



# Nature Conservation (Scotland) Act 2004

## 2004 asp 6

### PART 2

#### CONSERVATION AND ENHANCEMENT OF NATURAL FEATURES

### CHAPTER 4

#### GENERAL AND SUPPLEMENTARY

#### **38 Ramsar sites**

- (1) Where a wetland situated in Scotland is designated under paragraph 1 of article 2 of the Ramsar Convention for inclusion in the list of wetlands of international importance referred to in that article, the Scottish Ministers must give SNH notice of the designation.
- (2) SNH must, on receipt of such a notice, give notice of the designation to—
  - (a) every owner and occupier of the wetland or any part of it,
  - (b) the planning authority for the district in which the wetland, or any part of it, is situated,
  - (c) where the wetland, or any part of it, is situated in a National Park and the National Park authority for the National Park is not notified under paragraph (b), the National Park authority,
  - (d) every statutory undertaker which SNH considers may carry out operations which may affect the wetland or any part of it, and
  - (e) every relevant regulatory authority which SNH considers likely to have functions which relate to the wetland or any part of it.
- (3) The Ramsar Convention is the Convention on Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971, as amended by—
  - (a) the Protocol known as the Paris Protocol done at Paris on 3rd December 1982,
  - (b) the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting Parties held at Regina, Saskatchewan, Canada, between 28th May and 3rd June 1987, and

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(c) any further amendments coming into force from time to time, and the reference in subsection (1) to paragraph 1 of article 2 is, if necessary in consequence of any such further amendment or the coming into force of any instrument replacing that Convention, to be taken as referring to the appropriate successor provision.

### **39 Acquisition of land by SNH**

- (1) SNH may—
  - (a) acquire by agreement,
  - (b) with the authorisation of the Scottish Ministers, acquire compulsorily, all or any part of land of a description specified in subsection (2).
- (2) The land referred to in subsection (1) is—
  - (a) land which is a site of special scientific interest,
  - (b) any other land to which a nature conservation order or land management order applies,
  - (c) any other land which is contiguous to, or which SNH considers to be otherwise associated with, land of the type described in paragraph (a) or (b).
- (3) SNH may acquire land under subsection (1)(b) only where it is necessary to do so for the purpose of securing the conservation, restoration or other enhancement of any protected natural feature.
- (4) The power to acquire land under this section includes power to acquire a servitude or other right in or over land by the creation of a new right.
- (5) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to an acquisition under subsection (1)(b) as if—
  - (a) this section were contained in an Act in force immediately before the commencement of that Act,
  - (b) references in that Act to a local authority were references to SNH.
- (6) SNH may manage land acquired under this section.
- (7) If SNH disposes of land acquired under subsection (1)(b), or of any interest in it, it must do so on terms designed to achieve the purpose for which the land was acquired.

### **40 Restoration orders**

- (1) Where—
  - (a) a person is convicted of an offence under section 19(1), or
  - (b) the operation in respect of which a person is convicted of an offence under section 19(3), 27(1) or 36(2) has damaged any protected natural feature,
 the court by which the person is convicted may, in addition to dealing with the person in any other way, by order require the person to carry out, within such period as may be specified in the order, such operations for the purpose of restoring, so far as is reasonably practicable, the protected natural feature to its former condition as may be so specified.
- (2) Before making an order under subsection (1), the court must have regard to any representations by SNH as to the manner in which the aspect should be restored.

- (3) At any time before an order under subsection (1) has been complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or modify the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.
- (4) If, within the period specified in an order under subsection (1), the person against whom the order was made fails, without reasonable excuse, to comply with it, the 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.
- (5) If, within the period specified in an order under subsection (1), any operations specified in the order have not been carried out in accordance with the order, SNH may—
  - (a) carry out those operations, and
  - (b) recover from the person against whom the order was made any expenses reasonably incurred by it in doing so.
- (6) An order under subsection (1) is, for the purposes of any appeal or review, to be treated as a sentence.

#### **41 Signs etc.**

- (1) SNH may—
  - (a) put up, maintain or remove signs on any land, or
  - (b) take such other action as it considers appropriate,for the purpose of providing information to the public in relation to any land to which an SSSI notification, nature conservation order or land management order relates or in respect of which byelaws have been made under section 20(1).
- (2) Any person who damages or destroys—
  - (a) any sign put up by SNH in pursuance of subsection (1),
  - (b) any notice affixed by SNH or the Scottish Ministers to an object on land for the purposes of giving notification under or by virtue of this Part,is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### **42 Change of owner or occupier**

- (1) This section applies where a person with an interest in land within a site of special scientific interest or to which a nature conservation order or land management order relates—
  - (a) disposes of the interest, or
  - (b) where the person is the owner of the land, becomes aware that it is occupied by an additional or a different occupier.
- (2) The person with an interest in the land must, within the period of 28 days beginning with the date on which the person disposed of the interest or became aware of the change in occupation, send notices to SNH and—
  - (a) in the case of a disposal, to the person to whom the interest is disposed, or
  - (b) in the case of a change in occupation, to the additional or different occupier.

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- (3) A notice given under subsection (2) to SNH must specify the land concerned and—
- (a) in the case of a disposal, specify the date on which the person disposed of the interest in the land and the name and address of the person to whom the person disposed of the interest,
  - (b) in the case of a change in occupation, the date, to the best of the owner's knowledge, on which the change took place and, as far as the owner knows them, the name and address of the additional or different occupier.
- (4) A notice given under subsection (2) to a person to whom the interest is disposed of or to an additional or different occupier must—
- (a) specify the land concerned and state that an SSSI notification, nature conservation order or, as the case may be, land management order has effect in relation to the land, and
  - (b) where reasonably practicable, be accompanied by a copy of the relevant—
    - (i) SSSI notification (and any notification under section 5(1), 6(5), 7(3), 8(1) or 9(1), or notice under paragraph 10 of schedule 1, which amends the SSSI notification),
    - (ii) nature conservation order (and any amending order or revoking order which amends or partly revokes the nature conservation order), or
    - (iii) land management order (and any order under section 32(3) which amends or partly revokes the land management order),
 as the case may be.
- (5) For the purposes of this section, a person is treated as disposing of an interest in land if the person disposes of it by way of sale, exchange or lease, or by way of the creation of any servitude, right or privilege over that interest or by any other way except the grant of a standard security.

#### **43 Powers of investigation etc.: police**

- (1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, without warrant—
- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person,
  - (b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person's possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing,
  - (c) seize and detain for the purposes of proceedings under this Part any thing which may be evidence of the commission of the offence.
- (2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, for the purpose of exercising the powers conferred by subsection (1), enter any land other than a dwelling or lockfast premises.
- (3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Part has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.

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- (4) A warrant under subsection (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.
- (5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the constable's authority.
- (6) A constable who enters any land in the exercise of a power conferred by this section—
  - (a) may—
    - (i) be accompanied by any other persons, and
    - (ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the constable in the exercise of that power,
  - (b) may take samples of any articles or substances found there and remove the samples from the land.
- (7) A power specified in subsection (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.
- (8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) or by a warrant under subsection (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.

#### **44 Powers of entry: authorised persons**

- (1) Any person authorised in writing by SNH may, at any reasonable time, enter any land for any of the following purposes—
  - (a) to determine whether to give or confirm an SSSI notification or a notification under section 5(1), 6(5), 7(3), 8(1) or 9(1) in relation to the land,
  - (b) to assess the condition of any protected natural feature of the land,
  - (c) to determine whether or not to offer to enter into a management agreement in relation to the land or to ascertain the terms on which it should offer to enter into such an agreement,
  - (d) to ascertain whether a management agreement is being, or has been, complied with,
  - (e) to determine whether or not to formulate a proposal under section 29(2) for a land management order,
  - (f) to ascertain whether an offence under section 19(1) or (3), 27(1) or 36(1) or (2) or under byelaws made by virtue of section 20 is being, or has been, committed on or in relation to the land,
  - (g) to ascertain whether an operation required to be carried out by a land management order or an order under section 40(1) has been carried out in accordance with the order,
  - (h) to carry out operations in pursuance of section 37 or 40(5),
  - (i) to determine any question in relation to the acquisition of the land by agreement or compulsorily,
  - (j) to determine any question in relation to compensation under section 20(3) of the National Parks and Access to the Countryside Act 1949 (c. 97) as it applies in relation to byelaws made under section 20 of this Act,

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- (k) to put up, maintain or remove signs, or to do anything else, for the purposes of section 41,
  - (l) where SNH is not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).
- (2) Any person authorised in writing by the Scottish Ministers may, at any reasonable time, enter any land for any of the following purposes—
- (a) to determine whether a nature conservation order, or an amending order or revoking order, should be made in relation to the land,
  - (b) to determine whether a land management order, or an order under section 32(3) amending or revoking such an order, should be made in relation to the land,
  - (c) where the Scottish Ministers are not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).
- (3) The powers conferred by subsections (1) and (2) to enter land for any purpose mentioned in those subsections include power to enter for the same purpose any land other than that referred to in the subsection in question.
- (4) Nothing in this section authorises any person to enter a dwelling or lockfast premises.
- (5) Any person who intentionally obstructs a person acting in the exercise of any power conferred by this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) Schedule 4 makes further provision about the exercise of the powers conferred by this section; and references in this section and that schedule to a power conferred by this section include references to such a power exercisable by virtue of a warrant under that schedule.

#### **45 SNH: power to enforce**

- (1) Compliance with sections 12(2) and 15 is enforceable by civil proceedings brought by SNH for interdict or for any other appropriate remedy.
- (2) Where, on an application by SNH, the court is satisfied that any operation being, or proposed to be, carried out is damaging or is likely to damage—
- (a) any protected natural feature, or
  - (b) any other natural feature of Scotland which is of national importance,
- the court may make such order (whether for interdict or otherwise) as it considers appropriate.
- (3) An application under subsection (2) may be made whether or not civil proceedings under subsection (1) would be competent.
- (4) Subsections (1) and (2) do not prevent any other person who has a right to bring proceedings for compliance with the provisions specified in subsection (1) or, as the case may be, in relation to the matters referred to in subsection (2), from doing so.
- (5) In this section “the court” means the Court of Session or the sheriff.

#### **46 Offences: penalties and time limits**

- (1) The court must, in determining the amount of any fine to be imposed on a person convicted of an offence under this Part, have regard in particular to any financial benefit which has accrued or is likely to accrue to the person in consequence of the offence.
- (2) Summary proceedings for an offence under this Part may, subject to subsection (3), be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.
- (3) No such proceedings may be brought more than 3 years—
  - (a) after the commission of the offence, or
  - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (4) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

#### **47 Offences by bodies corporate etc.**

- (1) Where an offence under this Part committed—
  - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager or secretary of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner, or
    - (ii) purports to act in that capacity,
  - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is concerned in the management or control of the association, or
    - (ii) purports to act in the capacity of a person so concerned,

the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Part is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

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#### **48 Notices, applications etc.**

- (1) Any—
- (a) notice, notification or consent given, or
  - (b) request for review, proposal or application (other than an application to a court) made,
- under or for the purposes of this Part must be in writing.
- (2) A reference in this Part to SNH or the Scottish Ministers giving notice or notification to the interested parties is a reference to giving notice or notification to—
- (a) every owner and occupier of the land, or any part of it, to which the notice or notification relates,
  - (b) the Scottish Ministers or, as the case may be, SNH,
  - (c) every local authority in whose area the land, or any part of it, is situated,
  - (d) where the land, or any part of it, is situated in a National Park, the National Park authority for the National Park,
  - (e) where a planning authority for the district in which the land, or any part of it, is situated is not notified under paragraph (c) or (d), that planning authority,
  - (f) every community council (within the meaning of Part IV of the Local Government (Scotland) Act 1973 (c. 65)) in whose area the land, or any part of it, is situated,
  - (g) every statutory undertaker which the person giving the notice or notification considers may carry out operations which may affect the land or any part of it,
  - (h) every relevant regulatory authority which the person giving the notice or notification considers likely to have functions which relate to the land or any part of it,
  - (i) every community body which has registered an interest in the land, or in any part of it, under Part 2 of the Land Reform (Scotland) Act 2003 (asp 2),
  - (j) every other person appearing to the person giving the notice or notification to have an interest in the land or any part of it, and
  - (k) such other persons as the person giving the notice or notification thinks fit,
- and the date on which the Scottish Ministers or, as the case may be, SNH receive a notice or notification given to the interested parties is to be treated as the date on which the notice or notification is given.
- (3) The validity of a notice or notification given to the interested parties is not affected by failure to give the notice or notification to any of the persons specified in paragraphs (a) and (f) to (k) of subsection (2).
- (4) But subsection (3) does not apply in relation to a failure to give notice or notification to an owner or occupier of land specified in subsection (2)(a) unless SNH has or, as the case may be, the Scottish Ministers have—
- (a) taken all reasonable steps to identify the owners and occupiers of the land, or any part of it, to which the notice or notification relates, and
  - (b) given the notice or notification to each owner and occupier so identified.
- (5) The Scottish Ministers may by order modify subsection (2) so as to—
- (a) add or remove a type of person to or, as the case may be, from those referred to in that subsection, or
  - (b) amend any description of a type of person so referred to.



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- (6) Any reference in this Part to a notice or notification being given to a person is, unless subsection (10) applies, to be construed as a reference to its being—
- (a) delivered to the person to whom it is to be given, or
  - (b) sent in a prepaid registered letter, or by the recorded delivery service, addressed—
    - (i) where that person is an incorporated company or body, to the secretary, clerk or chief executive of the company or body at its registered or principal office,
    - (ii) where that person is a public office-holder, to the office-holder at the office-holder's principal office,
    - (iii) in any other case, to the person at that person's usual or last known place of abode.
- (7) Any reference in this Part to a request for review, a proposal or an application (other than an application to a court) being made, or a consent being given, is to be construed as a reference to its being—
- (a) delivered or sent in the manner described in subsection (6), or
  - (b) transmitted to the person to whom it is being made or given in some other reasonable manner (including by electronic means).
- (8) A request for review, proposal, application or consent which is transmitted by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (9) Subsection (10) applies where—
- (a) SNH is to give notice to the owners and occupiers of land in pursuance of section 29(6),
  - (b) any other notice or notification is to be given under this Part to the owners and occupiers of land and SNH is or, as the case may be, the Scottish Ministers are not aware of the name or address of any owner or occupier of the land.
- (10) Where this subsection applies a copy of the notice or notification must be addressed to “The owners and any occupiers” of the land (describing it) and a copy of it must be affixed to some conspicuous object on the land (and so doing is to be treated as sufficient for the purposes of providing notice or notification to each owner or occupier whose name and address is unknown).
- (11) Subsection (12) applies where, in giving to the interested parties—
- (a) a notification under section 3(1), 5(1) or 9(1), or
  - (b) a notice under paragraph 3(a) of schedule 2,
- SNH fails or, as the case may be, the Scottish Ministers fail to give the notification or notice to any interested party specified in subsection (2)(a).
- (12) Where this subsection applies SNH or, as the case may be, the Scottish Ministers—
- (a) must, if it or they become aware of the identity of, or are requested to do so by, any such interested party, provide—
    - (i) a copy of the notification or notice in question, and
    - (ii) such further information in relation to the notification or notice in question as it or they consider appropriate,
- to the interested party, and

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- (b) must take such action as it or they think fit in consequence of any representation made by the interested party.

#### **49 Transitional arrangements**

- (1) Schedule 5 contains transitional and transitory provisions and savings consequential on this Part.
- (2) This section and that schedule are without prejudice to sections 53(2)(a) and 56.