

# 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

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”.

#### ***Section 4 Site management statements***

42. This section requires that each SSSI notification must be accompanied by a site management statement prepared by SNH. The site management statement does not form part of the SSSI notification, but is a separate document which provides practical guidance to the owners and occupiers of the SSSI in relation to conservation and enhancement of the protected natural feature. It may also contain other information, including information which promotes the understanding and enjoyment of the natural feature by the general public.
43. The role of the site management statement is to complement and expand upon the rather technical and scientific information in the SSSI notification. To that end, SNH can use a site management statement to provide information and advice, in non-scientific language wherever possible, setting out how land managers can best secure the long-term protection of the site. At a practical level it will, for example, allow SNH to assist land managers in planning and carrying out operations on the site in ways which are

consistent with, and sensitive to, the conservation needs of the SSSI. Overall, the site management statement is intended to assist owners and occupiers, and their employees or contractors, to manage the site responsibly and in the most effective manner.

44. SNH can make use of site management statements as evolving documents. The provisions in subsections (3) and (4) enable the statements to be reviewed and updated in a manner which ensures that they continue to fulfil their purpose effectively. That process of review may be initiated either by SNH or by the owner or occupier of land within the SSSI.

### ***Section 5 Enlargement of sites of special scientific interest***

45. This section permits SNH to enlarge an existing SSSI, by adding an additional area of land (the “extra land”) to the original site. SNH is permitted to do so only where the combined site, comprising the original site and the extra land, can be regarded as being of special interest. The principal purpose of this provision is to enable land, which ought reasonably to have been included within the original site at the time when that original site was notified, to be incorporated within the site at a later date.
46. This might take place, for example, when new data come to light demonstrating the value or importance of the extra land – whether in its own right as land of intrinsic special interest or as land which is not perhaps inherently of special interest in itself, but which is demonstrably important to the effective conservation and management of the existing SSSI. The procedure in section 5 enables this to happen without having either to notify the additional land as an entirely separate SSSI or to denotify the original site and then re-notify the whole of the larger area from scratch. The procedure is sufficiently flexible to cover both a significant enlargement of an SSSI (for example, where a significant area of extra land of special interest is added) or a minor outward adjustment to the boundary of the site (for example, where the size of the site is increased only in a minor sense, perhaps for reasons associated with the effective management of the existing site). It should be noted that changes and adjustments which decrease the size of the SSSI are covered by section 9.
47. Any debate about the merits or otherwise of the enlargement must relate to the case for including the *extra* land. Section 5 does not allow the case for the original site to be debated as part of the process for including the land. Notification of the change is therefore confined solely to interested parties (see section 48(2)) in relation to the extra land. Representations from interested parties are similarly confined to those which are relevant to the case for or against inclusion of the extra land. Representations in relation to the original site (such as, for example, arguments putting the case for its denotification) are not competent in this context.
48. The procedures associated with enlargement are otherwise essentially the same as for initial notification and the arrangements set out in Schedule 1 again apply. In addition, SNH must have regard to the selection criteria prescribed in section 3(3)(a) and in guidance under section 54 in making the case for the combined area of land, just as it would for a new SSSI.
49. Notification under this section must update the original SSSI notification to properly reflect the natural features of the combined land and the guidance provided to land managers via the site management statement must likewise be updated in order to cover the enlarged site. Provision for updating the ORC list in the SSSI notification covering the combined site is made separately in section 6 and other variations to the notification can be made separately using the power conferred by section 8.

### ***Section 6 Review of operations requiring consent***

50. This section regulates any review of the ORCs listed in an SSSI notification. The times at which the process of review and revision can be carried out are subject to the constraints which are set out in subsections (1) and (2).

51. Subsection (1) gives SNH the power to review the ORC list when it thinks fit and obliges it also to do so on the request of any owner or occupier of the site. Subsection (2), however, limits the ability of SNH to carry out such a review more frequently than every 6 years, unless it has first obtained the consent of every owner or occupier. Thus, SNH can neither initiate reviews nor be obliged to carry out a review by an owner or occupier outwith the 6 year cycle, unless it has secured agreement from the owners and occupiers of the land affected.
52. Subsection (2) should be read in conjunction with the transitional provisions in paragraphs 3(a) and 5 of Schedule 5. These define the date on which the first 6 year period commences in relation to existing SSSIs and make special arrangements allowing SNH to conduct a structured programme of review of ORC lists during that initial 6 year period. SNH has been specifically tasked by the Scottish Ministers with reviewing those ORC lists which have been derived (as a consequence of paragraph 3(b) of schedule 5) from the PDO (“potentially damaging operations”) lists used for SSSIs under the 1981 Act. That review is to be undertaken in line with the policy that the new ORC lists should be more closely targeted and should deal with credible potential threats to the site, rather than (as has tended to happen in the past) simply listing all activities which might, theoretically, damage the site. Reserve powers exist, in section 7 and by using nature conservation orders, to cover the rare situations where activities which are genuinely detrimental to the SSSI interest have not been listed on an ORC list.
53. The 6 year period between ORC reviews reflects the existing site condition monitoring programme, which assesses the conservation status and condition of natural features across the SSSI series. It is this programme which yields the principal data which are required to inform a major review of the ORC list. There is nothing however to prevent more frequent reviews where there is mutual agreement between SNH and the owners and occupiers of the site that it would be sensible to do so.
54. Subsection (3) specifies that agreement to a review is given by owners and occupiers where *either* every owner and occupier explicitly consents *or* no reasonable objection to the proposal is received within 28 days. Where there are multiple owners and occupiers on a site and one individual seeks, without good cause, to block a review for which there is clear majority support amongst other owners and occupiers, it is unlikely that this will be regarded by SNH as a “reasonable objection”.
55. Subsection (4) enables SNH, in carrying out a review of the list of ORCs, also to review existing consents which it has given under section 16 of the Act allowing operations specified on the ORC list to be carried out. This is because a review of the ORC list may substantially alter that list and the detail of the particular operations specified in it, in order to ensure the protection of the site. Since ORC consents work, in practice, to modify the effect of the ORC list, it would be difficult to review that list without also considering the implications of existing consents. SNH may consider it would also be undesirable for consents to remain in place where it is clear that the operation is damaging the site and the consent is no longer consistent with the entry on the ORC list to which the consent originally related. Section 16 makes provision for the subsequent modification or revocation of ORC consents following a review under section 6(4).
56. Subsection (5) provides that SNH must amend the ORC list for any site where, on completion of an ORC review, it is of the opinion that operations should be added to or removed from the list or where it believes that an existing entry should be modified.

***Section 7 Addition or modification of operations requiring consent: urgent situations***

57. This section sets out the detail of a special procedure whereby SNH may, having obtained the consent of the Scottish Ministers, alter an ORC list for a site with immediate effect. This is an emergency measure which allows an unlisted operation to be added to the ORC list at very short notice where it becomes apparent that damage to the site may result if the unlisted operation is carried out. SNH may also modify any

existing entry on the ORC list in the same way (so that, for example, the existing entry is extended sufficiently to cover the operation which is posing a threat to the site).

58. SNH is limited in its power to change the ORC list on an emergency basis by subsection (2). This requires SNH to make a case to the Scottish Ministers explaining why it considers the alteration to the ORC list is necessary and why it considers the situation to be one of urgency. SNH cannot make the change to the ORC list unless the Scottish Ministers consent.
59. The effect of a change to the ORC list by means of section 7 is that the owner or occupier will be required to seek consent from SNH for an operation which may have previously been lawful. On receipt of an application for consent SNH may then be willing to allow the operation to proceed subject to conditions, or it may refuse consent. Applications for consent to carry out ORCs are dealt with in section 16 and appeals procedures are set out in section 18.

### ***Section 8 Variation of SSSI notifications***

60. This section enables SNH to vary certain aspects of the SSSI notification following the point at which the SSSI notification, and therefore the SSSI, has been confirmed under the terms of paragraph 10 of Schedule 1.
61. This section allows SNH to vary the description of the land and the list of features of special interest, as well as any miscellaneous “other information” contained in the SSSI notification by virtue of section 3(4)(a)(iv). It does not however allow SNH to vary the boundary of the SSSI (e.g. by enlarging the site) or alter the list of ORCs for the site. Separate procedures are provided in sections 5 and 6 in relation to these components of the SSSI notification.

### ***Section 9 Denotification of sites of special scientific interest***

62. This section provides a process by means of which an existing SSSI (or any part of an existing SSSI) may be denotified. The procedure set out in this section is in essence the reverse of the notification process specified in section 3. SNH must first determine that a site (or part of a site) is no longer of special interest, having applied essentially the same criteria as used for site selection and notification and restated in section 9(3). This includes a requirement to consider the contribution which the site makes to the SSSI series as a whole, both in relation to the natural features of Scotland and to those of Great Britain and of the member States of the European Union.
63. Having determined that the site, or part of the site, no longer satisfies those criteria, SNH must then give a revocation or modification notification to the interested parties in the same way as for an initial notification. In the case of a denotification, however, the information given to the interested parties, rather than detailing the special interest of the site, must set out SNH’s reasons for regarding the site or part of it as no longer being of special interest.
64. Where part only of the site is to be denotified, the interested parties are those individuals and bodies specified in section 48(2) who have an interest in relation to the particular part of the site which is to be denotified. SNH is not required to notify parties who have an interest in relation to other parts of the site only, although section 48(2)(k) gives it power to do so (and to inform other individuals and organisations who are not otherwise interested parties) where it may be appropriate to inform a wider audience of the proposed change. As with enlargement (see section 5), the denotification process is sufficiently flexible to cover scenarios ranging from the denotification of an entire site through to minor adjustments to the boundary of an SSSI.



## ***Section 10 Notifications relating to sites of special scientific interest: procedure***

65. This section introduces Schedule 1, which sets out procedures to be followed in relation to the notification of SSSIs under section 3(1), and their subsequent enlargement (section 5) or denotification (section 9).

### **Schedule 1**

## ***Notifications relating to sites of special scientific interest: procedure***

### **Application of Schedule**

66. [Paragraph 1](#) applies Schedule 1 to the notification of SSSIs under section 3(1), the notification of enlargements under section 5 and the denotification of SSSIs under section 9.

### **Publication**

67. [Paragraph 2](#) ensures that SNH must publish information describing the general effect of notifications under sections 3(1), 5(1) and 9(1). The objective is to ensure that the general public should reasonably be aware that an SSSI is being created, enlarged or removed. The minimum requirement is that information should be published in a local newspaper circulating in the area in which the SSSI is situated. SNH also has discretion as to other means of publicising the notification. The SNH website could, for example, provide a key mechanism for making such information publicly available. This provision allows SNH to give consideration to and to use other appropriate means designed to bring notifications are brought to the attention of a wider audience.

### **Content of notification**

68. [Paragraph 3](#) details the information which must be given to the interested parties when SNH provides notification of an SSSI, its enlargement or denotification and which must also be contained in the related notice required under paragraph 2.
69. It is a requirement of paragraph 3 that any such notification, and any notice published under paragraph 2 in the press, on the internet or elsewhere, must name a place where the full notification can be inspected free of charge at any reasonable time and from where a copy of the relevant documentation can be obtained or purchased.
70. [Paragraph 3\(c\)](#) ensures that SSSI notifications, notifications of enlargement and denotifications, and related notices give information about the right to make representations to SNH. The formal date of notification is defined in section 48(2) and the deadline for the submission of representations cannot be less than 3 months after this date. SNH must also specify the manner in which representations are to be made (including, for example, the address to which they are to be sent and whether representations can be made by e-mail as well as by letter).

### **Confirmation or withdrawal of notification**

71. [Paragraph 4](#) requires that an SSSI notification, notification of enlargement or denotification must be formally confirmed or withdrawn by SNH within one year of the date on which it was given. Provision is made to allow the period of one year to be extended in accordance with arrangements set out in paragraph 12. SNH is obliged to consider any representations which have been made in relation to the notification before confirming it. As noted above, representations must be made within the period specified in the notification and in the notice given under paragraph 2 which, by virtue of paragraph 3(c), cannot be less than 3 months.
72. [Paragraph 5](#) deals with the situation in which SNH fails to confirm a notification within the one year period (or within any period as extended by virtue of paragraph 12). If a notification is not formally confirmed by the deadline, it is to be treated as if it had been

withdrawn by SNH on the day on which the period allowed for confirmation expired. In such circumstances the notification no longer has any effect and the SSSI ceases to exist. It should, however, be noted that a failure to confirm the notification does not invalidate any effects it may have had during the period prior to non-confirmation – for example, if decisions under regulatory regimes or the planning system had been influenced by the existence of the SSSI.

### **Modification of notification**

73. Paragraphs 6 to 8 enable SNH to modify a notification prior to confirmation. Notifications may be modified by amending the matters specified in the SSSI notification (defined in section 3(4)) and SNH is accorded a degree of flexibility in this connection during the period prior to the notification being confirmed.
74. Thus the description of the land, the natural features which are of special interest or the miscellaneous other information included in the SSSI notification may be added to, removed or amended. This may, for example, be done where SNH requires to correct part of the notification or accepts a particular point made by an objector. SNH may also amend the boundaries of the site to reduce its coverage, for example, where it considers that a particular area should in fact be excluded from the site. SNH is not however permitted to use its pre-confirmation power of modification to extend the boundaries of the site or to add to the ORC list. Separate procedures exist in sections 5, 6 and 7 to allow changes to these particular components of the SSSI notification. These powers can be used before as well as after confirmation.

### **Referral to Advisory Committee**

75. Paragraph 9, together with section 21(6) to (8), sets out SNH's obligations in situations where representations (including objections to the site) have been lodged in accordance with paragraph 3(c).
76. Where any valid representation has been received and it relates to the natural features specified in the notification (e.g. it is an objection concerning the appropriateness or accuracy of the information contained in an SSSI notification by virtue of section 3(4)(a)(ii) or it concerns SNH's reasons for considering a site no longer to be of special interest) SNH cannot then confirm the notification until it has referred the representation to the Advisory Committee on SSSIs ("ACSSSI) and considered any advice received from ACSSSI.
77. The role and operations of ACSSSI are defined in section 21 (for which see paragraphs 153 to 162 of these notes ). The need to allow sufficient time for ACSSSI to consider objections, and for SNH properly, in turn, to consider ACSSSI's advice, prior to expiry of the deadline for confirmation of the SSSI was one of the key reasons for extending the confirmation period from 9 months (under the 1981 Act) to one year (under this Act).

### **Notice of decision to confirm or withdraw**

78. Paragraph 10 obliges SNH to give formal notice of any decision to confirm or withdraw a notification. Notice must be given to the interested parties (see section 48(2)) and must be publicised, including in at least one local newspaper and by any other means which SNH thinks fit, in accordance with the requirements of paragraph 2. A failure to give such notice within the deadline for confirmation leads, by virtue of paragraph 5, to the notification being deemed to have been withdrawn.
79. Paragraph 11 deals with the situation in which an objection to the notification has been referred to ACSSSI. In such cases the person who lodged the objection must be provided not only with notice of the confirmation or withdrawal of the notification but must also be given a copy of the advice which ACSSSI had given to SNH in relation to the matters raised by that objector.

### **Extension of period during which notification is to be confirmed or withdrawn**

80. Paragraphs 12 and 13 provide for the extension of the period within which a notification must be formally confirmed or withdrawn. An extension may be made in the event of a referral to ACSSSI, but the extension can be for no more than an additional 6 month period. Thus the notification is required, in most situations, to be confirmed or withdrawn within no more than 18 months of the date on which it was originally given. If this does not happen it will be deemed (by virtue of paragraph 5) to have been withdrawn.
81. Where no objections have been received which are required under section 21 to be referred to ACSSSI, paragraph 13 does however allow for the period for confirmation or withdrawal to be extended for an unspecified period where this is by mutual agreement between SNH and all owners and occupiers of land within the SSSI in question. In such circumstances confirmation could take longer than 18 months. Such an agreement may, for example, be reached where SNH is engaged in constructive but very detailed negotiations with owners and occupiers and they are content with the progress of those negotiations.
82. Paragraph 14 specifies the manner in which agreement to an extension of the period for confirmation or withdrawal is to be obtained by SNH. Agreement is given either where every owner and occupier explicitly consents or where no reasonable objection is received within 28 days of SNH making a proposal for extension. The concept of reasonableness is applied here in order to prevent one individual from blocking an extension for petty reasons and thereby thwarting the wishes of the overwhelming majority of owners and occupiers of the site. A similar principle applies elsewhere in the Act, for example in relation to the review of ORC lists (see section 6(3)(b)).
83. Paragraph 15 requires SNH to inform the interested parties of any extension to the period for confirmation or withdrawal. This is particularly relevant to the situation foreseen in paragraph 14(b) where no reasonable objection is received.

### **Section 11 Effect of SSSI notification**

84. Subsection (1) defines the point at which modifications to an SSSI notification, or alterations made to an SSSI notification by virtue of sections 5 to 9, take effect. Original SSSI notifications have effect from the date on which they are given (see sections 3(6) and 48(2)) and they have effect in their modified or amended form as of the date on which notice of the relevant change is given.
85. Subsection (2) provides that, where SNH gives notice (under paragraph 10 of Schedule 1) that it has withdrawn a notification of enlargement (given under section 5(1)), the original SSSI notification continues to have effect in its unaltered, original form. In other words, the notification reverts to the *status quo ante* and the situation continues as if the proposal for enlargement had never been made. It should be noted that this does not invalidate the effects which any notification given under section 5(1) may have had during the period between notification and withdrawal – for example where a decision by a regulatory body or under the planning system may have been influenced by the notice of enlargement.
86. Subsection (3) provides that an SSSI notification ceases to have effect when SNH gives notice (under paragraph 10 of Schedule 1) of its decision to withdraw the SSSI notification. It also provides that a denotification of a whole SSSI does not, in contrast to a partial denotification, have effect until the relevant notification under section 9(1) is confirmed. A default arrangement covering the situation in which SNH fails to take a decision is covered separately in paragraph 5 of Schedule 1.



## **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 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)).

## **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. 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).

**Section 14 Operations by public bodies etc.: authorised operations**

102. Subsection (1) sets out details of the situations in which SNH consent to an operation is not required by a public body. These are effectively situations in which consent has already been given via another route, or where action is necessary in an emergency. The particular circumstances are where:
- permission has already been given by a regulatory authority under section 15. The regulator is obliged under section 15 to have regard to SNH advice before giving permission and this subsection obviates the need for SNH to give separate permission for the operation. SNH consent is contained within the regulatory permission;
  - explicit planning permission has been granted. Again, SNH advice is taken into account by the planning authority and separate permission from SNH for the operation is not required by this subsection. It should be noted that this exemption applies only to the explicit grant of planning permission and does not remove the need to obtain SNH permission for an operation undertaken as a permitted development for which planning permission is not needed;
  - an operation is carried out in order to deal with an emergency situation. This exemption can only be invoked where SNH is informed as soon as possible after the need for the emergency operation becomes clear;
  - an operation is carried out in accordance with a management agreement between SNH and the public body. In concluding the agreement SNH will have consented to the operation; and
  - an operation is carried out in accordance with some other, formally-agreed plan for the management of land which has been approved in writing by SNH. For example, a forest management plan setting out a programme for forestry operations and land management activity over an extended period of time. The operations specified within such a management plan could be consented to in advance by SNH if it were to decide to approve the plan and gave such approval in writing.
103. Subsection (2) allows public bodies to proceed with an operation, in certain closely defined circumstances, even where SNH has refused consent or has imposed conditions which are unacceptable to the public body. But it may only do so where all of the conditions set out in subsection (3) have been met. It should be noted that failure by SNH to take a decision within 28 days in response to an application under section 13(3) is deemed to be a refusal of consent and the provisions of this subsection would therefore apply.
104. Subsection (3) sets out the conditions which have to be met if a public body intends to proceed with an operation in the face of SNH opposition. The conditions are that:
- no action can be taken until the 28 day period for consideration of the original application has expired;
  - notice must be given to SNH of the proposed start date for the operation;
  - that start date cannot be less than 28 days from the date on which notice of the intention to proceed with the operation is given;
  - the notice given to SNH must set out what the public body has done, or proposes to do, in response to any advice which may have been received from SNH in relation to the operation;
  - the operation must be carried out in a manner which causes as little damage or disturbance to the natural feature specified in the SSSI notification as is reasonably possible in all the circumstances;

- in seeking to avoid damaging or disturbing that feature the public body must have regard to any advice received from SNH; and
  - the public body must comply with its general duty in relation to SSSIs and the SSSI series, as set out in section 12(2)(c).
105. Subsections (4) and (5) govern certain situations in which a public body proceeds with an operation and that operation causes damage to a protected natural feature. The situations in question are where the operation has been carried out on the basis of permission from a relevant regulatory authority, where it is an emergency operation and where it has been carried out in the face of a refusal of consent from SNH or where conditions imposed by SNH have been set aside. In these cases, the public body is obliged to consult with SNH on how best to restore the damaged feature and it must, so far as is reasonably practicable, then carry out that restoration work in accordance with SNH advice. Failure to do so is a criminal offence under section 19.

### ***Section 15 Consent by certain regulatory authorities***

106. **Section 15** sets out the procedures to be followed where the permission of a relevant regulatory authority is needed before an operation affecting an SSSI may be carried out. Relevant regulatory authorities are to be defined for the purposes of the Act in a separate order made by the Scottish Ministers. It is not intended that planning authorities should be treated as regulatory authorities in this context, since statutory requirements for planning authorities to consult SNH in relation to planning applications already exist separately in planning legislation.
107. Subsection (3) requires a relevant regulatory authority to notify SNH before deciding whether to permit any operation which would be likely to damage a natural feature specified in an SSSI notification. Such notification to SNH must specify the nature of the operation, the proposed dates of commencement and completion, as well as the land on which it is proposed to carry out the operation.
108. Subsection (4) specifies that the obligation to consult SNH applies even if the proposed operation would take place outwith the land of an SSSI. As with section 13(2), what matters is whether the operation would be likely to damage the site, not where it is taking place. Again, the Act places a special responsibility on regulators as public bodies to anticipate and assess potential risks to SSSI land in a pro-active sense and, where they are public bodies, in accordance with the general duty set out in section 12.
109. Subsection (5) prohibits the authority from deciding whether to give its permission until 28 days have elapsed from the date of the notification to SNH under subsection (2) unless SNH has notified the authority that it does not need to wait until then. This provision is intended to ensure that SNH has sufficient time to provide advice, without unnecessarily delaying a decision if one can be taken quickly. For its part, SNH will require to be sensitive to the needs of regulators, who are themselves normally obliged to respond to applications within statutorily defined timescales.
110. Subsection (6) requires the relevant regulatory authority to have regard to any advice received by SNH when deciding to give its permission for an operation, and, where it does give its permission, in deciding whether any conditions should be attached to its permission.
111. Subsections (7) to (10) govern the situation in which a relevant regulatory authority decides not to follow advice from SNH, where that advice is not to grant permission for an operation or where it advises the regulator to impose certain conditions. Where this happens, certain conditions are imposed automatically and the regulator is obliged to inform both SNH and the applicant of the situation. This includes the requirement on the regulator – in addition to setting out the nature of the permission given and any terms and conditions – to explain what it has done, or proposes to do, in consequence

of the advice given by SNH. The regulator must make it explicit that it has taken its decision in the face of SNH advice.

112. The first automatic condition imposed via subsection (10) is that the operation cannot commence before the expiry of a 28 day period from the point at which the regulator has informed SNH that its advice has not been followed. The provision for a 28 day period between notice being given to SNH and the permitted start date for the operation allows SNH time, if necessary, to seek an interdict under section 45 and/or to advise the Scottish Ministers of the situation (in which case the Scottish Ministers would also have the option of prohibiting the operation by means of a nature conservation order).
113. The obligation on the regulator to make it clear to the applicant that permission has been granted in the face of opposition from SNH is intended to ensure that the applicant is aware of the possibility that the permission could be challenged and the operation prohibited. In such circumstances the applicant may, for example, wish to avoid incurring significant expenditure in connection with the proposed operation until the situation has been more fully resolved.
114. The second condition is that the applicant is obliged, as a condition of the permission granted by the regulator, to carry out the operation in such a way as to minimise, as far as is reasonably practicable in all the circumstances, any damage or disturbance to the protected natural feature.

### ***Section 16 Operations by owners or occupiers of sites of special scientific interest***

115. Subsection (1) prohibits an owner or occupier of land within an SSSI from carrying out, or causing or permitting to be carried out an ORC, except with written consent from SNH. Contravention of this provision is a criminal offence under section 19. Consent is obtained on application under subsection (2). The requirement for consent is set aside in certain specified circumstances defined in section 17(1).
116. It should be noted that, by virtue of section 17(4), sections 16 and 17 do *not* apply to any public body which is the owner and occupier of SSSI land. This means that any operations carried out on SSSI land by, or on behalf of, a public body will be dealt with under the provisions of sections 13 and 14, rather than under sections 16 and 17. The effect of sections 16 and 17 is therefore limited to private owners and occupiers. This distinction between public bodies and private owners and occupiers is reflected in the notes which follow.
117. It should also be borne in mind that “public body” has a broad meaning in the context of the Act and that it encompasses any body which is carrying out functions of a public nature. Because of this, there may occasionally be circumstances in which a body which usually carries out functions in a private capacity may be responsible to carry out functions of a public nature in one area of activity (e.g. if a public body sub-contracts some of its functions to it). The body would be a “public body” in that context. Where a body has dual capacity the application of the Act will be determined by whether or not, in any particular circumstance, the body is acting in pursuance of its public functions or whether it is operating in a purely private capacity.
118. In contrast to public bodies, a private land manager is required by section 16 only to have regard to the ORC list notified to him/her by SNH. Whilst public bodies are obliged to be pro-active and to anticipate any potential risks, there is no strict legal requirement imposed by section 16 on private land managers to think more generally about non-ORC list operations which might be likely to damage the SSSIs natural features.
119. If an operation is not on the ORC list then consent is not required from SNH and the owner/occupier does not have to consult SNH. Neither is there any legal obligation on the owners or occupiers of neighbouring land to consult SNH about the potential impacts of operations on their land on adjacent SSSI land. It should be noted however that powers have been provided within the Act (in section 7, via nature conservation



orders, and in section 45) which allow SNH or the Scottish Ministers to take emergency action to address potential threats from otherwise unregulated operations, should it prove necessary to do so. Private land managers, whilst not formally obliged to look beyond the immediate context of the ORC list, are advised to be generally aware of the existence of these special powers.

120. Subsection (2) specifies that an application for consent to carry out an ORC must detail the nature of the operation, set out the proposed dates of commencement and completion and define the land on which it is proposed to carry out the operation.
121. Subsection (3) provides that SNH may, on receipt of an application made under subsection (2), consent to or refuse permission for an operation. Where it consents to the ORC it may impose such conditions as it thinks fit.
122. Subsection (4) makes it explicit that any conditions imposed under subsection (3) 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 conditions imposed by SNH are not however limited to the examples given in subsection (4).
123. Subsection (5) provides that SNH may, on completion of a review of ORCs and related consents under section 6(4), modify or withdraw consent to an operation by giving notice to the person to whom consent was given. SNH may also modify or withdraw consent where it considers that carrying out the operation even in accordance with the consent will damage the SSSI in a manner which was not foreseen at the time the consent was given. In the latter case, (i.e. where subsection (5)(b) applies) SNH may only modify or withdraw the consent with the agreement of the Scottish Ministers and this proviso is set out in subsection (6).
124. It should be noted that the modification or withdrawal of consent may affect the ability of a land manager to continue with the established management of the land and that this may, in turn, give rise to a right to a compensatory management agreement in accordance with subsection (9). SNH is required to have regard to the *Financial Guidelines* to be published as statutory guidance under section 54 in deciding whether it should offer to enter into such an agreement.
125. Subsections (7) and (8) define the point at which a modification or withdrawal of consent take effect. In the case of a modification or withdrawal under subsection (5) (a) (i.e. following an ORC review carried out under section 6(4)) the change does not take effect until the expiry of the deadline for any appeal against the decision or, where an appeal has been brought, the point at which it is withdrawn or finally determined. Appeals must be lodged, by virtue of section 18(2) within 28 days of notice being given by SNH.
126. In the case of a modification or withdrawal under subsection (5)(b), for which SNH has obtained the agreement of the Scottish Ministers, the change has immediate effect. This means that any operations covered by the consent must also cease (or be altered to reflect the modified consent) with immediate effect. An appeal must again be lodged within 28 days (see section 18(2)) but operations would only be permitted to resume in the originally consented form in the event that any appeal is determined in favour of the land manager.
127. Subsection (9) obliges SNH to offer to enter into a management agreement in certain specified circumstances. In doing so, SNH must act in accordance with the *Financial Guidelines* which are to be published as statutory guidance under section 54. Copies of the *Financial Guidelines* can be obtained from the address given in paragraph 18 of these notes.
128. The circumstances in which SNH is required to offer a management agreement are described in subsection (9) and are subject to two requirements.

129. Firstly, the obligation to offer an agreement can only apply where SNH:
- refuses to consent to an operation being carried out;
  - makes its consent subject to conditions; or
  - modifies or withdraws its consent.
130. SNH must also have regard to the *Financial Guidelines* in determining whether it should enter into a management agreement. Where SNH considers that it should offer an agreement it must make such an offer on such terms and conditions as it thinks fit, having had regard to the formal guidance contained in the *Financial Guidelines*. The terms and conditions offered may include provision for any payments to the land manager which SNH, having had regard to the *Financial Guidelines*, consider appropriate in the circumstances.
131. Subsection (10) requires SNH to give an applicant reasons for a decision to make its consent subject to conditions, to refuse consent, to modify or withdraw its consent, or not to offer to enter into a management agreement in pursuance of subsection (9)(a). This provision is intended to ensure the transparency and openness of decision-making and to make it easier for any aggrieved party to challenge such a decision in an informed and effective manner. Specific rights of appeal are dealt with in section 18.

***Section 17 Operations by owners or occupiers of sites of special scientific interest: authorised operations***

132. Subsection (1) specifies the particular circumstances in which a private owner or occupier does *not* require SNH's consent before carrying out an ORC. These are effectively situations in which consent has already been given via another route, or where action is necessary in an emergency. The particular circumstances are where:
- permission has already been given by a relevant regulatory authority under section 15. The regulator is obliged under section 15 to have regard to SNH advice before giving permission and this subsection obviates the need for SNH to give separate permission for the operation;
  - explicit planning permission has been granted. Again, SNH advice is taken into account by the planning authority and separate permission from SNH for the operation is not required by this subsection. It should be noted that this exemption applies only to the explicit grant of planning permission and does not remove the need to obtain SNH permission for an operation undertaken as a permitted development for which planning permission is not needed;
  - an operation is carried out in order to deal with an emergency situation. This exemption can only be invoked where SNH is informed as soon as possible after the need for the emergency operation becomes clear;
  - an operation is carried out in accordance with a management agreement between SNH and the owner or occupier. The exemption covers operations carried out directly by the land manager as well as those carried out on his/her behalf (for example, by a contractor). In concluding the management agreement SNH will have consented to the operation; and
  - the operation is necessary in order to comply with the requirements of a land management order ("LMO"). In seeking such an order, SNH will have identified ORCs which may need to be carried out and the order will include an appropriate consent to those operations. LMOs are covered in sections 29 to 37.
133. It might be noted that, for private owners and occupiers, there is no equivalent to the provision in 14(1)(e) allowing for operations in accordance with an agreed management plan for the site. This is intentional and reflects the fact that public bodies are under a general duty, by virtue of section 12, to conserve and enhance SSSIs. As a result they

are accorded a greater degree of freedom and flexibility in managing SSSIs, but are also placed under the more onerous legal obligation to think beyond the limits of the ORC list provided by SNH and to guard against any potential damage to the natural features of the site.

134. Subsections (2) and (3) govern certain situations in which a land manager proceeds with an operation without SNH consent, either on the basis of permission from a relevant regulatory authority (given, for example, in the face of SNH opposition under sections 15(7) to (10)) or in an emergency situation, and that operation causes damage to the natural features of an SSSI. In these cases, the land manager is obliged to consult with SNH on how best to restore the site and he/she must then carry out that restoration work in accordance with SNH advice. Failure to do so is a criminal offence under section 19.
135. Subsection (4) specifies that sections 16 and 17 do not apply to operations on SSSI land where the owner or occupier of the land in question is a public body and that public body is acting in the exercise of its functions. Sections 13 and 14 apply instead. This effectively means that operations carried out by public bodies are governed by sections 13 and 14, whilst operations carried out by private land managers are covered by sections 16 and 17. The unusual circumstance in which a body may be exercising public functions in some situations and acting as a private owner or occupier in others is discussed above in connection with section 16.

### ***Section 18 Appeals in connection with operations requiring consent***

136. [Section 18](#) sets out rights of appeal and the procedures to be followed in mounting an appeal against certain decisions by SNH. The distinction drawn between private owners and occupiers and public bodies remains relevant and the appeal mechanisms in section 18 are intended for use by private land managers. Public bodies have alternative options (including in particular those set out in sections 14(2) and (3)) where consent to an operation is refused, conditioned, modified or withdrawn by SNH, or where the terms of a management agreement are unacceptable. The general expectation is that public bodies should seek a negotiated solution when in disagreement with each other, and should not need to resort to the courts.
137. Subsection (1) specifies the circumstances in which a private owner or occupier may appeal to the Scottish Land Court if aggrieved by a decision by SNH to:
- impose conditions when giving consent to an ORC;
  - refuse consent to an ORC;
  - modify or withdraw any consent to an ORC;
  - refuse to enter into a management agreement in accordance with section 16(9); or
  - make a management agreement subject to terms and conditions (including the amount of any payment) which are unacceptable to the owner or occupier.
138. Subsection (2) specifies that an appeal under section 18 must be made within 28 days of the date on which SNH notified the appellant of the decision being appealed.
139. Subsection (3) provides a failsafe arrangement which protects an applicant for an ORC in situations where SNH has failed to make a decision on the application within a reasonable period. Since the applicant cannot proceed with the operation in the absence of explicit consent without committing a criminal offence, this subsection provides a remedy if SNH fails to reach a decision on the application.
140. The solution provided in subsection (3) is that, if four months have elapsed since the application was lodged, the application will be deemed to have been refused, thereby enabling the applicant to refer the matter immediately to the Scottish Land Court. The four month period within which SNH must make a decision on the original application has been set at four months on the basis of practical experience in applying

the provisions of the 1981 Act. That period can be extended by mutual agreement, in order to allow for situations in which, for example, negotiations are proceeding constructively but the issues are complex and a longer period is needed to reach a final agreement.

141. Subsection (4) provides a similar failsafe arrangement in relation to management agreements. If a land manager believes, on the basis of section 16(9), that SNH should have offered to enter into a management agreement, and if SNH has not done so within 4 months of the date of a decision to refuse, condition, modify or withdraw consent, the land manager is entitled to refer the matter to the Scottish Land Court.
142. Subsection (5) requires the Scottish Land Court to determine any appeal on its merits, rather than simply by way of judicial review. The Court is therefore empowered to look into the facts of the case and is *not* confined merely to examining whether, for example, SNH acted unreasonably or whether it failed to follow procedures correctly. In essence, the Scottish Land Court is entitled to examine the entire case from scratch and to reach its own decision based on its own reading of the information presented to it. The Court may dispose of the case by making such order as it thinks fit. In particular, the Court is able to:
- uphold the original decision by SNH;
  - overturn the original decision and direct SNH to give consent;
  - overturn the original decision to impose conditions on a consent and quash any or all conditions which SNH may have imposed;
  - overturn the original decision and direct SNH to offer a management agreement; and
  - overturn the original decision to impose conditions as part of a management agreement and quash any or all conditions which SNH may have imposed.
143. In addition, over and above the ability to quash conditions imposed by SNH, subsection (6) enables the Scottish Land Court to direct SNH as to the particular conditions which it should impose instead of those original conditions when consenting to an ORC or offering a management agreement in line with the ruling made by the Court. The Court consequently has significant powers to shape the detailed terms and conditions of any consent or management agreement, should it feel it necessary to do so. The ability to make any other order as the Court sees fit, in section 18(5)(f) extends that flexibility still further.

## **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.
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.

## **Supplementary**

### ***Section 21 Advisory Committee on Sites of Special Scientific Interest***

153. Subsection (1) provides for the continuation of the Advisory Committee on Sites of Scientific Interest (referred to as “the Advisory Committee” in the Act and as “ACSSSI” in common usage). ACSSSI was established under section 12 of the [Natural Heritage \(Scotland\) Act 1991 \(c.28\)](#) and the provisions of section 21 carry forward its role in a largely unaltered form under the new Act.
154. ACSSSI has the advisory functions relating to SSSIs conferred on it by section 21. It is important to note that ACSSSI’s role is purely advisory in character. It does not operate as a tribunal and has no powers to determine appeals. It is however required to operate independently and to provide objective, scientific advice to SNH.
155. Subsection (2) provides that the Scottish Ministers shall be responsible for the appointment of the convener and other members of the Advisory Committee, and that



they may do so on such terms as may be set by them. Appointees to the Advisory Committee shall, to the best of the Scottish Ministers' knowledge, have suitable scientific knowledge and experience in relation to flora, fauna or the geological or geomorphological features of the land.

156. Subsection (3) requires the terms and conditions set on appointment of members to the Advisory Committee to include arrangements for the payment of remuneration and allowances to them by SNH.
157. Subsection (4) excludes any member of SNH, or any committee appointed by SNH, from being appointed to the Advisory Committee.
158. Subsection (5) allows the Scottish Ministers, from time to time, to give directions relating to the procedure of the Advisory Committee.
159. Subsections (6) and (7) set out circumstances in which representations made to SNH are to be referred to ACSSSI. Only SNH may refer a matter to the Advisory Committee, but it must do so where:
  - any person with a direct legal interest in the land ("interest in land", as defined in section 58(1)), makes a representation in relation to either the "scientific case" for notification of the SSSI (i.e. the reasons why the site should be notified on the basis of the particular natural features listed in the SSSI notification) or the "scientific case" for denotification;
  - the person making the representation does not agree to withdraw it; and
  - the representation is made *either* within the time limit for representations specified in the original notification (not less than 3 months from the date of notification – see paragraph 3(c) of schedule 1) *or* at least 10 years have elapsed since the original notification or since the last representation.
160. In effect this means that an objection to an SSSI must be referred to ACSSSI if it relates to the scientific case for or against the site and is submitted within the initial 3 month period for representations. The issue can then be revisited and referred back to ACSSSI every 10 years, if necessary.
161. Subsection (8) obliges SNH to refer any unresolved scientific objections to ACSSSI in accordance with subsections (6) and (7), and requires it both to consider any advice received from ACSSSI and then to take such action as it thinks fit in consequence of any such advice.
162. The effects of any referral to ACSSSI, as far as the SSSI notification and confirmation processes are concerned, are dealt with separately in paragraph 9 of Schedule 1.

## ***Section 22 - SSSI Register***

163. This section makes provision for the creation of an authoritative new public register of SSSIs to be overseen and maintained by the Keeper of the Registers of Scotland ("the Keeper").
164. [Paragraphs 12 and 13](#) of Schedule 5 make arrangements for the continuation of the existing register, established by the 1981 Act, until such time as the new register provided for in section 22 has been established.
165. Subsection (1) places a duty on the Keeper to keep a register of all SSSI notifications, copies of certain other notices and notifications under the Act which amend or alter the original notification, and any other information in relation to SSSI notifications required by regulations under subsection (3).
166. The notices which must be registered are those given under section 5 to 9 and under paragraphs 10 and 15 of Schedule 1. These cover the enlargement of sites, changes

to the ORC list, other variations to the SSSI notification, denotifications, notices confirming or withdrawing a notification and notices extending the period within which the notification must be confirmed.

167. Subsection (2) requires the Keeper to ensure that the SSSI register is available for public inspection at all reasonable times.
168. The intention of the new register is that it should provide an authoritative, central source of information about the extent and legal status of SSSI land. It will be accessible in electronic form and will be searchable. To that end, the Scottish Ministers are empowered in subsection (3) to make regulations specifying the form and manner in which the register is to be kept, the information which it is to contain, procedures and arrangements for amending the register and requiring SNH to supply documents and information to the Keeper in an appropriate format. The Scottish Ministers may also specify the fees (if any) which may be charged by the Keeper for the provision of reports and other information. The regulations may also make provision as to the evidential status of copies and extracts from the register when used in a legal context.