

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 6 – Sites of Special Scientific Interest

Section 37 – Combining sites of special scientific interest

242. **Section 37** of the Act provides for Scottish Natural Heritage to combine two or more sites of special scientific interest (SSSIs) into a single SSSI, by giving notice to the persons who are interested parties in relation to the sites being combined.

Subsection (2)

243. Subsection (2) inserts a new section 5A into the 2004 Act.
Combining sites of scientific interest – inserted section 5A of the 2004 Act
244. Subsections (1) to (3) provide for SNH to give notice of the combination of the SSSIs, and for the combined site to be a single SSSI. Subsection (4) provides for SNH in addition to give notice to the general public of a notification under section 5A of the 2004 Act. Subsection (5) clarifies that SNH may not include any land in the new combined site which was not already part of one of the component sites, and may not add a new operation requiring consent as a result of this procedure.

Subsections (3) and (4)

245. Subsections (3) and (4) make consequential amendments.
246. Subsection (3) has the effect that if SNH or the Scottish Ministers fail to give notice of a combined SSSI, then SNH or Ministers must both give such notice and take such action as it or they think fit in consequence of any representation received following notice.
247. Subsection (4) amends the definitions in section 58 of the 2004 Act.

Section 38 – Denotification of SSSIs: damage caused by authorised operations

248. **Section 38** of the Act amends section 9 of the 2004 Act, which as read with section 11 of and schedule 1 to that Act provides for SNH to denotify a SSSI to the extent that a site is no longer of special interest by reason of the natural feature specified in the notification of the site
249. **Section 9** as amended provides that section 11 of and paragraphs 3 to 15 of schedule 1 to the 2004 Act do not apply where a site is denotified by reason of damage to, or destruction of, a natural feature as a consequence of a certain operations permitted by a public body or office-holder. The effect is to streamline the process for denotification of a SSSI in such circumstances.

Section 39 – SSSIs: operations requiring consent

250. Section 39 of the Act amends the 2004 Act with the effect that existing provision relating to operations carried out by public bodies is also applied to operations which are caused or permitted by public bodies (when such operations occur on land which is owned or occupied by the public body).
251. Subsections (3)(a)(i) and (4)(a)(i) amend sections 14 and 17 of the 2004 Act such that SNH consent is not required when an operation is in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996. Subsections (3)(a)(iii) and 4(a)(iii) insert new paragraphs into section 14(1) and 17(1) such that SNH consent is not required for operations which are specified in a negative procedure order made by the Scottish Ministers (see section 53 of the 2004 Act).

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 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

*These notes relate to the Wildlife and Natural Environment (Scotland)
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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.