

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 4 - General and Supplementary

Section 43 Powers of investigation etc.: police

275. This section provides certain powers, including powers of entry and investigation, which may be exercised by the police in relation to the investigation of SSSI offences. The powers conferred are broadly similar to those in section 19 of the 1981 Act, as amended by paragraph 16 of Schedule 6. A distinction is made in the Act between police powers (as here in section 43) and the powers of SNH and persons authorised by the Scottish Ministers (as in section 44 below).
276. A police officer who has reasonable cause to suspect that any person is committing or has committed an offence may, without any requirement for a warrant, take a range of actions to search for and secure evidence. The power applies whether or not the identity of the suspected perpetrator is known.
277. The actions which the police officer is entitled to take are:
- to stop and search the suspect, if there are reasonable grounds for believing that evidence of the offence may be found on the suspect's person;
 - to search for, search or examine any thing which that person may be using, may have used or may currently have, or have had, in his/her possession if there is reasonable suspicion that evidence of the commission of the offence is to be found in or on that thing; and
 - to seize and detain for the purposes of proceedings any thing which may be evidence of the commission of the suspected offence.
278. It should be noted that, in contrast to section 19 of the 1981 Act, no specific power of arrest is provided in relation to SSSI offences.
279. In order to exercise the powers conferred under subsection (1), a police officer who has reasonable suspicion that an offence is being or has been committed may, under the terms of subsection (2), enter any land other than a dwelling or lockfast premises. This is a power of entry without any requirement for a warrant. The meaning of "land" for the purposes of this Act is set out in the Scotland Act 1998 (Transitory and Transitional Provisions)(Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 as including any "building and other structures, land covered by water, and any right or interest in or over land". Access may also be had to any body of water under the provisions of subsection (2) on the basis that the "land" in question includes any

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

substructure below it and any column of water or air above it. It should be noted that access (without warrant) may be had to any building which is not lockfast, provided that building is not a dwelling.

280. Access to any lockfast premises or dwelling may only be effected under warrant and subsection (3) makes provision for the issuing of a warrant by a sheriff or justice of the peace. Where a warrant is issued to search premises or a dwelling, reasonable force may be used in order to enter the premises in question.
281. Subsection (4) makes further provision in relation to the validity and expiry of a warrant. A warrant continues in force until the purpose for which it was issued has been satisfied. A warrant may however be time-limited by the sheriff when it is issued. Where this is the case, the warrant ceases to be valid when that time-limit is reached.
282. Subsection (5) places an explicit requirement on any police officer entering land (whether or not on the basis of a warrant) to give evidence of authority to enter the land to the occupier of the land or to anyone acting on behalf of the occupier if asked to do so.
283. Subsection (6) provides that a police officer who enters any land in the exercise of powers conferred by section 43 (whether or not on the basis of a warrant) is entitled to be accompanied by any other person, in order for that person to assist the police officer in the exercise of the powers conferred on him/her. The police officer may also take onto the land any necessary machinery, equipment or other materials and may take and remove samples of any articles or substances from the land. The use of an assistant, machinery and equipment and the taking of samples can, by virtue of subsection (7), be regulated under the terms of a warrant.
284. Where land is unoccupied or the occupier is absent, a police officer who enters the land under section 43 is obliged by subsection (8) to leave the land as effectively secured against unauthorised entry as it was when the police officer entered.