

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 1 – Sites of Special Scientific Interest

Notification of sites of special scientific interest

Section 3 Duty to give notification of sites of special interest

31. Subsection (1) places a duty on SNH to notify, as a site of special scientific interest, any land which it considers to be of special interest by reason of its flora, fauna, geology or geomorphological features. These features are the “natural features” of the land and are defined as such, for the purposes of the Act, in subsection (2). It might be noted that in common usage the abbreviation “SSSI” is used for “site of special scientific interest” and that practice has been adopted in these Notes.
32. Where it considers a site to be of special interest SNH must notify that fact to the interested parties listed in section 48(2). Procedures to be followed by SNH in notifying an SSSI are set out in schedule 1 to the Act which is introduced by section 10.
33. Subsection (3) qualifies the duty in subsection (1) by requiring SNH to have regard to certain criteria and guidance when reaching a view on whether land is of special interest. Such guidance, covered by paragraph (b) of subsection (3), may be a formal document setting out SSSI selection criteria and issued under section 54. But guidance to SNH is also provided by subsection (3)(a). This requires SNH to have regard to the contribution which any individual SSSI is likely to make to the representativity of the overall SSSI series in Scotland.
34. When taken as a whole, the SSSIs notified in Scotland will form a coherent series of protected sites. To be properly representative of the diversity and geographic range of the natural features of Scotland it is considered that this series could, for example, include, at one end of the spectrum, sites which are exceptionally rare or unique and, at the other, an adequately representative sample of sites which are more widespread or common.
35. Subsection (3)(a) also requires SNH to give consideration to the Scottish contribution to the conservation of natural features at the British and European levels. In this sense the Act recognises that Scotland has a particular responsibility in relation to the conservation of sites, species and habitat types which are characteristic of, and more prevalent in, the more northern parts of the British Isles but which are not necessarily well represented elsewhere in Great Britain or the European Union.
36. The fact that a particular type of site may be fairly common in Scotland but unusual at a British or European level is a factor which SNH must take into account. In

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2004 (asp 6) which received Royal Assent on 11 June 2004*

particular this means that SNH, when evaluating the relative interest of a site, should give consideration to the status and conservation requirements of relevant species or habitat types against a wider British or European backdrop, as well as considering them within the context of Scotland.

37. On that basis a properly representative series could legitimately include a relative over-representation of certain features in relation to the natural heritage of Scotland, in order to ensure that an adequate Scottish contribution is made to the conservation of such natural features in Britain or Europe. It should not however under-represent natural features which are characteristic of Scotland simply because such features are common elsewhere. To do so would result in a series which would not be properly representative of the natural features found in Scotland, and such a series would therefore be at odds with the requirements of section 3(3).
38. Subsection (4) specifies that the notification given to interested parties as a consequence of the duty in subsection (1) must be accompanied by a number of supplementary items which specify the extent and special characteristics of the site, as well as providing such other general information as SNH believes appropriate. The accompanying documentation must in particular:
 - describe the site;
 - specify the natural features of the site which are regarded as being of special interest;
 - list any acts or omissions which are likely, in the opinion of SNH, to be damaging to those features of interest; and
 - specify the location and boundaries of the site and provide a map delineating the site.
39. Subsection (5) defines a shorthand, technical term by which the notification given to the interested parties by virtue of subsection (1) *plus* the detailed documentation specified in subsection (4) is to be known for the purposes of the Act. These items, taken together, constitute the “SSSI notification” for the area of land in question.
40. Subsection (6), in conjunction with section 48(2), defines the point in time when the SSSI notification has effect. From that point the site is formally an SSSI and benefits from the protective mechanisms set out in the subsequent provisions of the Act.
41. Subsection (7) provides a shorthand, technical term for the potentially damaging acts or omissions which are listed in the SSSI notification by virtue of subsection (4)(a)(iii). These acts or omissions are to be known as “operations requiring consent”. This term is further abbreviated for the purposes of these explanatory Notes as “ORC”.