



# Natural Heritage (Scotland) Act 1991

## 1991 CHAPTER 28

### PART I

#### SCOTTISH NATURAL HERITAGE

##### *Functions of SNH*

## 2 General functions of Scottish Natural Heritage

(1) SNH shall have the following general functions—

- (a) the provision of advice to the Secretary of State or any other minister on the development and implementation of policies for or affecting the natural heritage of Scotland;
- (b) the provision of advice and the dissemination of knowledge to any persons (including the provision and promotion of publicity and information services) about the natural heritage (including its use and enjoyment) and any matters arising from the discharge of its functions;
- (c) the commissioning or support (whether by financial means or otherwise) of research which in its opinion is relevant to any of its functions or, in the case of research which is directly related to its functions, if it considers it appropriate to do so initiating and carrying out such research itself;
- (d) the power to accept any gift or contribution made to it for the purposes of any of its functions and, subject to the terms of such gift or contribution, it shall apply the gift or contribution to those purposes;
- (e) the power to form or promote or join with any other person in forming or promoting companies (within the meaning of the <sup>M1</sup>Companies Act 1985);
- (f) the power to form partnerships with other persons; and
- (g) the power to do all such other things as are incidental or conducive to the discharge of its functions including (without prejudice to the generality of this paragraph) the power to make charges for any service undertaken by it and the power to acquire, hold and dispose of land or any interest in or right over land.

*Status: Point in time view as at 01/03/1996.*

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- (2) SNH may, and if so requested by the Secretary of State or any general, regional or district planning authority shall, advise the Secretary of State or, as the case may be, the authority in relation to any matter arising under the <sup>M2</sup>Town and Country Planning (Scotland) Act 1972 which affects the natural heritage of Scotland.

#### Commencement Information

- I1** S. 2 wholly in force at 1. 4. 1992; S. 2 not in force at Royal Assent see s. 28(2); S. 2(1) wholly in force at 27.11.1991 and s. 2(2) wholly in force at 1. 4. 1992 by S.I. 1991/2633, arts. 3, 4, **Sch.**;

#### Marginal Citations

- M1** 1985 c. 6.  
**M2** 1972 c. 52.

### 3 Duty to take account of certain matters.

- (1) Subject to subsection (2) below, it shall be the duty of SNH in exercising its functions to take such account as may be appropriate in the circumstances of—
- (a) actual or possible ecological and other environmental changes to the natural heritage of Scotland;
  - (b) the needs of agriculture, fisheries and forestry;
  - (c) the need for social and economic development in Scotland or any part of Scotland;
  - (d) the need to conserve sites and landscapes of archaeological or historical interest;
  - (e) the interests of owners and occupiers of land; and
  - (f) the interests of local communities.
- (2) Paragraphs (b) to (f) of subsection (1) above shall not apply as regards any function exercised by SNH in pursuance of any of paragraphs (b) to (e) of section 133(2) of the <sup>M3</sup>Environmental Protection Act 1990 (special functions to be exercised through the joint committee).

#### Commencement Information

- I2** S. 3 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, **Sch.**

#### Marginal Citations

- M3** 1990 c. 43.

### 4 Nature conservation functions.

- (1) Except as regards the joint committee within the meaning of Part VII of the Environmental Protection Act 1990 and subject to the following provisions of this section, Part VII of that Act shall not extend to Scotland.
- (2) Sections 128(4), 128(5) (in so far as it relates to Schedule 7) and 132(3) of that Act shall continue to extend to Scotland and any reference in those sections to “the Councils” shall include a reference to SNH.

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- (3) Section 131 of that Act, in so far as it relates to the joint committee mentioned in subsection (1) above, shall continue to extend to Scotland.
- (4) Section 133 of that Act shall continue to extend to Scotland and—
  - (a) the references to “the Councils” shall include a reference to SNH; and
  - (b) in subsection (3) after the words “section 132 above” there shall be inserted the words “ or, as the case may be, the nature conservation functions of Scottish Natural Heritage ”,and in discharging its nature conservation functions, SNH shall have regard to any advice given to it by the joint committee under the said subsection (3).
- (5) The amendments made by Schedule 9 to that Act to enactments extending to Scotland shall continue to extend to Scotland.
- (6) SNH shall have the functions previously discharged by the Nature Conservancy Council for Scotland under the enactments amended by Schedule 2 to this Act in accordance with those enactments as so amended.
- (7) SNH shall be responsible for the establishment, maintenance and management of nature reserves (within the meaning of section 15 of the National Parks and Access to the <sup>M4</sup>Countryside Act 1949) in Scotland.
- (8) Paragraph 12 of Schedule 11 to the said Act of 1990 shall continue to extend to Scotland; and references to a new council shall, as regards the exercise of functions in part of a nature reserve or area of scientific interest in Scotland, be construed as references to SNH.
- (9) In this section “nature conservation” means the conservation of flora, fauna or geological or physiographical features.
- (10) Subject to anything in this section and Schedules 2 and 10 to this Act, for any reference in any enactment (including an enactment contained in a local or private Act and any order, regulation or other instrument having effect by virtue of an Act) to the Nature Conservancy Council for Scotland there shall be substituted a reference to Scottish Natural Heritage.

#### **Extent Information**

**E1** S. 4(2)(4) and (10) extend also to England and Wales.

#### **Commencement Information**

**I3** S. 4 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### **Marginal Citations**

**M4** 1949 c. 97.

## **5 Development projects or schemes.**

- (1) SNH may prepare proposals with respect to any area for a development project or scheme which is designed to achieve the conservation or enhancement of or which fosters understanding or enjoyment of the natural heritage of Scotland.
- (2) Proposals prepared under subsection (1) above in relation to any area shall—

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- (a) in relation to that area involve the application of new or developed methods, concepts or techniques; and
  - (b) be designed to illustrate the appropriateness of such a project or scheme to that area or other areas of a similar nature or which present similar problems to that area.
- (3) SNH may undertake, promote or coordinate, either by itself or in conjunction with any other authority or person, measures to implement the proposals mentioned in subsection (1) above.
- (4) Where SNH has prepared a proposal for a development project or scheme for any area which involves the compulsory acquisition of land under subsection (6)(a) below, a compulsory purchase order for that purpose shall be subject to special parliamentary procedure in any case where an objection has been duly made by the owner of the land and has not been withdrawn.
- (5) In subsection (4) above “owner” shall have the same meaning as in the <sup>M5</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (6) For the purposes of its function under subsection (3) above, SNH may—
- (a) acquire land compulsorily;
  - (b) exercise any powers to carry out work or provide services or facilities conferred by the <sup>M6</sup>Countryside (Scotland) Act 1967 on local authorities or planning authorities;
  - (c) with the approval of the Secretary of State and the Treasury, acquire by agreement and carry on or set up and carry on, directly or through an agent, or themselves carry on as agent, any business or undertaking, and, subject to such approval, may dispose of any such business or undertaking.
- (7) The power conferred by paragraph (b) of subsection (6) above—
- (a) may be exercised by SNH either on or in connection with land belonging to it, or with the consent of all persons having an interest therein, on or in connection with other land; and
  - (b) shall be exercisable in relation to land not belonging to it on such terms as may be arranged by agreement with the persons having an interest in the land.
- (8) Where any person having such an interest in the land as enables him to bind the land enters into any such agreement as is mentioned in subsection (7) above, the agreement—
- (a) in a case where the land affected by the agreement is registered in the Land Register of Scotland, may be registered in that register;
  - (b) in any other case, may be recorded in the appropriate Division of the General Register of Sasines,
- and if so registered or recorded shall be enforceable at the instance of SNH against persons deriving title to the land from the person who entered into the agreement:
- Provided that any such agreement shall not be enforceable against a third party who has in good faith and for value acquired right (whether completed by infertment or not) to the land prior to the agreement being registered or recorded or against any person deriving title from such a third party.
- (9) The <sup>M7</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory acquisition of land under this section as if this section had been in force immediately before the commencement of that Act, and in relation

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to such acquisition of land, SNH shall be treated as if it were a local authority within the meaning of that Act.

- (10) No land may be compulsorily acquired under this section unless the acquisition is authorised by the Secretary of State.
- (11) Any power to acquire land under this section shall include power to acquire a servitude or other right in or over land by the creation of a new right.

#### Commencement Information

**I4** S. 5 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### Marginal Citations

**M5** 1947 c. 42.

**M6** 1967 c. 86.

**M7** 1947 c. 42.

## 6 Natural Heritage Areas.

- (1) Where it appears to SNH, after consultation with such persons as it thinks fit, that an area is of outstanding value to the natural heritage of Scotland, and that special protection measures are appropriate for it, it may recommend to the Secretary of State that the area be designated as a Natural Heritage Area.
- (2) Where the Secretary of State receives a recommendation under subsection (1) above he may designate the area by a direction under this subsection as a Natural Heritage Area.
- (3) Where the Secretary of State proposes to make a direction under subsection (2) above he shall publish notice of the proposal in the Edinburgh Gazette and in at least one newspaper circulating in an area which includes the proposed area.
- (4) Before making a direction under subsection (2) above, the Secretary of State shall consider any representations received by him about the proposal within three months of the date which is the later of the dates on which the publication under subsection (3) above of notice relating to the proposal occurs.
- (5) Where the Secretary of State makes a direction under subsection (2) above he shall publish notice of the designation in the Edinburgh Gazette and in at least one newspaper circulating in an area which includes the Area.
- (6) Where it appears to SNH, after consultation with such persons as it thinks fit, that it is no longer appropriate that an area which has been designated as a Natural Heritage Area or any part of it should continue to be so designated it may recommend to the Secretary of State that the designation be cancelled or, as the case may be, varied.
- (7) Where the Secretary of State receives a recommendation under subsection (6) above he may, by a direction under this subsection, cancel or, as the case may be, vary the designation of the Natural Heritage Area; and subsections (3) to (5) above shall apply to a direction proposed to be made under this subsection as they apply to a direction proposed to be made under subsection (2) above, and for the purposes of such application the reference in subsection (3) to the proposed area shall be construed as a reference to the Area.

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- (8) Section 262C of the <sup>M8</sup>Town and Country Planning (Scotland) Act 1972 (National Scenic Areas) shall be amended as follows—
- (a) in subsection (3) for the words “National Scenic Area” there shall be substituted the words “ Natural Heritage Area under section 6 of the Natural Heritage (Scotland) Act 1991 ”; and
  - (b) in subsection (4) for the words “National Scenic Area” there shall be substituted the words “ Natural Heritage Area ”.
- (9) Notwithstanding the repeal by section 27 of and Schedule 11 to this Act of subsections (1) and (2) of the said section 262C or the amendment by this section of subsections (3) and (4) of that section, any area which, at the date of such repeal, was designated as a National Scenic Area shall continue to be so designated and, until such designation is cancelled by a direction under the said section 262C, the provisions of that section shall continue to have effect in relation to the area as if they had not been repealed or, as the case may be, amended.

#### Commencement Information

**I5** S. 6 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### Marginal Citations

**M8** 1972 c. 52.

## 7 Powers of entry.

- (1) For the purpose of surveying land in connection with—
- (a) the exercise or the proposed exercise of any of the functions of SNH under this Act or any other enactment in relation to land;
  - (b) the making of an access order by SNH under Part II of the <sup>M9</sup>Countryside (Scotland) Act 1967; or
  - (c) the acquisition under this Act or any other enactment of land or of any interest in land whether by agreement or compulsorily,
- any person duly authorised in writing by SNH may, at any reasonable time, enter upon the land.
- (2) For the purpose of surveying land, or of estimating its value, in connection with any claim for compensation payable by SNH by virtue of—
- (a) Part II of the Countryside (Scotland) Act 1967; or
  - (b) this Part of this Act,
- in respect of that or any other land, any person being an officer of the Valuation Office of the Inland Revenue Department or a person duly authorised in writing by SNH may, at any reasonable time, enter upon the land.
- (3) A person authorised under this section to enter upon any land shall, if so required by the occupier or anyone acting on his behalf, produce evidence of his authority, and shall not demand admission as of right to any land which is occupied unless at least fourteen days’ notice in writing of the intended entry has been given to the occupier and, where practicable, to the owner.

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(4) The power conferred on SNH in connection with the exercise of its functions under section 5 of this Act shall be construed as including power to search and bore for the purpose of ascertaining the nature of the soil or subsoil or the presence of minerals.

(5) No works authorised by subsection (4) above shall be carried out unless notice of the intention to do so has been included in a notice under subsection (3) above, and if the land in question is held by any statutory undertaker and such undertaker objects to the proposed works on the ground that carrying out such works would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the appropriate Minister <sup>F1</sup>. . . .

[<sup>F2</sup>(5A) In subsection (5) above, “appropriate Minister” has the same meaning as in section 213(1) of the Town and Country Planning (Scotland) Act 1972; but this subsection is subject to paragraph 2(10) of Schedule 4 to the Gas Act 1995.]

(6) Subject to subsection (7) below, if the sheriff is satisfied that there is a reasonable ground for entry upon any land which a person is entitled to enter in pursuance of this section and—

- (a) that admission to that land has been refused;
- (b) that such refusal is apprehended; or
- (c) that the land is unoccupied or the occupier is temporarily absent,

then the sheriff may grant a warrant authorising that person to enter the land, if necessary using such force as is reasonable in all the circumstances, and a warrant issued in pursuance of this section shall continue in force until the purpose for which the entry is required has been satisfied.

(7) Without prejudice to subsection (3) above, in any case to which paragraph (a) or (b) of subsection (6) above applies the sheriff shall not grant a warrant unless he is satisfied that a notice of the intended entry has been served on the occupier of the land and, where practicable, on the owner not less than fourteen days before the demand for entry was made.

(8) A person entering upon any land by virtue of this section may take with him such other persons and such equipment as may be necessary, and on leaving any land upon which he has so entered, being either unoccupied land, or land from which the occupier is temporarily absent, shall leave it as effectively secured against unauthorised entry as he found it.

(9) A person who wilfully obstructs any person acting in the exercise of his powers under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) It shall be the duty of SNH to compensate any person who has sustained damage by reason of—

- (a) the exercise by a person authorised by SNH of any powers conferred on him by virtue of this section; or
- (b) the failure of a person so authorised to perform the duty imposed on him by subsection (8) above,

except where the damage is attributable to the fault of the person who sustained it; and any dispute as to a person’s entitlement to compensation in pursuance of this subsection or as to the amount of the compensation shall be determined by arbitration.

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- (11) SNH shall not authorise any person to exercise a power to enter land under section 108 of the National Parks and Access to the <sup>M10</sup>Countryside Act 1949; but nothing in this subsection shall affect the validity of anything done in pursuance of an authorisation granted before the date of coming into force of this section by the Nature Conservancy Council for Scotland.

#### Textual Amendments

- F1** Words in s. 7(5) repealed (1.3.1996) by 1995 c. 45, s. 16(1), 17(5), Sch. 4 para. 20(a), Sch. 6; S.I. 1996/218, art. 2
- F2** S. 7(5A) inserted (1.3.1996) by 1995 c. 45, s. 16(1), Sch. 4 para. 20(b); S.I. 1996/218, art. 2

#### Modifications etc. (not altering text)

- C1** S. 7(5) modified (1.3.1996) by 1995 c. 45, s. 16(1), Sch. 4 para. 2(10)(i); S.I. 1996/218, art. 2  
 S. 7(5) extended (1.3.1996) by 1995 c. 45, s. 16(1), Sch. 4 para. 2(1)(xxxix); S.I. 1996/218, art. 2

#### Commencement Information

- I6** S. 7 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### Marginal Citations

- M9** 1967 c. 86.  
**M10** 1949 c. 97.



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