

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 4 - General and Supplementary

Section 39 Acquisition of land by SNH

255. Subsection (1) provides that SNH may acquire all, or any part, of land defined under subsection (2), either by agreement with the owner or compulsorily. Where land is acquired by compulsory purchase, SNH requires the prior authorisation of the Scottish Ministers.
256. Subsection (2) defines the land that may be acquired under subsection (1). SNH is entitled to acquire:
- land which is an SSSI;
 - any other land to which an NCO or LMO applies; or
 - any other land which is contiguous to or associated with an SSSI or with land to which an NCO or LMO applies.
257. Subsection (3) provides that SNH may only acquire land compulsorily where it is necessary to secure the conservation, restoration or enhancement of a protected natural feature. “Protected natural feature” is defined in section 58(1) and means a natural feature which is specified in an SSSI notification or is protected by the terms of an NCO.
258. Subsection (4) provides that the power to acquire land under this section is to include the power to acquire a servitude or other right in or over land by the creation of a new right. This ensures that rights (other than simple ownership of the land) can also be acquired where this is important to achieving the objectives specified in subsection (3).
259. Subsection (5) provides that the [Acquisition of Land \(Authorisation Procedure\) \(Scotland\) Act 1947 \(c.42\)](#) applies in relation to any compulsory acquisition of land by SNH under this section. This applies procedures for acquisition, as well as provisions relating to compensation. SNH is to be treated under the 1947 Act as if it were a local authority.
260. Subsection (6) clarifies the ability of SNH to manage land acquired under this section. Whilst SNH already has powers under the [Natural Heritage \(Scotland\) Act 1991 \(c.28\)](#) to acquire, hold or dispose of land, subsection (6) puts it beyond doubt that SNH is entitled to keep SSSI and related land under its direct management, where it considers this to be the most appropriate solution.

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

261. Subsection (7) ensures that, where SNH has purchased land compulsorily and it subsequently wishes to dispose of the land, or any interest in the land, it may only do so on terms which achieve the purpose for which the land was originally acquired. It would not, therefore, be legitimate for SNH to dispose of such land for purposes which it does not consider would secure the conservation, restoration or enhancement of the protected natural feature.