

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 4 - General and Supplementary

Section 46 Offences, penalties and time limits

307. This section makes provision in relation to the prosecution of offences and the penalties which may be imposed.
308. Subsection (1) provides that a court must have regard, when imposing a fine for an SSSI offence, to any financial gain which the offence may have brought, or been likely to bring, to the offender. It is intended, for example, that in cases involving damage to SSSIs for commercial reasons (such as in the course of a development or construction project) the court should be able to impose penalties which adequately reflect the significance of the offence. The objective is to allow the courts to address situations in which the anticipated gains from damaging an SSSI would outweigh the likely penalties. This provision is designed to remove any incentive to commit an offence for financial gain.
309. Subsections (2) and (3) stipulate the deadline within which prosecutions for offences under Part 2 must be brought. Similar principles apply to wildlife offences under Part 1 of the 1981 Act, as amended by the Criminal Justice (Scotland) Act 2003 and paragraph 18 of Schedule 6 to this Act.
310. Summary prosecutions for SSSI offences must be brought within 6 months of the date on which sufficient evidence of the offence comes to the knowledge of the prosecutor (irrespective, subject to subsection (3), of when the offence actually occurred). If the prosecutor fails to take action within that 6 month period, the case automatically falls and no further action is possible.
311. In the absence of the provision in subsection (2), the terms of section 136 of the [Criminal Procedure \(Scotland\) Act 1995 \(c.46\)](#) would require a summary prosecution to be brought within six months of the date on which the offence was actually committed. In the case of environmental and wildlife offences, it can be some time before the offence is discovered and expert evidence is obtained. This provision therefore ensures that an offender cannot escape prosecution simply by covering up his or her actions for 6 months.
312. Liability to prosecution is not, however, open-ended. Where proceedings have not been instituted within 3 years of the date on which the offence was committed, the case will automatically fall and no further action will be possible. In the case of a continuing contravention of the law, which takes place over an extended period of time, the date on which the offence was committed is the last date on which the contravention occurred.

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

313. Subsection (4) specifies that any dispute in relation to the date on which sufficient evidence became available to the prosecutor should be settled by means of a signed certificate from the prosecutor stating the relevant date.