

**Financial guidelines  
for supporting the management of  
Sites of Special Scientific Interest  
and  
Natura 2000 sites**

**October 2004**

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## **Overview of the Financial Guidelines**

### **Section 1 - Introduction**

Section 1 introduces the Guidelines and sets out the policy and legislative background to both this guidance and the Nature Conservation (Scotland) Act 2004 (“the 2004 Act”). The legal status of the Guidelines is explained.

### **Section 2 - Support for the voluntary management of SSSIs and Natura sites**

Section 2 provides brief guidance explaining how managers of SSSIs and Natura sites can enter into voluntary agreements with public authorities which provide financial support to maintain or enhance the nature conservation interest of these sites.

### **Section 3 - Entitlement to compensatory management agreements**

Section 3 contains more detailed guidance covering specific entitlements which land managers may have when SNH or the Scottish Ministers use powers under the 2004 Act to ensure the maintenance of the nature conservation interest of SSSIs and Natura sites.

### **Section 4 - Land Management Orders – Payments**

Section 4 deals with payments covering the cost of operations required under Land Management Orders and explains the effect of non-compliance.

### **Section 5 - Dispute resolution**

Section 5 sets out broad principles which apply in cases where disputes arise and makes arrangements to ensure that deadlines for appeal do not prevent parties from seeking negotiated settlements.

### **Annexes A, B and C**

Annexes A and B to the Financial Guidelines set out detailed rules applying to SNH management agreements and the circumstances in which professional fees will be reimbursed. Sources of further information about management schemes and agreements, appeals, complaints and other matters are listed in Annex C.

## **Glossary and guide to terminology**

### **1949 Act**

the National Parks and Access to the Countryside Act 1949 (c.97)

### **1967 Act**

the Countryside (Scotland) Act 1967 (c.86)

### **1968 Act**

the Countryside Act 1968 (c.41)

### **1981 Act**

the Wildlife and Countryside Act 1981 (c.69)

### **1994 Regulations**

the Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716)

### **2004 Act**

the Nature Conservation (Scotland) Act 2004 (asp 6)

### **Birds Directive**

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.79 p1)

### **Cross Compliance**

Conditions which must be observed in return for receipt of subsidy in accordance with Council Regulation 1782/2003 of 29 September 2003, implementing the Common Agricultural Policy Reform. See also related terms – GAEC and SMR.

### **EIA**

Environmental Impact Assessment

### **FCS**

Forestry Commission Scotland

### **GAEC**

Good Agricultural and Environmental Condition. Compliance is required under Council Regulation 1782/2003 of 29 September on CAP Reform. See also Cross Compliance and SMR.

### **Habitats Directive**

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.92, p7)

### **Land**

The term “land” should be understood in these Guidelines to include buildings and other structures, land covered by water (as well as the water body itself) and any right in or over land. This definition is analogous to that provided by The Scotland Act 1998 (Transitory and Transitional Provisions)(Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379)<sup>1</sup>.

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<sup>1</sup> See also paragraph 464 of the Explanatory Notes to the 2004 Act (Published by The Stationery Office Ltd, ISBN 0-10-591056-2).

**Land manager**

An informal term used for convenience to refer to the person (normally the owner or occupier) with direct responsibility for the management of land within or affecting a protected site.

**LMO**

Land Management Order

**Management agreement**

An contractual agreement concluded between SNH and a land manager:

- to secure the management of the land as a nature reserve (section 16 of the 1949 Act<sup>2</sup>);
- to secure the conservation and enhancement, or to foster the understanding and enjoyment, of the natural heritage of Scotland (section 49A of the 1967 Act<sup>3</sup>);
- for the purpose of conserving the flora, fauna or geological or geomorphological features of an SSSI (section 15 of the 1968 Act<sup>4</sup>),
- for land management activities outside the SSSI which may benefit the nature conservation interest of the SSSI (section 15 of the 1968 Act<sup>3</sup>); and
- for the management, conservation, restoration or protection of a Natura site, or any part of it or land adjacent to it (regulation 16 of the 1994 Regulations).

**Natura site**

Natura 2000 sites collectively make up the Natura 2000 network, which is comprised of Special Areas of Conservation (SACs) designated under the Habitats Directive, and Special Protection Areas (SPAs) designated under the Birds Directive. See also the definition of “European site” contained in regulation 10 of the 1994 Regulations.

**NCO**

Nature Conservation Order

**ORC**

An operation specified in an SSSI notification which, under the terms of the 2004 Act, requires the consent of SNH (i.e Operation Requiring Consent).

**Protected site**

An informal term used for convenience to refer to both SSSIs and Natura sites

**RDR**

Rural Development Regulation (Council Regulation EC 1257/99 as implemented by Commission Regulations EC 1750/99 and 1783/2003 )

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<sup>2</sup> Relevant amendments to section 16 of the 1949 Act include those made by sch 1 para 1 of the Nature Conservancy Council Act 1973 (c.54) and section 4(6), sch 2 para 1 of the Natural Heritage (Scotland) Act 1991 (c.28) and para 1 of sch 9 to the Environmental Protection Act 1990(c.43).

<sup>3</sup> Section 49A was inserted into the 1967 Act by the Countryside (Scotland) Act 1981 (c.44) s9. Relevant amendments to section 49A of the 1967 Act include those made by section 14(3), 27(1), para 4(3) of sch 10 to the Natural Heritage (Scotland) Act 1991 and s76 and para 28 of sch 12 to the Abolition of Feudal Tenure etc (Scotland) Act 2000 (asp 5).

<sup>4</sup> Relevant amendments to section 15 of the 1968 Act include those made by para 9 of sch 1 to the Nature Conservancy Council Act 1973, sch 17 pt I of the 1981 Act, sections 132, 162(2), para 4(2)(a) and (b) of sch 9 and para 1 of sch 16 to the Environmental Protection Act 1990, section 4(6) and para 3 of sch 2 to the Natural Heritage (Scotland) Act 1991 and sections 76 and para 29(2) of sch 12 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5).

**RSS**

Rural Stewardship Scheme

**SEERAD**

Scottish Executive Environment and Rural Affairs Department

**SEPA**

Scottish Environment Protection Agency

**SFGS**

Scottish Forestry Grants Scheme

**SMR**

Statutory Management Requirements. Compliance is required under Council Regulation 1782/2003 of 29 September on CAP Reform. See also Cross Compliance and GAEC.

**SNH**

Scottish Natural Heritage

**SSSI**

An SSSI is a Site of Special Scientific Interest notified in accordance with section 3 of the 2004 Act, or a site originally notified in accordance with section 23 of the 1949 Act or section 28 of the 1981 Act which is an SSSI by virtue of the provisions of Schedule 5 of the 2004 Act.

# Section 1

## Introduction

1.1 These Financial Guidelines set out Scottish Executive policy in relation to the availability of financial support for the management of Sites of Special Scientific Interest (“SSSIs”) and Natura 2000 sites (“Natura sites”).

1.2 In issuing this guidance, the Scottish Ministers recognise that there are circumstances in which it is appropriate for public funding to be made available to assist with the management of land which is of special nature conservation interest.

1.3 SSSIs and Natura sites are protected in law and all land managers are obliged to comply with the important legal obligations which arise under relevant legislation.

1.4 Financial support may, nonetheless, be appropriate where additional management operations, over and above normal economically-viable activity, or the requirements of legal compliance, are desirable or necessary in order to conserve or enhance the biological or geological features of a protected site. Payments may also be appropriate where the protection given to an SSSI or Natura site means that established land management operations have to be restricted or discontinued. In such circumstances individual land managers should not be expected to carry a disproportionate share of the cost of achieving conservation objectives which benefit society as a whole.

1.5 These Financial Guidelines explain the basis on which the Scottish Ministers expect managers of SSSIs and Natura sites to be able to access appropriate sources of public funding. The Guidelines are intended primarily for the use of Scottish Natural Heritage (“SNH”) and those, such as land managers and their professional advisers, who require to work closely with SNH in order to secure the conservation and enhancement of SSSIs and Natura sites.

1.6 The principal objectives of this guidance are:

- to provide a general framework of recommendations and advice covering publicly funded management schemes and agreements for the conservation and enhancement of SSSIs and Natura sites;
- to specify, where necessary, the detailed expectations of the Scottish Ministers in relation to matters such as eligibility for payments and the terms and conditions on which management agreements should be offered;
- to assist land managers in understanding both their rights to compensation and the wider opportunities which exist for them to obtain financial support for “added value” management activity;
- to provide the formal guidance to SNH required in connection with, and explicitly referred to in, section 16(9) of the 2004 Act;
- to provide a formal guidance document to which other bodies, and in particular the Scottish Land Court, may refer in the course of dispute resolution procedures or legal action; and
- to ensure overall transparency, equality of treatment and value for money.



## Legal status of the Financial Guidelines

1.7 These Financial Guidelines are guidance issued by the Scottish Ministers under the powers conferred by section 54(1) of the 2004 Act.

1.8 The recommendations, advice and information contained in relevant sections of this document provide formal guidance to SNH as to the circumstances in which, and the terms and conditions on which, it should offer to enter into a management agreement in situations where section 16(9) of the 2004 Act applies. SNH is required under section 16(9) to have regard to these Financial Guidelines in deciding whether to offer a compensatory management agreement and in determining the terms of any such agreement.

1.9 These Financial Guidelines have effect from the date on which the relevant provisions of the 2004 Act, and in particular section 16, come into force.

1.10 With effect from the same date, these Financial Guidelines replace the publication, *Financial Guidelines for Management Agreements*<sup>5</sup>, issued by the Scottish Office (Department for Agriculture and Fisheries for Scotland) on 11 February 1983.

## Policy and legislative background

1.11 The origins of the 2004 Act, and of these Financial Guidelines, lie in the policy statement *The Nature of Scotland*<sup>6</sup>, which was published by the Scottish Executive in March 2001.

1.12 Alongside measures dealing with the conservation of biodiversity and the prevention of wildlife crime, *The Nature of Scotland* proposed significant reforms to the way in which SSSIs are managed and protected. *The Nature of Scotland* established the following principles:

- SSSIs should remain at the heart of the system for protecting Scotland's natural heritage, in a way which respects both the importance of the natural features they protect and the sustainable development which rural communities depend upon;
- increased resources should be available to provide incentives for the positive management of SSSIs by their owners or occupiers, so that more land managers should be able to manage SSSI land in a way which benefits both them and the wider public interest;
- large compensation payments which reward people for not undertaking environmentally damaging new projects should end. Land managers should no longer be paid simply for not carrying out work which threatens the nature conservation interest of an SSSI;
- owners or occupiers of land should not suffer disadvantage if the measures needed to protect an SSSI prevent them from pursuing their normal, established land management activities and they incur genuine loss as a result. Where the established management of the land has to be altered or restricted, in order to protect an SSSI, land managers should be compensated for such losses;

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<sup>5</sup> *Wildlife and Countryside Act 1981 – Financial Guidelines for Management Agreements* (Department for Agriculture and Fisheries for Scotland, 11 February 1983) ISBN 0-11-751639-2. Similar guidance was issued for England and Wales as joint circular 4/83 (England) and 6/83 (Wales) on 31 January 1981. The relevant provisions of the 1981 Act were brought into force across Great Britain on 28 February 1983.

<sup>6</sup> *The Nature of Scotland: A Policy Statement* (Scottish Executive, March 2001) ISBN 0-75590-005-7

- SNH should have the power to refuse consent for operations which are likely to damage an SSSI, subject however to the creation of an effective independent appeals mechanism to allow such decisions to be challenged;
- effective powers and appropriate incentives should be provided to ensure that land is managed in a way which secures its conservation interest. In exceptional situations it should be possible to oblige land managers to carry out work which is necessary to conserve the site.
- Significantly higher penalties should be provided for deliberate damage to SSSIs, damage by third parties should be addressed and public bodies (including regulators and statutory undertakers) should take a more active role in protecting and conserving sites.

1.13 These core principles were widely consulted upon in 2001 and welcomed by a broad range of interested parties. Detailed policy proposals were then developed in close co-operation with key stakeholders including, in particular, representatives of farming, landowning, conservation, professional and public interests. A draft Bill implementing the original *Nature of Scotland* principles was published by the Scottish Executive, together with a draft version of these Financial Guidelines, for public consultation in March 2003.

1.14 That consultation resulted in the introduction in the Scottish Parliament in September 2003 of the Nature Conservation (Scotland) Bill. Following detailed parliamentary scrutiny, the Bill was passed unanimously by the Scottish Parliament on 5 May 2004 and received Royal Assent, as the Nature Conservation (Scotland) Act 2004<sup>7</sup>, on 11 June 2004.

1.15 The 2004 Act makes specific provision, in section 54, for the Scottish Ministers to issue guidance containing recommendations and advice for the use of both SNH and land managers. These Financial Guidelines have been issued in accordance with that power. They are intended to be used by all parties in addition to the 2004 Act, as the authoritative source of information on the Scottish Executive's expectations as regards entitlements to management agreements and the terms and conditions of such agreements.

1.16 The Scottish Ministers will continue to monitor the application of these Financial Guidelines and will review their content as necessary<sup>8</sup>. Revisions will be made in the light of experience of the practical application of the Guidelines and of the continuing evolution of policy on financial support for different forms of land management. Any revision to the Guidelines will be re-issued following consultation with interested parties.

1.17 It should be noted that these Guidelines reflect information, for example on agri-environment arrangements and the requirements of the Rural Development Regulation<sup>9</sup>, which is current as of October 2004 but which will be subject to change in the future. There is, for example, already a proposal for a new Regulation for a European Agricultural Fund for Rural Development from 2007. Where such changes impact upon entitlements to financial support as set out in these Financial Guidelines, the Scottish Ministers expect SNH and other interested parties (in the absence of revised Guidelines) to interpret these Guidelines in a manner which ensures that the underlying principles continue to apply in the way originally intended.

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<sup>7</sup> 2004 (asp 6)

<sup>8</sup> A specific power to issue revisions of guidance is given to Scottish Ministers by section 54(1) of the 2004 Act.

<sup>9</sup> Council Regulation EC 1257/99

## Further guidance and advice

1.18 Specific information on obtaining financial support in the form of an SNH management agreement, or under schemes such as *Natural Care*, *the Rural Stewardship Scheme* or *the Scottish Forestry Grant Scheme*, can be obtained from the contacts given in Annex C.

1.19 Further general guidance covering the wider responsibilities of public bodies and others under both the SSSI and Natura systems is available separately from the Scottish Executive.

1.20 Land managers with responsibility for land within SSSIs and Natura sites can obtain guidance and advice on conservation and land management matters from SNH, and are advised to contact their local SNH Area Officer in the first instance.

1.21 These Guidelines should be read in conjunction with the relevant provisions of the 2004 Act. Where land forms part of a Natura site, the Conservation (Natural Habitats &c.) Regulations 1994 (“the 1994 Regulations”)<sup>10</sup>, as amended, which set out provisions to ensure protection of Natura sites, should also be consulted.

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<sup>10</sup>SI 1994/2716.

## Section 2

### Support for the voluntary management of SSSIs and Natura sites

2.1 This section provides brief guidance explaining how managers of SSSIs and Natura sites can obtain financial support for work which secures the effective conservation management of protected sites, by entering into voluntary agreements with public authorities. A number of potential options exist and these are described below.

#### Natural Care

2.2 The Scottish Ministers consider it appropriate that financial incentives should be available to the managers of protected areas, and of other areas of the countryside where this is appropriate, to maintain or enhance key features of our natural heritage.

2.3 These payments, to be delivered through the *Natural Care* strategy, will support the delivery of the favourable management that these special interests require. In line with *Nature of Scotland* principles, payments will not be made simply to compensate for the cessation of management that may be harmful to protected sites.

2.4 A key objective of the *Natural Care* strategy is to make a major contribution to the target of ensuring SSSI features are in favourable condition. It will do this by bringing the majority of the SSSI network into assured management arrangements which are designed to help secure the effective conservation of the special features for which sites have been notified.

2.5 This will be achieved through the collective contributions of SNH management agreements and the other incentives available to the managers of SSSIs, notably via the Scottish Forestry Grants Scheme (“SFGS”) and the Rural Stewardship Scheme (“RSS”). It is estimated that around 85-90% of the network requires some form of active management that can be supported through these arrangements. The remainder of the SSSI network is not believed to require financial support in this way because, for instance, it consists of intertidal areas owned by the Crown or because it consists of robust geological formations.

2.6 In other cases, the nature or level of funding that is appropriate will vary. For instance:

- Some SSSIs and Natura sites may be damaged because they are not managed in accordance with recognised standards of good land management practice. Land managers are expected to comply with such standards that are relevant to their operations and with the requirements of any other regulatory regime or code of practice. The taxpayer cannot be expected to pay farmers and other land managers simply to stop doing things they ought not to have been doing in the first place.
- There are inevitably constraints on the availability of public funding, and within those constraints public authorities may have to decide on the relative priority of different cases for the funding of SSSI and Natura site management. Some SSSIs and Natura sites are maintained in good condition through existing, economically sustainable, management practices.

2.7 The objectives of the *Natural Care Strategy* are four-fold:

- to avoid deterioration of, and to secure improvements in, the condition of SSSIs through arrangements that can assure their positive management,
- to foster the pride and commitment of land managers in the positive management of SSSIs and other conservation interests through direct rewards, and by drawing on their own knowledge and skills in land management through their active involvement in the development of management schemes,
- to broaden and improve access to support for land management that benefits the natural heritage, through a combination of additional resources and more effective integration of available incentives, and
- to establish conservation of the natural heritage as a legitimate output of rural development through the delivery of social and economic benefits to the people of Scotland.

2.8 The *Natural Care* strategy sets out how the increased resources now available will be used to significantly increase the availability of management agreements to the managers of SSSIs. It also sets out the context and priorities for SNH's expanding *Natural Care* programme, which will be implemented principally through the use of "management schemes". These are based on voluntary agreements with land managers, under which a standard rate of payment will be offered in particular parts of the country for particular activities which safeguard or enhance the conservation interest of SSSIs.

2.9 SNH's management schemes under *Natural Care* are intended to be non-competitive - if a land manager meets the requirements specified in the scheme, SNH will make the payments which the scheme provides for. They will be relatively simple, generic schemes developed in consultation with land managers so that they offer prescriptions and payment rates that are appropriate to local land use and economic conditions rather than being developed at the national level. Land managers can decide whether or not to enter into a management scheme, depending on whether or not they judge this to be in their interest.

2.10 In the circumstances where SNH considers that a management scheme is not appropriate, it will still be able to enter into individually-negotiated voluntary management agreements with land managers.

2.11 Priorities for SNH support under the *Natural Care* strategy include:

**for Natura sites**

- where features are deteriorating or suffering significant disturbance,
- where there is a likelihood or a risk of deterioration or of significant disturbance,
- where there is a legal obligation to restore the site (degraded raised bogs only), or
- where current management is essential to maintain the qualifying features and there may be a risk of modification or cessation of this management.

**for SSSIs**

- SSSIs in urgent need of positive management to avoid deterioration or loss of their nature conservation interest where such management can reasonably be expected to avoid this deterioration or loss, and
- sites where improving the management of the SSSI interest can also achieve Biodiversity Action Plan targets.

2.12 Detailed rules governing SNH's power to offer management agreements are set out in Annex A to these Guidelines. These apply not only to agreements under a *Natural Care* management scheme, and to individually-negotiated agreements for the management of SSSIs and Natura sites, but will also apply in the case of agreements designed to secure the management of the natural heritage in the wider countryside.

2.13 Contact details for further information on the *Natural Care* strategy, including applications for assistance, are set out in Annex C to these Guidelines.

## **Co-financed schemes under the Scotland Rural Development Plan**

2.14 The *Natural Care* strategy will be delivered through schemes funded and administered by SNH or other public authorities either alone or, where there is clear benefit in such arrangements, in partnership with others. It is important that land managers agree on natural heritage objectives and consider how good stewardship can best be achieved through the opportunities available.

2.15 The relationship between the Scotland Rural Development Plan ("RDP") schemes that support environmental outputs from rural land and SNH's *Natural Care* schemes and management agreements is a complex and evolving one.

2.16 The two principal schemes co-financed by the EC under the Scotland RDP, which are of particular relevance to SSSIs, are the RSS and the SFGS, together with the SFGS: Farmland Premium. Whilst there is considerable overlap of objectives and coverage, SNH's *Natural Care* schemes and agreements will seek to complement these other schemes in terms of the overall resources available, in order to support the management of SSSIs. SNH's schemes may encourage application to an RDP scheme. A flexible approach will be encouraged in such cases.

### **◆ Rural Stewardship Scheme**

2.17 This scheme is designed to encourage farmers, crofters and common grazings committees to adopt environmentally friendly practices and to maintain and enhance particular habitats and landscape features. The RSS supports biodiversity-friendly agricultural management in the interests of wildlife and habitats, including birdlife, species-rich pasture, moorland, wetland, peatland and woodland/scrub on agricultural land.

2.18 Entry to the RSS is competitive, and occupiers of agricultural land in any part of Scotland (not just SSSIs and Natura sites) may apply. Applications are assessed on the basis of a ranking system which gives weight to the environmental and other benefits which would be secured by the project. Within this ranking system, applications which benefit Natura sites or SSSIs attract extra points.

2.19 Contact details for further information on RSS assistance are set out in Annex C.

### **◆ Scottish Forestry Grants Scheme**

2.20 The SFGS, administered by the Forestry Commission Scotland ("FCS"), and the SFGS: Farmland Premium are focused on delivering the priorities of the Scottish Executive's Scottish Forestry Strategy, *Forests for Scotland*<sup>11</sup>.

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<sup>11</sup> Forests for Scotland (Forestry Commission, 2000) 0855384549

2.21 The aim of SFGS, and SFGS: Farmland Premium is, “to encourage the creation and management of woods and forests, in order to provide economic, environmental and social benefits for now and the future”. SNH’s *Natural Care* programme is seen as the main mechanism for achieving positive management of SSSIs and Natura sites, but SFGS plays an important role in relation to woodland habitats and will be the principal source of funding in this context. In specific circumstances, complementary funding to the SFGS may be available through SNH under the *Natural Care* programme.

2.22 Under the SFGS, Stewardship Grants are payable to contribute towards the cost of work which will significantly improve the economic, ecological or social value of woodland. In the case of woodland SSSIs and Natura sites, eligible work will attract the higher rate of grant that currently contributes 90% of approved standard costs. Work relating to woodland SSSIs and Natura sites is eligible for this higher rate of grant where the purpose is to:

- improve the ecological value of native woodlands, through work related to native woodland Habitat Action Plans,
- improve the environmental value of woods and forests through work related to Biodiversity Action Plans (Habitat Action Plans, Species Action Plans and Local Biodiversity Action Plans) and designated sites or species listed in the schedules of the Wildlife and Countryside Act 1981 (“the 1981 Act”)<sup>12</sup> or the Habitats Directive<sup>13</sup>,
- improve the economic, ecological and social value of woods and forests by encouraging more use of alternative systems to clear-felling, where this is practical and appropriate, and
- improve the economic and ecological value of woods and forests by reducing deer numbers.

2.23 In addition to the financial support provided by the SFGS, compliance with the UK Forestry Standard will continue to be a condition of any SFGS approval. These conditions include the protection of designated conservation sites such as SSSIs, as well as the maintenance and enhancement of biodiversity as part of the implementation of the UK Biodiversity Action Plans.

2.24 Contact details for further information on SFGS assistance are set out in Annex C.

### **Which scheme should a land manager seek funding from?**

2.25 Land managers may wish to seek their own professional advice about the sources of funding which can best support their aspirations for the management of their land. The funding agencies in Scotland will observe the following principles:

- If a project on a protected area clearly falls within the scope of a non-SNH scheme (eg RSS or SFGS) SNH may ask the land manager to make an application to one of these schemes before it offers to enter into a management agreement.
- If a project falls within the scope of a non-SNH scheme, but the land manager and SNH are of the view that it does not appear to be likely to be a successful candidate

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<sup>12</sup> 1981 (c.69).

<sup>13</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

for funding under either of these schemes, SNH may offer a management agreement without any preconditions about prior application to another scheme. Discussion between the land manager, SNH, SEERAD and FCS may be appropriate to establish, in particular cases, which funding mechanism is the most likely to be able to support the appropriate management of the area and whether a combination of funding from different sources is appropriate.

- When SNH offers to fund management activities which could fall within the scope of a non-SNH scheme it may do so at a different rate of payment from the other scheme. In some cases this rate may be lower, for example, where a nationally-calculated rate of payment under another scheme exceeds the costs of particular projects in particular places. In other cases, SNH may offer a higher rate of payment, for example, where nationally-calculated rates under non-SNH schemes do not cover the costs of proposed management action in a particular place and circumstances, and do not provide a sufficient incentive for land managers to enter into contracts to manage the land in a way which will benefit its SSSI interest.

## **Future developments**

2.26 Policy on support for environmentally-sustainable land use is under continuing development. In particular, the Scottish Ministers are examining how the reform of the Common Agricultural Policy can contribute to the development of a new system of Land Management Contracts to support farm businesses in the delivery of a range of the economic, social and environmental benefits. It is expected that the first steps towards implementation of Land Management Contracts will be taken during the course of 2005.

2.27 It should be noted that all land within the Single Farm Payment system will be subjected to Cross Compliance conditions – including both Statutory Management Requirements (SMR) and Good Agricultural and Environmental Condition (“GAEC”).



## Section 3

### Entitlement to SNH compensatory management agreements

3.1 The Scottish Ministers believe that, for the most part, the favourable conservation management of SSSIs should be achieved through voluntary action, supported by the availability of appropriate financial assistance and incentives. A brief guide to such assistance has been provided in Section 2 of these Guidelines.

3.2 There may, however, be occasions when SNH is unable to grant consent for operations which would adversely affect an SSSI, or where the Scottish Ministers have to use their powers, in the public interest, to protect an SSSI or Natura site from damage or deterioration. On these occasions, it may be appropriate for the land manager to receive compensation through an SNH management agreement.

3.3 It will be possible for SNH to combine compensatory and voluntary elements within the same management agreement, as necessary. Depending on the circumstances, the land which is relevant in relation to the compensatory element of a management agreement may be land within an SSSI; land within a Natura site; or land which is affected because of the need to protect an SSSI or Natura site. These different scenarios are explained below. SNH has discretion to deal appropriately with exceptional circumstances, including situations in which account should properly be taken of impacts on other land or on a business as a whole.

3.4 It should be noted that this section does **not** apply to situations in which public authorities other than SNH refuse (or modify or withdraw or otherwise restrict) consent in respect of operations which would be likely to damage the natural features of an SSSI or Natura site.

### Situations in which compensation may be payable

#### ◆ Operations Requiring Consent

3.5 A land manager may be entitled to compensation through an SNH management agreement in situations where section 16(9) of the 2004 Act applies – that is, where consent to an operation requiring consent (an “ORC”) is refused, revoked, modified or made subject to conditions. In determining whether or not to offer an agreement under such circumstances, SNH is obliged by the Act to have regard to the guidance contained in these Financial Guidelines. Compensatory agreements of this kind are relevant only for SSSI land which is subject to ORCs.

3.6 The expectation of the Scottish Ministers is that SNH should offer to enter into an agreement with a land manager where:

- SNH has used its powers under the 2004 Act to refuse, revoke or modify consent for an ORC, or where it makes its consent subject to conditions;
- **and** the ORC in question is one which is shown to be part of the **established** management of the land;
- **and** the refusal, revocation or modification, or the effect of any conditions, impacts on the land manager’s activities in such a way that his ability to earn income, by continuing with the **established** management of the land, is unavoidably reduced.

## Nature Conservation Orders

3.7 The 2004 Act does not make specific provision for compensatory management agreements in connection with the exercise of ministerial powers to make Nature Conservation Orders (“NCOs”) under section 23 of the 2004 Act.

3.8 This is because NCOs are unlikely to be used in future to prevent or restrict operations which are part of the established management of SSSI land. In the event that such operations do need to be controlled but are not currently on the ORC list for the SSSI, the preferred method will be for SNH to use its powers, in sections 6 and 7 of the 2004 Act, to add the relevant operation to the list of ORCs for the site and then to grant or refuse consent, or impose conditions, in the normal way. Rights to compensation will then be dealt with in the same way as for other cases involving applications for consent in relation to SSSI land.

3.9 Nonetheless, where a land manager can demonstrate that the making of an NCO covering SSSI land has adversely affected his interests by preventing or restricting the **established** management of the land, and he has suffered genuine loss as a result, the Scottish Ministers would normally expect SNH to use its discretion and to offer a management agreement on similar terms and conditions as would have applied in the analogous ORC situation set out in paragraphs 3.5 and 3.6 above.

3.10 SNH has similar discretion to offer a compensatory agreement in cases where an NCO applies either a) to land which is within a Natura site (whether or not the land is also an SSSI), or b) to land outwith a protected site. The principles already established above, in paragraph 3.6, will govern any such offer.

### ◆ Land Management Orders

3.11 Entitlements to payments may also arise through the exercise of ministerial powers to make Land Management Orders (“LMOs”) under sections 29 to 37 of the 2004 Act. This situation is dealt with in more detail in Section 4 of these Guidelines. LMOs can be applied to both SSSI and Natura sites.

## Disputes and appeals

3.12 A land manager who is aggrieved by a decision by SNH not to offer an agreement where section 16(9) applies, or by the terms and conditions of such an agreement, may appeal to the Scottish Land Court under the terms of section 18 of the 2004 Act.

3.13 Similarly, where the Scottish Ministers exercise powers to make an LMO, specific provision has been made in the Act to allow for representations and appeals. This provision includes a right of appeal to the Scottish Land Court under section 34.

3.14 No formal rights of appeal have been provided where SNH refuses to enter into a management agreement in connection with an NCO, but representations from any aggrieved party will be dealt with by SNH on a fair and reasonable basis.

3.15 The principles to be applied in resolving disputes are explained in more detail in Section 5 of these Guidelines.

## Compensation - Key principles

3.16 In general, the principles governing a land manager's entitlement to compensation are that:

- A land manager **should** be entitled to compensation through an SNH management agreement if he can show that the exercise of SNH's powers (or those of the Scottish Ministers' relating to NCOs) will cause him actual loss because he can no longer do something which is part of the **established** management of the land.
- A land manager **should not** be entitled to compensation if the exercise of SNH's or the Scottish Ministers' powers prevents him from carrying out a **new** project which is not part of the established management of the land.
- A land manager **should not** be entitled to compensation if he is refused consent or grant assistance for a project under another consent regime (e.g. if he is refused consent under Environmental Impact Regulations or the Scottish Environment Protection Agency's ("SEPA") discharge control system; or if he is refused SFGS approval or does not receive a grant for a project which would damage an SSSI or Natura site).
- A land manager **should not** be entitled to compensation where any loss arises from either a requirement to comply with, or a failure to comply with: relevant environmental legislation or regulatory regimes; Standards of Good Farming Practice; Cross Compliance requirements; or other rules, requirements or standards of good practice which regulate the extent or conduct of an activity and its impact on the natural environment.

## Established management and new projects

3.17 In most cases it will be relatively clear what constitutes a new project and what constitutes part of the established management of the land. But in some cases this may be a matter requiring specialist judgement, which may be informed by evidence provided by bodies such as the Scottish Executive Environment and Rural Affairs Department ("SEERAD"), FCS or other appropriate regulatory bodies. It may also be relevant in such cases to consider specialist advice obtained from other bodies and individuals, such as the Scottish Agricultural College or a suitably qualified professional adviser with extensive experience in a relevant area of practice.

3.18 It is for SNH to obtain appropriate advice, where it considers such advice to be necessary. In the event that a land manager disagrees with the position adopted by SNH, the potential need for further advice or a "second opinion" is something which may be explored within the context of any dispute resolution procedure.

3.19 As a general rule, projects which require an Environmental Impact Assessment ("EIA") under European EIA requirements<sup>14</sup> are likely to be regarded as new projects. Such projects are, in particular, likely to include any which require an EIA under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999<sup>15</sup> or the Environmental Impact Assessment

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<sup>14</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003.

<sup>15</sup> SSI 1999/43.

(Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002<sup>16</sup>. Activities covered by other EIA regulations may also be regarded as new projects<sup>17</sup>.

3.20 In judging what is part of the **established management** of the land and what is a **new project**, the following principles will be applied:

- An activity is part of the established management of the land if it has been part of the actual or habitual pattern of use of that land within the preceding 15 years or is part of the normal rotational pattern of use of the type of land in question. The length of time which is regarded as the normal rotational pattern will vary according to the type of land and the type of crop/land use and ‘custom of the country’ in that locality;
- An activity is part of the established management of the land if it is one which is necessary to maintain the existing use of the land in question. For example, the repair of field drains in accordance with traditional practice, would be considered to be part of the established management of the land if it is carried out in order to maintain the land in its current use, rather than to convert or intensify its use;
- Adjustments to scale or intensity of an activity which may include such attributes as grazing pressure or stocking composition are part of established land management if the land manager can establish that in the past 15 years the stocking density and pattern or other activity has been at the level he proposes to attain, and if that level is consistent with the Standards of Good Farming Practice and Cross Compliance requirements which apply to the land in question<sup>18</sup>;
- In the case of woodland management, activity is much more periodic in its pattern over the life-cycle of the wood or forest. However, most such activity is likely to have been, or currently is, the subject of FCS approval through Woodland Grant Scheme/SFGS contracts incorporating an agreed Plan of Operations or the grant of a felling licence. Consequently, activities which fall within these criteria are, in most cases, likely to be established management for the woodland in question, provided they currently accord with the UK Forestry Standard;
- Non-agricultural activities may be part of the established management of the land. For instance, a land manager may be entitled to compensation if the exercise of SNH’s or the Scottish Ministers’ powers will cause him an actual loss because of a loss in revenue from non-agricultural activities from which he has, within the past 10 years, earned revenue or (where no revenue is earned) from activity which has contributed to the capital value of the property.
- An activity, whether agricultural or non-agricultural, will not be treated by SNH as being part of the established management of the land if it has been carried on in breach of relevant rules and regulations or of standards of good practice, or if the historical level of activity, revenue or capital value which is subsequently reduced has benefited from non-compliance with, or non-enforcement of, such requirements.

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<sup>16</sup> SSI 2002/6.

<sup>17</sup> European EIA requirements are implemented in Scotland by means of a number of other statutory instruments, including, for example: the Environmental Impact Assessment (Scotland) Regulations 1999 (SSI 1999/1); the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (SSI 2000/320); the Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (SSI 2003/341).

<sup>18</sup> It should be noted that for some agri-environment scheme participants the maximum stocking density will be set as part of the agri-environment scheme agreement. Factors such as stocking may also be regulated by other contractual arrangements, including the terms and conditions of SNH management agreements.

3.21 Land managers may make a case that exceptional circumstances exist and that a period longer than 15 years should be used in determining what constitutes established management.

3.22 In all cases, a land manager is expected to take reasonable steps to minimise the losses for which he may be compensated, and a failure to do so may affect his entitlement. In particular, a land manager may be required to demonstrate that he had no reasonable alternative way of pursuing the intended activity on his holding before SNH determines whether to enter into a compensatory management agreement.

### **Special circumstances – Uneconomic management**

3.23 In some instances, the established management of the land may in future become uneconomic because of changed market circumstances. Where this occurs the economically rational course of action for the land manager may be to convert from one land use to another, or even to withdraw the land entirely from active management.

3.24 In cases where continuation of the existing land use is essential to maintenance of the special interest of the site, SNH will normally seek to enter into a voluntary management agreement which makes it worthwhile for the land manager to continue to manage the land in a manner consistent with its special interest.

3.25 A land manager who prefers, instead of entering into a voluntary agreement, to change the way in which SSSI land is managed is entitled to do so, but will require to secure consent from SNH (and/or any other relevant regulatory authority) for operations which are likely to damage the site. Where SNH consent is required, SNH will deal with any application for consent in the normal way and may grant consent, withhold consent or give consent subject to conditions.

3.26 SNH is, however, likely to refuse consent for new operations which will have a negative impact on the site, especially where the SSSI is also a Natura site. In the event that consent is refused the land manager will not, in practice, be able to implement the proposed change in land use. It is a criminal offence, under section 19(3) of the 2004 Act, to carry out an ORC without having obtained consent. Neither will the land manager be entitled to compensation, since the new operations will not, by definition, be part of the established management of the land. Compensatory management agreements are only available in circumstances where land managers suffer loss because they are unable to continue with established management practices.

3.27 In view of the above, SNH may, where existing land management practices are no longer economically-viable and alternative solutions do not exist, offer to lease or purchase land in order to ensure that a site continues to be managed in a manner consistent with its nature conservation interest.

3.28 SNH may do so where the established management regime for land within an SSSI is clearly no longer economically-viable and all of the following conditions are satisfied:

- a suitable voluntary agreement to support the existing management regime cannot be agreed;
- consent to proposed new management operations on the site cannot reasonably be given; and

- no realistic, economically-viable, alternative use of the land can be identified which the land manager is willing to implement and which preserves the nature conservation interest of the site.

3.29 The general expectation of the Scottish Ministers in such circumstances is that responsibility for (and ownership of) land should, wherever possible, remain with the land manager rather than being acquired by SNH. A decision to lease or purchase the land should not be taken until other potential options have been properly considered and have been rejected.

3.30 The decision whether SNH should lease or purchase land for which existing management has become non-viable will (unless ordered by a court) be at SNH's discretion. SNH will not however withhold consent for a change of management regime in such exceptional circumstances unless it is reasonably prepared a) to offer an appropriate management agreement and b) if an acceptable agreement proves impossible to conclude, to lease or purchase the land.

3.31 The arrangements covered in paragraphs 3.27 to 3.30 above are **not** be understood as constituting a compulsory lease or purchase procedure. A land manager is not obliged to accept any such an offer of lease or purchase. The terms of any offer, including any amount payable, are to be negotiated freely between the respective parties.

3.32 Disputes in relation to the lease or purchase of land which can no longer be managed on an economically-viable basis do not fall directly within the jurisdiction conferred on the Scottish Land Court by the 2004 Act. Alternative means of dispute resolution will therefore require to be employed in such circumstances. Dispute resolution issues are also dealt with in Section 5.

3.33 The Court does, however, have a potential role to play, by virtue of section 18 of the 2004 Act, in the *specific* circumstance where a land manager is aggrieved by a refusal of consent (or by the conditions imposed on any consent).

3.34 In such cases, where the land manager can show that SNH's decision will, in effect, render the land within a site incapable of any reasonable beneficial use, it is open to the Scottish Land Court to consider lease or purchase as potential solutions (amongst others) and to dispose of the case accordingly. The flexibility allowed to the Court under section 18 of the 2004 Act means that it may, should it see fit, direct SNH:

- to permit the proposed new management regime (by giving ORC consent); or
- to alter or remove any conditions imposed in connection with any consent; or
- to offer an appropriate management agreement; or
- to lease or purchase the land in question on such terms as may be appropriate.

3.35 Where SNH does offer to lease or purchase land within an SSSI, the offer may also include land outwith the site where this is necessary for the effective conservation of the site or where the remaining part of the holding located outside the SSSI would no longer constitute a viable enterprise in its own right.

3.36 In exceptional circumstances, where a voluntary lease or purchase arrangement cannot be agreed between SNH and the land manager, SNH may, as a last resort, use its powers of compulsory purchase under section 39 of the 2004 Act where this is necessary in order to ensure the protection of the nature conservation interest of the site.

## Section 4

### Land Management Orders – Payments

4.1 Sections 29 to 37 of the 2004 Act make provision for Land Management Orders (“LMOs”). LMOs may be made only where it has proven impossible to enter into a management agreement, or where an existing agreement has broken down. LMOs may be made in relation to both SSSI land (under the 2004 Act) and Natura sites (under analogous provisions in the 1994 Regulations).

#### Entitlement to payments

4.2 Where the Scottish Ministers make an LMO requiring a land manager to take particular action over and above the requirements of good land management practice - in order to safeguard or enhance the special interest of an SSSI or Natura site - the land manager will be entitled to payment for the costs of the work which the Order requires him to carry out.

4.3 In applying to the Scottish Ministers for an LMO, SNH is obliged by section 29(7)(f) of the 2004 Act to specify the costs likely to be incurred in carrying out the required operation, together with the amounts which it should pay to persons carrying out the operation. A land manager affected by a proposed LMO is entitled to make representations to the Scottish Ministers in relation to the LMO application<sup>19</sup> and such representations may relate, amongst other matters, to the amount which SNH proposes to pay.

4.4 A land manager who is aggrieved by the terms and conditions of an LMO, including any provision for the making of payments, may appeal, under section 34 of the 2004 Act, to the Scottish Land Court within 28 days of the Order being made.

#### Effect of non-compliance

4.5 If the land manager fails to carry out the work required in the Order, or fails to arrange for the work to be carried out, he is in breach of the law and has forfeited any compensatory entitlement. He may also be liable to prosecution under section 36 of the 2004 Act. Similar considerations apply where the operation is carried out otherwise than in the manner specified in the LMO.

4.6 Under such circumstances, SNH is not required to make any payment to the land manager and may recover any payments already made. It is also empowered under section 37 of the 2004 Act to carry out the work itself, or to arrange for the work to be carried out on its behalf, and is further entitled to take legal action to recover from the land manager any additional expenses incurred by SNH in connection with the work specified in the LMO.

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<sup>19</sup> See schedule 3 of the 2004 Act for details of LMO procedures.

## Section 5

### Dispute resolution

5.1 Dispute resolution arrangements will require to be invoked when SNH and the land manager do not agree about matters such as:

- whether the land manager is entitled to compensation in the form of a management agreement;
- the terms or conditions of a compensatory management agreement offered by SNH, or the amount payable under the agreement;
- the basis on which compensation, if payable, has been calculated (for example whether income foregone or loss in capital value should be used);
- whether SNH should reasonably have offered a voluntary management agreement, or should have offered to lease or buy land, in the situation where the established management of the site had become uneconomic and consent cannot be given to an alternative management regime; or
- whether SNH is correct in asking ministers to make an LMO, or whether the amounts payable under such an order are appropriate.

### Types of dispute resolution

5.2 Without prejudice to the rights conferred by the 2004 Act, it is the hope of the Scottish Ministers that, in the event of any dispute, both SNH and land managers will seek, wherever possible, to resolve matters through private negotiation. It is likely to be in the interests of all parties to thoroughly explore the scope for a negotiated settlement before resorting to the courts.

5.3 The Scottish Ministers would also encourage both SNH and land managers to consider whether other dispute resolution mechanisms might prove effective in resolving disputes. The appropriateness of alternative mechanisms will depend on the specific nature of the matter in dispute but are likely to include:

- mediation,
- expert determination,
- arbitration by a single arbiter appointed by agreement

5.4 In general it is anticipated that only the most intractable or legally-complex disputes should require to come before the courts and that, in the normal course of business, most disputes should be capable of resolution before the need for court action arises.

### Statutory and non-statutory provision for dispute resolution

5.5 Statutory provision for appeals to the Scottish Land Court, in relation to ORC-related compensatory management agreements covering SSSI land, has been made in section 18 of the 2004 Act. This provision covers situations in which a land manager is aggrieved by a decision not to enter into a management agreement under section 16(9) of the 2004 Act, or by the terms and conditions of such an agreement.



5.6 Non-statutory arrangements for dispute resolution will require to be invoked in other cases, for example where disagreements arise in relation to voluntary management agreements and schemes such as those available under *Natural Care*; in connection with NCO-related compensatory management agreements; or where disputes arise in relation to the reimbursement of professional fees. These arrangements are likely to include options such as mediation, expert determination and arbitration, as well as SNH's own formal Complaints Procedure, details of which are available on request from SNH (see paragraph C4 in Annex C).

5.7 Non-statutory arrangements will also apply where a land manager believes that SNH should reasonably have offered to lease or buy all or part of a site which can no longer be managed on an economically-viable basis. It is however open to the Scottish Land Court to consider the appropriateness of lease or purchase, alongside a range of other potential options, in cases where the land manager is aggrieved by a decision not to give consent to operations which are necessary to a new and economically-viable management regime. This situation is dealt with in more detail in paragraphs 3.32 to 3.34 of Section 3.

5.8 Statutory provision has been made in relation to LMOs. A land manager can make representations to the Scottish Ministers before the order is made, under paragraph 3(c) of Schedule 3 to the 2004 Act, and can subsequently appeal to the Scottish Land Court by virtue of section 34 of the 2004 Act.

### **SNH decisions and effect on deadlines for appeal**

5.9 Under section 18 of the 2004 Act, appeals to the Scottish Land Court against a decision by SNH to refuse, modify, or revoke a consent, or to impose restrictive conditions, must be made **within 28 days** of the date on which SNH gave notice of its decision. Appeals against a decision not to enter into a management agreement, or in relation to the terms and conditions of an agreement must, similarly, be initiated **within 28 days** of the date on which the land manager is advised of the refusal, or of the date of any formal offer setting out the disputed terms and conditions.

5.10 It is important however that these strict statutory deadlines are not interpreted in a manner which forces a land manager into appealing to the Scottish Land Court prematurely. It will normally be in the interests of all parties to ensure that matters are only brought before the Court once it is clear that a mutually-acceptable solution cannot be produced by negotiation, internal review or an alternative method of dispute resolution, such as mediation or expert determination. Adequate time needs to be allowed, within the overall context established by section 18, for such options to be properly explored following any initial decision or offer.

5.11 It is particularly important that an applicant who is willing to work with SNH in good faith to seek a mutually-acceptable solution does not inadvertently run out of time to lodge an appeal, in the event that negotiations or alternative methods of dispute resolution prove unsuccessful.

5.12 In order to ensure clarity in such situations, the following paragraphs set out details of the administrative procedures which will be followed by SNH when dealing with applications for consent and with situations in which compensatory management agreements are offered. The fundamental principle to be applied is that SNH will make it clear to land managers whether or not a decision or offer is one which will trigger the start of the 28 day period.

5.13 Except in the special circumstances noted in paragraph 5.21, all parties should therefore work on the basis that the 28 day period, within which an appeal to the Court has to be lodged, will only commence once SNH has clearly indicated that it has reached a **final decision** or has made a **formal offer**.

5.14 A final decision in this sense is one which, for the purposes of section 18 of the 2004 Act, represents the definitive and formal position of SNH on the matter. In making a final decision, SNH is, in effect, indicating that it sees no further scope for negotiation or for the use of alternative methods of dispute resolution. This may, for example, be because negotiations or dispute resolution processes have reached a conclusion or because they have irretrievably broken down. Similarly, a decision which follows the outcome of a complaint under SNH's formal Complaints Procedure is likely to be a final decision for the purposes of section 18.

5.15 A formal offer, by the same token, is an offer of a management agreement which, for the purposes of section 18, represents SNH's final decision in relation to the terms and conditions of the agreement it is prepared to offer. Again the formal offer may represent the outcome of a process of negotiation or dispute resolution, or it may be SNH's final offer in the event that such processes have failed to produce any basis for agreement.

5.16 In all cases SNH will, for the avoidance of any doubt, make it clear to the land manager whether or not any particular decision or offer is one which should be regarded as initiating the 28 day period for appeal.

5.17 Where SNH advises a land manager that it has made either a final decision or a formal offer, a land manager will, in effect, only be able to reverse that decision, or have the terms of the offer varied, by appealing to the Scottish Land Court under section 18 of the 2004 Act.

5.18 It is to be hoped that all parties will be prepared to seek a mutually-agreed solution to any dispute. However, SNH's willingness to negotiate, to employ alternative methods of dispute resolution, or to deal with a formal complaint, in no way restricts the land manager's statutory right to appeal to the Scottish Land Court under section 18 of the 2004 Act. The administrative arrangements set out above have been designed to safeguard the interests of land managers and to provide the flexibility to allow mutually-acceptable solutions to be explored. They do **not** prevent a land manager from appealing to the Scottish Land Court as soon as it is clear that a legal basis for such an appeal exists – irrespective of whether SNH has, at that particular point, made a final decision or formal offer.

5.19 SNH also operates a formal Complaints Procedure, details of which are available from the customer care section of the SNH website (at: [www.snh.gov.uk/about/default.asp](http://www.snh.gov.uk/about/default.asp)) or from the address given in paragraph C4 of Annex C. Complaints under this internal procedure will be considered in connection with initial or interim decisions or offers, or in relation to the effectiveness (or otherwise) of decision-making processes, ongoing negotiations or the general conduct of business by SNH. However, as a general rule, the most appropriate mechanism for appealing against a final decision or formal offer, in the sense in which these terms are defined in paragraphs 5.14 and 5.15, is to appeal to the Scottish Land Court under section 18 of the 2004 Act.

## **Effect of sections 18(3) and 18(4) – The 4 month rule**

5.20 Special arrangements have been made in sections 18(3) and 18(4) of the 2004 Act to cope with situations in which SNH fails to act on an application for consent or fails to offer an agreement. In such cases, SNH will at the end of the 4 month period (unless an extension has been agreed in writing), be deemed to have made a definitive decision, by default, not to give consent or not to offer an agreement. This arrangement is intended to act as a failsafe and to protect the interests of land managers, by ensuring that inaction or delay on the part of SNH does not unreasonably prevent matters being brought before the Scottish Land Court.

5.21 Where SNH has not taken action within the 4 month period, land managers need to be aware that the effect of sections 18(3) and 18(4) means that an appeal to the Scottish Land Court **must** be lodged within 28 days of the expiry of the 4 month period - unless that period has been explicitly extended. Where negotiations or other dispute resolution processes are still in progress at that point and the land manager is content to continue, it is important that an extension to the 4 month period is agreed in writing with SNH. If this is not done, and the negotiations or other processes subsequently break down, the land manager could, on a strict interpretation of section 18, be held to have failed to appeal to the Scottish Land Court within the necessary 28 days.

5.22 As a result, in cases where a solution is being actively sought and it appears that the 4 month period will be exceeded, SNH will, as a matter of course, ask land managers to agree in writing to extend the 4 month period. In the event that negotiations are unsuccessful, the land manager will still be able to appeal to the Court within 28 days of the end of the extended period, or within 28 days of any decision or offer made by SNH. Where a decision or offer is made, the rules established above in paragraphs 5.9 to 5.19 will determine when the 28 day period should be considered to have begun, provided the 4 month period, or any extension, has not expired.

5.23 Where it does not believe that there is any value in extending the 4 month period and it is not in a position to make a decision or to offer an agreement, SNH will, again as a matter of good administrative practice, write to land managers in advance of the expiry of the period, alerting them to the expiry date and to the fact that any appeal to Court must be lodged within 28 days.

5.24 In the event that SNH fails to offer a compensatory management agreement and the land manager believes that it should have done so, it is open to the land manager to write to SNH, within the 4 month period (or any extended period) requesting that SNH makes such an offer. In responding to such a request, SNH will make it clear whether or not the response it gives should be treated as a final decision or a formal offer, for the purposes of section 18 of the 2004 Act.

## **Admissibility of appeals**

5.25 It is for the Scottish Land Court to decide on the admissibility of any appeal and to determine whether, having taken its own rules, the requirements of the 2004 Act, this guidance and other relevant factors into account, it is prepared to hear a particular case.

5.26 In preparing any appeal, it is important that an aggrieved party has regard to the rules and requirements of the Court. Guidance is available via the Court's website at: [www.scottish-land-court.org.uk](http://www.scottish-land-court.org.uk). Further information may be sought from the Principal Clerk to the Court at the address provided in paragraph C3 of Annex C.

## **Land Management Orders**

5.27 Representations to the Scottish Ministers in relation to a proposal from SNH for an LMO must be made within 3 months of the date on which notice of the proposal was given to interested parties, or within any longer period allowed for under paragraph 5 of schedule 3 to the 2004 Act.

5.28 A formal appeal to the Scottish Land Court against a decision by the Scottish Ministers to make an LMO must, by virtue of section 34(2) of the 2004 Act, be lodged within 28 days of the date on which the Scottish Ministers gave notice of their decision to the appellant.

5.29 In both cases the deadlines are strict and, unlike the situation described in paragraphs 5.9 to 5.19 above, the option to retain flexibility and to allow for negotiation or alternative dispute resolution is limited.

5.30 It is however open to the land manager and SNH to seek to negotiate a settlement during the 3 month period before the Scottish Ministers decide whether or not to make the LMO. If such an agreement can be reached before the LMO is made, it is possible for SNH, under paragraph 10 of schedule 3, to formally withdraw the LMO proposal.

## **Role of the Scottish Land Court**

5.31 The 2004 Act provides that the Scottish Land Court may determine an appeal on its merits, rather than simply by way of judicial review. This empowers the Court to consider the facts of the case. It is not confined simply to considering whether, for example, SNH failed to follow proper procedure or acted unreasonably.

5.32 Nonetheless, it should be remembered that, as a court of law, the Scottish Land Court deals with disputes between parties on the basis of the information presented to it. The Court does not function as an inquiry, and will not actively seek out information which a party has failed to present. It is therefore important for aggrieved parties to ensure that all of the relevant facts are brought to the attention of the Court when mounting an appeal.

## Annex A

### Rules applying to SNH management agreements

A1. Management agreements may be made under relevant provisions in the 1949, 1967 and 1968 Acts and in the 1994 Regulations<sup>20</sup>. SNH may make payments by way of a Management Agreement in the following circumstances:

- under section 16 of the 1949 Act to secure the management of the land as a nature reserve;
- under section 49A of the 1967 Act to secure the conservation and enhancement or to foster the understanding and enjoyment of the natural heritage of Scotland;
- under section 15 of the 1968 Act for the purpose of conserving the flora, fauna or geological or geomorphological features of an SSSI;
- under section 15 of the 1968 Act, as amended by the Environmental Protection Act 1990<sup>21</sup>, for land management activities outside the SSSI which may benefit the nature conservation interest of the SSSI; and
- under regulation 16 of the 1994 Regulations for the management, conservation, restoration or protection of a Natura site, or any part of it or land adjacent to it.

A2. Payments to agricultural producers under management agreements must be consistent with the European Union rules on payments set out in the Community Guidelines for State Aid in the Agricultural Sector. As a matter of policy, similar provisions will normally apply to non-agricultural occupiers unless other specific State Aid requirements apply. These rules require agreements to comply with the European Council's Rural Development Regulation ("RDR") and the European Commission's Implementing Regulation<sup>22</sup>. Article 24 of the RDR states that the basis for calculating support for agri-environmental commitments shall be:

- Income foregone;
- Additional costs resulting from the commitment given; and
- The need, where justified, to provide an incentive.

These terms are explained below.

A3. SNH may offer to enter into a management agreement in accordance with standard rates of payment established in a management scheme. Alternatively, *in certain circumstances*, SNH may offer an individually-calculated management agreement reflecting the actual costs (or a proportion of the actual costs) and income foregone of carrying out the agreed management, excluding any VAT recoverable by the land manager. Entitlement to compensation on an individually-calculated basis will arise where consent is refused by SNH for "established" management of an SSSI and may also arise where a Land Management Order or Nature Conservation Order is made.

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<sup>20</sup> For full references to legislation, see the Glossary and guide to terminology on page 5

<sup>21</sup> 1990 (c.43).

<sup>22</sup> Commission Regulation EC 1750/99

A4. Payments will ordinarily be calculated on an annual basis and will be made either in arrears or at the mid-year point. In exceptional cases where entitlement to compensation arises and there is no loss in annual revenue, payments may reflect the actual loss of capital value. In all cases, best value for taxpayers' money must be achieved.

A5. In accordance with the requirements of the RDR a land manager who enters into a management agreement with SNH will be required to observe at least the Standard of Good Farming Practice (see below) over the entire farm. Where the management agreement includes an undertaking to adjust livestock grazing levels on or around an SSSI or Natura site, appropriate provision may be made to verify that natural or semi-natural grazings elsewhere on the holding are maintained in area and quality within the standards of overgrazing and undergrazing as contained in SEERAD's Standard of Good Farming Practice.

A6. In assessing the level of payments it is a requirement that these do not include the costs of compliance with the Standard of Good Farming Practice, or with legislative or other regulatory obligations. In determining this, regard will be had to the developing range of codes of good practice and those provisions of Good Farming Practice which may be appropriate. These are contained in Chapter 9 of the Rural Development Plan for Scotland. In so far as possible, and in accordance with the principle that payment should not be made for compliance with environmental legislation, this will apply regardless of the actual land use as many aspects of these codes are relevant to uses other than agriculture.

### **Income foregone**

A7. This element of the payment is calculated on the basis of net income foregone by owners/occupiers in modifying or maintaining the land management practice on the SSSI or Natura site to that required to manage it for the benefit of nature conservation. Calculation of income foregone will take into account current land management practices of similar land uses and revenue and cost estimates based on typical farm or other rural businesses within the general area of the SSSI or Natura site. Where the management undertakings involve the loss of, or loss of entitlement to, production based (i.e. non-decoupled) agricultural support payments, this should be reflected in the calculation of net income foregone. However, in light of the reforms of the CAP which will apply in Scotland from 1<sup>st</sup> January 2005, the expectation is that, in general, management undertakings entered after that date will not lead to loss of, or entitlement to, agricultural support payments.

### **Additional costs**

A8. Where additional recurring costs of managing an SSSI or Natura site may be incurred, for example, where it is necessary to introduce livestock grazing to a site in order to achieve the appropriate level of management, a contribution towards the annual net costs of this (if any) may form part of the annual management payment. In calculating these additional costs, account will be taken of any incidental benefits to the land manager.

A9. Agreements may also include payments for works and one-off measures to restore or enhance the land's nature conservation value, for example, fencing or scrub control. Where these involve investment in the productive assets of a holding, payments may be limited to a proportion of the cost. If appropriate, payment may also be made for the preparation of a farm plan showing how the management of the SSSI can be integrated with that of the total farm area.

A10. In all such cases, payments will take account of any reasonable incidental costs *and* benefits to the land manager. In such cases, the length of the management agreement should reflect the reasonable expectation of the life of the investment in terms of its nature conservation benefit or the achievement of that benefit.

## **Incentive**

A11. The RDR permits agri-environment payments to include an incentive, normally limited to a maximum of 20% of the income foregone and additional costs (calculated as set out above) to encourage positive management measures to be adopted. In certain circumstances SNH may consider whether justification exists to permit the inclusion of such an incentive in the payment. This will reflect the special management needs of the specific SSSI or Natura site above normal land management practice in the locality and any significant additional conservation outcomes that the agreement may deliver as well as its contribution to the overall objectives of the *Natural Care* programme.

## **Financial impact**

A12. Ministers expect owners and occupiers to minimise any potential adverse financial impact arising during their negotiations with SNH. An owner/occupier should not make any contractual or other legal commitment to any operation envisaged in a management agreement before it is concluded, without this having been agreed in writing with SNH. In assessing compensation for modification of established management, account shall be taken of the ability to mitigate any loss elsewhere on a holding.

## **Terms of the agreement**

A13. When making an offer of a management agreement, SNH should ensure the following:

- There should be a formal agreement setting out clearly the obligations of the parties, the payments that will be made, and the management that will be carried out on the land. An agreement should be in the form of a contract which will bind both parties when completed. SNH, as a conservation body, may register the agreement and create conservation burdens which would be binding not only on the current owner but on future owners of the land. It is important that the agreement complies with the necessary statutory requirements<sup>23</sup>;
- Article 23 of the RDR requires that an agreement will normally be for a minimum term of 5 years, and for no longer than 10 years, except in the case of specific management undertakings where it is shown that the conservation benefits cannot be delivered or secured in a shorter period. There are limited grounds on which agreements for periods of less than 5 years can be entered into. An agreement may include provision for review of the standard payments and other terms, including where appropriate, changes in the circumstances giving rise to the agreement. Prior to its expiry, SNH should consider the need for renewal of an agreement if appropriate to the conservation of the site;

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<sup>23</sup> The Title Conditions (Scotland) Act 2003 (asp 9), in particular sections 3, 4 and 38

- Where land is let and a tenant proposes to accept an offer of a management agreement, it may have implications for the tenancy agreement and for the landlord. In all cases, the tenant is required to notify the landlord of the proposed agreement, and SNH will require confirmation that the landlord does not object to the terms of the agreement. As an alternative, a tripartite agreement may be completed between the landlord, the tenant and SNH on the management obligations under the agreement. In addition, where there is a tenancy or licence with less than 5 years remaining, SNH will normally require a tripartite agreement with the landlord that he/she agrees to maintain the land in accordance with the management agreement for the remainder of its term. Similar assurances may be required in relation to mortgagees, or other legal interests in the property;
- Owners and occupiers are responsible for obtaining all necessary consents and permissions which are required in order to undertake the management in accordance with the terms of the agreement; and
- Owners of land, which is subject to a management agreement, must notify future tenants, licensees and other third party interests of all the details, and the management requirements contained in the agreement; and they should ensure as far as in their power to do so that the tenant/licensee complies with the terms of the agreement.

A14. SNH will make a contribution to the professional fees reasonably and appropriately incurred in completing a management agreement (VAT on such fees should only be met where the land manager is not registered for VAT purposes) in accordance with its published policy at any time being. Annex B sets out SNH's current policy on reimbursement of fees incurred by owners or occupiers.

### **Alternative schemes**

A15. Payments made by SNH for land management will not duplicate payments for the same undertakings under any other environmental land management schemes. Examples of such schemes include the RSS and Environmentally Sensitive Areas Schemes operated by SEERAD and the SFGS operated by FCS. Land managers must give details of any other schemes of which they are beneficiaries, when entering into discussions with SNH. SNH may require a prior application to an alternative scheme before it offers to enter into a management agreement.

A16. SNH may make payments in respect of land subject to other agreements, where this is for *additional* management requirements, provided that these complement and do not duplicate payments under existing schemes.

A17. In normal circumstances, SNH would not encourage land managers to seek early termination of agreements in order to allow them to enter into other schemes. It should be noted in particular that early termination of agri-environment agreements could result in a financial penalty being imposed. In *exceptional* circumstances, however, where all parties (including the body administering the scheme and the one to which transfer is proposed) agree, it may be possible for agreements to be terminated before their expiry, without penalty, in order to facilitate replacement with another scheme which better meets nature conservation objectives.



## **Transitional arrangements**

A18. The introduction of new guidance will result in a period of transition. Where the annual payment in an existing agreement is due to be reviewed, except where the agreement contains specific provisions to the contrary, the basis of that review will be in accordance with the method of assessment set out in paragraphs A4 to A11 above.

A19. There may also be circumstances where it would be beneficial for both parties to an existing agreement to terminate it, and for the owner/occupier either to enter the land into another environmental land management scheme, or take up the offer of a new standard agreement from SNH which is in accordance with this guidance. It must be understood by both parties that this is an entirely voluntary option. However, in negotiating a new contractual arrangement with SNH, the following points may help the parties achieve a satisfactory outcome:

A20. In order to achieve the surrender of the existing agreement SNH may pay a lump sum, but this will be conditional on the future management being guaranteed to achieve the conservation objectives for a minimum of ten years or the remaining term of the existing agreement, whichever is less.

A21. In calculating any lump sum that may be paid by SNH, reference may be made to the Land Compensation (Scotland) Act 1963<sup>24</sup> (as amended). However, the overriding criteria are the need to secure the favourable condition of SSSIs or Natura sites and to deliver best value for money for the taxpayer.

A22. Accordingly, in calculating any lump sum that may be justified, SNH will need to balance the existing nature conservation objectives, the level of payments and the remaining length of term under an existing agreement against the desired nature conservation objectives and the level of payments under a new agreement calculated in accordance with this guidance.

## **Breach of agreement**

A23. In all agreements, SNH shall be able to withhold or reduce annual payments where the agreed management has not been carried out to a satisfactory standard. In some circumstances, SNH may terminate the agreement before it has run its full term. Where any annual or capital payments have been made and the terms of the agreement have been breached, SNH may reclaim part or the whole of any funding, plus an appropriate level of interest. The Scottish Ministers would not, however, expect SNH to take these steps without appropriate efforts, including the use of dispute resolution mechanisms, having been made to resolve the issues.

## **Capital taxation**

A24. Exemption from certain capital taxes may be available to owners of heritage land and property. Inland Revenue Capital Taxes can provide further information about the exemption. Enquires should be directed to the address given in paragraph C5 of Annex C.

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<sup>24</sup> 1963 (c.51). See also further reference to the 1963 Act in paragraph A27.

A25. If land which benefits, or will benefit, from exemption is already partly or wholly funded by payments made under a management agreement with SNH, the agreement may be amended or terminated to avoid any effective duplicate funding. This is a matter that should be discussed with SNH, not Inland Revenue Capital Taxes.

## **Land acquisition**

A26. It may be appropriate under certain circumstances for SNH to acquire ownership of the property, either voluntarily or by exercising its compulsory purchase powers. Powers to acquire land are to be found in sections 17 and 18 of the 1949 Act, section 24 of the 1967 Act, section 5 of the 1991 Act, under section 39 of the 2004 Act and in the analogous provisions of the 1994 Regulations.

A27. Compensation will be paid in accordance with normal practice, taking account of relevant statutory provision and case law and including appropriate consideration of factors such as severance, injurious affection, disturbance or betterment. Of particular relevance is the Land Compensation (Scotland) Act 1963<sup>25</sup> (and any amendment to this Act or application of it, in particular by the Land Compensation (Scotland) Act 1973 and the Planning & Compensation Act 1991)<sup>26</sup>.

A28. In the event of compulsory acquisition, SNH may choose to manage the land directly, or through a leasehold arrangement with a recognised voluntary conservation organisation or other appropriate body. There may also be circumstances where SNH may wish to support the acquisition of land by a voluntary conservation organisation or other appropriate body, and may offer a land purchase grant.

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<sup>25</sup> 1963 (c.51).

<sup>26</sup> 1973 (c.56) and 1991 (c.34).

## Annex B

### Management agreements: Reimbursement of professional fees

**Note to applicants: You are advised to draw the following guidance to the attention of your professional adviser *before* any work is carried out on your behalf. A further copy, or copies, can be made available to your professional adviser on request.**

#### Introduction

B1. SNH may enter into management agreements under relevant provisions in the 1949, 1967 and 1968 Acts and in the 1994 Regulations<sup>27</sup>

B2. Section 16(9) of the Nature Conservation (Scotland) Act 2004 provides that the terms and conditions of any management agreement (including provisions for payment) shall be determined as SNH thinks fit, having regard to guidance given by Scottish Ministers under section 54 of the 2004 Act. The Financial Guidelines set out in this document are guidance under section 54.

B3. These Financial Guidelines describe the circumstances in which SNH will consider it appropriate to make payments to land managers in order to support the positive management of protected areas and to sustain their special conservation interest. Management agreements offered by SNH may be either voluntary (see Section 2) or compensatory (see Section 3) in nature. Agreements are most likely to be offered under the terms of standard management schemes, for which standard payment rates have been established. More unusually, where the particular circumstances of a case do not fit well within a standard scheme, individually-negotiated management agreements may be appropriate.

B4. SNH will make a contribution to professional fees which have been **reasonably and appropriately** incurred in completing an **individually-negotiated** management agreement. SNH will **not** normally reimburse professional fees incurred in relation to **standard** management scheme agreements. This note (as Annex B to the Financial Guidelines) sets out SNH's current policy in this respect.

#### ***Please note in particular the following:***

B5. If you employ a professional adviser this establishes a contractual relationship between you and your adviser rather than one between your adviser and SNH. *If there is any difference between SNH's assessment of reasonable professional costs and the amount charged by your adviser the difference will **not** be recoverable from SNH.* You will be responsible for paying any amount which SNH declines to reimburse.

B6. It is therefore in your interests to ensure that when employing an adviser their fees will be reasonable and appropriate in relation to the management agreement and the services required. The Royal Institution of Chartered Surveyors has already provided guidance to its members to this effect, which should, in appropriate cases, form the basis of your adviser's terms of appointment. In the event of doubt you should obtain quotations and seek SNH's advice.

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<sup>27</sup> For full references to legislation, see the Glossary and guide to terminology on page 5

B7. SNH will only reimburse professional costs incurred in completing certain management agreements. These will **not** normally include management agreements under **standard management schemes**.

B8. For the avoidance of doubt, costs in relation to professional work carried out in connection with the following will **not** be reimbursed:

- Discussions associated with the notification of an SSSI;
- The development and lodging of an application for consent under section 16 of the 2004 Act, including the preparation and submission of proposals such as a business plan, environmental assessment or other investigation; or any subsequent amendment; and
- Negotiations following service of an application for consent under section 16 of the 2004 Act, concerning the terms and conditions to be specified in a written consent from SNH, if SNH has not at that point intimated that it would wish to conclude a management agreement.

B9. In particular, you should note that fees incurred *before* SNH has advised that it is prepared to negotiate a management agreement will **not** be met.

### **Standard management schemes**

B10. These aim to offer standard prescriptions/payment rates and there will normally be no negotiation involved. However, there can be some variation in scheme design and the approach taken to reimbursement of professional costs will be considered on a scheme by scheme basis according to the following principles.

B11. In accordance with the overriding principle in paragraph B4 above it is normal SNH policy **not to reimburse professional service costs associated with entering standard management scheme agreements**. However, there may be exceptions to this. The situations in which the cost of professional services might be justified are considered below:

#### **◆ Scheme consultation**

B12. Where an agent acts for prospective applicant(s) in a scheme consultation this means, in effect, that costs will have been incurred before SNH has indicated that it is willing to enter into an agreement. As a result, in accordance with the rule set out in paragraph B9 above, **there will be no reimbursement of costs**. For some schemes, where there is a need for consultation, SNH may employ its own agent directly to facilitate a consultation exercise.

#### **◆ Preparation of a management plan**

B13. Where a scheme requires a management plan to be prepared applicants may require professional input or assistance in developing such a plan. **SNH policy is not to reimburse these costs beyond the standard scheme payment rate offered for an acceptable plan**. This rate will take account of the likely level of input or assistance required.

#### **◆ Negotiation of prescriptions**

B14. The design of standard schemes will seek to avoid the need to alter or negotiate prescriptions or payments, but in some situations adaptation of this kind may prove necessary. Standard payments will however be applied wherever possible. This will reduce the need for an

applicant to take on an adviser. **SNH's policy is not to reimburse professional costs incurred in negotiating scheme prescriptions.** In exceptional circumstances, where negotiations are necessarily complex (eg as a result of not being able to utilise standard payment rates), SNH will offer to make a fixed contribution or to reimburse reasonable costs incurred, provided prior agreement is obtained.

#### ◆ Examination of agreements

B15. Applicants may wish to obtain professional help in checking the implications of the management agreement contract. These contracts are normally standard for each scheme and based on a standard model across all schemes. The National Farmers Union of Scotland and the Scottish Rural Property and Business Association (formerly the Scottish Landowner's Federation) will have been consulted on the general standard terms of the agreement. **Normal SNH policy is not to reimburse the costs of professional examination of scheme management agreement contracts.** However, SNH may consider doing so in exceptional circumstances, providing that SNH's prior agreement to such an arrangement has been obtained.

### Individually calculated and negotiated agreements

B16. The properly incurred cost of using a professional adviser to negotiate payments under an individually assessed management agreement will be reimbursed on a **quantum meruit basis**.

B17. Once you have confirmed the appointment of an adviser you should inform SNH immediately and provide details of the arrangements, including those about fees, you have entered into. *The cost of employing advisers without notifying SNH in this way may not be reimbursed.* SNH will respond and inform you of any ceiling above which fees will not be reimbursed without further consultation and written agreement.

B18. SNH will assess quantum meruit, as follows:

- That amount which represents the level required to provide appropriate professional representation reflecting the amount of work and the level of expertise commensurate with the complexity and size of the claim/payment.
- In all cases the hourly rate charged should be agreed in advance with SNH and an assessment of the likely cost should be made and agreed with SNH. Accurate time records should be maintained to assist the assessment of fees;
- Account may be taken of Ryde's Scale (as revised), suitably applied to annual payments, as a guide to quantum meruit as long as it is appropriate to do so.

B19. These Financial Guidelines do not include explicit provision for the reimbursement of professional fees on the review of an annual payment. This is discretionary. Where SNH agrees, reimbursement will be on the basis set out above. In many cases a payment review will involve relatively little work, often just the simple arithmetic update of a number of variable costs. In these circumstances SNH requires the fee to reflect the cost of the work actually done.

B20. SNH uses standard forms of agreement. However, where it is necessary and appropriate for an adviser to negotiate the terms, other than compensation, fees incurred in undertaking this work, providing it does not duplicate the work done by others, will normally be settled on a quantum meruit basis.

B21. If an adviser changes during the course of negotiations, the time spent duplicating earlier work by, for example, briefing themselves on the case, will only be reimbursed by SNH in exceptional circumstances.

B22. SNH will not reimburse the costs of advisers incurred in agreeing the basis on which their fees will be calculated or reimbursed.

B23. SNH will assess the reasonableness of solicitors fees on the basis of its own and its solicitor's accumulated experience in relation to the negotiation of management agreements. If SNH considers any fees claimed excessive, and an amended fee note cannot be agreed, the matter may be referred via SNH's solicitor to a Law Accountant. If the Law Accountant's assessment of the fee is not agreed then the matter may be referred to the Auditor of the Court of Session.

B24. If you propose to employ additional or other professional advisers and you intend to claim for their fees as well you should consult SNH beforehand and obtain SNH's prior consent on their terms of engagement and the basis for calculating their fees.

B25. In addition to reimbursing an adviser's fees SNH is prepared also to consider including the adviser's travel expenses and other disbursements necessarily and reasonably incurred. If travelling costs, including the time spent travelling, of a surveyor travelling long distances to undertake the case are claimed, it will be necessary to demonstrate that reimbursement is appropriate. However where the same adviser is carrying out other work on your behalf only those expenses relevant to the fees SNH is reimbursing will be eligible. Interest is not paid on professional fees.

### **Abortive negotiations**

B26. If SNH offers to negotiate a management agreement and subsequently withdraws, it will defray your reasonable professional costs incurred up until that time. The assessment of the reasonableness of costs in these circumstances will take account, as far as possible, of guidance given above in relation to individually-calculated and negotiated agreements.

B27. If you withdraw from negotiations SNH will not reimburse your costs except in exceptional circumstances.

### **VAT**

B28. SNH will only pay VAT on professional fees where the land manager is not registered for VAT purposes. If you are registered and able to reclaim VAT, fees will be reimbursed net of VAT with the tax being reclaimed by you in the normal way.

### **Payment procedure**

B29. Surveyors' and other professional experts' fees will normally be paid following completion of Missives.

B30. Solicitors' fees will normally be paid following the execution and delivery of the management agreement.

B31. Advisers fee notes should be made out to and sent to their clients in duplicate; with one copy for your retention and the other for forward transmission to SNH supported by adequate time records. You will then be reimbursed upon SNH's approval of the details submitted.

B32. In exceptional circumstances SNH may be prepared to consider other arrangements but any payments will always be made directly to you.

### **Dispute resolution**

B33. In the event of dispute over fees it will be open to both parties to seek dispute resolution through a mechanism, such as mediation, expert determination or arbitration, to be mutually agreed between the parties. SNH's preference will be to seek resolution through mediation or expert determination rather than through arbitration. Disputes in relation to fees are **not** covered by the statutory arrangements in the 2004 Act and do not fall within the remit of the Scottish Land Court.

### **Further guidance**

B34. Further guidance in relation to the reimbursement of professional fees may be obtained from SNH Rural Surveyors in Area Offices or from:

*Natural Care* Team, Operational Support Unit,  
Scottish Natural Heritage,  
Battleby,  
Redgorton,  
Perth  
PH1 3EW.

Telephone: 01738 444 177  
Fax: 01738 458 627  
E-mail: [Natural.Care@snh.gov.uk](mailto:Natural.Care@snh.gov.uk)

## Annex C

### Contact details

C1. Information about SNH's *Natural Care* programme, management schemes and agreements can be obtained from:

*Natural Care* Team, Operational Support Unit,  
SNH,  
Battleby,  
Redgorton,  
Perth,  
PH1 3EW  
Telephone: 01738 444177  
E-mail: [Natural.Care@snh.gov.uk](mailto:Natural.Care@snh.gov.uk)  
SNH website: [www.snh.org.uk](http://www.snh.org.uk)

C2. Information about RSS and SFGS may be obtained from your local SNH, SEERAD or FCS offices. Information on RSS, including links to online forms, can also be found on the internet at: <http://www.scotland.gov.uk/library5/environment/rss1-00.asp>. Information covering SEERAD agriculture grants and services, together with links to other information on agri-environment schemes and SFGS, is at: <http://www.scotland.gov.uk/library5/agri/saaggs-00.asp>. SFGS information is also available on the FCS website at: <http://www.forestry.gov.uk>. Detailed SFGS guidance and forms can be found at: <http://www.forestry.gov.uk/forestry/INFD-63RNAR>

C3. Further information on appealing to the Scottish Land Court may be obtained from the Court's website (<http://www.scottish-land-court.org.uk/contact.html>) or from:

The Principal Clerk  
Scottish Land Court  
1 Grosvenor Crescent  
Edinburgh  
EH12 5ER  
Telephone: 0131 225 3595  
Fax: 0131 226 4812  
E-mail: [mailbox@scottish-land-court.org.uk](mailto:mailbox@scottish-land-court.org.uk)

C4. Information on SNH's internal Complaints Procedure is available from the customer care section of the SNH website (<http://www.snh.gov.uk/about/default.asp>) or from:

Head of Secretariat  
Scottish Natural Heritage  
12 Hope Terrace  
Edinburgh  
EH9 2AS  
Email: [jain.rennick@snh.gov.uk](mailto:jain.rennick@snh.gov.uk)  
phone: 0131 447 4784



C5. Information on exemptions from certain capital taxes, which may be available to owners of heritage land and property is available from:

Inland Revenue Capital Taxes  
Ferrers House  
PO Box 38  
Castle Meadow  
Nottingham  
NG2 1BD