



ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

AGENDA

10th Meeting, 2003 (Session 2)

Wednesday 5 November 2003

The Committee will meet at 10.00 am in Committee Room 1.

1. **Nature Conservation (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

Richard Lockett, Perthshire Adviser, Farm Wildlife Advisory Group

Becky Shaw, Crofting Environment Officer, Scottish Crofting Foundation

Alasdair Laing, Vice Convener, Scottish Landowners' Federation

Andrew Hamilton, Royal Institution of Chartered Surveyors

Tony Andrews, Chief Executive, Scottish Countryside Alliance.

2. **Subordinate legislation:** The Committee will consider the following negative instrument—

the Protection of Animals (Anaesthetics) (Scotland) Amendment Order 2003, (SSI 2003/476).

3. **National Waste Plan inquiry (in private):** The Committee will consider a draft report.

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The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>Submission from Farm Wildlife Advisory Group</p> <p>Submission from Scottish Crofting Foundation</p> <p>Submission from Scottish Landowners' Federation</p> <p>Submission from Scottish Countryside Alliance</p> <p>Submission from Royal Institution of Chartered Surveyors</p>	<p>ERD/S2/03/10/1a</p> <p>ERD/S2/03/10/1b</p> <p>ERD/S2/03/10/1c</p> <p>ERD/S2/03/10/1d</p> <p>ERD/S2/03/10/1e</p>
<p><u>Agenda Item 2</u></p> <p>Copy of the Protection of Animals (Anaesthetics) (Scotland) Amendment Order 2003, (SSI 2003/476)</p> <p>Extract from the Subordinate Legislation Committee's 9th Report 2003</p>	<p>ERD/S2/03/10/2a</p> <p>ERD/S2/03/10/2b</p>
<p><u>Agenda Item 3</u></p> <p>Draft report on the National Waste Plan Inquiry (<i>for members only</i>)</p>	<p>ERD/S2/03/10/3a</p>

SUBMISSION FROM THE FARMING AND WILDLIFE ADVISORY GROUP (FWAG)

FWAG Scotland

FWAG Scotland operates through a network of local groups and professional farm conservation advisers. Through our advisers, we help farmers and landowners to maximise the conservation value of their land by integrating conservation with the commercial running of the farm. Advisers are asked to provide advice on the management of a wide variety of farm habitats, as well as on the creation of new habitats. FWAG advisers frequently work with land managers who have designated conservation sites (SSSI, Natura 2000) on their land, and are often asked to help advise on management, and to liaise with Scottish Natural Heritage (SNH) on management issues. More recently, FWAG staff have been involved in the drawing up of Natural Care Scheme grant applications.

General Comment

FWAG welcomes and supports the overall purpose of the bill. We feel that it signals an important change in the approach to the management of Scotland's natural heritage. FWAG strongly believes in a positive, proactive approach to land management, and we are confident that this bill will drive change in this direction.

Fundamental Principles and Overall Vision

We agree with all the stated principles in the overall vision. However, Para A23 states, "*the result of the bill is a set of initiatives which will enhance the capacity of the system to protect and preserve important sites*". FWAG does not believe that it is the system alone which protects and preserves important sites. The system cannot function without those who work on the ground to achieve this objective, with good judgement, sound advice and the right set of initiatives.

Part 1: Biodiversity

In Part 1, Clause 2 is vague and unclear. We fail to see how this paves the way for a clearly defined Biodiversity Strategy, and it is unclear what will constitute the actual 'Biodiversity Strategy'. FWAG believes that a strategy should contain specific actions to achieve the objectives of the strategy, and that these should be assessed at regular intervals to ensure that delivery is taking place.

Part 2: Conservation and Enhancement of Natural Heritage

This part of the bill is the one in which FWAG feels it has the most experience, and on which it can pass comment. Many of these comments do not relate to specific sections of the bill, but to broader principles and desired outcomes.

1. Need for Change

There is a clear need to change the current system of SSSI site designation, and the ongoing management of these sites. We now have an inventory, of the most important and significant natural heritage sites in Scotland which would rival anywhere in the rest of Europe. However, the designation of sites has not always prevented the decline of the conservation value of these areas, and has often alienated those who own or manage them. Designating an area, and drawing up a list of potentially-damaging operations, does not necessarily encourage the continuation of good practice which maintains (or could maintain if the right support is provided) sites in sound condition.

2. Land Manager Engagement

The most significant factor in preventing the degradation of sites, and in maintaining and (if possible) enhancing their value, is the activities of the land manager. In FWAG's experience, a large number of cases involving conflict in conservation management boil down to factors like poor communication, to misunderstanding and to antagonistic procedures. Within the designated site management process, a culture of managing by 'dictat' or letter, and a generally impersonal approach, has created a situation which can be adversarial and counter-productive. Many of these issues have been tackled in the bill, and it is up to SNH to ensure that the ethos of the bill is seen through on the ground. In practical terms, this should mean the following:

- The Site Management Statement should be in language which is recognisable to the land manager, should be clear in its guidance, and should contain information which is relevant and understandable. It is not certain that Clause 4 (2) will achieve this.
- There is a requirement for SNH to produce Site Management Statements including guidance on 'best practice' for new sites. However, there is no statutory requirement for SNH to consult with the owner / occupier when drawing up this statement. This only serves to distance the process from the owner / occupier, and to reinforce perceptions of a loss of management control. Involving the land manager in this process may not change the procedure significantly, but SNH should be seen to involve the owner / occupier in preparing the statement, rather than presenting it as a *fait accomplis*.
- The requirement in the bill for SNH to consult more widely on designation (ie with communities and other agencies) is positive, but must be managed, and the owner / occupier should be kept informed at all times.
- SNH staff should be able to develop a much closer relationship with the land manager. This means engaging positively – directly, and through others like FWAG - with owners, to ensure that the value of a site and the reasons for its importance are recognised. Often, sites are designated for seemingly-obscure and unexciting reasons, but the wider context and interest of such designations should be made clear to the land manager from the start.

- The prejudice which many land managers have, of perceiving conservation as a threat, must be addressed as a priority. Any information, guidance and advice which a landowner receives should be set in a broad context, and should portray conservation of the special site as an opportunity, and not a threat.

3. Overlap with Other Environmental Schemes

Paragraph B10 recognises the role of SSSIs as a wider, national network of sites which are representative of Scotland's natural heritage as a whole. FWAG agrees with this statement, but feels that it is important also to recognise the value of land which is not necessarily designated as an SSSI. In ecological terms, the land which lies between the most significant nature conservation value sites is also highly significant, in terms of habitat linkages and networks, and is often very valuable in its own right. Having 'islands' of well-managed nature conservation sites, within a depleted landscape, is not a desirable situation.

In this context, FWAG fails to see why other environment schemes (eg Rural Stewardship Scheme) funded through the Scottish Executive and Rural Development Plan should be expected to contribute towards the management of SSSI / Natura 2000 sites. In this area, Part 2 of the Draft (Section E, Draft Financial Guidelines), is contradictory and confusing. Section 1.12 of the Draft Financial Guidelines states that "*SNH may ask the land manager to make an application to one of these schemes before it offers to enter into a management agreement*". This is set against the objectives of Natural Care (section 1.3), one of which proposes "*more effective integration of available incentives*".

FWAG propose that there should **NOT** be any requirement for land managers to apply to other schemes before being offered an SNH management agreement. The reasons for this are listed below:

- Management of SSSIs often requires very site-specific management which is carefully tailored to suit the requirements of an individual site. The Rural Stewardship Scheme is a nation-wide scheme, with very broad management prescriptions which are often not ideal and are, in some cases, contradictory to the management requirements of designated sites.
- It is important to keep the process of application to schemes as simple as possible. The more complex the process is, and the more schemes which a land manager has to look at, and apply to, in order to secure incentives for positive land management, the more likely they are to become disillusioned.
- Funding for schemes such as the Rural Stewardship Scheme is not able to match the level of demand. The limited funding available under the Rural Stewardship Scheme should be seen as distinct. SNH should meet its statutory obligations separately from this.

**SUBMISSION FROM SCOTTISH CROFTING FOUNDATION
Summary**

We will confine our comments purely to Parts 1 and 2 of the Bill.

1. The Scottish Crofting Foundation welcomes the creation of a biodiversity duty on public bodies in the exercise of their functions. High nature-value agriculture must be recognised by policy tools and incentives supporting agricultural land management.
2. In general, we welcome the revised system proposed by the Bill and supports moves away from what can be a confrontational and prescriptive system towards a more positive and targeted support system for land management. We support the proposal to abandon the use of an untargeted and potentially inflammatory list of Potentially Damaging Operations.
3. We support the commitment to bring 85% of SSSIs into positive land management. This intention must be adequately resourced.
4. A significant proportion of Scotland's designated sites are found in the Highlands and Islands – many of these are on land in crofting tenure. The way in which the land has been managed for generations frequently makes a significant contribution to the high environmental value of the site. We accordingly strongly support moves to increase local involvement in the management of protected sites. Particularly welcome is the recognition of the socio-economic importance of particular areas and the inclusion of local views in the preparation of a Site Management Statement.

Specific points

Nature Conservation Orders

The power in s.23(3) to control, through a Nature Conservation Order, activities on land outwith the SSSI system at the discretion of Scottish Ministers has the potential to create significant uncertainty in land management decisions and potentially go against the positive steps towards openness and inclusiveness that are available elsewhere in the Bill.

Land Management Orders

A similar concern relates to the making of Land Management Orders on contiguous land.

We would like to see safeguards introduced to s. 36 to ensure that those who through circumstances beyond their control are unable to carry out the actions required in a Land Management Order are not penalised.

Compensatory entitlements

Crofting in general exhibits a pattern of diversified income streams and crofters are often encouraged to diversify their land-based activity in order to maintain a viable enterprise in rural communities. It is foreseeable that tensions may become apparent between this aim and the definition of established management for the purposes of compensatory entitlement. With fragile rural communities often struggling to maintain levels of land-based activity, there is perhaps an argument for including socio-economic criteria in deliberations over what constitutes established management for the purposes of agreeing any compensatory entitlement.

SUBMISSION FROM THE SCOTTISH LANDOWNERS' FEDERATION

The Scottish Landowners' Federation welcomes the opportunity to comment on the Scottish Executive's proposals for legislation in respect of conserving and enhancing the natural heritage of Scotland. The SLF recognises the objectives of the Nature Conservation (Scotland) Bill, namely to safeguard and care for natural heritage through constructive engagement and shared responsibility. The SLF entirely agrees that nature conservation "cannot be achieved in a vacuum". The importance of reconciling environmental priorities and legitimate socio-economic expectations is something that needs to be at the heart of natural heritage policy making.

Summary

Scotland's exemplary places for nature conservation and their biodiversity are not only the fusion of geology, climate and ecology, but also the result of past management. Such sites will continue to rely on such management to maintain and enhance their status. In that respect, the SLF has long advocated the need for positive incentives to underpin management. Compensation for not doing something is a very unsatisfactory and blunt tool for the management of natural heritage, and should be considered only when positive management agreements would be inappropriate or impractical. Therefore, the SLF will lend its support to the Bill if it ensures that

- positive management agreements are the primary policy tool
- compensation is diminished but retained for exceptional circumstances
- 'conservation' is pursued ahead of single-interest 'protection'
- designation is based on robust and transparent scientific assessment
- the economic implications of designation are fully accounted for
- all European Union designations (SPAs and SACs) are underpinned by SSSIs
- appeals procedures are enhanced and accessible

The SLF shares the implicit concern that the Wildlife and Countryside Act 1981 is no longer fit for purpose. The 'protection' of designated sites has strengths, but also increasingly weaknesses if adequate 'conservation' of the most important natural assets is to be achieved. Protection alone cannot secure biodiversity. Conservation can, through appropriate and balanced management.

Of particular importance to the SLF, is the absolute need for all European Union designations (Natura 2000), such as Special Protection Areas (SPAs) or Special Areas of Conservation (SACs), to also be fully designated as SSSIs. Given the proposals for the future of SSSIs within the Bill, it is essential that such designation provides the management and legal basis upon which land managers can properly engage with competent authorities. The SLF is entirely opposed to any SPA or SAC that is not underpinned by an SSSI. This is of particular concern in light of the provisions set out in the Bill for the operation Nature Conservation Orders (NCOs).

The SLF shares the commitment inherent in the Bill to conserve and enhance Scotland's exceptional natural heritage, not least as a national resource that needs increasingly careful management. The SLF also considers that the interdependence of people and nature is most obvious in the work of land managers, whether they be farmers, foresters, gamekeepers or landowners, who have responsibility for safeguarding SSSIs. Any legislation must recognise the land manager's pivotal role in securing environmental benefits whilst contributing to social and economic development. Therefore, the Bill must equally support and encourage the endeavours of land managers, as well as seeking to protect the most special natural heritage sites.

Biodiversity

The SLF appreciates that the Bill would place a new duty on all public authorities to further the conservation of biodiversity. Therefore, the SLF supports the introduction of a general biodiversity duty to apply to all Scottish public bodies in all that they do and have responsibility for, as well as to link with and support the draft Scottish Biodiversity Strategy. Moreover, the SLF welcomes this as a 'duty' which is mandatory, rather than a 'power' which is discretionary.

Enhanced Protection of SSSIs and Related Reforms

The SLF considers that SSSIs should remain the core component of the system of 'conserving' Scotland's natural heritage. The SLF believes that 'protection' can not simultaneously respect the importance of natural features and sustain the economic and social development of rural communities that depend on such sites.

The SLF welcomed the explicit recognition by the Scottish Executive and Scottish Natural Heritage in *The Nature of Scotland* that many habitats were not only the result of past activity but continue to rely on continuous positive management. Hence, the proposals presented within the Bill are broadly supported by the SLF. Moreover, SSSIs must be viewed as conservation sites that depend on management, rather than protection sites that rely on sanctity.

The SLF also appreciates that, as a network of sites of national significance, SSSIs provide both a baseline for wider conservation efforts across Scotland and a framework for natural heritage sites of European significance, which have been designated through Natura 2000. However, the SLF also shares the view that the SSSI system that currently operates in Scotland can be improved. There is a need for greater transparency, better consultation and an improved and accessible dispute resolution process. Equally, the burdens of a financial and bureaucratic nature of such designations for land managers need to be kept to a minimum.

The SLF entirely welcomes the proposed formal obligation to be placed on SNH to produce management statements for SSSIs. The SLF considers that such statements will give owners and occupiers practical guidance on the management of each site, and thereby avoid inadvertent or inadequate practice. The SLF also considers that such statements could provide the medium through which SNH could address particular socio-economic issues associated with particular SSSIs which can not be dealt with by the purely scientific criteria used for site designation.

This would go some way to reconciling the legitimate needs of land managers seeking to secure a livelihood and the need to conserve environmentally significant resources. The SLF supports this element of the draft Bill, believing that site management statements ought to provide greater clarity about how any given SSSI needs to be managed. This should then provide the basis upon which management agreements can be developed in the mutual interests of Scotland's natural heritage and Scotland's equally fragile rural economy and ultimately dependent rural society.

The SLF entirely agrees that land managers should not be expected to shoulder a disproportionate share of the cost of delivering public goods from Scotland's natural heritage. It is only right and proper that the public purse should contribute to supporting the favourable management of SSSIs. Voluntary management agreements are the most appropriate mechanism through which land managers receive financial support in return for the positive enhancement of significant wildlife sites.

Accepting positive incentives in place of compensation, as proposed by the Bill, does not cause the SLF difficulty. The SLF has consistently maintained that compensation for not doing something is a very unsatisfactory way of supporting the management of natural heritage, and should continue to be available only in exceptional circumstances. SSSIs are not implemented for economic benefit, but to maintain and enhance Scottish biodiversity and its environment. The

SLF considers that the best, perhaps only, way to achieve this is to engage with those who also depend on the same land for their livelihoods. Therefore, the SLF entirely supports such provisions of the Bill that would fully put into practice such a positive approach to nature conservation.

However, the SLF must make clear that the effectiveness of such a positive and voluntary approach is entirely dependent on the adequacy and availability of resources. The current agricultural and rural economic climate requires that positive management agreements must secure conservation interests whilst ensuring that the owner or occupier is not financially disadvantaged. Land under SSSIs must be viewed in a positive light, and not as a burden or blighted by designation. There is an increasingly urgent requirement to utilise resources that will engage land managers who are willing and able to deliver valuable environmental gains in the public interest.

The SLF also agrees, however, that there will be occasions when a voluntary agreement does not prove possible. Compensation is appropriate if it is no longer possible to continue with the established management of the land if the integrity of the SSSI is to be safeguarded. The SLF welcomes the Bill's provision for land managers to receive compensation for actual losses experienced as a direct result of an enforced change of management practice. The obligation that would be placed on SNH to provide a compensatory management agreement is supported. The SLF welcomes the commitment shown by the Bill to owners and occupiers who may be penalised if the existence of an SSSI makes it more difficult or impossible to pursue their legitimate land use activities. If the established management has to be altered under designation, then appropriate compensation is both necessary and fair.

The SLF accepts that compensation would not be paid where operations are either speculative or do not form part of the established use of the land. Equally, land managers should not receive compensation where they are required to comply with other legislation or standards of practice in relation to other voluntary measures. However, the Bill must make it entirely explicit what exactly is deemed to be both "speculative development" and the "established use of the land".

The SLF entirely supports the inclusion in the Bill of a new right of appeal to the Scottish Land Court if the management of SSSI land is restricted. This right of appeal would be extended to cover cases where there are disputes about compensation, which is also endorsed by the SLF. It is important that land managers have a clear statutory provision when administrative or mediation mechanisms are unable to resolve disputes, such as when consent is refused or the amount offered by way of compensation is felt to be inadequate.

However, the SLF must take this opportunity to record its concerns regarding the costs of such improved dispute resolution. The Scottish Land Court is the right form of recourse, providing as it does both expertise and experience, and will be of immense value in dealing with such cases. Such expertise and experience, as well as the administration involved, will not however be costless. The SLF seeks that adequate provision be made to ensure that the costs of such appeals for land managers do not effectively make the better dispute resolution arrangements effectively redundant and inaccessible.

The SLF appreciates that the Bill intends to introduce powers that would enable SNH to apply for an order from Scottish Ministers to oblige the land manager to carry out operations regardless of whether a management agreement is in place or not. The SLF believes that such Land Management Orders (LMOs) must only be implemented as a power of last resort and only after SNH has failed to conclude a suitable agreement (positive or compensatory) proves impossible.

Improved Measures to Tackle Wildlife Crime

The SLF supports much of the motivation behind the intended measures in relation to wildlife crime, agreeing that the practical application of current legislation has weaknesses and loopholes that require correction. The SLF is generally satisfied that the legitimate interests of land managers will not be adversely affected by the Bill.

The SLF is concerned about moves to amend legislation in order to simply replace 'intentional' with 'reckless'. Reckless and intentional are not synonymous and must be treated as such. If the concept of 'recklessness' is to be introduced, it must be to extend and enhance offences of an 'intentional' nature if the legal framework is to remain fit for purpose. An 'intentional' element must be retained within the Bill to ensure that ambiguity and confusion do not compromise the interests of either land managers or protected interests, such as the capercaillie. Adequate safeguards must be provided to guarantee that responsible land managers, and recreational users of the countryside, can not inadvertently contravene any 'reckless' provisions.

Equally, improved controls in response to public concern about the misuse and abuse of snares must not impinge on this legitimate and practical method of pest control – often implemented in the interests of conservation management and biodiversity. The SLF's initial reaction to the intended action on snares is, therefore, broadly supportive. The Bill could go some way to achieving the dual objectives of preventing unnecessary suffering of wildlife and of deterring the unregulated setting of snares on land where the owner or occupier has not authorised their use.

Conclusions

Scotland's exemplary places for nature conservation and their biodiversity remain dependant on continuous management. Such sites rely on land managers to maintain and enhance the habitats and species for which they are designated. As a result, the SLF has long advocated support for positive management rather than the philosophy of compensation for not doing something. The SLF has responded positively to the proposed changes in the approach to the management of SSSIs and welcomes the aims of the Bill wholeheartedly.

Land managers, whether they are farmers, foresters, gamekeepers or crofters have the day to day responsibility for safeguarding much of Scotland's natural heritage. At the same time, whatever their scale of operation, they depend on the economic activity upon their land for their own livelihoods and cannot be expected to operate in an economic and social vacuum.

The Bill is about partnership and the effective management of land, a fact recognised by the Scottish Executive, landowners and conservation bodies alike. Natural heritage designation should be viewed as an accolade, not a millstone to land management. The proposals represent a major step forward in ensuring that Scotland's natural heritage is protected for future generations.

SUBMISSION FROM THE SCOTTISH COUNTRYSIDE ALLIANCE

The Scottish Countryside Alliance is pleased to be giving evidence to the Environment and Rural Development Committee on the Nature Conservation (Scotland) Bill.

The Scottish Countryside Alliance was established to represent, promote and preserve the rights and interests of those involved in life in the countryside, including countryside dwellers and workers, country sportsmen and women, farmers, landowners and suppliers of countryside goods and services. To this end we support any measures that will support and enhance biodiversity provided that people are seen as a core component of that biodiversity.

The Scottish Countryside Alliance would like to see more of an emphasis on a partnership approach in protecting SSSIs, and believe the essential co-operation of landowners and managers can be retained through providing payments for positive management, and not increasing penalties. We would like to see more funding available for financial rewards, and recognition of the socio-economic and conservation value of country sports. The voluntary principle underpins statutory conservation management in the UK but it needs strong fiscal rewards to work.

The Scottish Countryside Alliance agrees that nature conservation objectives should take full account of local economic and social objectives. Although action is needed to conserve wildlife throughout the countryside, we seek agreements which will benefit both our natural heritage and countryside dwellers.

The SCA recognises that the Scottish Executive's role under the European Convention of Human Rights, is to promote the best interests of the people of Scotland. This means that any legislation should seek to enhance the quality of life of the Scottish People. We therefore would like the Committee to take into consideration the economic impact of this Bill and seek a reassurance that, not only will the rural economy of Scotland not be damaged as a result, but it will be strengthened.

We have three general concerns about this Bill. These are:

- 1) The balance of enforcement and trust between SNH and land managers.**
- 2) Developing working and 'creative' partnerships between the authorities (SNH) and the land managers in local communities (rather than the assumption implicit in the Bill of working against them)**
- 3) The relationship between the impacts of this proposed legislation and the Environment and Rural Development Committee's commitment to Integrated Rural Development**

We hope that the following submission emphasises these concerns but, in addition, contains several specific points we would like to make. This is by no means comprehensive and we look forward to expanding on our position in our oral submission to the Committee.

Consultation Exercise.

The SCA would be interested to know what cognisance was taken of the consultation responses submitted in June 2003. We would very much like the committee to be able to tell us why, and on whose recommendation, this bill has changed since the draft.

Extended responsibilities of SNH

It seems clear that this Bill will give SNH considerable new powers and new responsibilities. We are concerned that this organisation does not, at present, have the resources to carry out these responsibilities and, if it is to be asked to, will need a considerable increase in those resources. We simply wonder if this is the best way to spend taxpayers money. We do realise that the promotion and safeguarding of biodiversity is important and justified and therefore wonder exactly what the cost implication of this Bill is.

We are also very concerned that with these increased responsibilities SNH is being put in a position of designating the SSSIs, enforcing the SSSIs, deciding if a designation has been contravened in any way and then the manager of an SSSI if indeed the land is compulsorily acquired. We feel that this gives one body an excessive amount of power in this area.

The relationship between the Land Reform (Scotland) Act, the Water Framework Directive and the Nature Conservation (Scotland) Bill

If we, as a nation, are protecting our natural heritage and sites of national importance, through the designation of SSSIs, it seems troubling that we have just passed a law effectively letting anyone access every part of it, which could, very easily, damage what we are trying so hard to protect.

There is no mention, in the bill, of any kind of education programme that will inform the public of how to be aware of SSSIs. We feel this is a serious omission and that there should be a duty on SNH to educate the general public on the importance of SSSIs. We realise that SNH already has a duty to educate, however, similar to the Land Reform (Scotland) Act, we feel that there should be a specific duty for SNH to educate the public on this area, within the Bill.

With regards to the Water Framework Directive; if there were a conflict in orders between the Nature Conservation (Scotland) Bill and the Water Framework Directive, which has supremacy? Should this not be specified in the bill?

Notification of Sites of Special Interest

The SCA is concerned that there is no objective guidance provided for land managers on what constitutes an SSSI or how decisions are reached on designation of SSSIs. Guidance in section 42 relating to whether or not land is of special interest must be written by Scottish Ministers, consulted on by all interested parties and then be codified within the Nature Conservation (Scotland) Bill. This guidance must include a comprehensive list of when land would be considered of "special interest". Without this, there is far too much vagueness within this designation. We are deeply concerned that there does not seem to have to be any scientific basis for the designation of SSSI and feel that this, too, is too vague.

We feel that there should also be a specific appeals procedure relating to the designation of SSSIs. It should not simply be left to a conflict over how to manage it.

Site Management Statements

In some cases it may be that the same conservation benefit can be managed with two different approaches. We feel there should be some acknowledgement of this in the bill and an acceptance by SNH that if the agreed outcome is achieved within a certain time limit the current, successful, land management is able to continue.

The notification of interested parties is a correct approach, however, we feel that the input of the local land manager and land owner is the most important and should be given more priority than those with a marginal interest, particularly as they are ultimately charged with implementing the site management. Therefore if, for any reason, the local land manager and

land owner's opinions and concerns are not included in the Site Management Statement there must be a section explaining why.

Additionally, we feel that there should be an economic and social impact assessment form submitted at the same time as the Site Management Statement. This would correctly reflect the wider interest and benefits that are intentions of the bill.

Enlargement of SSSIs

There was considerable concern over extending land management orders over contiguous or adjacent land. The Bill does not specify exactly how large or exactly what is considered to be adjacent land. This could cause potential problems as, for example, a designated SSSI in the middle of a land holding could potentially dictate the land management in the entire area which could have implications for the viability of some or all of that holdings enterprises.

Compulsory Acquisition

The SCA has considerable concerns over the extent to which compulsory acquisition could apply to land both within and without the SSSI.

Under the NCB at present SNH Chapter 4, section 38 states that SNH can acquire compulsorily any SSSI, any other land where a NCO or an LMO applies or indeed any other land "which is contiguous to, or which SNH considers to be otherwise associated with" any SSSI, NCO or LMO. This is worrying as this could potentially affect large areas of undesignated land.

We also have concerns over the remit of SNH after the land has been confiscated. In Section 38(6) SNH can confiscate land and then either manage the land itself, or dispose of the land in any way they deem appropriate to further the SSSI. We are very concerned that SNH does not have appropriate qualifications to manage land itself, does not have a broad enough basis and therefore should not be the only body involved in deciding what happens to this land once it is confiscated.

We are deeply concerned that if land is compulsorily acquired there is no mention of payment within the Bill. We feel that should land be acquired, the owner should certainly be compensated.

The main issue here is the balance between enforcement and trust. The draconian nature of compulsory purchase goes against the grain of Rio and the Habitats Directive which both emphasise the importance of working **with** local land management communities.

Advisory Committee on SSSIs

The Advisory Committee must take account of those currently managing the land and therefore must have at least 50% representation of current land managers or with practical experience of land management. We also feel that this section gives those without a specific local interest in the land far too much power to challenge the site management. It should be restricted to those with direct evidence of contravention or local interest only. SNH should not make a decision as to whether to take the case further or not based on whether or not it is "frivolous". If any dispute cannot be resolved then it should proceed to the Advisory Committee as a matter of course. We also think that those petitioning the advisory committee should be able to access outside opinion for example a scientific peer review.

Nature Conservation Orders

The Nature Conservation Orders must be proceeded on the same basis as the SSSIs. Without the same strict, scientific definition of special interest the term is too vague and ill-defined.

There are certain areas in Scotland where the local economy is dependent on the land, for example, island economies. In these incidents when drafting the Nature Conservation Orders there should be included an socio-economic impact assessment which accounts for the affect the Nature Conservation Order will have on the local economy, community and culture. The outcome of this impact survey must then be published and if the NCO goes ahead despite any negative evidence, this must be explained. There should also be rights of appeal for NCOs as there are for LMOs etc.

Prosecutions

We feel that the threat of prosecution to land managers who may have contravened Nature Conservation Orders is expressed too strongly in the Bill and that latitude should be provided to enable land managers who have not damaged SSSIs to be exempt from prosecution.

Wildlife Crime

The SCA condemns anyone who perpetrates a wildlife crime. We believe that the concept of wildlife officers is good but that they will require proper training. We are also very concerned that the Bill states that these Wildlife Officers can be accompanied onto land by any persons that they deem appropriate. We feel that this is draconian and undemocratic and could potentially cast doubt over evidence in the courts. The only person necessary to be accompanying an officer, except for other officers, should be a vet so that if there are suffering animals, they can be helped.

We feel that there is very little explanation of exactly what the remit is of these Wildlife Officers which should also be clarified. We would like to hear more about the training, qualifications and the remit of these wildlife officers. We would like to see this specified in the Bill.

SUBMISSION FROM ROYAL INSTITUTION OF CHARTERED SURVEYORS IN SCOTLAND

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) has noted the above consultation paper and is grateful for the opportunity to participate in this debate.

RICS Scotland is the principal body representing professionals employed in the land, property and construction sectors. The Institution represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and trainees. Our members practise in sixteen land, property and construction markets and are employed in private practice, in central and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations. As part of its Royal Charter, the Institution has a commitment to provide advice to the government of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

RICS Scotland welcomes the review of system with a view to making it more transparent, more accountable and more effective in protecting and preventing the deterioration of the features of interest within SSSIs. We also welcome the opportunity to provide oral evidence on part two of the bill.

We would like to voice our concerns over the removal of compensation for land owners, land managers and/or tenants, who, for perfectly valid business reasons, may wish to change the way in which they manage their land, but are refused permission by SNH.

In the past, compensation has been provided. This proposal, as it stands, will seriously restrict the way in which land can be used and will also have a negative impact on the value of the land in question. There may also be European Court of Human Rights (ECHR) ramifications to consider. The removal of the asset value of land, without providing compensation, seriously impinges on the rights of the individual. RICS Scotland is also concerned about the proposal that SHN will be able to determine the change of existing use. Although compensation will be provided for this, it removes the right of the individual to determine how they manage their own land.

RICS Scotland welcomes the introduction of a third party appeal process. It can only be seen as a progressive way in which to proceed if an independent appeals procedure is available and it is an inclusion that we welcome.

RICS Scotland would also suggest that information on consents in relation to SSSIs be made publicly available. Not only is this a matter of public interest, but, it also aids the valuation process. RICS Scotland welcomes the slimming down of the Damaging Operations List (now the Operation Requiring Consent). We also welcome the move towards more voluntary and positive management agreements, but have concerns about the wider powers afforded to SHN and Ministers to restrict activity on land designated as a SSSI.

Concerns also prevail on the inclusion of Land Management Orders. These could be regarded as restricting the freedom of use by land owners / managers as SNH will have the authority to dictate how the land is to be managed, without the consent of the owner.

RICS Scotland welcomes the recommendation that statutory undertakers will be obliged to consider the requirements of SSSIs when granting permission or allocating grants. This is a much simpler system than that which is in operation at present and will provide a one-stop-shop for applicants.

Site Management Statements

Site Management Statements for SSSIs should be prepared by SNH in consultation with the land owners and occupiers.

Operations by owners or occupiers of sites of special scientific interest

There now appears to be two notice periods for gaining consent from SNH to carry out an operation. Previously, the time limit had been four months. In order to allow for adequate farm planning to be undertaken, this needs to be clarified.

Change of owner occupation

RICS considers it to be a rather extreme measure to suggest that an owner should automatically be guilty of an offence if they have not informed SNH of a change of ownership within 28 days. We would suggest six months as a more realistic time-scale.

Nature Conservation Orders

The Bill appears to suggest that Nature Conservation orders apply to all land in Scotland? In our opinion, this is a radical and unnecessary extension of government control on land, which has not gone through the rigorous SSSI selection procedure.

Compulsory purchase for purposes of conserving natural heritage

This section appears to imply that compulsory purchase orders are available on any land in Scotland. Again, this seems to be a noticeably excessive measure.

**Subordinate Legislation Committee
Extract of 9th Report, 2003**

1. At its meeting on 28th October the Committee determined that it did not need to draw the attention of the Parliament to the instruments listed in the Annexe to this report on any of the grounds in its remit.
2. The report is also addressed to the following committees as the lead committees for the instruments specified:

Environment and Rural Affairs SSI 2003/476

Draft Instruments subject to approval

The Protection of Animals (Anaesthetics) (Scotland) Amendment Order
2003 (**SSI 2003/476**)

Background

1. The Committee asked the Executive three questions on this instrument.

Question 1

2. The Committee asked the Executive for further explanation of the delay in making these Regulations, given that they were required to come into force at the same time as the Welfare of Farmed Animals (Scotland) Regulations 2003 and that the relevant Directive was made in November 2001.

Answer 1

3. The present Order, in respect of which the relevant Directive was made on 9 November 2001, required to be made in such a manner as to come into force at the same time as the Welfare of Farmed Animals (Scotland) Amendment Regulations 2003 ("the 2003 Regulations") since the Order is required to amend the 1954 Act in line with the amendment, by the 2003 Regulations, to paragraph 23(2) of Schedule 6 to the Welfare of Farmed Animals (Scotland) Regulations 2000.

4. The 2003 Regulations required to be laid before Parliament in draft and to be approved by Parliament. They were so laid on 19 June and, making allowance for the summer recess, approved on 17 September 2003. The Executive considered carefully the timing of the Order so that it came into force at the same time as the 2003 Regulations, in order to avoid an inconsistency in the law on this point. As there is no guarantee that Parliament will approve an affirmative instrument, breaking the 21-day rule, in order to ensure both amendments came into force on the same day, was considered the most effective way forward. The Executive's response is reproduced at Appendix 4.

Report 1

5. **The Committee found the Executive's explanation convincing, drawing it to the attention of the lead committee and the Parliament as providing the further information requested.**

Question 2

6. The Committee asked the Executive to explain why, in regulation 2 on page 1 and in the first line of the Explanatory Note on page 2, there is a reference to "the First Schedule", rather than to "Schedule 1" to the 1954 Act, given the guidance on the drafting of statutory instruments.

Answer 2

7. The Executive has replied in similar terms to this question as to the same point that arose in connection with the draft Order on which the Committee has reported above.

Report 2

8. **The Committee again considers that the drafting of the instrument in this respect departs from proper drafting practice and reports it on that ground.**

Question 3

9. The Committee noted that footnote (a) contains rather a lot of detail about Wales that does not appear to be relevant and asked the Executive for clarification as to its purpose.

Answer 3

10. The footnote refers to the Transfer of Functions (Wales) (No.1) Order 1978 ("the 1978 Order"). This Order, despite its title, amends section 1(3) of the 1954 Act to refer to the Secretary of State for Scotland (see article 11(2) of, and paragraph 5 of Schedule 5 to, the 1978 Order). The Order therefore represents the link between the 1954 Act, and the transfer of functions to the Scottish Ministers by the Scotland Act 1998. Previous instruments made under the 1954 Act (e.g. the Protection of Animals (Anaesthetics) Act 1954 (Amendment) Order 1982) contain a footnote referring in the same way to the 1978 Order. The Executive considers that the footnote is both accurate and helpful.

Report 3

11. The Committee observes that the purpose of the 1978 Order was not to transfer functions to the Secretary of State for Scotland but to share the functions of the Minister of Agriculture with the then newly-created post of Secretary of State for Wales. The 1954 Act already, in its original form, provided for the powers under the Act to be exercisable jointly in Great Britain by the Minister of Agriculture and the "Secretary of State" (meaning the Secretary of State for Scotland).

12. The Executive refers to an Order made under the same power in 1982 but there, it seems to the Committee, a reference to the 1978 Act was

necessary to reflect the transfer of functions to the Welsh Secretary, the 1982 Order extending throughout Great Britain.

13. The Committee considers that, in any event, the footnote, even though of doubtful relevance and clarity, does not do any harm and the meaning of the Order is not affected in any way. **The Committee therefore simply draws the attention of the lead committee and the Parliament to the Executive's response for information.**

Appendix 4

THE PROTECTION OF ANIMALS (ANAESTHETICS) (SCOTLAND) AMENDMENT ORDER 2003, (SSI 2003/476)

On 7 October 2003, the Subordinate Legislation Committee considered the above instrument and requested an explanation of the following matters:-

The Committee asked the Executive for further explanation as to the delay in making these Regulations, given that they were required to come into force at the same time as the Welfare of Farmed Animals (Scotland) Regulations 2003 and that the relevant Directive was made in November 2001.

The Committee asked the Executive to explain why, in regulation 2 on page 1 and in the first line of the Explanatory Note on page 2, there is a reference to "the First Schedule", rather than to "Schedule 1" to the 1954 Act, given the guidance on the drafting of statutory instruments.

The Committee noted that footnote (a) contains rather a lot of detail about Wales that does not appear to be relevant and asked the Executive for clarification as to its purpose.

The Scottish Executive Environment and Rural Affairs Department responds as follows:-

(i) The present Order, in respect of which the relevant Directive was made on 9 November 2001, required to be made in such a manner as to come into force at the same time as the Welfare of Farmed Animals (Scotland) Amendment Regulations 2003 ("the 2003 Regulations") since the Order is required to amend the 1954 Act in line with the amendment, by the 2003 Regulations, to paragraph 23(2) of Schedule 6 to the Welfare of Farmed Animals (Scotland) Regulations 2000. The 2003 Regulations required to be laid before Parliament in draft, and approved by Parliament. They were so laid on 19 June and, making allowance for the summer recess, approved on 17 September 2003. The Executive considered carefully the timing of the Order so that it came into force at the same time as the 2003 Regulations, in order to avoid an inconsistency in the law on this point. As there is no

guarantee that Parliament will approve an affirmative instrument, breaking the 21 day rule, in order to ensure both amendments came into force on the same day, was considered the most effective way forward.

(ii) The Schedule to the Protection of Animals (Anaesthetics) Act 1958 which would be amended by the relevant provision of the draft Order appears in the 1954 Act as the “First Schedule”. In drafting the Order, the Executive considered whether the Schedule in the 1954 Act should be referred to in line with drafting practice at Westminster as the Committee suggest. The guidance applied by the Executive is silent on this precise point, indicating only that the form “Schedule ... to the Act” should normally be used. In the interests of clarity and certainty the Executive concluded that the reference to the Schedule in the draft Order is more helpful and less likely to cause confusion to the reader in the form in which it has been drafted than as “Schedule 1”. In addition, the Executive submits that there is no doubt as to the meaning or legal effect of the draft amendment.

(iii) The footnote refers to the Transfer of Functions (Wales) (No. 1) Order 1978 (“the 1978 Order”). This Order, despite its title, amends section 1(3) of the 1954 Act to refer to the Secretary of State for Scotland (see article 11(2) of, and paragraph 5 of Schedule 5 to, the 1978 Order). The Order therefore represents the link between the 1954 Act, and the transfer of functions to the Scottish Ministers by the Scotland Act 1998. Previous instruments made under the 1954 Act (eg the Protection of Animals (Anaesthetics) Act 1954 (Amendment) Order 1982) contain a footnote referring in the same way to the 1978 Order. The Executive considers that the footnote is both accurate and helpful.

Scottish Executive Environment and Rural Affairs Department

October 2003