



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 6

### SITES OF SPECIAL SCIENTIFIC INTEREST

#### 37 Combining sites of special scientific interest

- (1) The 2004 Act is amended as follows.
- (2) After section 5 insert—

##### **“5A Combining sites of special scientific interest**

- (1) Where SNH considers that two or more sites of special scientific interest should be combined, it may notify that fact to the persons who are the interested parties in relation to the sites in question.
- (2) Subsections (4) to (7) of section 3 apply in relation to a notification under subsection (1) as they apply to a notification under section 3(1), but as if—
  - (a) references in section 3(4)(a)(ii) and (iii) to a natural feature were references to the natural features by reason of which SNH considers the original sites to be of special interest, and
  - (b) section 3(4) required the notification to also be accompanied by a revised site management statement prepared in relation to the combined site of special scientific interest.
- (3) Accordingly, from the date when notification is given under subsection (1)—
  - (a) that notification is an “SSSI notification” for the purposes of this Act,
  - (b) the combined site of special scientific interest is a single “site of special scientific interest” for the purposes of this Act, and
  - (c) the original SSSI notifications cease to have effect.
- (4) SNH must give public notice describing the general effect of an SSSI notification given by virtue of subsection (1) in such manner (including on the internet or by other electronic means) as SNH thinks fit.

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(5) Nothing in this section allows SNH to—

- (a) include any land in a combined site of special scientific interest which was not included in at least one of the original sites of special scientific interest,
- (b) add to the operations requiring consent specified in the original SSSI notifications (otherwise than by extending the original area to which any such operation requiring consent related so as to include any land in the combined site of special scientific interest).”.

(3) In section 48(11)(a) (notices etc.), after “5(1)” insert “, 5A(1)”.

(4) In section 58(1) (interpretation)—

- (a) in the definition of “site of special scientific interest”, after “3(6)” insert “(read, where necessary, together with section 5A(3)(b))”,
- (b) in the definition of “SSSI notification”, after “3(5)” insert “(read, where necessary, together with section 5A(3)(a))”.

### **38 Denotification of SSSIs: damage caused by authorised operations**

In section 9 (denotification of SSSIs) of the 2004 Act, after subsection (4) insert—

“(5) This subsection applies where—

- (a) a public body or office-holder (after consulting SNH in accordance with any enactment) permits the carrying out of an operation,
- (b) the carrying out of the operation in pursuance of that permission damages a natural feature specified in an SSSI notification,
- (c) SNH, because of that damage, gives notification under subsection (1) of its intention to revoke or modify the SSSI notification, and
- (d) the explanation given by virtue of subsection (4)(a)(ii) in the document accompanying the notification under subsection (1)—
  - (i) states that SNH considers that all or part of the site of special scientific interest is no longer of special interest by reason of the damage caused by the carrying out of the permitted operation, and
  - (ii) explains the effect of subsection (6)(b).

(6) Where subsection (5) applies—

- (a) section 11, and paragraphs 3 to 15 of schedule 1, do not apply in relation to the notification under subsection (1), and
- (b) the relevant SSSI notification is revoked or, as the case may be, modified when the notification is given under subsection (1).”.

### **39 SSSIs: operations requiring consent**

(1) The 2004 Act is amended as follows.

(2) In section 13(1) (SNH consent required for operations carried out by public bodies), after “out” insert “, or cause or permit to be carried out on land owned or occupied by the public body or office-holder”.

(3) In section 14 (SNH consent not required for certain operations)—

- (a) in subsection (1)—

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- (i) after paragraph (c) insert—
    - “(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,
  - (ii) the word “or” immediately following paragraph (d) is repealed,
  - (iii) after paragraph (e) insert “, or
    - (f) if that operation is of a type described by order made by the Scottish Ministers.”,
  - (b) in subsection (2), after second “out” insert “or cause or permit to be carried out”,
  - (c) in subsection (3)—
    - (i) in paragraph (a)(i), for “proposes to commence the operation” substitute “is proposed that the operation be commenced”,
    - (ii) in paragraph (b), after “way” insert “, or causes or permits the operation to be carried out only in such a way,”,
    - (iii) in paragraph (c), after “operation” insert “or, as the case may be, in causing or permitting the carrying out of the operation,”,
  - (d) in subsection (4)(a), for “an operation for” substitute “or causes or permits the carrying out of an operation in circumstances in”.
- (4) In section 17 (SNH consent not required for certain operations)—
- (a) in subsection (1)—
    - (i) after paragraph (c) insert—
      - “(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,
    - (ii) the word “or” immediately following paragraph (d) is repealed,
    - (iii) after paragraph (e) insert “, or
      - (f) if that operation is of a type described by order made by the Scottish Ministers.”,
  - (b) in subsection (4), for the words from “owner” to “functions” substitute “operation in respect of which section 13 applies.”.

#### **40 SSSI offences: civil enforcement**

- (1) The 2004 Act is amended as follows—
- (a) after section 20 insert—

##### *“Restoration notices*

#### **20A Restoration notices**

- (1) SNH may propose to give a restoration notice where it is satisfied that a person (the “responsible person”)—
- (a) has committed an offence under section 19(1), or
  - (b) has committed an offence under section 19(3) in respect of an operation which has damaged a natural feature specified in an SSSI notification.
- (2) A restoration notice is a notice which requires the responsible person to carry out such operations as may be specified in the notice, within

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such periods from the notice taking effect as may be so specified, for the purpose of restoring, so far as is reasonably practicable, the damaged natural feature to its former condition.

- (3) A proposal under subsection (1) must be made to the responsible person and must—
  - (a) explain why SNH proposes to give the restoration notice,
  - (b) be accompanied by a draft of the proposed restoration notice,
  - (c) explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question,
  - (d) explain that the responsible person has the right to make representations to SNH about the proposal within the period of 28 days from the date on which the proposal is made,
  - (e) specify the manner in which such representations must be made.
- (4) SNH may, after the period for making representations about a proposal has expired, give the restoration notice (with or without modifications) to the responsible person.
- (5) A restoration notice has effect only if the responsible person gives SNH notice of intention to comply with it within 28 days of it being given.
- (6) SNH may by giving notice to a responsible person in respect of whom a restoration notice has effect—
  - (a) extend the period specified in the restoration notice within which operations are to be carried out, or
  - (b) otherwise modify the restoration notice in such manner as SNH considers appropriate.
- (7) A notice may be given under paragraph (b) of subsection (6) only where the responsible person has consented to the modification.
- (8) SNH may withdraw a restoration notice (by giving notice to the responsible person) where it is satisfied on the basis of information subsequently obtained that the restoration notice should not have been given to the responsible person.
- (9) Where a restoration notice is withdrawn, SNH must compensate the responsible person for any expenses reasonably incurred in complying with the restoration notice.
- (10) Proceedings against the responsible person may not be commenced or continued for an offence in relation to which the restoration notice has effect (even if the restoration notice is subsequently withdrawn).
- (11) If, within the period specified in a restoration notice, the responsible person to whom it is given fails, without reasonable excuse, to comply with it, the responsible person is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.

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- (12) If, within the period specified in a restoration notice, any operations so specified have not been carried out in accordance with the restoration notice, SNH may—
- (a) carry out those operations, and
  - (b) recover from the responsible person any expenses reasonably incurred by it in doing so.”
- (b) in section 14(1) (SNH consent not required for certain operations by public bodies), after paragraph (a) insert—
- “(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”
- (c) in section 17(1) (SNH consent not required for certain operations by owners or occupiers), after paragraph (a) insert—
- “(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”
- (d) in section 44(1) (powers of entry), after paragraph (b) insert—
- “(ba) to ascertain whether an operation required to be carried out by a restoration notice given under section 20A(4) has been carried out in accordance with the notice,
  - (bb) to carry out operations in pursuance of section 20A(12),”
- (e) in paragraph 1(1)(b) (duty to give notice before entering occupied premises) of schedule 4, for “(1)(h)” substitute “(1)(bb), (h)”.
- (2) In section 8B(1) (protection afforded to spent alternatives) of the Rehabilitation of Offenders Act 1974 (c.53), after paragraph (c) insert—
- “(ca) has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section.”
- (3) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows—
- (a) in section 69(7) (notice of previous alternative disposals), after paragraph (b) insert “;
  - (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”
- (b) in section 101 (previous convictions)—
- (i) in subsection (10), after paragraph (b) insert “;
  - (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”
- (ii) in subsection (11)—
- (A) the word “or” immediately following paragraph (b) is repealed,
  - (B) after paragraph (c) insert “; or

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- (d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”
    - (C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”
  - (c) in section 166 (previous convictions: summary proceedings)—
    - (i) in subsection (10), after paragraph (b) insert “;
      - (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”
    - (ii) in subsection (11)—
      - (A) the word “or” immediately following paragraph (b) is repealed,
      - (B) after paragraph (c) insert “; or
        - (d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”
      - (C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”