

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – General

Section 55: Crown application

438. This section deals with the application of the Act to the Crown.
439. Subsections (1) and (2) provide for the provisions on biodiversity (Part 1), SSSIs (Part 2) and the general provisions in Part 5 to bind the Crown. The provisions inserted by Part 3 (and Schedule 6) into the 1981 Act and the [Protection of Badgers Act 1992 \(c.51\)](#) will be governed, in so far as they apply to the Crown, by the provisions of those Acts. Neither currently binds the Crown. The amendments and repeals to other legislation made in Schedule 7 reflect that same principle and bind the Crown only to the same extent as did the enactments which are being repealed or amended.
440. It should be noted that, by virtue of subsection (1), Her Majesty is bound by Parts 1, 2 and 5 of the Act in her private as well as her public capacity. The principal practical effect of this is to extend the SSSI system to land (in particular the Balmoral Estate) which is owned by Her Majesty as a private individual. For the purposes of the Act, Her Majesty's private estate is treated as private land and the provisions of the Act apply to it in the same way as they apply to the land of any other private landowner.
441. Subsections (3) to (11) apply the SSSI provisions in Part 2 of the Act to Crown land with appropriate modifications.
442. "Crown land" is defined in subsection (9) for the purposes of this section as land which belongs to Her Majesty in right of the Crown, to an office-holder in the Scottish Administration or to a government department, or which is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department. Crown land therefore equates, for the purposes of the Act, to what might be thought of as Her Majesty's "public" estate. Her Majesty's private property (such as Balmoral Estate) is not Crown land within the definition used in this Act.
443. Byelaws, NCOs and LMOs can only be made in relation to Crown land with the consent of the appropriate authority responsible for the land in question. An interest in land may only be purchased compulsorily where the appropriate authority consents. This permits action to be taken, for example, in relation to the activities of a tenant who occupies Crown land, or in relation (in the case of byelaws or NCOs) to the activities of third parties (including members of the general public) on Crown land. Such action does however require the agreement of the appropriate authority, as defined in subsection (10).
444. The Crown itself is exempt, under subsection (7) from criminal prosecution, but its acts or omissions may be declared illegal on application to the Court of Session if they

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

contravene Part 2 of the Act. By virtue of subsection (8) Crown servants remain liable to prosecution on the same basis as any other person, if they contravene the provisions of Part 2 of the Act.

445. Subsection (10) provides a definition of the term “appropriate authority” used in section 55. Where land forms part of the Crown Estate, the appropriate authority will be the Crown Estate Commissioners. In the case of other land belonging to the Crown (e.g. land managed by the Scottish Administration or a government department) the appropriate authority will be the responsible office holder in the Administration or the relevant department. The Scottish Ministers are, by virtue of subsection (11), empowered to determine any dispute in relation to who is the appropriate authority in relation to any particular area of land. Their decision on the matter is final.