

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

Offences and Byelaws

Section 19 Offences in relation to sites of special scientific interest

144. Subsection (1) provides that it is an offence for any person to intentionally or recklessly damage any natural feature specified in an SSSI notification. It should be noted that the offence is one which extends to members of the general public and to public bodies, such as statutory undertakers, which are carrying out operations on SSSI land. The inclusion of acts by third parties, and not just those carried out by the owners and occupiers of the site, is one of the fundamental differences between the Act and the previous provisions of the 1981 Act.
145. The concept of “damaging” natural features of an SSSI is defined further in sections 58(2) and (3) and includes both causing the natural feature to deteriorate and disturbing and harassing the fauna for which the site has been notified.
146. Subsection (2) provides a statutory defence to the offence in subsection (1). A person is not guilty of the offence of recklessly damaging the natural features of an SSSI if the act can be shown to be the incidental result of an otherwise lawful operation. Certain further conditions require to be satisfied in order for the defence to be effective. The person who carried out the act must *either* have taken reasonable precautions to avoid damage to the site *or* he/she should be able to demonstrate that the damaging consequences of the lawful operation could not reasonably have been anticipated. It is also necessary to show that, once it became apparent that damage was being caused, the person took all reasonable steps to minimise that damage.
147. Subsection (3) makes it an offence for any public body to carry out an operation which is likely to damage the natural features of an SSSI unless it has obtained SNH consent or one of the other exemptions allowed for in section 13(1) applies. It is also an offence for any private owner or occupier to carry out an ORC without SNH consent or where the exemptions specified in section 17(1) apply. These offence provisions are subject to a reasonable excuse defence.
148. Subsection (3) also makes it an offence for both public bodies and private owners and occupiers to fail to restore an SSSI in accordance with sections 14(5)(b) and 17(3) (b), for example where damage has resulted from an emergency operation. Again, a reasonable excuse is a defence.

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

149. Subsection (4) provides that a person found guilty of an offence under this section will be liable on summary conviction to a fine of up to £40,000, and on conviction on indictment to a fine (that is, to a fine which can be set at whatever level the Court thinks fit, including in excess of £40,000, having had regard to the facts of the case).
150. Subsection (5) provides that it is not a defence to proceedings under subsection (3) for contravention of sections 13(1) or 16(1) to show that the operation did not in fact damage the natural features of the site. In fact the offence is one of carrying out the operation without having obtained consent (or without one of the exemptions in sections 14 and 17 applying). It is therefore immaterial whether or not the operation actually resulted in damage to the SSSI and a defence based on the argument that no damage was caused is irrelevant.

Section 20 Byelaws

151. Subsection (1) allows SNH to make byelaws to protect SSSIs. This will allow SNH to deal with a variety of actions that may damage an SSSI such as fly-tipping, the driving of vehicles off-road or the setting of fires.
152. Subsection (2) applies sections 20(2), 20(3), 106 and 107 of the [National Parks and Access to the Countryside Act 1949 \(c.97\)](#) to the making of byelaws under the Act in the same way as they apply to the making of byelaws under the 1949 Act. Those sections, amongst other things, set out various prohibitions and restrictions which byelaws may contain and relevant procedures.