



# Nature Conservation (Scotland) Act 2004

## 2004 asp 6

### PART 5

#### GENERAL

#### **53 Orders and regulations: general**

- (1) Any power of the Scottish Ministers under this Act to make orders (except nature conservation orders, amending orders, revoking orders, land management orders and orders under section 32(3) and paragraph 11(3) of schedule 5) or regulations is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes and different areas.
- (3) An order under section 56 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order or regulations under this Act (except sections 56 (where subsection (5) applies) and 59) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No order under section 56 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

#### **54 Guidance**

- (1) The Scottish Ministers may issue guidance (or approve guidance issued by others) containing recommendations, advice and information for the assistance of—
  - (a) public bodies and office-holders in complying with the duty under section 1(1) to further the conservation of biodiversity,
  - (b) SNH in exercising its functions under Part 2, and
  - (c) persons affected or likely to be affected by the exercise by SNH of any of those functions,

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and may issue revisions of any guidance issued by them (or approve revisions of guidance issued by others).

- (2) Guidance issued or approved under subsection (1)(b) may, in particular, contain information—
  - (a) as to the circumstances in which SNH should, for the purposes of section 3(1), 5(1) or 9(1), consider land to be of special interest or, as the case may be, no longer to be of special interest,
  - (b) as to circumstances in which, and the terms and conditions on which, SNH should offer to enter into a management agreement,
  - (c) as to the amounts which SNH should pay to persons carrying out operations specified in land management orders.
- (3) Before issuing or approving guidance under subsection (1), the Scottish Ministers must consult SNH and such persons appearing to them to represent other interests concerned as they think fit.
- (4) The Scottish Ministers must publish any guidance issued by them under subsection (1) in such manner (including on the internet or by other electronic means) as they think fit.

#### **Commencement Information**

**II** S. 54 in force at 1.10.2004 by [S.S.I. 2004/407](#), **art. 2(d)**

## **55 Crown application**

- (1) Parts 1 and 2 and this Part bind the Crown.
- (2) The amendments and repeals of enactments made by schedule 7 bind the Crown to the same extent as the enactments amended or repealed.
- (3) Part 2 applies to Crown land with the following modifications.
- (4) Byelaws made by virtue of section 20 may apply to Crown land only if the appropriate authority consents.
- (5) No order may be made under section 23 or 30 in relation to Crown land unless the appropriate authority has consented to the making of the order.
- (6) An interest in Crown land, other than one held by or on behalf of the Crown, may be acquired under section 39, but only with the consent of the appropriate authority.
- (7) No contravention by the Crown of any provision made by or under Part 2 makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (8) Despite subsection (7), any provision made by or under Part 2 applies to persons in the public service of the Crown as it applies to other persons.
- (9) In this section “Crown land” means land an interest in 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.

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- (10) In this section “the appropriate authority”, in relation to any land—
- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
  - (b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land [<sup>F1</sup> or the relevant person] ,
  - (c) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.

[<sup>F2</sup>(10A) In subsection (10), “relevant person”, in relation to any land to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that land.]

- (11) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

#### Textual Amendments

- F1** Words in s. 55(10)(b) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 34\(a\)](#)
- F2** [S. 55\(10A\)](#) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 34\(b\)](#)

#### Commencement Information

- I2** S. 55 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

## 56 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

## 57 Minor and consequential amendments and repeals

Schedule 7 sets out minor amendments and amendments and repeals consequential upon the provisions of this Act.

#### Commencement Information

- I3** S. 57 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

## 58 Interpretation

- (1) In this Act—
- “the 1981 Act” means the Wildlife and Countryside Act 1981 (c. 69),
  - <sup>F3</sup> ...
  - “amending order” has the meaning given in section 24(1),

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“biodiversity” has the same meaning as has “biological diversity” in the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or in any United Nations Convention replacing that Convention),

“excluded operation” has the meaning given in section 31(2),

“interest”, in relation to land, means any right in or over land exercisable by virtue of the ownership of an interest in land, by virtue of a licence or agreement or by virtue of any other entitlement to occupy the land, and in particular includes sporting rights,

“interested parties” is to be construed in accordance with section 48(2),

“land management order” has the meaning given in section 29(2),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

“management agreement” means an agreement under—

- (a) section 16 (agreements for establishment of nature reserves) of the National Parks and Access to the Countryside Act 1949 (c. 97),
- (b) section 49A (agreements to secure the conservation and enhancement, or to foster the understanding and enjoyment, of natural heritage) of the Countryside (Scotland) Act 1967 (c. 86), or
- (c) section 15 (agreements for the purpose of conserving the natural features of areas of special scientific interest) of the Countryside Act 1968 (c. 41),

“natural feature” has the meaning given in section 3(2),

“nature conservation order” means an order under section 23(1),

“operations” includes works and other activities,

“operation requiring consent” has the meaning given in section 3(7),

“permission” includes authorisation, consent and any other type of permission (and “permit”, “permitted” and “permitting” are to be construed accordingly),

“prohibited operation” has the meaning given in section 23(5),

“protected natural feature” means a natural feature—

- (a) which is specified in an SSSI notification, or
- (b) by reason of which a nature conservation order has effect,

“public body or office-holder” includes a statutory undertaker and any person exercising functions of a public nature, but does not include any court or any tribunal or body exercising the judicial power of the State,

“relevant regulatory authority” has the meaning given in section 15(2),

“revoking order” has the meaning given in section 24(1),

“site management statement” has the meaning given in section 4(2),

“site of special scientific interest” has the meaning given in section 3(6)<sup>F4</sup>(read, where necessary, together with section 5A(3)(b) ],

“SNH” means Scottish Natural Heritage,

“SSSI notification” has the meaning given in section 3(5)<sup>F5</sup>(read, where necessary, together with section 5A(3)(a) ],

“statutory undertaker” means—

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of water or hydraulic power,

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- (b) [<sup>F6</sup>an operator of an electronic communications code network (within the meaning given in paragraph 1(1) of Schedule 17 to the Communications Act 2003);]
  - (c) an airport operator (within the meaning of the Airports Act 1986 (c. 31)) operating an airport to which Part V of that Act applies,
  - (d) a gas transporter, within the meaning of Part I of the Gas Act 1986 (c. 44),
  - (e) a holder of a licence under section 6(1) of the Electricity Act 1989 (c. 29),
  - (f) Scottish Water,
  - (g) the Civil Aviation Authority or a holder of a licence under Chapter I of Part I of the Transport Act 2000 (c. 38) (to the extent that the person holding the licence is carrying out activities authorised by it), or
  - (h) [<sup>F7</sup>a universal service provider within the meaning of Part 3 of the Postal Services Act 2011 (c.5).]
- (2) A reference in this Act to damaging a protected natural feature includes a reference to causing that natural feature to deteriorate.
- (3) A protected natural feature consisting of fauna is, for the purposes of this Act, to be treated as being damaged if it is disturbed or harassed to the extent that SNH or, if the land is not a site of special scientific interest, the Scottish Ministers—
- (a) no longer consider the land to which it relates to be of special interest by reason of that feature, or
  - (b) consider the degree to which the land is of special interest by reason of that feature to have decreased significantly.

#### Textual Amendments

- F3** Words in s. 58(1) repealed (1.8.2010) by Public Services Reform (Scotland) Act 2010 (asp 8), **ss. 2(3)(d)**, 134(7); S.S.I. 2010/221, art. 3(2), Sch.
- F4** Words in s. 58(1) inserted (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 37(4)(a)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(n)
- F5** Words in s. 58(1) inserted (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), **ss. 37(4)(b)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(n)
- F6** Words in s. 58(1) substituted (28.12.2017) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 (S.I. 2017/1285), reg. 1(1), **Sch. 1 para. 10(2)**
- F7** Words in s. 58(1) substituted (1.10.2011) by The Postal Services Act 2011 (Consequential Modifications and Amendments) Order 2011 (S.I. 2011/2085), **Sch. 1 para. 58**

#### Commencement Information

- I4** S. 58 in force at 29.11.2004 by S.S.I. 2004/495, **art. 2**

## 59 Short title and commencement

- (1) This Act may be cited as the Nature Conservation (Scotland) Act 2004.
- (2) This Act (except sections 53 and 56 and this section) comes into force on such day as the Scottish Ministers may by order appoint.

**Changes to legislation:**

There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004, Part 5.