

# NATURE CONSERVATION (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Conservation and Enhancement of Natural Features**

#### *Chapter 1 – Sites of Special Scientific Interest*

#### **Exercise of functions in relation to sites of special scientific interest**

#### *Section 12 Exercise of functions by public bodies etc.*

87. **Section 12** applies to the exercise by a public body of any function on, or so far as affecting, any land which is of SSSI status.
88. This general duty is therefore invoked whenever a public body exercises a function in relation to any part of the SSSI series, whether the function affects a part of one SSSI, the whole of an SSSI or a variety of areas of land on a number of different SSSIs. In essence, public bodies must comply with the obligations set out in section 12 wherever their policies or operations impinge on, or are likely to affect, SSSI land.
89. Subsection (2) requires public bodies to:
- consult SNH in relation to the exercise of the function;
  - have regard to any advice received from SNH as a result of such consultation; and
  - take reasonable steps, when exercising the function, to both further the conservation and enhancement of protected natural features and to maintain and enhance the representative nature of SSSI series as a whole.
90. As with the biodiversity duty in section 1, the general duty in relation to SSSIs does not override other statutory obligations. Public bodies must still carry out their primary functions in a proper and effective manner. But in doing so they must also act to further the conservation, maintenance and enhancement of individual SSSIs and the wider SSSI series.
91. Subsection (3) ensures that the relationship between the general duty in section 12 and the more specific obligations in sections 13 to 15 is clear. Compliance with section 12 does not absolve a public body from the need to comply with the more detailed requirements regulating specific operations which are likely to damage any natural feature for which an SSSI has been notified. The provisions of *both* section 12 *and* sections 13 to 15 must be complied with. Section 12 is an overarching duty. Sections 13 to 15 describe how to deal with situations in which specific operations are likely to damage an SSSI. The interplay between section 12 and sections 13 to 15 is particularly important where a public body is considering the option to proceed with an operation

*These notes relate to the Nature Conservation (Scotland) Act  
2004 (asp 6) which received Royal Assent on 11 June 2004*

against SNH advice. In such cases, the public body remains bound by its general obligation under section 12 (for which see section 14(3)(c)).