

# **NATURE CONSERVATION (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5 – General**

##### ***Section 58 Interpretation***

462. This section provides definitions of particular terms used in the Act and expands upon references in Part 2 to situations in which protected natural features are can be said to have been damaged.
463. Subsection (1) provides definitions of a series of terms used in the Act. These are self-explanatory. It should be noted that these terms have been specifically defined in section 58 because they have a specialist or technical meaning which may be different from the “ordinary” meaning which might otherwise be ascribed to them. Terms in the Act which are intended simply to have their ordinary meaning (or which are given a specific meaning elsewhere – see next paragraph) are not given a specific definition in this section.
464. The use of the word “land” represents an exception to this general rule. “Land” has already been given a statutory definition, which applies to Acts of the Scottish Parliament unless there is a clear contrary intention, in The Scotland Act 1998 (Transitory and Transitional Provisions)(Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999. That definition includes any “building and other structures, land covered by water, and any right or interest in or over land”. In the light of this existing formal definition, a specific definition of land is not provided in section 58. That order also gives or attracts the meaning which is, unless a contrary intention, to be ascribed to other words and expressions used in ASPs (including, for example, “Act”, “person”, “property” and “writing”).
465. The definition of “public body or office holder” makes it clear that courts, tribunals and bodies exercising the judicial power of the State are not to be treated as public bodies for the purposes of the Act. If such bodies were to be subject to the duties imposed on public bodies by the Act this would potentially give rise to a conflict of interest in situations, for example, where a court (such as the Scottish Land Court or the Court of Session) were to be bound by one of the general duties in the Act at the same time as being required to rule on a dispute arising from the provisions of the Act. A particular difficulty would arise where a duty under the Act (for example in section 12) required a court to consult SNH and have regard to its advice in situations where SNH were a party to the case being heard.
466. Subsection (2) specifies that damaging a site includes actions which do not necessarily have a catastrophic or immediate impact, but which are such as to cause the site to deteriorate. The term “protected natural feature” also encompasses features which are not on an SSSI but which are protected by the terms of an NCO.

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

467. Subsection (3) deals with the related scenario, in which the fauna for which a site has been notified are disturbed or harassed to the extent that the special interest of the site is significantly diminished. Again, the use of the term “protected natural feature” means that the provision also extends to features protected by the terms of an NCO. This provision does not make it an offence simply to disturb birds or animals on an SSSI. But it does potentially give rise to a criminal offence, by virtue for example of section 19(1), where the disturbance is of such a nature and at such a level that the ability of the bird or animal population to maintain itself on the site in the future is called into question. The offence will occur where SNH (in the case of an SSSI) or the Scottish Ministers (in the case of land covered by an NCO) consider that either the special interest of the land has decreased significantly or that it is no longer of special interest.