

# **NATURE CONSERVATION (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

##### *Chapter 2 -Nature Conservation Orders*

##### *Section 23 Nature conservation orders*

169. Subsection (1) empowers the Scottish Ministers to make a nature conservation order, which wholly or partially prohibits the carrying out, or the carrying out in a particular way, of a specified operation on specified land.
170. Subsection (2) specifies the purposes for which an NCO may be made. The purposes are: for the conservation of the feature(s) of interest of an SSSI or any other feature of natural heritage which the Scottish Ministers consider to be of special interest; or to facilitate compliance with an international obligation.
171. Subsection (3) specifies the land to which an NCO can apply, namely, land which is or forms part of an SSSI, any other land which the Scottish Ministers believe to be of special interest by reason by virtue of its natural heritage, land contiguous to or otherwise believed to be associated with an SSSI or other land considered to be of special interest, or any combination of the aforementioned land.
172. Subsection (4) allows Ministers to include particular conditions in the NCO. Those conditions may, for example, prohibit or permit the prohibited operation only at particular times, in a particular place, when carried out in a particular manner or in accordance with other specified conditions. Examples might include a ban on the operation being carried out during the breeding season, the permitting of limited operations on part of the site or a ban which permits traditional, low-impact methods of working but prohibits the use of heavy machinery.
173. Subsection (5) provides a defined shorthand term which can be used to refer to the operations which are banned under the terms of the NCO. These are to be known as “prohibited operations”.
174. Subsection (6) provides that an NCO comes into immediate effect on being made by the Scottish Ministers. Any operation prohibited under the NCO must cease immediately the NCO is made. Failure to do so is a criminal offence by virtue of section 27.
175. Subsection (7) defines the point at which an NCO ceases to have effect. The NCO falls unless it is confirmed in accordance with the provisions of Schedule 2 – whether that non-confirmation is explicit and represents a clear decision not to confirm the NCO or whether it occurs because the Scottish Ministers have failed to take a definite decision.

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

176. Where an NCO has been confirmed by the Scottish Ministers and continues in force in the longer term, it may be revoked under section 24. Where the Scottish Ministers decide to revoke an NCO, it ceases to have effect immediately, on the date on which the revoking order is made. During the parliamentary passage of the Act, Ministers made it clear that NCOs should not remain in place longer than is necessary.