

# 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 4*

##### *Powers of Entry of Authorised Persons: Further Provision*

##### **Notice of entry to occupied land**

292. [Paragraph 1](#) specifies that notice must be given to the occupier (and, where practicable, also to the owner) of any land where a person authorised by SNH or the Scottish Ministers requires to enter the land for the purposes specified in section 44. The period of notice – either 24 hours or 14 days – is specified with reference to the purpose for which entry is required. Notice is not required where a person authorised by SNH or the Scottish Ministers enters the land in order to ascertain whether an offence is being or has been committed.

##### **Warrant for entry**

293. [Paragraph 2\(1\)](#) provides for situations in which entry to land by authorised persons is actively opposed by the owner or occupier, where it has proven impossible to give advance notice, as required under paragraph 1, or where giving notice would defeat the object of the proposed entry. In such circumstances, a person authorised by SNH or the Scottish Ministers may obtain a warrant for entry from a sheriff or justice of the peace. This sets aside the requirement for advance notice and the authorised person may also use reasonable force to effect entry to the land. In the event that the use of force is anticipated to be necessary, the authorised person may wish to request the assistance of the police. As already noted, a warrant cannot be granted to SNH staff and other authorised persons for entry to lockfast premises or a dwelling. Powers of entry and search in relation to lockfast premises and dwellings are available only to the police.
294. [Paragraph 2\(2\)](#) ensures that the sheriff does not grant a warrant simply on the basis that entry is opposed or expected to be opposed, unless he or she is satisfied either that, where paragraph 1 requires notice to be given, the required notice has in fact been given or that notice is not required because entry is necessary under section 44(1)(f) for the purposes of investigating a suspected offence.
295. In essence this means that SNH or the Scottish Ministers must have made genuine efforts to give notice of entry before seeking a warrant where the argument for the warrant is simply that entry has been refused or is likely to be refused. The granting of a warrant is not, however, subject to this requirement where the land is unoccupied (or the occupier is absent), where entry is necessary in order to investigate a suspected

offence or where giving notice would defeat the object of gaining entry (for example, in cases where an NCO is being considered).

296. [Paragraph 2\(3\)](#) provides that the 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.

### **Evidence of authority**

297. [Paragraph 3](#) requires that a person entering land by virtue of section 44 or under warrant must, if challenged by the occupier or someone acting for the occupier, be able to produce evidence of his authority to exercise the power of entry.

### **Supplementary powers**

298. [Paragraph 4](#) enables an authorised person who enters land by virtue of section 44 to take with them any other persons, or any machinery, equipment or materials, which they may require in order to assist them in the exercise of their powers in relation to the land, or in relation to the conduct of any investigation. Samples may also be taken and removed from the land. The terms of a warrant issued under paragraph 2 can make particular provision regulating the use of such assistants, machinery, equipment or materials or the taking and removal of samples.

### **Duty to secure land**

299. [Paragraph 5](#) requires a person who exercises powers to enter land, which is either unoccupied or land from which the owner is temporarily absent, to ensure that the land is secured against unauthorised entry when they leave the land. The land must be secured to the same degree as it was before entry took place.

### **Compensation**

300. [Paragraph 6](#) sets out the extent to which SNH and the Scottish Ministers are liable in relation to damage which may result either from the exercise of the power of entry or from any subsequent failure to secure the land, as required in paragraph 5. Any dispute in relation to the amount of compensation is to be determined by arbitration.