

# **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*

##### *Section 40 Restoration orders*

262. Subsection (1) provides that, where a person is convicted of an offence under section 19(1), or an offence under 19(3) or (4), 27(1) or 36(2), which has resulted in damage to an SSSI or land subject to an NCO, the court which convicts the person may require him/her to carry out operations necessary to restore, so far as is reasonably practicable, the natural feature to its former condition. The order may also specify the time within which restorative action must take place and the extent of the restoration required.
263. Subsection (2) requires the court to have regard to any representations made by SNH in relation to the manner in which restoration of the natural feature should take place.
264. Subsection (3) allows the person against whom a restoration order was made to make an application to the court requesting that the order be discharged or modified. The court may do so if it believes there has been a change in circumstances that has made the compliance or full compliance with the restoration order either impracticable or unnecessary.
265. Subsection (4) specifies that a person subject to a restoration order, who fails (without a reasonable excuse) to comply with the terms of the order is guilty of an offence. A person guilty of an offence under this subsection will be liable on summary conviction to a fine of up to £40,000, and on conviction on indictment to a fine (that is, to a fine which can be set at whatever level the Court thinks fit, including in excess of £40,000, having had regard to the facts of the case).
266. Subsection (5) allows SNH to carry out operations specified in a restoration order and to recover the costs of doing so where the conditions of the order have not been fulfilled. Such costs are recoverable from the person against whom the order was made.
267. Subsection (6) provides that a restoration order is to be treated as a sentence for the purposes of any repeal or review.