

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 4 - General and Supplementary

Section 45SNH: power to enforce

301. This section provides SNH with an explicit power to protect the biological and geological natural heritage of Scotland by means of civil proceedings. It allows SNH to apply to the court for interdict (or to seek any other appropriate remedy) in order to enforce compliance with particular sections of the Act or to prevent damage, more generally, to important natural features. Although it is arguable that SNH already has the necessary title and interest to be able to initiate civil proceedings, this provision puts the matter beyond doubt.
302. Subsection (1) provides a specific power for SNH to ask the sheriff or the Court of Session to require a public body to comply with its general, section 12, duty. That duty obliges public bodies to further the conservation and enhancement of SSSIs and to maintain or enhance the SSSI series. Where, therefore, a public body had failed to consult SNH, had failed to have regard to SNH advice or had not taken reasonable steps to fulfil its obligations in relation to the protection of SSSIs, it would be open to SNH to challenge those failings in court and to seek an appropriate remedy. Similar provision is made in relation to compliance by a regulatory body with the requirements of section 15. Any failure by a regulator to comply with its duties under section 15 could also be challenged via civil proceeding.
303. Subsection (2) makes more general provision for civil proceedings (whether or not proceedings under subsection (1) would be competent) where SNH believes that it is necessary to prevent operations from taking place on SSSIs or and similar land. SNH may apply to the sheriff or to the Court of Session for an order under subsection (2) where an actual or proposed operation is damaging or is likely to damage protected or important natural features.
304. The court is empowered to grant interdict or make any other order which is appropriate in the circumstances in order to safeguard any protected or important natural feature. “Protected natural feature” is defined in section 58(1) and means a natural feature specified in an SSSI notification or protected by an NCO. Any order made by the court can also give protection to any other natural feature which is of national importance. In practice, this may include a feature which is of high standard but which has not yet been formally notified in an SSSI notification – for example, a feature on land which is being considered as an SSSI. As with NCOs, it is possible under section 45 to take action to give interim protection to such natural features in advance of formal notification of an SSSI. Similarly, the power under section 45 can also be invoked in order to protect

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

natural features on a Natura 2000 site which has not been “underpinned” via the SSSI system (i.e. it has not been notified as both an SSSI and a Natura site).

305. The power given to SNH under this provision does not prevent any other party which has title and interest in the matter from initiating civil proceedings as an alternative to, or in parallel with, any action which SNH may take. That right to take proceedings is specifically preserved and protected by subsection (4).
306. Subsection (5) provides that the relevant court to which application should be made will be either the sheriff court or the Court of Session. The choice of court will depend on the nature of the case and the parties involved. A local matter involving a private landowner might, for example, most appropriately be heard by the sheriff for the area. A major case involving alleged non-compliance by a public body might, by contrast, be more appropriate to the Court of Session.