

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 4 - General and Supplementary

Section 44 Powers of entry: authorised persons

285. This section enables a person who is authorised in writing by SNH to enter land, except for a dwelling or lockfast premises, at any reasonable time for the purposes set out in subsection (1).
286. Those purposes cover activities arising from the obligations and responsibilities placed on SNH under the Act. Thus, SNH has been given powers of entry which enable it to survey and assess land in order to determine, for example, whether to notify that land as an SSSI, whether to offer a management agreement to the owner or occupier or whether to propose an LMO. The full list of purposes is set out in paragraphs (a) to (l) of subsection 1.
287. Subsection (2) provides corresponding powers of entry for persons authorised by the Scottish Ministers. Fewer purposes are specified in paragraphs (a) to (c) of the subsection, since there are fewer instances in the Act – essentially only NCO and LMO powers – where the Scottish Ministers have specific functions which might potentially entail a requirement to enter land. As with the powers of entry conferred on SNH, a person authorised in writing by the Scottish Ministers may, enter land at any reasonable time, but only for purpose specified in this subsection.
288. Subsection (3) provides that the power to enter land by virtue of subsections (1) and (2) may – where the same purposes apply – be exercised in relation to any land other than the land in relation to which the power of entry is initially exercised. The practical effect of the provision is to allow an authorised person to enter other land – for example land which lies outwith the boundary of an SSSI or which is not covered by a particular NCO – on an incidental or consequential basis, in order to achieve the original purpose. Thus, for example, an authorised person carrying out an inspection of an SSSI with a view to determining whether or not the Scottish Ministers should make an NCO is entitled to enter not only the SSSI but other land, where it is necessary to do so in order to achieve the purpose of the inspection.
289. Subsection (4) makes it clear that persons authorised by SNH or the Scottish Ministers are not entitled to enter a dwelling or lockfast premises. Where an offence is suspected and there are grounds for believing that evidence of such an offence is to be found in lockfast premises or a dwelling, search warrants may be obtained by the police on the basis set out in section 43.

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

290. Subsection (5) ensures that the deliberate obstruction of a person authorised by SNH or the Scottish Ministers, whilst that person is exercising powers under this section, constitutes a criminal offence. The maximum fine for such an offence is level 5 on the standard scale. Obstruction of a police officer is already an offence under section 41 of the [Police \(Scotland\) Act 1967 \(c.77\)](#) and no further provision is made in this connection by the Act.
291. Subsection (6) introduces Schedule 4 which specifies in further detail the procedures which must be followed, and the constraints which apply, when the powers of entry set out in this section are exercised. Particular provision is made in Schedule 4 covering the issuing of warrants for entry to land, although as noted above there is no provision for SNH staff or other persons authorised under section 44 to enter or search lockfast premises or dwellings.