



# Nature Conservation (Scotland) Act 2004

## 2004 asp 6

### PART 2

#### CONSERVATION AND ENHANCEMENT OF NATURAL FEATURES

### CHAPTER 3

#### LAND MANAGEMENT ORDERS

## 29      **Proposals for land management orders**

(1) This section applies to—

- (a) land which is, or forms part of, a site of special scientific interest,
- (b) land which is contiguous to, or which SNH considers to be otherwise associated with, a site of special scientific interest,
- (c) any combination of land of the type described in paragraphs (a) and (b).

(2) Where—

- (a) any of subsections (3) to (5) applies, and
- (b) SNH considers that an order under section 30(1) (a “land management order”) in relation to the land is necessary or expedient for the purpose of conserving, restoring or otherwise enhancing any natural feature specified in an SSSI notification,

SNH may propose to the Scottish Ministers that they make a land management order.

(3) This subsection applies where—

- (a) SNH has offered to enter into a management agreement in relation to land to which this section applies for the purpose specified in subsection (2)(b), and
- (b) the offeree has refused or failed to enter into the agreement.

(4) This subsection applies where a person fails to comply with a management agreement entered into with SNH, for the purpose specified in subsection (2)(b), in relation to land to which this section applies.

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- (5) This subsection applies where SNH has not, by reason of not being aware of the name or address of any owner or occupier of land to which this section applies, been able to offer to enter into a management agreement in relation to the land.
- (6) Subsection (5) does not apply unless—
  - (a) SNH has given notice in accordance with section 48(10) stating that it wishes to offer to enter into a management agreement in relation to the land, and
  - (b) 28 days have passed since the notice was given.
- (7) A proposal under subsection (2) must—
  - (a) describe the land to which it relates in a manner which would be sufficient to enable a document relating to the land to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland,
  - (b) be accompanied by a map on which the land is delineated,
  - (c) describe the natural feature in question,
  - (d) explain why SNH offered to, or wishes to offer to, enter into a management agreement in relation to the land or, as the case may be, specify the failure to comply with a management agreement which has been entered into,
  - (e) specify—
    - (i) any operations (including any operations requiring consent) which should be carried out on the land for the purpose of conserving, restoring or otherwise enhancing that natural feature,
    - (ii) the persons who should carry out the operations, and
    - (iii) how and when the operations should be carried out,
  - (f) state—
    - (i) the costs which the persons referred to in paragraph (e)(ii) are likely to incur by so doing, and
    - (ii) the amounts which SNH should pay to those persons in respect of those costs, and
  - (g) specify any operations which should not be carried out on the land.

### **30 Power to make land management orders**

- (1) The Scottish Ministers must, within 3 months of the expiry of the period during which representations on a proposal for a land management order may be made in pursuance of paragraph 3(c) of schedule 3, after considering the matters specified in subsection (2)—
  - (a) make a land management order in the manner which has been proposed,
  - (b) make such other land management order as the Scottish Ministers think fit in relation to the land, or any part of the land, to which the proposal relates, or
  - (c) refuse to make a land management order in relation to that land or any part of it.
- (2) Those matters are—
  - (a) the proposal under section 29(2) and the accompanying map,
  - (b) any representations made to them in pursuance of paragraph 3(c) of schedule 3, and
  - (c) any information provided to them in pursuance of paragraph 6 of that schedule in relation to the proposal.

### **31 Content of land management orders**

- (1) A land management order must—
  - (a) describe the land to which the order relates in a manner which would be sufficient to enable the order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland,
  - (b) be accompanied by a map on which the land is delineated,
  - (c) describe the natural feature which is to be conserved, restored or otherwise enhanced in pursuance of the order,
  - (d) specify—
    - (i) the operations which are to be carried out on the land for the purpose of conserving, restoring or otherwise enhancing that natural feature,
    - (ii) the persons who are to carry out those operations, and
    - (iii) how and when those operations are to be carried out,
  - (e) specify any operations which must not be carried out on the land,
  - (f) specify the date on which the order is to come into effect and the period for which it is to have effect, and
  - (g) set out the circumstances in which an appeal may be made under section 34(1) against the decision to make the order.
- (2) Any operation specified in a land management order by virtue of subsection (1)(e) is, in relation to the land to which the order relates, referred to in this Act as an “excluded operation”.
- (3) A land management order may provide for the making of payments by SNH to any person in respect of reasonable costs incurred by the person in carrying out an operation specified in the order by virtue of subsection (1)(d)(i).

### **32 Review of land management orders**

- (1) The Scottish Ministers may, when they think fit, review a land management order for the purposes of determining whether they should make an order amending or revoking it.
- (2) The Scottish Ministers must carry out—
  - (a) the first such review within 6 years of the date on which the land management order was made,
  - (b) any subsequent such review within 6 years of the previous review.
- (3) If, on completion of a review, the Scottish Ministers decide that the land management order should be amended or revoked they may make an order to that effect.

### **33 Land management orders and related orders: procedure**

Schedule 3 sets out procedure relating to land management orders and orders under section 32(3).

### **34 Appeals in connection with land management orders and related orders**

- (1) Any owner or occupier of land to which a land management order relates who is aggrieved by—

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- (a) a decision of the Scottish Ministers to make a land management order or an order under section 32(3), or
  - (b) the terms or conditions of such an order,

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 the Scottish Ministers gave notice to the appellant of the decision being appealed.
- (3) The Scottish Land Court must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—
  - (a) affirming the order in question,
  - (b) directing the Scottish Ministers to amend the order in such manner as the Court may specify,
  - (c) directing the Scottish Ministers to revoke the order,
  - (d) making such other order as it thinks fit.

### **35 Effect of land management orders**

- (1) A land management order has effect from—
  - (a) the expiry of the time limit for appealing against the decision to make the land management order, or
  - (b) where such an appeal is made, its withdrawal or final determination.
- (2) A land management order ceases to have effect—
  - (a) on the expiry of the time limit for appealing against the decision to make an order under section 32(3) revoking the land management order, or
  - (b) where such an appeal is made, on its withdrawal or final determination.
- (3) A land management order has effect as amended by an order under section 32(3)—
  - (a) from the expiry of the time limit for appealing against the decision to make the order under that section, or
  - (b) where such an appeal is made, from its withdrawal or final determination.

### **36 Offences in relation to land management orders**

- (1) Any person who, without reasonable excuse, fails to carry out, in the manner required by a land management order, an operation which the person is required by the order to carry out is guilty of an offence.
- (2) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, an excluded operation is guilty of an offence.
- (3) Any person guilty of an offence under subsection (1) or (2) is liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.

### **37 Enforcement of land management orders**

- (1) Subsection (2) applies where SNH considers—
  - (a) that any operation required to be carried out by a land management order has not been carried out within the period or by the date specified in it, or

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- (b) that any such operation has been carried out otherwise than in the manner so specified.
- (2) Where this subsection applies SNH—
  - (a) is not required to make any payment (and may recover any payments made) in pursuance of the land management order in relation to the operation in question, and
  - (b) may—
    - (i) carry out the operation, or carry out such further work as is necessary to ensure that it is carried out, in the manner so specified, and
    - (ii) recover from the person whom the land management order required to carry out the operation any additional expenses reasonably incurred by it in doing so.
- (3) The reference in subsection (2) to additional expenses incurred by SNH in carrying out an operation or further works is a reference to expenses incurred by SNH in so doing less the amount which SNH would, if that subsection had not applied, be required to pay in relation to the carrying out of the operation.