

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

RELATED INITIATIVES AND SUPPORTING INFORMATION

6. The Act should be read and understood in context. It forms part of a larger package of measures, including other environmental legislation, statutory and non-statutory guidance, administrative arrangements and schemes providing financial support, which together constitute the new system for nature conservation in Scotland.
7. Further information on the non-legislative measures which support the Act can be obtained from the Scottish Executive and from SNH. Reference is made in these Notes to supporting documentation which is of particular importance in understanding the effects of the Act. Details of how to obtain copies of that documentation is provided at appropriate points in the text.
8. It should be noted that changes to the Conservation (Natural Habitats &c.) Regulations 1994, which implement obligations arising from Council Directive [92/43/EEC](#) (“the Habitats Directive”), will be necessary as a consequence of certain of the SSSI and species protection provisions in the Act. These will be effected separately, by regulations made under section 2(2) of the [European Communities Act 1972 \(c.68\)](#).

Part 1 Biodiversity

9. [Part 1](#) of the Act deals with biodiversity.
10. Whilst the conservation of habitats (see the measures in Part 2) or of species (see Part 3) is relevant to the conservation of biodiversity, Part 1 of the Act, for the first time, makes specific provision for action to conserve biodiversity in its own right.
11. In essence, the Act requires attention not only to be given to the *means* (such as establishing protected sites or preventing the killing of wildlife) but also to the *ends* – that is, to the long-term objectives underlying nature conservation legislation. The Act requires public bodies to do more than simply to adhere to prescriptive rules defining what may or may not be done in any given situation. It requires, and empowers, them at a general level to take appropriate positive action, within the context of their core functions, to further the conservation of the overall diversity, richness and extent of the natural world.
12. Public bodies operating in Scotland will, as a result, be obliged to give proper consideration to, and account for, the impacts which their activities and policies have on the overall balance and health of the natural biological environment, at a local, regional, national and international level. They will be required to act, in ways which are consistent with the exercise of their other statutory functions, in order to ensure that the conservation of that naturally-occurring biological diversity is encouraged and advanced.

13. In order to support and inform compliance with the new biodiversity duty, the Act invokes principles and strategies which are external to it – by establishing the 1992 Rio Convention on biodiversity and the new Scottish Biodiversity Strategy as the key points of reference to which all public bodies must have regard when acting to further the conservation of biodiversity. Copies of the Scottish Biodiversity Strategy, which was launched on 25 May 2004 and which will, in due course, be formally designated in terms of section 2 of the Act, may be obtained from: The Scottish Executive, Wildlife and Habitats Division, Victoria Quay, Edinburgh, EH6 6QQ (E-mail: biodiversity@scotland.gov.uk) or via the Scottish Executive website (www.scotland.gov.uk/biodiversity).

Part 2 The SSSI system

14. **Part 2** of the Act creates a new system for conserving and enhancing specific areas of Scotland which are considered to be of particularly high quality in terms of their flora, fauna or geological or geomorphological features. Those features of the biological and geological natural heritage of Scotland are referred to in the Act collectively as “natural features” and the areas of land in question are sites of special scientific interest or “SSSIs”.
15. The provisions within this Part are based upon, but significantly extend, develop and, ultimately, replace the existing SSSI system which was brought into being by Part II of the 1981 Act.
16. The intention is that the new SSSI arrangements will safeguard Scotland’s biological and geological natural heritage by establishing a system designed to protect the natural features present on particular areas of land considered to be of special interest because of those natural features. The system is also intended to contribute to the conservation of the wider natural heritage of Great Britain and the member States of the European Union, by ensuring that the significance of natural features found within Scotland is considered in terms of their importance at a British and European level.
17. A significant feature of the SSSI provisions in the Act is that they regulate the degree to which, and the manner in which, land management operations can be carried out on SSSIs. In certain circumstances, the Act provides for operations to be either restricted or prohibited if they are likely to damage the natural features on an SSSI.
18. This in turn, where the operations form part of the established management of the land, may give rise to SNH offering to enter into a management agreement with the land manager to a management agreement offered by SNH. In this connection the provisions of the Act (and in particular sections 16, 17 and 18, which affect the rights of private land managers) should be read in conjunction with the *Financial guidelines for supporting the management of Sites of Special Scientific Interest and Natura 2000 sites* (referred to in these notes as the “*Financial Guidelines*”). The guidelines are available from: The Scottish Executive, Wildlife and Habitats Division, Victoria Quay, Edinburgh, EH6 6QQ (E-mail: NCAct@scotland.gov.uk or via the Scottish Executive website: www.scotland.gov.uk/Topics/Environment/Countryside/Wildlife-Habitats). The *Financial Guidelines* will be issued as formal statutory guidance in terms of section 54 of the Act.

Part 3 Protection of Wildlife

19. **Part 3** of the Act introduces Schedule 6, which in turn contains a package of amendments to the law on species protection and wildlife crime as set out in Part I of the 1981 Act. It also makes a range of broadly analogous changes to the **Protection of Badgers Act 1992 (c.51)**, as well as significantly increasing penalties for offences involving badger-digging, badger-baiting and other acts of cruelty. In addition, Part 3 obliges SNH to prepare and issue a code covering the watching of cetaceans (whales, dolphins and porpoises), basking sharks and other marine wildlife.

20. The changes effected by these amendments to the 1981 Act build upon the increased sanctions and wider police powers already introduced via the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), which came into force on 26 March 2003. In doing so, Part 3 and Schedule 6 to the Act seek to conserve Scotland's biological natural heritage by protecting birds, and certain animals and plants, *wherever* they occur and not simply within specified protected sites. In this sense, the species protection measures in Part 3 of the Act are intended to complement to the site protection measures in Part 2 and as a contribution to the overall goal of biodiversity conservation set out in Part 1.

Part 4 Scottish Fossil Code

21. The effective protection and conservation of Scotland's geological natural heritage is intended to be supported by the requirement in Part 4 for the production by SNH of a Scottish Fossil Code. This will provide guidance in particular in relation to the collection and removal of fossils and will offer a helpful point of reference against which good practice in terms of palaeontological fieldwork can be measured. Legal protection for important fossil sites is provided primarily by means of the SSSI system set out in Part 2 of the Act.

Part 5 - General

22. [Part 5](#) of the Act contains a range of general technical and procedural provisions which support the interpretation and implementation of the provisions in the four preceding parts. A power to issue statutory guidance in relation to the biodiversity duty in Part 1 and in connection with certain aspects of the SSSI system in Part 2, including selection criteria for SSSIs and the *Financial Guidelines* covering management agreements, is provided in section 54. Minor and consequential amendments and repeals to other statutes are set out in Schedule 7, which is introduced by section 57. The meaning of particular terms used in the Act is set out in section 58 (Interpretation).