

# NATURE CONSERVATION (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### *Chapter 4 - General and Supplementary Schedule 5*

#### **Part 2: Transitional Arrangements**

#### **Interpretation**

333. In paragraph 1, the “relevant day” is defined for the purposes of Schedule 5 as the day on which the repeals of the SSSI and related provisions in Part II of the Wildlife and Countryside Act 1981 (listed in paragraph 4 of schedule 7) come into force.

#### **Notifications under the 1981 Act**

334. Paragraphs 2 and 3 ensure that existing SSSIs continue to have effect when the new arrangements in the Act come into force. Any SSSI notification which has effect immediately before the relevant day and which has been confirmed (where confirmation was necessary under the legislation in force at the time the site was notified) is to be treated as an SSSI notification given under Part 2 of the Act.
335. It should be noted that paragraph 3(a) has a “year zero” effect in relation to existing SSSIs which have been confirmed and they are to be treated as having been notified and confirmed under the Act on the commencement date of the new SSSI system created by the Act (i.e. the “relevant day”). References elsewhere in the Act (or in other legislation) to the date on which the SSSI was notified or confirmed will, therefore, for all existing SSSIs, be to the “relevant day” defined in paragraph 1, on which the new system takes effect. This is of relevance, for example, in relation to the ability of owners and occupiers to request a review of the ORC list for a site. SNH is not obliged to carry out such a review until 6 years from the relevant day, although in practice it will propose reviews during this period as part of the structured review programme which it has been asked to carry out.
336. Special reference is made to the [Wildlife and Countryside \(Amendment\) Act 1985 \(c.31\)](#) in paragraph 2(b) because prior to that Act no requirement existed to both notify and then confirm SSSIs.
337. Paragraph 3(b) has the effect of converting all existing lists of PDOs under the existing SSSI system into ORC lists under the new system. SNH has been tasked by the Scottish Ministers with reviewing and updating all lists converted in this way. Special arrangements are made in paragraph 5, which should be read in conjunction with the

ORC review provisions in section 6, to enable a structured review programme to be carried out within the first 6 years following commencement of the new system.

338. Where SNH has given written consent to a PDO under the terms of the 1981 Act, that consent also continues in force, by virtue of paragraph 3(d), and is to be treated as a written consent under the new Act which permits the carrying out of the corresponding operation on the relevant ORC list (which itself will have been created from the old PDO list). Consents may however be reviewed as part of the ORC review process in section 6(4) and may be modified or withdrawn under section 16(5).
339. [Paragraph 3\(c\)](#) makes provision in relation to notices of intent (i.e. notices that a person intends to carry out an operation on the PDO list for a site) under the 1981 Act which are submitted to SNH within the 4 month period prior to the relevant day (i.e. during the 4 months prior to the commencement date for the new SSSI system). In order to avoid the inconvenience involved if such notices were simply to be deemed to be void, provision has been made to ensure that they can be considered by SNH, post commencement, as if they are valid applications for ORC consent under section 16(2) of the Act. This arrangement applies only to notices of intent which remain unresolved on the relevant day. Where SNH has given written consent to the proposed operation, that consent remains valid under paragraph 3(d). Where SNH has refused to give consent, the notice of intent falls and cannot be considered as a valid application for ORC consent. The period of 4 months specified in paragraph 3(c) reflects existing arrangements in the 1981 Act.
340. [Paragraph 4](#) requires SNH to ensure, as soon as practicable following the relevant day, that all existing SSSIs have a site management statement, as provided for in section 4 of the Act. It may do so either by preparing a new site management statement or by adopting an existing statement.
341. [Paragraph 5](#) suspends the effect of section 6(2) in order to enable SNH to implement a structured review of ORCs. If this were not done, SNH would not be able to review ORC lists which had been converted from existing lists of potentially damaging operations for 6 years after the Act comes into force, unless it were able to secure the agreement of owners and occupiers under section 6. This would potentially prevent it from implementing a structured review programme across the SSSI series.
342. [Paragraph 6](#) clarifies, for the avoidance of doubt, that a consent given by regulatory body prior to the provisions of the Act coming into force is not to be regarded as a valid consent in terms of section 15 of the Act. In other words, where a consent has been issued by a regulator prior to the commencement of section 15, the safeguards built into section 15 will not have applied and SNH will not have been formally consulted about the application. The applicant for consent will therefore still require to obtain SNH consent separately before proceeding with an operation on an SSSI even though regulatory consent has been obtained.
343. [Paragraph 7](#) regulates the situation in which an SSSI is in the process of notification, but has not yet been confirmed at the point when the provisions of the Act come into force. In this circumstance the notification will proceed under the old arrangements of the 1981 Act and the relevant provisions of that Act continue to have effect for that purpose. Immediately it is confirmed, however, the SSSI will fall squarely within the terms of the new Act – paragraph 3(a) will convert it into an SSSI notified under the Act on the day confirmation is given under the 1981 Act.

### **Notifications under the 1949 Act**

344. A small number of SSSIs notified under the [National Parks and Access to the Countryside Act 1949 \(c.97\)](#) still exist. Paragraphs 8 to 10 allow for such notifications to continue in force, but in a more limited fashion than for SSSIs notified under the 1981 Act. 1949 Act sites were notified only to the planning authority for the area and,

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

on a similar basis, they will have effect under the new Act only in relation to the general duty placed on public bodies by section 12.

345. SNH is empowered to revoke a 1949 Act site by the simple mechanism of giving notice to the interested parties. Any remaining 1949 Act sites can therefore, in due course, either be renotified by SNH under the new system or revoked.

**Orders under section 29 of the 1981 Act**

346. [Paragraph 11](#) provides that NCOs made under the 1981 Act should continue to have effect. Again, the provision has a “year zero” effect and the NCO is to be treated as having been made and confirmed on the date the relevant provisions of the new Act are brought into force.
347. An NCO which has not yet been confirmed remains subject to the confirmation process set out in the 1981 Act until such time as it has been confirmed. The relevant provision of the 1981 Act continue to have effect for that purpose.
348. Despite that preservation of the 1981 Act provisions, the revocation of any 1981 Act NCO which has not yet been confirmed can be effected on the same basis as allowed in relation to NCOs under the new Act. Revocation will therefore have immediate effect.

**Registers of notifications**

349. [Section 22](#) of the Act makes new arrangements for the provision and maintenance of, and access to, information about SSSIs, via a new SSSI Register under the authority of the Keeper of the Registers. Full development of the new Register may take some time so there may be a corresponding delay in bringing section 22 into effect. Paragraphs 12 and 13 therefore ensure that the existing arrangements set out in section 28(12) of the 1981 Act will continue in force until the new SSSI Register is operational.