

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

EXPLANATORY NOTES

INTRODUCTION

Part iii: Nature Conservation and Wildlife Protection

Summary

166. Part III of the Act gives greater protection to wildlife and natural features by making provision for the conservation of biological diversity, and by improving protection for Sites of Special Scientific Interest (SSSIs) in England and Wales and the enforcement of wildlife legislation.
167. SSSIs are areas of land notified by the conservation agencies (English Nature and the Countryside Council for Wales) because they are of special interest arising from their flora, fauna or geological or physiographical features. The provisions enable the conservation agencies to impose permanent restrictions in place of the present temporary 4 month restrictions to prevent damaging operations on SSSIs in England and Wales. There is also a power for the conservation agencies to secure the management of a SSSI. The Act improves procedures for notification and denotification of SSSIs, and gives various rights of appeal to owners and occupiers of land who are affected by its provisions.
168. The Act increases the conservation agencies' powers of entry to land and extends powers of compulsory purchase. There are increased penalties for damage to a SSSI by owners and occupiers and by other persons. There is also a new power for the conservation agencies to make byelaws to protect SSSIs.
169. The Act places new duties on statutory undertakers and public bodies in respect of SSSIs and imposes restrictions on them when carrying out or authorising activities which affect a SSSI.

Background

170. Sites of Special Scientific Interest were first introduced in legislation by section 23 of the National Parks and Access to the Countryside Act 1949, which required them to be notified to the local planning authority. A system of controls was introduced by the current Wildlife and Countryside Act 1981 ("the 1981 Act").
171. Under section 28 of the 1981 Act, SSSIs are established by notification by the conservation agencies. Owners and occupiers are then required to notify the agency if they intend to carry out an operation on a site which is likely to damage the features of special interest (these operations are listed by the agency when notifying the site). The agency may consent to the work, or has 4 months to negotiate a management agreement for the land (including financial payments). If agreement is not reached at the end of the 4 month period (and if this period is not extended by agreement or by a nature conservation order, where appropriate, under section 29), the owner or occupier may undertake the proposed operation. The 1981 Act does not enable the conservation

agencies to require owners and occupiers to manage a SSSI for its nature conservation interest.

172. Proposals for strengthening the legislation were published in *Sites of Special Scientific Interest – Better protection and management*¹. Over 550 responses were received, generally in support of the proposals. Following consideration of the responses to consultation, a framework document was published setting out proposals for legislation². This Act gives effect to those proposals.
173. The Government is a signatory to the UN Convention on Biological Diversity 1992 and, as part of its response to the Convention, has been committed to the development and implementation of the UK Biodiversity Action Plan³ by working in partnership with others in the public and non-public sectors. The Action Plan identified certain habitats and species which were priorities for conservation, enhancement or restoration wherever they occurred.

Commentary on sections

Sections 73 to 80 And Schedule 8

174. *Section 73* changes the name of the Nature Conservancy Council for England to English Nature. Schedule 8 sets out the necessary consequential amendments to other legislation.

Section 74: Conservation of biological diversity

175. *Section 74* has three main elements: a general duty on Government to have regard to biodiversity conservation; a duty to list the most important species and habitat types for biodiversity conservation; and a specific duty to further their conservation.
176. *Section 74(1)* places a duty on any Minister, Government Department and the National Assembly for Wales in the exercise of their functions to have regard to the purpose of conserving biological diversity in accordance with the UN Convention on Biological Diversity 1992. For the purposes of this section, conservation is defined (*section 74(7)*) as including restoration and enhancement.
177. *Section 74(2)* requires the Secretary of State and the National Assembly respectively for England and Wales to publish lists of habitat types and species which they consider to be of principal importance for the conservation of biological diversity under the Convention. They are required under *section 74(4) and (5)* to consult English Nature or the Countryside Council for Wales as appropriate in preparing the lists and to keep the lists under review and published.
178. *Section 74(3)* places a further duty on the Secretary of State and the National Assembly for Wales (the listing authorities) to take steps that are reasonably practicable to further the conservation of the listed habitat types and species and to promote the taking of such steps by others.
179. *Section 75(1)* introduces Schedule 9, which amends Part II of the 1981 Act to improve the protection of sites of special scientific interest (SSSIs). Schedule 9 is explained in more detail below.

¹ Published by the Department of the Environment, Transport and the Regions, September 1998. Available free of charge from: DETR Room 9/22 Tollgate House, Bristol BS2 9DJ. Tel. 0117 987 6170, Fax. 0117 987 8119

² *Sites of Special Scientific Interest: better protection and management. The Government's Framework for Action*. Published by the Department of the Environment, Transport and the Regions, August 1999. Available free of charge from: DETR Room 9/22 Tollgate House, Bristol, BS2 9DJ. Tel. 0117 987 6170, Fax. 0117 987 8119

³ Biodiversity: The UK Action Plan Cm 2428 London HMSO January 1994
Biodiversity: The UK Steering Group Report, Vol 1 Meeting the Rio Challenge, Vol 2 The Action Plans London HMSO 1995.

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180. *Section 75(2)* relates to SSSI notifications given under the National Parks and Access to the Countryside Act 1949. The majority of those sites have been re-notified under the 1981 Act and this subsection cancels any existing old notifications.
181. *Section 75(3)* relates to section 15(2) of the Countryside Act 1968, which enables the conservation agencies to enter into agreements with owners and occupiers of SSSIs and of other land adjacent to a SSSI for the purposes of conserving the special features of the SSSI. This section extends the agencies' power so that they can enter into agreements with owners or occupiers of other land (not necessarily within or adjacent to a SSSI), for those purposes. An example would be for the protection of a water supply some way from the SSSI.
182. *Section 75(4)* inserts a new section 15A into the Countryside Act 1968. The new section gives the conservation agencies power to compulsorily purchase the land referred to in the above paragraph for the purposes of conserving the special features. There are safeguards for the owner of the land being compulsorily acquired. The compulsory purchase cannot take place unless the conservation agency are satisfied they cannot reach an agreement for the conservation of the SSSI or unless there has been a breach of an agreement for its conservation. The new section also provides that, having compulsorily acquired the land, the conservation agencies can manage it themselves or dispose of it on terms providing that another person will conserve the features of the SSSI.
183. *Section 76(1)*. The 1981 Act provisions relating to SSSIs apply to England, Wales and Scotland while the amendments made to those provisions by this Act will apply only to England and Wales (SSSIs are a devolved matter). This section introduces Schedule 10, Part I of which makes the necessary consequential amendments in relation to provisions which will in future apply only in Scotland. Part II of Schedule 10 makes various amendments in relation to other legislation, mainly to introduce the term "site of special scientific interest" (a definition of which is inserted into the 1981 Act by paragraph 5(2) of Schedule 9 to the Act).
184. *Section 76(2)* introduces Schedule 11 which sets out the transitional provisions and savings for the purpose of applying the new provisions of the Act to existing SSSIs (notified under s28 of the 1981 Act).
185. *Section 77* imposes on the Secretary of State a duty to notify the conservation agencies of sites designated under the 1971 Ramsar Convention on Wetlands of International Importance. Under this Convention, adopted at Ramsar in Iran, the United Kingdom is required to designate wetlands of international importance especially in relation to waterfowl, and generally to promote the wise use of wetlands. The conservation agencies are also required to notify owners and occupiers, and certain statutory bodies of the designation.
186. *Section 78*. Limestone pavements are rare and exceptional areas of fissured limestone. They are protected under section 34 of the 1981 Act which enables orders to be made to prevent the limestone from being disturbed or removed. This section amends the fines for removing or disturbing limestone, to match increased penalties (of up to £20,000) that may be imposed for damaging SSSIs.
187. *Section 79* amends s50 of the 1981 Act, which relates to the making of payments under management agreements. It expands the scope of section 50 by deleting references to particular persons and substituting a reference to any person.
188. *Section 80* amends section 51 of the 1981 Act which provides for powers of entry for giving proper effect to the nature conservation provisions in the Act. This section extends the conservation agencies' powers of entry onto land (which is not limited to the potential or actual SSSI) for a range of specified purposes. These include assessing whether land should be notified as a SSSI; formulating a scheme for the management of a SSSI in order to conserve its special features; assessing the condition of the features

on the site, and ascertaining whether an offence under Section 28P or under byelaws made by virtue of Section 28R of the 1981 Act has been committed. Entry to the land may be by vehicle or boat, and the person entering the land may take equipment or materials with him. The person entering the land must leave it as effectively secured as he found it and the agency will be liable to pay compensation for any damage caused by the exercise of the power of entry.

Schedule 8: English Nature Name Change

189. [Schedule 8](#) effects the consequential amendments for the change of name of the Nature Conservancy Council for England to English Nature.

Schedule 9 - Sites of Special Scientific Interest

190. [Paragraph 1 of Schedule 9](#) replaces section 28 of the 1981 Act with new sections 28 to 28R inclusive.
191. *New section 28* revises procedures for notifying SSSIs. The measures include: affirming the duty of the conservation agencies to notify land of special interest; requiring notification (which must specify the features by reason of which the site is of special interest, and include a list of the operations likely to damage those features) to be given to owners and occupiers, the local planning authority, and the Secretary of State; publishing the notification in a local newspaper; and setting out the procedures and timetables to be followed (including the opportunity for representations to be made to and considered by the agencies) before a notification can be confirmed with or without modification;. The notification should also include a statement of the conservation agencies' views about the appropriate management of the land. [Paragraph 5\(4\)](#) of Schedule 9 amends section 52 of the 1981 Act to provide that "occupier" includes commoners, defined in the section as persons with rights of common.
192. *Section 28A* enables the conservation agencies to vary the matters specified in the notification, other than the area of land concerned, at any time after confirmation. The agency must give notice to the owners and occupiers of the land affected, who may make representations. The amended notification may then be withdrawn or confirmed (with or without modifications).
193. *Sections 28B and 28C* enable the conservation agency to increase the area of a SSSI. Under s28C amendments may also be made to the notification of the original SSSI as respects the features of special interest, the operations likely to damage those features, and the statement of views about the management of the SSSI.
194. *Section 28D* provides a power for conservation agencies to denotify all or any part of a SSSI which is no longer of special interest. Where the power is to be exercised the agency must notify, amongst others, owners and occupiers and advertise the fact in a local newspaper. Representations may be made to the conservation agency and the agency may then withdraw or confirm (with or without modifications) the denotification. If they do neither, the proposal to de-notify will lapse after nine months. The land will continue to be protected until the de-notification has been confirmed.
195. *Section 28E* provides that the owner or occupier of a SSSI shall not carry out any operation listed in the section 28 notification as likely to damage the site unless notice is given to the conservation agency of a proposal to carry out the operations, and the agency give their consent or the works are carried out under the terms of an agreement with the agency, or under a management scheme or notice.
196. Consent may be granted subject to conditions and consent may be withdrawn or modified; however the agencies must give reasons for their decision. This section does not apply where the owner or occupier is a public body (defined under section 28G) carrying out its functions. The reason is that in these circumstances section 28H (see below) will apply.

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197. Failure by an owner or occupier to follow the procedures in (1) and (2) above will be an offence under section 28P(1) but it is a defence if the operation is authorised by a planning permission granted on an application or by a permission or consent from a public body, where the procedures in section 28I below have been followed (section 28P(4)). It is also a defence where the operation was an emergency.
198. *Section 28F* enables a person to appeal where he has been refused consent to carry out works on a SSSI (this includes a deemed refusal where after 4 months the agency has neither granted nor refused consent), where he has been granted consent subject to conditions or where he is aggrieved by the modification or withdrawal of a consent. The appeal must be made within 2 months (or such longer period as is agreed in writing) of the decision or failure to decide, to the Secretary of State or the National Assembly for Wales in Wales, who may cause a hearing or local inquiry to be held into the appeal. The Secretary of State and National Assembly for Wales may make regulations specifying the procedures for appeals. There is power to award costs of the proceedings.
199. *Section 28G* imposes a duty on “public bodies” in exercising their functions to take reasonable steps, consistent with the proper exercise of those functions, to further conservation and enhancement of the special features on a SSSI. This applies where the public body is exercising its statutory functions on a SSSI or on land outside the SSSI where those functions affect a SSSI. “Public bodies”, referred to in the Act as *section 28G authorities*, are defined in *subsection (3)* to include Ministers, Government Departments, local authorities and statutory undertakers (whether in the public sector, or a privatised utility) and other public bodies.
200. *Section 28H* requires the public body to notify the conservation agency when they propose to carry out operations in the exercise of their functions, which are likely to damage the features of special interest of a SSSI. This applies equally to works outside a SSSI, which may affect that SSSI. The conservation agency may refuse its assent, or assent to the operation (with or without conditions). Where assent is refused, or the conditions are not acceptable, the public body may proceed with the works, providing that they give the agency not less than 28 days notice of the start of the operation. That notice must state how the body has taken into account any advice which the agency has given. It is a requirement that any such operations are carried out so as to cause as little damage as is reasonably practicable, and that the body restore the site to its former condition, again, so far as is reasonably practical, if damage does occur.
201. *Section 28I* applies where the authority has power to grant permissions, including authorisations or consents, for other parties to carry out operations (whether on or outside a SSSI) which are likely to damage the special features of a SSSI. Before granting any such permission they must give the conservation agency not less than 28 days notice. Before making any decision the authority must take into account the advice of the conservation agency, which may include advice on conditions to be attached to the permission (section 28I(5)(b)). If the authority intends to grant permission against the advice of the agency, they must notify the agency and the permission must allow 21 days before operations may commence. This would for example give the agency an opportunity to contact the applicant to discuss ways of mitigating any effects, or to offer a management agreement.
202. *Section 28J* sets out provisions for Management Schemes, which may be formulated by the conservation agencies. A management scheme will set out measures for conserving or restoring the special interest of the land. The conservation agency must consult the owners or occupiers of the land about a proposed management scheme. The agency may then serve notice of the proposed scheme on owners and occupiers who may make representations. Within 9 months, the agency must confirm (with or without modifications) or withdraw the scheme. The agency may cancel or propose modifications to a scheme at any time.
203. The management scheme is a new concept and is designed to provide a detailed statement of the measures required for positive management of the SSSI, which is

available to owners and occupiers. It should provide greater detail than the statement of views about the management of the land served with the notification of a SSSI, and is designed to help secure that SSSIs remain in favourable condition. It may specify activities for which consent is given. It is also designed to help ensure that all parties are aware of the recommended management regime for conservation and restoration of the special features.

204. *Section 28K* enables a conservation agency to serve a management notice on the owner or occupier where (1) the agency has formulated a management scheme which is not being implemented, and as a result the features which make the land of special interest are being inadequately conserved or restored, and (2) the agency has been unable to conclude a management agreement, on reasonable terms, with the owner or occupier. A management notice is a notice requiring specified works (which it is reasonable to require to ensure the land is managed in accordance with a management scheme) to be carried out on the site. *Section 28M(2)* provides that the conservation agency may make payments for the costs of this work. They may also enter the land and carry out the works themselves, if the notice is not complied with, and may charge the costs to the owner or occupier.
205. *Section 28L* enables any person who has been served with a management notice, to appeal against it to the Secretary of State or the National Assembly for Wales as appropriate. Notices may be quashed, varied or confirmed. Procedures for appeals will be set out in regulations. There are provisions for hearings or local inquiries as in section 28F above.
206. *Section 28M* provides that the conservation agencies may make payments to an owner or occupier of land in relation to which a management scheme is in force. If they withdraw or modify an existing consent to carry out operations, they must offer a payment to an owner or occupier if he suffers loss as a result. The amount of the payment is to be determined by the conservation agencies in accordance with guidance given and published by Ministers (the Secretary of State, as respects England, and the National Assembly for Wales as respects Wales).
207. *Section 28N* gives the conservation agencies a compulsory purchase power in relation to land notified as a SSSI. This power is additional to that in section 17 of the National Parks and Access to the Countryside Act 1949 relating to nature reserves and additional also to that in the new section 15A of the Countryside Act 1968 inserted by section 75(4) of the Act. This new power may only be exercised where the agencies cannot secure an agreement for the management of a SSSI or where the terms of such an agreement have been breached in such a way that the land is not being managed satisfactorily. The agency may then either manage the land or dispose of it to ensure its future management.
208. *Section 28P* provides for offences. *Subsection (1)* makes it an offence for an owner or occupier to cause or permit damaging operations contrary to section 28E(1) without reasonable excuse. The penalty is a fine not exceeding £20,000 in the magistrate's court or, on indictment, an unlimited fine. *Subsection (2)* makes it an offence for a public body, as defined in section 28G, to carry out operations in contravention of section 28H, without reasonable excuse. The penalty is the same. It will be a reasonable excuse in any event that a planning permission (granted on an application) has been granted for the operations, or that they were necessary as an emergency measure, or that a permission or consent for the operations has been granted in accordance with section 28I. *Subsection (6)* makes it an offence (carrying the same penalty) for any person intentionally or recklessly to damage or destroy the features which make a site of special interest or intentionally or recklessly to disturb fauna for which the site is notified, provided he knew that what was damaged, destroyed or disturbed lay within the SSSI. *Subsection (7)* provides for a similar defence of reasonable excuse. Failure to comply with a management notice is an offence under *subsection (8)* and attracts the statutory maximum fine (£5,000) or on indictment an unlimited fine. Proceedings for

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an offence under this section may only be taken by the conservation agency, unless the Director of Public Prosecutions consents otherwise.

209. *Section 28Q* requires the owner of an SSSI who disposes of any interest in the land, or who becomes aware that the occupation of the land has changed, to tell the conservation agency within 28 days. This will enable the agency to take steps to ensure the new owner or occupier is aware of the SSSI and the associated rights and requirements.
210. *Section 28R* gives a power to the conservation agencies to make byelaws on any SSSI and applies, with modifications, the provisions in section 20 of the 1949 Act (which relate to byelaws for nature reserves).
211. *Paragraph 2* of Schedule 9 repeals section 29 and section 30 of the 1981 Act which enable the conservation agencies to make a Nature Conservation Order and provide for associated compensation. These powers are no longer required as the provisions in the Act (section 28 to section 28R) give full protection to SSSIs. Paragraphs 15 to 19 of Schedule 11 set out the transitional provisions in relation to these cases.
212. *Paragraph 3* of Schedule 9 amends section 31 of the 1981 Act so as to enable the court to order restoration of a SSSI where a person has been convicted of damaging or destroying it under section 28P (1) or (6). The court may also order restoration of a SSSI where a public body (as defined by section 28G) has been convicted of an offence under section 28P(2) or (3), this applies whether the operation which damaged the special features took place on, or off, the SSSI.
213. *Paragraph 7* of Schedule 9 provides for a new Schedule 10A to be inserted in the 1981 Act. The Schedule contains provisions relating to the appointment and powers of persons appointed under sections 28F(8) and 28L(10) to determine appeals in respect of consents and management notices.

Schedules 10 and 11: Consequential and Transitional provisions

214. *Schedule 10* contains consequential amendments. *Schedule 11* sets out the transitional provisions and savings for SSSIs. These ensure that all existing SSSIs, notified under the 1981 Act, are taken forward into the new provisions (paragraph 2); and that, for existing SSSIs, the conservation agencies will, within 5 years of commencement of these provisions, give owners and occupiers a statement of views about the management of the land. The owners and occupiers will be given the opportunity to make representations (*paragraph 6*).
215. *Paragraph 8* provides that if a consent to carry out operations on an SSSI has been given under the old legislation, this will still be valid (paragraph 8(1)(b)). However, the conservation agency will have power to withdraw or modify that consent (section 28E(6)); in this event, the owner or occupier will have a right of appeal (section 28F) and a right to payment for loss suffered (section 28M).
216. Under *paragraph 9* of Schedule 11, an owner or occupier of an SSSI existing when the new legislation comes into force has the right to continue with an operation where no consent or management agreement exists, but four months have elapsed from giving notice of intent to carry out the operation. In these cases, the agency has been given power to serve a stop notice, to prevent or modify the operation. The owner or occupier, on whom the stop notice has been served, has a right of appeal (paragraph 11) to the Secretary of State, and a right to payment if he suffers loss because of it. Paragraph 9(11) of the Schedule provides that these provisions of paragraph 9 (as mentioned above) do not apply where the operations have not begun within 3 years (in most cases) from this legislation coming into force.
217. Section 29 of the 1981 Act has been repealed, but there are transitional provisions in *paragraphs 15-17 of Schedule 11* to preserve the conservation protection for those sites and to maintain the benefit of any consent given to owners and occupiers for operations on those sites. Where an offence takes place on a SSSI before the new provisions come

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into force, *paragraph 20* of Schedule 11 provides that the offences and penalties in force at that time will apply. The requirements on public bodies to carry out operations giving rise to as little damage as possible and to restore any damage will similarly not apply where operations have already started before the new provisions come into force (*paragraph 14*).