



Nature Conservation (Scotland) Act 2004

2004 asp 6

PART 2

CONSERVATION AND ENHANCEMENT OF NATURAL FEATURES

CHAPTER 1

SITES OF SPECIAL SCIENTIFIC INTEREST

Operations affecting sites of special scientific interest

VALID FROM 29/11/2004

13 Operations by public bodies etc.

- (1) A public body or office-holder must not carry out any operation which is likely to damage any natural feature specified in an SSSI notification except—
 - (a) with the written consent of SNH given on an application under subsection (3),
 - (b) where subsection (1) of section 14 applies, or
 - (c) in accordance with subsection (2) of that section.
- (2) Subsection (1) of this section applies whether or not the operation would take place on land within a site of special scientific interest.
- (3) An application for SNH's consent must specify—
 - (a) the nature of the operation,
 - (b) the proposed dates of commencement and completion, and
 - (c) the land on which it is proposed to carry out the operation.
- (4) On an application under subsection (3) SNH may—
 - (a) give consent to the operation being carried out, whether or not subject to conditions, or
 - (b) refuse such consent.

Status: Point in time view as at 01/10/2004. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004, Cross Heading: Operations affecting sites of special scientific interest. (See end of Document for details)

- (5) The conditions referred to in subsection (4)(a) may, in particular, provide—
 - (a) that, despite the terms of the application under subsection (3), the operation may be carried out—
 - (i) only in such manner as SNH may specify,
 - (ii) on part only of the land on which the public body or office-holder wishes to carry out the operation,
 - (b) that the operation may be carried out only for, or within, such period as SNH may specify.
- (6) SNH must, in giving or refusing consent, provide the public body or office-holder with written advice in relation to the operation, including advice on minimising such damage as is referred to in subsection (1).
- (7) SNH must give a public body or office-holder reasons for a decision under this section—
 - (a) to give consent subject to conditions,
 - (b) to refuse consent.
- (8) SNH is, if it neither gives nor refuses consent within 28 days of the date of the application under subsection (3), to be treated as having refused consent.

VALID FROM 29/11/2004

14 Operations by public bodies etc.: authorised operations

- (1) SNH's consent under section 13 is not required in relation to the carrying out of an operation of the type described in subsection (1) of that section—
 - (a) in respect of which permission has been given by a relevant regulatory authority in accordance with section 15,
 - (b) which is authorised by a planning permission granted on an application under Part III of the Town and Country Planning (Scotland) Act 1997 (c. 8),
 - (c) which is an emergency operation particulars of which (including details of the emergency) are notified to SNH as soon as practicable after the necessity for the operation becomes apparent,
 - (d) in accordance with the terms of a management agreement between SNH and the public body or office-holder carrying out the operation, or
 - (e) in accordance with any plan relating to the management of land which has been prepared by the public body or office-holder and approved in writing by SNH for the purposes of this section.
- (2) A public body or office-holder may, if all the conditions set out in subsection (3) are satisfied, carry out an operation of the type described in section 13(1)—
 - (a) in respect of which SNH has refused consent, or
 - (b) in a case where SNH has given consent, otherwise than in accordance with any condition to which the consent is subject.
- (3) Those conditions are—
 - (a) that the public body or office-holder has, more than 28 days after the date of the application under section 13(3), given notice to SNH of—

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- (i) the date (which must be at least 28 days after the date of the notice) on which it proposes to commence the operation, and
 - (ii) what (if anything) the body or office-holder has done, or proposes to do, in consequence of any written advice in relation to the operation which it has received, before the date of the notice, from SNH in pursuance of section 13(6),
- (b) that the body or office-holder carries out the operation in such a way as to give rise to as little damage or disturbance as is reasonably practicable in all the circumstances to any natural feature specified in an SSSI notification (having had regard, in particular, to any such advice as is referred to in paragraph (a)(ii)),
 - (c) that in carrying out the operation, the body or office-holder complies with section 12(2)(c).
- (4) Subsection (5) applies where—
- (a) a public body or office-holder carries out an operation for which it would, but for subsection (1)(a) or (c) or (2), require SNH's consent, and
 - (b) the operation damages any natural feature specified in an SSSI notification.
- (5) Where this subsection applies the body or office-holder must—
- (a) consult SNH as to the manner in which the natural feature should be restored to its former condition, and
 - (b) restore it, so far as is reasonably practicable, to that condition in accordance with any advice given by SNH in pursuance of paragraph (a).

15 Consent by certain regulatory authorities

- (1) This section applies where the permission of a relevant regulatory authority is needed before operations may be carried out.
- (2) A reference in this Act to a relevant regulatory authority is reference to any person designated as such for the purposes of this Act by order made by the Scottish Ministers.
- (3) Before deciding whether to permit the carrying out of an operation which is likely to damage any natural feature specified in an SSSI notification, the authority must notify SNH of the proposal to carry out the operation specifying—
 - (a) the nature of the operation,
 - (b) the proposed dates of commencement and completion, and
 - (c) the land on which it is proposed to carry out the operation.
- (4) Subsection (3) applies whether or not the operation would take place on land within a site of special scientific interest.
- (5) The authority must not decide whether to give its permission until the expiry of the period of 28 days beginning with the date of the notification to SNH unless SNH has notified the authority that it need not wait until then.
- (6) The authority must have regard to any advice received from SNH—
 - (a) in deciding whether to give its permission, and
 - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to its permission.
- (7) Subsection (8) applies where the authority does not follow any such advice which—

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- (a) advises it against permitting an operation, or
 - (b) advises it to attach certain conditions to a permission.
- (8) Where this subsection applies—
- (a) the permission given by the authority is subject to the conditions set out in subsection (10), and
 - (b) the authority must give notice in accordance with subsection (9) to SNH and the applicant for permission.
- (9) A notice given under subsection (8)(b) must set out the permission given and its terms and must include a statement specifying—
- (a) what the authority has done, or proposes to do, in consequence of the advice given by SNH,
 - (b) that in giving permission or, as the case may be, attaching conditions to the permission the authority has not followed advice received from SNH under subsection (6), and
 - (c) the conditions set out in subsection (10).
- (10) The conditions referred to in subsections (8)(a) and (9)(c) are that—
- (a) the permitted operation must not be commenced before the end of the period of 28 days beginning with the date on which notice under subsection (8)(b) is given, and
 - (b) the operation is carried out in such a way as to give rise to as little damage or disturbance as is reasonably practicable in all the circumstances to the natural feature referred to in subsection (3).

Commencement Information

II S. 15(2) in force at 1.10.2004 by S.S.I. 2004/407, art. 2(a)

VALID FROM 29/11/2004

16 Operations by owners or occupiers of sites of special scientific interest

- (1) An owner or occupier of land within a site of special scientific interest must not carry out, or cause or permit to be carried out, an operation requiring consent on the land except—
- (a) with the written consent of SNH given on an application under subsection (2), or
 - (b) where section 17(1) applies.
- (2) An application for such consent must specify—
- (a) the nature of the operation,
 - (b) the proposed dates of commencement and completion, and
 - (c) the land on which it is proposed to carry out the operation.
- (3) On an application under subsection (2) SNH may—
- (a) give consent to the operation being carried out, whether or not subject to conditions, or
 - (b) refuse such consent.

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- (4) The conditions referred to in subsection (3)(a) may, in particular, provide—
 - (a) that, despite the terms of the application under subsection (2), the operation may be carried out—
 - (i) only in such manner as SNH may specify,
 - (ii) on part only of the land on which the owner or occupier wishes the operation to be carried out,
 - (b) that the operation may be carried out only for, or within, such period as SNH may specify.
- (5) SNH may, by giving notice to the owner or occupier to whom consent to carry out an operation has been given, modify or withdraw its consent—
 - (a) on completion of a review of it under section 6(4), or
 - (b) where SNH considers that the carrying out of the operation requiring consent in accordance with the consent will damage any natural feature specified in an SSSI notification in a manner not foreseen by SNH at the time it gave consent.
- (6) Consent may not be modified or withdrawn under subsection (5)(b) without the agreement of the Scottish Ministers.
- (7) A modification or withdrawal under subsection (5)(a) has effect from—
 - (a) the expiry of the time limit for appealing against it, or
 - (b) where an appeal is made, its withdrawal or final determination.
- (8) A modification or withdrawal under subsection (5)(b) has effect on notice of it being given.
- (9) Where, under this section—
 - (a) SNH—
 - (i) refuses to consent to an operation being carried out,
 - (ii) makes its consent subject to conditions, or
 - (iii) modifies or withdraws its consent, and
 - (b) it considers, having had regard to any guidance issued or approved under section 54(1) so far as relating to circumstances in which it should offer to enter into a management agreement, that, despite the decision referred to in paragraph (a), it should offer to enter into such an agreement with the applicant or, as the case may be, the person to whom the consent was given, it must offer to enter into such an agreement on such terms and conditions (including provision for payment to the applicant by SNH) as, having regard to the guidance, it thinks fit.
- (10) SNH must give an applicant reasons for a decision by virtue of this section—
 - (a) to make its consent subject to conditions,
 - (b) to refuse consent,
 - (c) to modify or withdraw its consent,
 - (d) where paragraph (a) of subsection (9) applies, not to offer to enter into a management agreement in pursuance of that subsection.

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VALID FROM 29/11/2004

17 Operations by owners or occupiers of sites of special scientific interest: authorised operations

- (1) SNH's consent under section 16 is not required in relation to the carrying out of an operation requiring consent—
 - (a) in respect of which permission has been given by a relevant regulatory authority in accordance with section 15,
 - (b) which is authorised by a planning permission granted on an application under Part III of the Town and Country Planning (Scotland) Act 1997 (c. 8),
 - (c) which is an emergency operation particulars of which (including details of the emergency) are notified to SNH as soon as practicable after the necessity for the operation becomes apparent,
 - (d) in accordance with the terms of a management agreement between SNH and the person carrying out the operation or causing or permitting it to be carried out, or
 - (e) which is carried out as required by a land management order.
- (2) Subsection (3) applies where—
 - (a) an owner or occupier of land within a site of special scientific interest carries out, or causes or permits to be carried out, an operation which would, but for subsection (1)(a) or (c), require SNH's consent, and
 - (b) the operation damages any natural feature specified in an SSSI notification.
- (3) Where this subsection applies the owner or occupier must—
 - (a) consult SNH as to the manner in which the natural feature should be restored to its former condition, and
 - (b) restore it, so far as is reasonably practicable, to that condition in accordance with any advice given by SNH in pursuance of paragraph (a).
- (4) Section 16 and this section do not apply to an owner or occupier being a public body or office-holder acting in the exercise of its functions.

VALID FROM 29/11/2004

18 Appeals in connection with operations requiring consent

- (1) An owner or occupier of land within a site of special scientific interest who is aggrieved—
 - (a) by a condition imposed under subsection (3)(a) of section 16,
 - (b) by a decision under subsection (3)(b) of that section to refuse consent,
 - (c) by a decision under subsection (5) of that section to modify or withdraw consent,
 - (d) by a decision, where paragraph (a) of subsection (9) of that section applies, not to enter into a management agreement in pursuance of that subsection,

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- (e) by the terms and conditions (including any provision for payment by SNH) on which SNH has offered to enter into a management agreement in pursuance of that subsection,
may appeal to the Scottish Land Court.
- (2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which SNH notified the appellant of the decision being appealed.
- (3) If, within—
- (a) the period of 4 months beginning on the date on which the owner or occupier seeking the consent made an application under section 16(2), or
 - (b) such longer period, beginning on that date, as may be agreed in writing between SNH and the owner or occupier,
- SNH neither gives nor refuses the consent sought in the application, SNH is to be treated, for the purposes of this section, as having refused consent on the day on which the period expired and an appeal may be made and determined under this section accordingly.
- (4) If, within—
- (a) the period of 4 months beginning on the date on which SNH—
 - (i) refuses consent to an operation being carried out,
 - (ii) makes its consent subject to conditions, or
 - (iii) modifies or withdraws its consent, or
 - (b) such longer period, beginning on that date, as may be agreed in writing between SNH and the owner or occupier,
- SNH has not offered to enter into a management agreement in pursuance of section 16(9), SNH is to be treated, for the purposes of this section, as having decided not to so offer on the day on which the period expired and an appeal may be made and determined under this section accordingly.
- (5) The Scottish Land Court must determine an appeal made under subsection (1) on the merits rather than by way of review and may do so by—
- (a) affirming the decision appealed against,
 - (b) where the appeal is against a refusal of consent, directing SNH to give consent,
 - (c) where the appeal is as to the conditions to which a consent is subject, quashing all or any of those terms or conditions,
 - (d) where the appeal is against a decision not to offer to enter into a management agreement, directing SNH to so offer,
 - (e) where the appeal is as to the terms and conditions of a management agreement, quashing all or any of those terms or conditions,
 - (f) making such other order as it thinks fit.
- (6) The Scottish Land Court may direct SNH—
- (a) where it determines an appeal under paragraph (b) or (c) of subsection (5), as to any conditions to which its consent to the carrying out of the operation requiring consent are to be subject,
 - (b) where it determines an appeal under paragraph (d) or (e) of that subsection, as to terms and conditions of the management agreement (including provision for payment by SNH) which it must offer to enter into.

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