

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 6 – Sites of Special Scientific Interest

Section 40 – SSSI offences: civil enforcement

252. **Section 40** of the Act provides for civil enforcement where SNH is satisfied that a person has committed an offence under section 19(1) or (3) of the 2004 Act.

Subsection (1)

253. Subsection (1)(a) inserts a new section 20A into the 2004 Act, which provides for the giving of restoration notices by SNH where it is satisfied that a person has intentionally or recklessly damaged any natural feature specified in an SSSI notification contrary to section 19(1) of that Act, or has without reasonable cause carried out an operation which has damaged a natural feature specified in an SSSI notification, or has failed to restore such a feature, contrary to section 19(3) of that Act.

Restoration notices – inserted section 20A of the 2004 Act

254. Subsections (1) and (3) enable SNH to propose to give a restoration notice to the responsible person if it is satisfied that that person has committed a relevant offence under the 2004 Act. SNH must in particular specify why the proposal is to be made, that representations may be made in respect of the proposed notice, and the effect of accepting a restoration notice if served i.e. that a person who is the subject of a restoration notice who gives notice of intention to comply with the notice within 28 days of it being given is discharged from liability to conviction for the relevant offence
255. Subsection (2) explains what is meant by the term “restoration notice”.
256. Subsection (4) enables SNH to give a restoration notice after the period for making representations (28 days) has expired. Subsection (5) gives effect to a restoration notice only if the responsible person gives SNH notice of intention to comply with it within 28 days of the notice being given. Subsection (6) allows SNH to extend the period for operations to be carried under the notice or otherwise modify the notice as SNH considers appropriate. Subsection (7) clarifies that SNH may only modify the notice under (6)(b) where the responsible person has consented to such a modification. Subsection (8) allows SNH to withdraw a restoration notice should it become satisfied that the restoration notice should not have been given to the responsible person. Subsection (9) requires SNH to compensate the responsible person for any expenses reasonably incurred in complying with a notice which is withdrawn. Subsection (10) prevents proceedings being commenced or continued for an offence in relation to which a restoration notice has effect even if the notice is subsequently withdrawn.
257. Subsection (11) provides that failing to comply with a restoration notice will itself be an offence. In the event of the requirements of a restoration notice not being carried

*These notes relate to the Wildlife and Natural Environment (Scotland)
Act 2011 (asp 6) which received Royal Assent on 7 April 2011*

out, subsection (12) of that section allows SNH to carry out the operations and recover costs from the responsible person.

258. Subsection (1)(b) and (c) of section 40 of the Act amends sections 14(1) and 17(1) of the 2004 Act such that SNH consent is not required for operations carried out by public bodies or owner occupiers when such operations are in accordance with the requirements of a restoration notice.
259. Subsection (1)(d) and (e) of section 40 of the Act amends section 44(1) of the 2004 Act so in respect of a new power of entry to SNH for the purposes of it ascertaining whether an operation as required by a restoration notice has been carried out in accordance with the notice.

Subsections (2) and (3)

260. Subsections (2) and (3) make consequential amendments needed following the introduction of the restoration notice procedure.
261. Subsection (2) amends section 8B(1) of the Rehabilitation of Offenders Act 1974, with the effect that the giving of a notice of intention to comply with a restoration notice is added to the list of alternatives to prosecution which are capable of being protected as spent alternatives under that Act.
262. Subsection (3) makes consequential amendments of the Criminal Procedure (Scotland) Act 1995, with the effect that the court may in certain circumstances (sentencing in particular) take into account the making and acceptance of a restoration notice.