

# NATURE CONSERVATION (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Conservation and Enhancement of Natural Features**

#### *Chapter 1 – Sites of Special Scientific Interest*

#### **Operations affecting sites of special scientific interest**

#### ***Section 17 Operations by owners or occupiers of sites of special scientific interest: authorised operations***

132. Subsection (1) specifies the particular circumstances in which a private owner or occupier does *not* require SNH's consent before carrying out an ORC. These are effectively situations in which consent has already been given via another route, or where action is necessary in an emergency. The particular circumstances are where:
- permission has already been given by a relevant regulatory authority under section 15. The regulator is obliged under section 15 to have regard to SNH advice before giving permission and this subsection obviates the need for SNH to give separate permission for the operation;
  - explicit planning permission has been granted. Again, SNH advice is taken into account by the planning authority and separate permission from SNH for the operation is not required by this subsection. It should be noted that this exemption applies only to the explicit grant of planning permission and does not remove the need to obtain SNH permission for an operation undertaken as a permitted development for which planning permission is not needed;
  - an operation is carried out in order to deal with an emergency situation. This exemption can only be invoked where SNH is informed as soon as possible after the need for the emergency operation becomes clear;
  - an operation is carried out in accordance with a management agreement between SNH and the owner or occupier. The exemption covers operations carried out directly by the land manager as well as those carried out on his/her behalf (for example, by a contractor). In concluding the management agreement SNH will have consented to the operation; and
  - the operation is necessary in order to comply with the requirements of a land management order ("LMO"). In seeking such an order, SNH will have identified ORCs which may need to be carried out and the order will include an appropriate consent to those operations. LMOs are covered in sections 29 to 37.
133. It might be noted that, for private owners and occupiers, there is no equivalent to the provision in 14(1)(e) allowing for operations in accordance with an agreed management

*These notes relate to the Nature Conservation (Scotland) Act  
2004 (asp 6) which received Royal Assent on 11 June 2004*

plan for the site. This is intentional and reflects the fact that public bodies are under a general duty, by virtue of section 12, to conserve and enhance SSSIs. As a result they are accorded a greater degree of freedom and flexibility in managing SSSIs, but are also placed under the more onerous legal obligation to think beyond the limits of the ORC list provided by SNH and to guard against any potential damage to the natural features of the site.

134. Subsections (2) and (3) govern certain situations in which a land manager proceeds with an operation without SNH consent, either on the basis of permission from a relevant regulatory authority (given, for example, in the face of SNH opposition under sections 15(7) to (10)) or in an emergency situation, and that operation causes damage to the natural features of an SSSI. In these cases, the land manager is obliged to consult with SNH on how best to restore the site and he/she must then carry out that restoration work in accordance with SNH advice. Failure to do so is a criminal offence under section 19.
135. Subsection (4) specifies that sections 16 and 17 do not apply to operations on SSSI land where the owner or occupier of the land in question is a public body and that public body is acting in the exercise of its functions. Sections 13 and 14 apply instead. This effectively means that operations carried out by public bodies are governed by sections 13 and 14, whilst operations carried out by private land managers are covered by sections 16 and 17. The unusual circumstance in which a body may be exercising public functions in some situations and acting as a private owner or occupier in others is discussed above in connection with section 16.