

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 3 - Land Management Orders

Section 34 - Appeals in connection with land management orders and related orders

238. Subsection (1) establishes the right of any owner or occupier of land to which the LMO relates to appeal to the Scottish Land Court against the making of the initial LMO or any subsequent order. The appeal may challenge the decision to make the order or it may take issue with particular terms or conditions of the order.
239. Appeals must, by virtue of subsection (2), be made within 28 days of the date on which notice of the order was given by the Scottish Ministers.
240. Subsection (3) provides that the Scottish Land Court must consider an appeal on its merits and may make such other order as the Court thinks fit.
241. As with other appeals to the Scottish Land Court under the Act, subsection (3) provides that the Court should 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, the Scottish Ministers acted unreasonably or whether they failed to follow procedures correctly. In essence, the Scottish Land Court is entitled to examine the entire matter 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:
- affirm the decision made by the Scottish Ministers;
 - direct the Scottish Ministers to amend the order in such manner as the Court may specify; and
 - direct the Scottish Ministers to revoke the order.