

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

Operations affecting sites of special scientific interest

Section 13 Operations by public bodies etc.

92. Subsection (1) prohibits a public body from carrying out any operation which is likely to damage any natural feature by reason of which an SSSI notification has effect, unless certain conditions are met. These are that either:
- SNH has given explicit written consent to the operation in accordance with section 13(4);
 - the provisions of section 14(1) apply (i.e. consent has effectively been given in some other form or the operation is necessary in an emergency); or
 - the provisions of section 14(2) apply (i.e. the operation satisfies the conditions set out in subsection (3) allowing the public body to proceed in the face of a refusal of consent by SNH).
93. Contravention, without reasonable excuse, of this section is a criminal offence under section 19.
94. Subsection (2) provides that the obligations imposed by subsection (1) apply whether or not the operation would take place on land within an SSSI. This means that operations by a public body which would be likely to damage the protected natural features of an SSSI are controlled under section 13 even where they take place outwith the formal boundary of the site. What matters is whether the operation is likely to damage the protected natural features. Where the operation is taking place is not relevant.
95. It is important to note in this context that public bodies, unlike private land managers, are required to do more than merely seek consent for operations on the formal ORC list for a site. The effect of not limiting this provision to ORCs is intended to require public bodies need to be more pro-active in their approach. Public bodies must, for example, assess potential risks to any SSSI (including an SSSI on adjacent land to that on which they intend to carry out operations) when planning and carrying out any operation. In this sense, public bodies must take responsibility for anticipating any potential threat to a site, whilst private owners and occupiers are not obliged by section 16 to think beyond the ORC list notified to them by SNH or to consider the impacts of their activities on a neighbouring SSSI. The activities of public bodies are regulated by sections 13 and 14.

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

For more on the position of private owners and occupiers, see the notes on section 16, below.

96. Subsection (3) requires that an application for SNH's consent to an operation must specify the nature of the operation, provide details of the proposed dates on which the operation will start and finish, and define the land on which the public body proposes to carry out the operation.
97. Subsection (4) provides that where SNH has received an application as specified under subsection (3), it may either consent to the operation or refuse its consent. Where SNH consents to the operation it is entitled to do so subject to such conditions as it sees fit.
98. Subsection (5) makes it explicit that any conditions imposed under subsection (4) can, in particular, restrict the manner in which the operation is to be carried out or specify that the operation may only be carried out on part of the land in question. SNH may also stipulate that the operation can only be carried out for, or within, a certain period of time (for example, outwith the breeding season for important species). The types of conditions which may be imposed by SNH are not however limited to the examples given in subsection (5).
99. Subsection (6) obliges SNH to provide written advice to the public body when giving or refusing consent to an operation. Such advice must include advice on how to minimise the type of damage to the protected natural feature by reason of which an SSSI notification has effect. The provision of such advice is not optional and this section ensures that SNH will provide appropriate conservation and ecological advice and guidance to other public bodies which will allow them to carry out a permitted operation in the most appropriate and least damaging manner.
100. Subsection (7) requires SNH to provide reasons for either refusing consent or giving consent subject to conditions. This is intended to ensure the transparency and openness of decision-making and to make it easier for decisions by SNH to be challenged by the public body in question where it believes SNH has wrongly refused consent or imposed unreasonable conditions.
101. Subsection (8) ensures certainty by deeming any application for consent under section 13 to have been refused if SNH has failed to respond within 28 days of the date of application. Where SNH neither gives nor refuses consent, and the application is therefore treated as having been turned down, the public body has the option of proceeding under section 14(2)(a).