



The Scottish Parliament

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

AGENDA

11th Meeting, 2003 (Session 2)

Wednesday 12 November 2003

The Committee will meet at 9.30 am in the Chamber, Assembly Hall, The Mound, Edinburgh.

1. **Subordinate legislation:** The Committee will consider the following affirmative instrument—

the Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003, (draft).

Allan Wilson MSP (Deputy Minister for Environment and Rural Development) to move S2M-454 in the name of Ross Finnie MSP—That the Environment and Rural Development Committee recommends that the draft Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 be approved.

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

the Horticultural Produce (Community Grading Rules) (Scotland) Regulations 2003, (SSI 2003/502)

the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Amendment (No.2) Order 2003, (SSI 2003/514).

3. **Mainstreaming equality:** The Committee will consider recommendations from the Equal Opportunities Committee.

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

Lloyd Austin, Lisa Schneidau and Jonathan Hughes, Scottish Environment LINK

Professor Roger Crofts

Professor John McManus

Professor Charles Gimingham

Dr Bob McIntosh, Director, Forestry Commission Scotland

Nick Reiter, Director, Deer Commission for Scotland

Professor Donald Davidson, Chairman, Advisory Committee on Sites of
Special Scientific Interest.

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

Tracey Hawe
Clerk to the Committee
Direct Tel: 0131-348-5221

The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>The Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003, (draft)</p> <p>Extract from the Subordinate Legislation Committee's 9th Report 2003</p>	<p>ERD/S2/03/11/1a</p> <p>ERD/S2/03/11/1b</p>
<p><u>Agenda Item 2</u></p> <p>the Horticultural Produce (Community Grading Rules) (Scotland) Regulations 2003, (SSI 2003/502)</p> <p>the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Amendment (No.2) Order 2003, (SSI 2003/514)</p>	
<p><u>Agenda Item 3</u></p> <p>A paper from the Clerk is attached</p>	<p>ERD/S2/03/11/3a</p>
<p><u>Agenda Item 4</u></p> <p>Submission from SE LINK</p> <p>Submission from RSPB Scotland</p> <p>Submission from Scottish Wildlife Trust</p> <p>Submission from Woodland Trust Scotland</p> <p>Submission from Professor Roger Crofts</p> <p>Submission from Professor John McManus</p> <p>Submission from Professor Charles Gimingham</p> <p>Submission from Forestry Commission Scotland</p> <p>Submission from Deer Commission for Scotland</p> <p>Submission from the Advisory Committee on Sites of Special Scientific Interest</p>	<p>ERD/S2/03/11/4a</p> <p>ERD/S2/03/11/4b</p> <p>ERD/S2/03/11/4c</p> <p>ERD/S2/03/11/4d</p> <p>ERD/S2/03/11/4e</p> <p>ERD/S2/03/11/4f</p> <p>ERD/S2/03/11/4g</p> <p>ERD/S2/03/11/4h</p> <p>ERD/S2/03/11/4i</p> <p>ERD/S2/03/11/4j</p>
<p><u>Agenda Item 5</u></p> <p>Draft report on the National Waste Plan Inquiry (<i>for members only</i>)</p>	<p>ERD/S2/03/11/5a</p>

**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	The Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (Draft)
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Draft Instruments subject to approval

The Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 **(Draft)**

Question

1. The Committee had noted that there were references in paragraphs 6 and 7 of the Schedule to this Order to “the Sixth Schedule” and “the Seventh Schedule” respectively, of the Opencast Coal Act 1958. The Committee observed that references in an instrument to the Schedule of another enactment should be in the form “Schedule 6” or “Schedule 7”, even where the original reference is in some other form. The Executive was therefore asked to explain why accepted drafting procedure has not been followed in this case.

Answer

2. The Executive explains that the Schedules to the Opencast Coal Act 1958 which would be amended by the provisions of the draft Order that the Committee raise appear in the 1958 Act as the “Sixth Schedule” and “Seventh Schedule”. In drafting the Order, the Executive considered whether the Schedules in the 1958 Act should be referred to in line with drafting practice at Westminster as the Committee suggests. 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.

3. In the interests of clarity and certainty the Executive concluded that the references to those Schedules in the draft Order are more helpful and less likely to cause confusion to the reader as they are drafted than as “Schedule 6” and “Schedule 7”. In addition, the Executive submits that there is no doubt as to the meaning or legal effect of the draft amendment.

4. The Executive’s response is reproduced at Appendix 1.

Report

5. The Committee notes that the rule appears in the 3rd edition of Statutory Instrument Practice (paragraph 2.7.3) available on the HMSO website.

6. Whilst the Executive's position is that using the form "Schedule 6" rather than "the Sixth Schedule" would cause confusion to the reader, it seems to the Committee that at least as much confusion would be caused by different standards being used in this respect between UK SIs and SSIs.

7. **The Committee therefore draws the instrument to the attention of the Parliament and the lead committee on the ground that it departs from proper drafting practice in this respect.** The Committee nevertheless agrees that this is a point of form only and that the legal effect of the instrument is not in doubt.

Appendix 1

THE AGRICULTURAL HOLDINGS (CONSEQUENTIAL AMENDMENTS) (SCOTLAND) ORDER 2003 (draft)

On 7th October 2003 the Committee asked:

1. The Subordinate Legislation Committee today considered the above instrument and requests an explanation of the following matter.
2. The Committee notes the references in paragraphs 6 and 7 of the Schedule to the Order to “the Sixth Schedule” and “the Seventh Schedule” respectively, of the Opencast Coal Act 1958. The Committee observes that references in an instrument to the Schedule of another enactment should be in the form “Schedule 6” or “Schedule 7”, even where the original reference is in some other form. The Executive is therefore asked to explain why accepted drafting procedure has not been followed in this case.

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

1. The Schedules to the Opencast Coal Act 1958 which would be amended by the provisions of the draft Order that the Committee raise appear in the 1958 Act as the “Sixth Schedule” and “Seventh Schedule”. In drafting the Order, the Executive considered whether the Schedules in the 1958 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.
2. In the interests of clarity and certainty we concluded that the references to those Schedules in the draft Order are more helpful and less likely to cause confusion to the reader as they are drafted than as “Schedule 6” and “Schedule 7”. In addition, we submit that there is no doubt as to the meaning or legal effect of the draft amendment.

Scottish Executive Environment and Rural Affairs Department

9th October 2003

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

12 November 2003

Mainstreaming Equality in the Work of Committees

Introduction

1. The Convener has received the attached letter from the Convener of the Equal Opportunities Committee in relation to mainstreaming equality in the work of committees of the Scottish Parliament.
2. The Committee is invited to consider this letter and, in particular, recommendations 2, 5 and 7 of the Equal Opportunities Committee's 1st Report 2003 (see Annex A of the letter).

Background

3. Members will be aware that the Parliament considered the Equal Opportunities Committee's 1st Report 2003 at its meeting on 1 October 2003. Following this debate the Committee has written to all other parliamentary committees inviting feedback on any steps which each committee has taken or intends to take in response to this report.
4. Mainstreaming is a relatively new concept which has been developed in recent years to shift the focus away from equal opportunities as an 'add-on' to considering it as integral to the policy development and legislative process. Mainstreaming is aimed at ensuring that equality issues are "built in" from the beginning therefore of a process.
5. The central recommendation of the report on mainstreaming was that all committees should adopt a number of equality guidelines in their work and these are attached as Annex B. The Equal Opportunities Committee has also agreed implementation notes to supplement the overarching policy intent of the equality guidelines with practical advice to assist committees mainstream equality in their work. These are attached as Annex C.
6. In relation to legislation the Equal Opportunities Committee has recommended that lead committees utilise an equalities checklist and this is attached as Annex D. It is suggested that, as a minimum, the lead committee writes to the Minister or other Member in charge of a Bill with the "six questions" contained in the checklist.

Conclusion

7. The Committee is invited to consider and agree to adopt the equality guidelines recommended by the Equal Opportunities Committee and to consider and agree to utilise the equalities checklist provided by the Equal Opportunities Committee when considering legislation as lead committee at Stage 1. The Committee may also wish to consider and agree that its annual report specifically addresses mainstreaming equality.
8. The Committee is invited to consider and agree this approach to mainstreaming equality in its work and to agree that the Convener responds to the Convener of the Equal Opportunities Committee outlining the approach.

Tracey Hawe
Clerk to the Environment and Rural Development Committee
November 2003

Committee Conveners

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October 2003

Dear Convener

Mainstreaming equality in the work of committees of the Scottish Parliament

Following the Committee debate on mainstreaming which took place in the Chamber on 1st October and to assist the Committee in its consideration of its ongoing work on mainstreaming, the Equal Opportunities Committee is keen to receive feedback from you on any steps your Committee has taken or intends to take in response to recommendations 2, 5 and 7 of the Equal Opportunities Committee's 1st Report 2003 (see Annex A).

These recommendations are the result of a lengthy inquiry into mainstreaming by the Equal Opportunities Committee which has also resulted in the production of equality guidelines and implementation notes to support committees in delivering mainstreaming. Both the guidelines and implementation notes have already been circulated to all Conveners.

It would be helpful if we could have a response by Friday 21 November 2003.

Cathy Peattie MSP
Convener
Equal Opportunities Committee

Cc: Committee Clerks

Annex A: Recommendations from the Equal Opportunities Committee's 1st Report 2003

Recommendation 2

The Committee recommends that the Equality Guidelines in Annex B be adopted by all committees in their work and used in drawing up their work programmes for the session 2003-2007.

Recommendation 5

The Committee recommends that lead committees, as a useful starting point, utilise the equalities checklist attached at Annex A during Stage 1 consideration of legislation.

Recommendation 7

The Committee agrees with the Procedures Committee recommendation that in their annual report, committees specifically address how they have mainstreamed equality and highlight specific practices they wish to comment on.

ANNEX B

Equality Guideline 1 – Primary Legislation

Background

Equal Opportunities criteria should be considered at all stages of the legislative process, including the policy development process preceding the introduction of the bill. Equality proofing during legislation should not be seen a standalone process but rather as part of an on-going process of work which begins at the policy development stage.

The following sets out guidelines for the various types of legislative activity and the main stakeholders.

To carry out mainstreaming activities effectively and ensure that equal opportunities considerations are included in all of their work involving legislative activity, committees need to consider the following:

Primary Legislation – Stage 1

Bill Sponsor

- has the Bill sponsor assessed the implications of the Bill for all equal opportunities categories as identified in the remit of the Equal Opportunities Committee, including the impact on all key stakeholders;
- have any differential impacts on particular categories been quantified, discussed and justified;
- what consultation has been carried out with the stakeholders;
- how clearly have the intended effects of the Bill been set out in accompanying documentation;
- what additional information on the Bill is made available e.g. previous consultation exercises, draft guidance, equality impact assessments, disaggregated data etc;

Committee activity

- to what extent equal opportunities issues have been addressed in selecting witnesses and advisers and analysing evidence; and
- have the equal opportunities criteria been adequately considered at all stages of the legislative process.

Primary Legislation – Stage 2

At Stage 2 there are no formal requirements. However, equal opportunities implications may arise at this stage. The following recognises that there are amendments which are largely technical in nature, or drafted primarily to stimulate debate. Broadly, in discussion of amendments, committees would be encouraged to address:

- if amendments address concerns raised earlier at Stage 1, and how;
- if amendments introduce new policy issues; and,
- if a new policy issue, has an analysis (similar to Stage 1, i.e. impact analysis) been done.

Equality Guideline 2 – Information Base

Equal opportunities criteria should be considered at all stages of the legislative process. In order to carry out mainstreaming activities effectively and ensure that equal opportunities considerations are included in all of their work, committees need to have access to high quality information including:

- disaggregated statistics and other relevant information on equal opportunities categories as identified in the Scotland Act;
- develop EOC database of EO contacts and consultees, accessible to all committees;
- SPICe briefings on Bills should include reference to equal opportunities issues;
- briefing papers on changes to equality legislation;
- briefing notes from relevant external groups;
- legal advice.

Monitoring

Ensure that information resources are regularly updated and relevant training is carried out.

Equality Guideline 3 - Consultation

Committees regularly consult with a variety of individuals and organisations in the course of their work. Equal Opportunities criteria should underpin the processes and mechanisms which facilitate these consultations/inquiries. Specifically, Committees should aim to include equal opportunities criteria in:

- deciding what to consult upon
- deciding who to consult with
- deciding the format of each consultation/inquiry

Committees should include equal opportunity considerations as part of their overall criteria for choosing an inquiry topic. For example, in deciding topics of consultations and inquiries Committees may wish to identify, by impact analysis, how the proposed topic impacts upon “equal opportunities” as defined in the remit of the Equal Opportunities Committee.

Committees should include equal opportunity considerations as part of their overall criteria for selecting witnesses. For example, Committees should aim to ensure as wide a representation as possible of stakeholders.

Committees should include equal opportunity considerations in deciding the format of a consultation/inquiry. For example, equal opportunities criteria should be adopted in advertising a consultation/inquiry while sufficient time

should be allowed for responses in order to allow less well resourced groups to participate.

Committees should include equal opportunity considerations in deciding who to appoint as Committee advisers.

Monitoring

Monitor and evaluate levels of participation, particularly in order to identify groups who are under-represented. Ensure that witness databases are regularly updated to include widespread representation of minority groups.

ANNEX C

Mainstreaming Implementation Notes

Introduction

1. It is widely recognised that mainstreaming involves a process of cultural change leading to the incorporation of an equalities perspective into all policies and processes at the development stage in order to ensure that an analysis is made of the effects on all equality groups before decisions are taken.
2. These implementation notes are intended to support the application of the principles laid out in the Equality Guidelines developed by the Equal Opportunities Committee and published in its 1st Report 2003: 'Mainstreaming equality in the work of committees of the Scottish Parliament'. These notes should be read in conjunction with the guidelines (Annex B). The Committee also recommends that the SPCB provide training on mainstreaming equality for both Members and appropriate SPCB staff.
3. Whereas the Equality Guidelines lay out policy intent, the Implementation Notes lay out practical steps to assist committees mainstream equality into their work. These steps are not intended to be exhaustive and it is fully expected that Committees will further develop these processes through use and experience.
4. Further information on mainstreaming is provided in the SPICe briefing 'Mainstreaming Equalities Issues' which can be accessed on the Parliament's intranet: [Mainstreaming Equalities Issues](#).

Equality Guideline 1 – Primary Legislation

Introduction

5. This guideline is intended to assist committees in checking that, in developing the relevant legislation policy, the bill sponsor has effectively taken equalities issues into account. In most cases the bill sponsor will be the Scottish Executive. The Non Executive Bills Unit has also produced its own note on equal opportunities considerations
6. In order to have taken account of equalities issues, the sponsor must have assessed the impact of the legislation on specific groups who can be identified in terms of the grounds or categories listed in Schedule 5 of the Scotland Act:

... the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin,

or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

Stage 1

Consultation

7. Standing Orders Rule 9.3.3 (c) requires the bill sponsor to identify the extent to which it has consulted on the provisions of the proposed legislation and the impacts, if any, on equal opportunities. In the absence of clear and detailed statistics relating to all of the categories listed under equal opportunities in the Scotland Act, effective consultation will assist in identifying impact on specific groups. Committees should check:

- that consultation has taken place;
- that the consultation included all aspects of the legislation;
- if any aspects were excluded from the consultation, on what basis were they excluded;
- that the consultation period was a minimum of three months to assist smaller voluntary organisations who may not meet very often or larger organisations whose authority procedures for responding may be quite lengthy;
- that equality groups were included in the consultation; as a minimum, the following should have been given the opportunity to comment: the Commission for Racial Equality, the Disability Rights Commission, the Equal Opportunities Commission, the Equality Network, organisations dealing with age and faith;
- that the sponsor has dealt with any equality issues raised during the consultation by accommodation or justification;
- ideally, the sponsor should publish the list of consultees with the memorandum.

8. The Scottish Executive has published good practice guidance¹ on consulting with equalities groups which is available electronically from the Scottish Executive website:
<http://www.scotland.gov.uk/library5/social/gpgc-00.asp>

Effects on Equal Opportunities

9. Committees should check that the sponsor has laid out clearly under the heading 'Effects on Equal Opportunities' how it has assessed any differential impact of the provisions of the legislation, including any evidence on which it has based its assessment, such as, for example, disaggregated statistics.

10. Do disabled people have an opportunity to comply with the provisions of the legislation which is equal to that of non-disabled people? For example if the bill requires the provision of information, is there also provision for

¹ Good practice guidance – consultation with equalities groups, Reid-Howie Associates, Scottish Executive Central Research Unit and Equality Unit 2002, ISBN 0-7559-0447-8

that information to be provided in alternative formats for, for example, people with a visual impairment?

11. Are women likely to be more affected by the provisions than men? In the accompanying documents to the Community Care and Health (Scotland) Bill, the Executive recognised the bill would be: “of particular benefit to women who make up 58% of the approximately 620,000 carers in Scotland.”
12. If a differential impact on a group or groups has been identified:
 - have representatives of the group(s) who will be affected by the differential impact been included in any relevant consultation to ensure that the impact is clearly understood and the policy consequently effectively developed;
 - has the sponsor taken steps to deal with the differential impact and if not, why not? Has a conscious policy decision been made or has there been an omission on the part of the bill sponsor?
13. If the sponsor states that there is no effect on equal opportunities, has the sponsor justified this statement with reference to, for example, disaggregated statistics or some other form of evidence?

Equalities Checklist

14. The Equal Opportunities Committee recommends that lead committees, as a useful starting point, utilise the equalities checklist during stage 1 consideration of legislation.
15. Sending out the 6 mainstreaming questions in the Equalities Checklist for completion by the sponsor invites the sponsor to provide you with more information concerning the process by which the sponsor has reached its decisions. However, committees may also wish to invite the Bill sponsor to respond to additional questions on equality issues specific to the Bill.
16. The Equal Opportunities Committee has published an analysis of routine scrutiny of primary legislation for equalities issues in its 5th Report 2002 [Analysis of Routine Scrutiny of Legislation](#) which highlights issues arising from the Executive’s legislation and should serve as useful background material.
17. Paragraph 65 of the report notes:

There appears to be a positive relationship between the provision of a greater level of relevant detail by the Scottish Executive in the specific section of the Policy Memorandum and the mainstreaming of equal opportunities in the development process.

Stage 2

18. Committees will be aware of concerns raised in respect of equalities at stage 1 and should assess the extent to which, if at all, amendments brought forward at stage 2 address these concerns.

19. If an amendment at stage 2 introduces new policy, committees will wish to ascertain if there is an impact on equalities issues.

Equality Guideline 2 – Information Base

Introduction

20. This guideline highlights the need for committees to have access to relevant sources of up-to-date information to assist in mainstreaming equality into their work. Data sources listed here may, for example, assist committees when deciding who to include in consultation exercises or in defining inquiry remits by identifying potential differential impact on specific groups of people.

Information types and sources

Disaggregated Statistics

21. There is a great deal of variation in the quality and quantity of available data which is broken down by equality strand or category, for example, by men and women, by reference to ethnic groups or disabled people etc. However there is an increased awareness of the need for this type of data and consequently an increasing availability. The Scottish Executive publishes a Guide to Data Sources on Equality in Scotland² which can help identify where to find relevant information. The Executive statistics web page, <http://www.scotland.gov.uk/stats>, also provides a useful source of statistical information and is searchable.

Equal Opportunities Consultation Database

22. The Equal Opportunities Committee recommends that the Parliament as a whole develops a database of Equal Opportunities contacts and consultees which would be accessible to all Committees.

23. In the meantime, the Equal Opportunities Committee Clerks have developed and are maintaining such a database of equal opportunities contacts who have expressed an interest in equalities and given their permission for their details to be held for consultation purposes. This database will be made available to committee clerks on the G:\ drive. For further information on accessing this data, please contact the Clerks to the Equal Opportunities Committee.

SPICe Briefings

24. SPICe has provided a number of briefings on equal opportunities issues to the Equal Opportunities Committee and these are available on SCAN (on the Parliament intranet) at the following location: <http://intranet/speir/services/spice/rbeo.html>.

² Equality in Scotland, Guide to Data Sources 2002, Central Statistics Unit, Scottish Executive, ISBN 0-7559-0335-8

25. All subsequent briefing papers on equal opportunities issues will also be made available in the same location. The SCAN service also provides links to articles and reports on current equalities issues as well as other relevant publications and SPICe can, of course, provide briefings on changes to equality legislation. All future SPICe briefings on bills will include reference to equalities issues.

External Groups

26. External groups with specific interests in equalities issues, such as the statutory equality groups, also produce papers on key issues covered by their remit and which can be accessed via their web sites. These can provide useful input to committees when considering what impact a specific policy can have for the various equality strands. These groups include the Disability Rights Commission (www.drc-gb.org), the Equal Opportunities Commission (for gender issues) (www.eoc.org.uk), the Commission for Racial Equality (www.cre.gov.uk), the Equality Network (for lesbian, gay, bisexual and transgender (LGBT)) issues (www.equality-network.org) and Age Concern Scotland (www.ageconcernscotland.org.uk).

27. Key contacts for these and other equality organisations are available via the equal opportunities consultation database.

Legal Advice

28. Where required, legal advice can be sought from the Scottish Parliament's legal team and guidance is available to clerks to assist committees in requesting that advice. This guidance can be found at the following location:

G:\Clerking Information\Odyssey – Committee Guidance\F Other Issues\4 Legal Advice

Monitoring

29. It is important to ensure that information sources used by committees are as up-to-date as possible. For internal sources which are used regularly, there should be an agreed update procedure with the date of the latest update, if relevant, clearly indicated. For other sources, committees should, when seeking the information, check the date on which the information was last updated, or the publication date to ensure that it is the latest version.

Equality Guideline 3 – Consultation

Introduction

30. This guideline aims to assist committees in including equality criteria into all consultation processes they employ in their work.

Consultation

31. 'Consultation' covers a range of processes and situations from formal evidence sessions to civic participation events involving a large number of people and includes both written and oral consultation.

What

32. Committees should assess the impact of the topic of their consultation or inquiry on equal opportunities as defined in Schedule 5 Head L of the Scotland Act 1998 (see paragraph 4 above).

33. Is any group of people likely to be more affected by the issue(s) on which the committee wishes to consult or carry out an inquiry due to any of the grounds specified? Has the committee taken this fully into account in defining the terms of the consultation or inquiry? Committees might find it useful to assess their choice of topic in light of the policy development mainstreaming questions in the Equalities Checklist.

Who

34. In selecting witnesses, consultees and groups or individuals to invite to specific events, Committees should seek to include as wide a range of people and organisations as is practicable. Has the Committee made every effort to include both men and women, members of minority ethnic communities, disabled people, a range of different age groups, members of the LGBT communities, a wide range of backgrounds and faiths/belief systems or has the event been organised in such a way as to create barriers to attendance for certain groups of people?

35. Are invitations being sent only to previous contacts of the Committee; does the Committee have a list of 'usual suspects'; how diverse is the group invited; does it adequately represent the diversity of the target population? Has the Committee made assumptions about the groups of people it needs to invite/include, and, if so, can these assumptions be justified objectively?

36. The Equal Opportunities consultation database can assist in providing access to a range of individuals and groups Committees might wish to include to ensure a diverse range of participants.

37. The process for appointing advisers has been designed to comply with equal opportunities requirements (see relevant guidance for clerks).

38. The Scottish Executive has published good practice guidance³ on consulting with equalities groups which is available electronically from the Scottish Executive website:
<http://www.scotland.gov.uk/library5/social/gpgc-00.asp>

³ Good practice guidance – consultation with equalities groups, Reid-Howie Associates, Scottish Executive Central Research Unit and Equality Unit 2002, ISBN 0-7559-0447-8

How

39. Key considerations when consulting are:

- leave enough time for consultation returns – minimum three months but longer if possible to allow as wide a range of respondents as possible to take part; where this is not possible due to time constraints over which committees have no control, committees should otherwise make every effort to include as wide a range of people and organisations as possible in the time available;
- ensure all documentation issued is fully accessible (see the guidance at <http://intranet/speir/services/eo/guides.html> and relevant clerking guidance) and available both electronically and in hard copy;
- ensure venue is accessible – this includes, for example, for people with mobility issues and hearing impairment (audio loop etc) and make it clear to those invited how accessible the venue is, i.e. notify them of any potential difficulty;
- always ask attendees if they have any special requirements both in terms of access and diet, if food is being provided; confirm with attendees arrangements that are put in place in response to their requests;
- consider how best to increase participation from minority groups, for example, hold more informal meetings, visit relevant groups where they work, be flexible in timing of meetings;
- always include the Scottish Parliament access statement in different community languages which is available from Public Information.

Monitoring

40. Evaluate the level of participation by:

- evaluating returns to written consultations against type of groups responding as well as total numbers or returns, for example, how many responses were received from women and women's organisations, from ethnic minority groups and individuals, from disabled groups and individuals, from large organisations and from small voluntary organisations;
- analysing breakdown of witnesses attending Committee meetings against equal opportunities categories to assess which groups are under-represented;
- requesting feedback from individuals and organisations who did not attend to assess why they did not attend and what could be done differently to increase participation.

ANNEX D

Equalities Checklist

Introduction

The Equal Opportunities Committee of the Scottish Parliament has endorsed the following checklist it wishes to be used when considering any policy or legislative issue.

It is important to bear in mind that the definition of equal opportunities in the Scotland Act 1998 is as follows:

“the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.”

It is therefore expected that ALL of these areas should be considered when using this checklist.

Please note that this is not meant to be all encompassing guidance on equalities proofing, but it is recommended that this be the minimum standard to be attained.

What is Mainstreaming⁴

- “ ‘Mainstreaming’ equality is essentially concerned with the integration of equal opportunities principles, strategies and practices into the every day work of Government and other public bodies from the outset, involving ‘every day’ policy actors in addition to equality specialists. In other words, it entails rethinking mainstream provision to accommodate gender, race, disability and other dimensions of discrimination and disadvantage, including class, sexuality and religion.
- It is a long-term strategy to frame policies in terms of the realities of people’s daily lives, and to change organisation cultures and structures accordingly. It puts people, and their diverse needs and experiences, at the heart of policy-making.
- It leads to better government through better informed policy-making and a greater transparency and openness in the policy process and helps to tackle democratic deficit by encouraging wider participation in the policy process through effective consultation mechanisms.

⁴ EOC/CRE document – Questions on Mainstreaming

- As a process it tackles the structures in society which contribute to, or sustain, discrimination and disadvantage.
- The application of a mainstreaming approach can avoid the adoption of policies and programmes which replicate discrimination and exacerbate existing inequalities.
- Mainstreaming complements lawful positive action designed to address the historic and current impact of discriminatory structures and practices.”

Questions to Consider when equality proofing

1. What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?

Does the policy properly consider the needs of diverse groups of women and men? Remember that members of the same social group may have different needs; and that some people face multiple discrimination, for example, ethnic minority women.

Have equalities dimensions been explicitly addressed?

Keep in mind the goals and outcomes of policies can either perpetuate or overcome existing inequities between women and men and amongst different social groups.

2. Do we have full information and analyses about the impact of the policy upon all equalities groups? If not, why not?

Is the data you have been provided with broken down by gender, race and disability?

Assume that there is an equalities impact then look for information to prove or disprove that assumption

Who has been consulted? There is a need for both experts and ‘ordinary’ voices to be heard. Has the fact that it is harder for some groups than others to speak out been taken into account?

3. Has the full range of options and their differential impacts on all equality groups been presented?

What is the impact of values, assumptions and stereotypes on the options presented and the options favoured?

How might your own values, opinions and experiences influence your understanding of the issue?

- 4. What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of proposals been taken into account?**
- 5. How have the policy makers demonstrated they have mainstreamed equality?**
- 6. How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?**

SUBMISSION FROM SCOTTISH ENVIRONMENT LINK

Summary

1. LINK member bodies warmly support the proposals in this Bill and recommend the Committee should support the general principles of the Bill while suggesting a number of modest amendments that might be proposed at stage 2. In addition, the Executive should be commended for the collaborative way in which it has worked to prepare this Bill, and LINK recommends such a process for future legislation.
2. The provisions on biodiversity (Part 1) are both welcome and fully supported by LINK members. The general duty is very positive – and reflects that agreed by a number of members of the Executive’s Expert Working Group. The link to the Scottish Biodiversity Strategy is particularly welcome. However, there is considerable scope to improve, on the face of the Bill, the provisions relating to the Scottish Biodiversity Strategy. The suggestions, offered below, would we believe greatly assist in ensuring this Part of the Bill works in practice.
3. Part 2 on SSSIs reflects the conclusions of the Expert Working Group which included a wide range of key stakeholders. It advances both the protection and management of these important sites and is fair to their owners and occupiers. One or two areas could be fine-tuned to deliver these aspirations to an even greater extent.
4. In the light of evidence provided by our Members (especially RSPB Scotland, Plantlife Scotland, Scottish Wildlife Trust, the Scottish Raptor Study Groups and others), LINK offers general support to the proposals in Part 3 of the Bill. However, we also offer collective comments on specific issues – especially non-native species, recklessness and the review of Wildlife and Countryside Act Schedules.

Introduction

The Nature Conservation Bill is a long overdue update of Scotland’s wildlife and nature conservation legislation, and it has been under development for a long time. It has benefited from the input of a wide range of stakeholders, as well as extensive consultation. Part 2 on SSSIs, for instance, has emerged from almost five years of consultation and dialogue, initiated in 1998 by the Scottish Office paper *People and Nature: a New Approach to SSSI Designations in Scotland* and continued by the Scottish Executive consultation paper *The Nature of Scotland*. The detailed proposals have been developed, agreed and scrutinised by an Executive-convened Expert Working Group, on which LINK was pleased to be represented.

Part 1 on biodiversity has been discussed both by the above Expert Working Group, and within the Scottish Biodiversity Forum. Many of the proposals relating to wildlife crime originate from the legislation sub-group of the Partnership for Action against Wildlife Crime, and widespread consultation via *The Nature of Scotland*.

This process culminated in the publication of a draft bill in March 2003, to which the Executive received 141 responses, 128 broadly supportive and just 7 opposed in principle (S2W-1159, 4 August 2003). LINK and many of its Member Bodies have participated in these discussions and consultations – a process which, we believe, has contributed to the almost universal support for the draft Bill. We, therefore, recommend that the **Committee should support the general principles of the Bill as well as commend the engagement of stakeholders in the development of this legislation**, a process that could be emulated for future legislative proposals.

General comments

1. Marine issues

Although over two-thirds of Scotland is marine and of great conservation importance, this Bill focuses on terrestrial issues. Marine legislation is a hotch-potch of over 80 different Acts covering fisheries, fish-farming, navigation, oil and gas, etc, some devolved, some reserved, meaning that marine interests are neither adequately protected nor managed holistically. The principles of a modern nature conservation system, set out in this bill, should be extended to the marine environment. However, a simple extension of this bill to cover the seas (in the absence of reform to other marine legislation) would not be appropriate. Rather, a more comprehensive overhaul of marine legislation (both devolved and in partnership with DEFRA) is required. We therefore welcome the Executive's commitment to address this issue, including legislative progress, in the medium term via, for example, consultation on a Scottish Marine Strategy.

Thus, while not pressing for additional measures in this bill to cover the marine environment, LINK members would welcome assurances from the Executive that plans to address marine conservation issues are in hand and comprehensive marine legislation will be brought forward within 2-3 years.

2. Finances

One key policy objective of this legislation is to shift the emphasis of SSSI management from 'negative' (compensation for not doing damage) towards the 'positive' (encouraging beneficial management). SNH needs to be adequately resourced for this new positive management era, and be able to provide sufficient schemes such as *Natural Care* to cover all SSSIs. LINK believes that much of this funding can be derived from the re-direction of existing expenditure. The Draft Financial Guidelines of the draft Bill make it clear that agri-environment schemes are a key funding mechanism for SSSI management, and an integrated approach to the current CAP reforms would recognise this additional ask on Rural Development Plan funding and shift subsidies accordingly.

3. Local Sites

Local Sites (sometimes called Listed Wildlife Sites or Sites of Interest to Nature Conservation) are a system of non-statutory sites below SSSIs that aim to identify all land within local authority areas that is of high biodiversity value. They provide an ideal mechanism for prioritising biodiversity action, for example in site protection through the planning system and in targeting agri-environment advice.

There are over 3000 Local Sites in Scotland, with 29 out of 32 Local Authorities operating various systems with different criteria and standards, and NGOs such as Scottish Wildlife Trust also heavily involved. LINK members believe that the effectiveness of Local Sites as a toolkit for delivering biodiversity action should be maximised. We recommend:

- A review of the state and status of Local Sites in Scotland;
- The development of common standards for Local Sites;
- A recognition of Local Sites in the Scottish Biodiversity Strategy; and
- Improved guidance and support for local authorities in developing and operating Local Sites systems.

1. Biodiversity

LINK members welcome and support the proposal to enact a duty on all public bodies to further the conservation of biodiversity. This is an important means of demonstrating the Government's ongoing commitment to the conservation of biodiversity, as required by the UK's implementation of the UN Convention on Biological Diversity. It should also mean greater protection and enhancement of biodiversity in the wider countryside, vital in the face of increasing habitat fragmentation and climate change.

Furthermore, we strongly commend the linkage of this duty to the Scottish Biodiversity Strategy (currently subject to separate consultation). We further welcome the addition (since the draft Bill) of the requirement to report to Parliament on the implementation of this strategy. LINK members do however believe that there are a number of ways these provisions could be improved if they are to be truly useful. These include:

- making the designation of a strategy a requirement rather than an option (ie “must” rather than “may” in line 18). With public bodies required to have regard to a strategy in fulfilling their duty under section 1, we suspect they may be rather surprised, when considering their responsibilities under this duty, to discover there is, in fact, no strategy to which to have regard!
- adding a requirement that the strategy should identify priority habitats and species in Scotland (giving focus to the document) and report on their status and trends;
- adding a requirement on Ministers and public bodies to **take, or promote the taking of, action** to further the conservation of these species and habitats. In effect, this simply requires those with “action points” in the strategy (or its implementation plans) to carry out those actions; we see little point in producing an admirable strategy and plan of action if there is no parallel requirement to ensure the plans are carried out.
- requiring Ministers to provide guidance to public bodies, particularly local authorities, on how they can implement the biodiversity duty within their operations: for example, the use of Local Sites in planning and targeting biodiversity action.

Finally, while welcoming the use of the term “biodiversity”, we are concerned that (as we believe this is the first time it has been used in Scots law) it is not defined. We recommend the addition of an additional clause to clearly state that “biodiversity” has the meaning given in the UN Convention on Biological Diversity.

2. Sites of special scientific interest (SSSIs)

The current legislation establishing and regulating SSSIs in Scotland is the Wildlife and Countryside Act 1981 (as amended). New legislation for England and Wales (the Countryside and Rights of Way Act 2000) has updated and improved legislation in relation to SSSIs in those countries. Not all of the changes enacted by CRoW are directly applicable to the situation in Scotland and some of the measures proposed in the Nature Conservation (Scotland) Bill differ from their CRoW equivalents accordingly.

LINK members warmly welcome the retention of SSSIs in Scotland and the proposals to modernise the legislation. The proposed measures offer significant improvements over existing legislation in terms of clarity of purpose and interpretation. We have long pressed for such legislation – to address the current situation where 45% of SSSIs are not in favourable condition (see *Time to Act: Saving Scotland’s wildlife*¹).

Overall, LINK members are of the view that this proposed legislation to protect sites of special natural heritage value is essential and that modernisation of existing legislation is the appropriate delivery mechanism. This Bill, as introduced, offers significant improvements over existing legislation in Scotland and in England and Wales, as well as over the draft Bill, issued for consultation in March 2003. We therefore believe the proposals in part 2 of this Bill fulfils the Executive’s policy aspirations set out in *The Nature of Scotland*. However, we feel that there is still room for improvement in some areas and the suggestions below would, we believe, help to meet these aspirations to an even greater extent.

- We warmly welcome the Executive’s agreement to and proposal for legislation to give SSSIs a “**statutory purpose**”. However, as drafted, it is restricted to SNH’s duties in relation to notification, enlargement and denotification. A broader statutory purpose to

¹ Butterfly Conservation, National Trust for Scotland, Plantlife, RSPB Scotland, Scottish Wildlife Trust and WWF (2000) *Time to Act: Saving Scotland’s wildlife*. RSPB, Edinburgh.

conserve and enhance the site series is necessary to give statutory underpinning to management of SSSIs; it should also apply to all relevant bodies, such as ACSSSI and the Land Court, as well as SNH. Secondly, the selection criteria appear to be limited to representativeness – we believe there should be an acknowledgement that rarity and/or irreplaceability are criteria for SSSI notification.

- The duty on public bodies etc (S.12), at present, appears to relate only to specific projects affecting individual sites. We believe such a **general duty on all public bodies** should also relate to the development of broad policies and strategies that may affect the integrity of the site series; that is, all SSSIs collectively or individually.
- One specific area where the Bill as introduced is weaker than CRoW is in its failure to include, as an offence, **disturbance of fauna** for which an SSSI is notified. Although this could be construed as damage, specific inclusion of disturbance of fauna (in S.19 or S.56(2)) would add clarity.

3. Wildlife crime

In the light of evidence provided by our Members (especially RSPB Scotland, Plantlife Scotland, Scottish Wildlife Trust, the Scottish Raptor Study Groups and others), LINK offers general support to these proposals. In particular, we fully support the measures to tighten controls on the possession of pesticides – chemicals which are often abused in the poisoning of wildlife. Other issues the committee may wish to consider include:

- **New measures to address non-native species:** non-native or ‘alien’ species can be a significant threat to the conservation of Scotland’s natural heritage. Since the draft Bill was published, the Executive has consulted separately on legislative proposals regarding non-native species. LINK members would recommend that these are brought forward at stage 2 as Executive amendments, and would encourage the Committee to seek such a commitment from the Executive. These measures should seek to improve both measures to control already established non-native species and those to deter the introduction of additional non-native species including measures to ban the sale of plant species at high risk of becoming invasive in the wild.
- **Recklessness:** all LINK members support the principle of these proposals. However, many members would welcome reassurance that the statutory defences provided will not result in unwarranted prosecutions of those exercising access rights if disturbance is entirely accidental or inadvertent. Our reading of the provisions leads us to believe this is the case and we would welcome the Executive’s reassurance that this is the intention. In addition, we hope the Executive, SNH or Local Authorities will act swiftly if this legislation is misquoted (eg on signs) by landowners seeking to prevent lawful access.
- **Review of schedules:** LINK members are content to agree the proposals in para 17, Schedule 6 to streamline the processes for the variation of schedules. However, we believe that the intention of the original statute – that such variation should be based on sound scientific advice – should be retained. Accordingly, we believe that Scottish Ministers should be required, before making such an Order, to consult with SNH and other interested parties and publish the results of this consultation process.

This submission is supported and endorsed by the following members of Scottish Environment LINK:

Biological Recording In SCotland (BRISC)
Butterfly Conservation Scotland
Cairngorms Campaign
Mountaineering Council of Scotland
RSPB Scotland
Plantlife Scotland

Ramblers’ Association Scotland
Scottish Raptor Study Groups
Scottish Wildlife Trust
The National Trust for Scotland
The Wildfowl & Wetlands Trust
Woodland Trust Scotland
WWF Scotland

SUBMISSION FROM RSPB SCOTLAND

Summary

- **The Committee should commend the engagement of stakeholders in the development of this legislation, and recommend such a process for any future legislative proposals.**
- **Part 1 on biodiversity is welcome, both in itself and as a context for the site and species protection measures. The general duty is very positive and the link to a strategy particularly welcome. There is however much scope to improve the provisions relating to the Strategy.**
- **Part 2 on SSSIs reflects the conclusions of the Expert Working Group, representing farmers, landowners and environmentalists. It is therefore both a step forward for the protection and management of such sites and fair to their owners and occupiers. One or two areas could be fine-tuned to deliver these aspirations to an even greater extent.**
- **Part 3 on wildlife crime greatly improves the protection of wildlife and the systems of deterrence and investigation of wildlife crime. It is widely supported by all members of the Partnership for Action against Wildlife Crime (Scotland). We make a number of suggestions for improvements.**
- **Overall, we believe the Committee should support the general principles of the Bill while recommending a number of improvements be considered as part of stage 2.**

Introduction

This Bill has been a long time in gestation – and has been widely discussed by a wide range of stakeholders, as well as subject to extensive consultation. The popularity and need for these measures was shown by the petition presented to the Parliament in 2001 supported by nearly 10,000 signatures (PE387).

Part 2 on SSSIs has emerged from almost five years of consultation and dialogue, initiated in 1998 by the Scottish Office paper *People and Nature* and continued by the Scottish Executive consultation paper *The Nature of Scotland*. The detailed proposals have been developed, agreed and scrutinised by an Executive-convened Expert Working Group. Part 1 on biodiversity has been discussed by both that group and by the Scottish Biodiversity Forum. Many of the wildlife crime proposals originate from the legislation sub-group of the Partnership for Action against Wildlife Crime (Scotland), and consultation via *The Nature of Scotland*.

This process culminated in the publication of a draft bill in March 2003, to which the Executive received 141 responses, 128 broadly supportive and only 7 opposed in principle (S2W-1159, 4 August 2003). We therefore believe that **Committee should support the general principles of the Bill as well as commend the engagement of stakeholders in the development of this legislation.**

General comments – marine issues

Over two-thirds of Scotland is the sea. These marine areas are of great conservation importance – but not addressed by this bill¹. At present, the seas are inadequately protected and not managed holistically. Marine legislation is a hotch-potch of over 80 different Acts covering fisheries, fish-farming, navigation, oil and gas, etc - some devolved, some reserved. It is important that the principles of a modern nature conservation system, set out in this bill, are extended to the marine environment. However, a simple extension of this bill to cover the seas (without parallel reform to other marine legislation) would be inappropriate. We therefore welcome the Executive's commitment to address this issue in the medium term via, for instance, the Scottish Sustainable Marine Environment project and the Scottish Marine Strategy². Thus, **while not pressing for extension of this bill to the marine environment, we believe the Committee should seek assurances from the Executive that plans to address marine conservation issues are in hand and legislation will be brought forward within 2-3 years.**

¹ With odd exceptions such as the protection of cetaceans and basking sharks from disturbance.

² Announced by the Deputy Minister for Rural Development and the Environment on 23rd Oct. (News release 668/2003)

General comments - resources

One key policy objective of this legislation is to shift the emphasis of SSSI management from 'negative' (compensation for not doing damage) towards the 'positive' (encouraging beneficial management, primarily by incentives). SNH needs to be adequately resourced for this new positive management era, and provide sufficient schemes such as *Natural Care* to cover all SSSIs. Much of this funding should be derived from the re-direction of existing expenditure, as the negative compensation arrangements expire and as SSSI-beneficial components in *eg* agri-environment or forestry schemes encourage positive stewardship. Moreover, if CAP reform is implemented well, the incentives for environmentally damaging land use practices will be reduced, thus lowering the [real] costs of compensating for any changes to 'established practice' and of positive management agreements.

1. Biodiversity

"Scotland's nature is at the heart of our common wealth as a nation"

Sam Galbraith, then Scottish Executive Minister for the Environment (Foreword to The Nature of Scotland, March 2001).

RSPB Scotland warmly welcomes the proposal to enact a duty to further the conservation of biodiversity and its application to all public bodies and office holders. This is an important means of demonstrating the Government's ongoing commitment to the conservation of biodiversity, a global responsibility – thus ensuring that our natural heritage is protected both for its own sake and for the benefit of future generations.

Furthermore, we strongly commend the linkage of this duty to the Scottish Biodiversity Strategy (currently subject to separate consultation). We further welcome the addition (since the draft Bill) of the requirement to report to Parliament on the implementation of this strategy. There are however a number of ways in which this provision can be improved; including:

- making the designation of a strategy obligatory rather than optional - ie "must" rather than "may" in line 18. (With public bodies required to have regard to a strategy in fulfilling their duty under section 1, we suspect they may be rather surprised, when considering their responsibilities under this duty, to discover there is, in fact, no strategy to which to have regard!)
- adding a requirement that the strategy should identify priority habitats and species in Scotland and report on their status and trends; and
- adding a requirement on Ministers and public bodies to **take, or promote the taking of, action** to further the conservation of these species and habitats. In effect, this simply requires those with "action points" in the strategy to carry out those actions. We see little point in producing an admirable strategy and plan of action if there is no parallel requirement or commitment to ensure the plans are carried out.

Finally, while welcoming the use of the term "biodiversity", we are concerned that it is not defined. We recommend the addition of a clause stating clearly that "biodiversity" has the meaning given in the UN Convention on Biological Diversity to which the UK is a signatory.

2. Sites of special scientific interest (SSSIs)

"We believe that the designation of Scotland's most special natural places continues to be essential to their effective protection and management. The current SSSI system requires reform, especially to the way in which it secures the appropriate management of sites ... to secure better protection ... and if [the] interests of the people who manage these areas and the communities that depend on them for jobs or amenity are to be taken into account more effectively."

The Nature of Scotland (p32), The Scottish Executive, March 2001

The current legislation establishing and regulating SSSIs in Scotland is the Wildlife and Countryside Act 1981 (as amended) [hereafter "WCA"], which when passed applied throughout Great Britain. New legislation for England and Wales (the Countryside and Rights of Way Act 2000 – [hereafter "CRoW"]) has updated and improved legislation in relation to SSSIs in those countries. This bill includes some similar measures, but varied to be appropriate for Scotland, as well as some measure unique to Scotland.

RSPB Scotland warmly welcomes the retention of SSSIs and the plans to modernise the legislation. The proposed measures offer significant improvements over existing legislation in terms of clarity of purpose and interpretation. RSPB Scotland and others have long pressed for such legislation – to address the current situation where 45% of SSSIs are not in favourable condition (see *Time to Act: Saving Scotland's wildlife*³).

Overall, we welcome:

- the wider involvement of interested parties (S49(2)), reflecting the aim of encouraging stakeholder involvement in the notification and management of SSSIs;
- SNH's duty to notify SSSIs as part of a series of sites of special interest in terms of the natural heritage not only of Scotland, but also of Great Britain and of EU member states. This reflects the biogeographical reality that much of Scotland's wildlife lives within a British and European context;
- we welcome the retention of NCOs – which deals with both third party damage – as well as their applicability to comply with international obligations as well as the conservation of SSSIs;
- the proposals in relation to Land Management Orders (LMOs) which seek to address the way that SSSIs can, at present, deteriorate through neglect as much as by deliberate damage. Consensual processes (voluntary management agreements etc) are, rightly, encouraged by the Bill, but Orders such as these should be available where these fail;
- the suggested role for the Scottish Land Court in relation to appeals over consents or management orders seems an appropriately Scottish solution; and
- in general, the offences set out in this part of the Bill are clearly defined. The maximum fines suggested seem appropriate when compared with financial penalties for other environmental crimes such as fly-tipping. However, giving the courts the additional option of imposing a prison sentence of up to six months would enable appropriate sentencing in cases of malicious damage and would put damage to SSSIs on a par with crimes against species.

RSPB Scotland is therefore of the view that primary legislation to ensure the protection of sites of special natural heritage value is essential and that modernisation of existing legislation is the appropriate delivery mechanism. This Bill, as introduced, offers significant improvements over existing legislation in Scotland and in England and Wales, as well as over the draft Bill, issued for consultation in March 2003. Overall, we believe the proposals in part 2 of this Bill fulfil the Executive's policy aspiration quoted above. We feel however that there is still room for improvement in some areas and the suggestions below would, we believe, help to meet these aspirations to an even greater extent.

- We warmly welcome the Executive's agreement to and proposal for legislation to give SSSIs a "**statutory purpose**". However, as drafted, it is restricted to SNH's duties in relation to notification, enlargement and denotification. A broader statutory purpose to conserve and enhance the site series is necessary to give statutory underpinning to management of SSSIs. It should also apply to all relevant bodies, such as ACSSSI and the Land Court, as well as SNH.

³ Butterfly Conservation, National Trust for Scotland, Plantlife, RSPB Scotland, Scottish Wildlife Trust and WWF (2000) *Time to Act: Saving Scotland's wildlife*. RSPB, Edinburgh.

- Moreover, the setting of **management objectives**, at the site level, will allow owners/occupiers to know how their site fits into the series as a whole and for all parties to know whether positive management is needed and/or an LMO appropriate.
- The duty on public bodies etc (S.12) are present appears to relate only to specific projects affecting individual sites. We believe such a **general duty on all public bodies** should also relate to the development of broad policies and strategies that may affect the integrity all SSSIs collectively.
- One specific area where the Bill as introduced is weaker than CRoW is in its failure to include, as an offence, **disturbance of fauna** for which an SSSI is notified. Although this could be construed as damage, specific inclusion of disturbance of fauna (in S.19 or S.56(2)) would add clarity.
- Unlike CRoW, this bill makes no provision for the underpinning, in domestic law, of designations under the **Ramsar Convention** protecting wetlands. We believe this to be a missed opportunity to demonstrate commitment to this important international obligation to which the UK is a signatory. A new section could be added requiring Scottish Ministers to publish designations and SNH to manage SSSIs so designated in accordance with the provisions of the Convention.

3. Wildlife crime

“Illegal persecution of birds of prey in Scotland is a national disgrace and the Government will take all possible steps to eliminate it.”

Donald Dewar MP, Secretary of State for Scotland, September 1998, at launch of Counting the Cost.
(Scottish Office news Release 1765/98, 6 September 1998)

Both RSPB Scotland and the wider Partnership for Action against Wildlife Crime (Scotland) have long called for improvements in the legislation on wildlife crime and its detection and investigation. Such measures are necessary due to the continuing high level of wildlife persecution – despite the protection afforded by the WCA. The levels of such persecution are widely reported⁴, and illustrated in the appendix. The first step was taken, last year, in the Criminal Justice (Scotland) Act 2003 with its provisions to allow arrest and custodial sentences. This was very welcome and the Committee should be aware that police officers have had cause to exercise these powers on a number of occasions in the six months these provisions have been in force.

The further proposals, in Schedule 6 of this Bill, continue the process of improving Part 1 of the WCA and are all very welcome. RSPB Scotland supports Schedule 6 in its entirety, particularly (due to the continued abuse of pesticides, see figure 2) the proposals to tighten control of these substances (new WCA S.15A). We therefore support the early enactment of these measures - indeed, one improvement to the Bill would be the inclusion of S.51 in S.57 so that these provisions come into effect immediately upon Royal Assent. Other improvements the committee may wish to consider include the following:

- **Protection of nests and nest sites throughout the year.** At present, WCA, S.1(1)(b) only protects nests when in use or being built. This is satisfactory for most species, who build new nests each year. However, a number of species (eg golden eagle, osprey or kingfisher) use the same site and/or nest year after year and their breeding performance and conservation can be severely disrupted if these are destroyed in the winter. Such a change was a

⁴ eg The Scottish Office, on behalf of Partnership for Action against Wildlife Crime (1998) Counting the Cost; Annual RSPB reports on Birdcrime (UK) and Persecution (Scotland); Whitfield, P et al (2003) The association of grouse moor in Scotland with the illegal use poisons to control predators. *Biol. Conserv.* 114: 157-163.

recommendation of the UK-wide Raptor Working Group (on which the Executive and SNH were represented) and is, we believe, necessary to comply with the EU Birds Directive.

- **Extension of lekking provision (Para 2(6)) to any schedule 1 species.** This added protection for capercaillie leks is most welcome but, to be consistent, should be applied to any scarce species that leks. Such an extension would only apply to Ruff, a scarce and occasional breeder here. However, this approach is consistent and means that, if circumstances mean that species move on or off schedule 1 in future (by Order), this provision does not need to be amended (requiring primary legislation).
- Capercaillie are also often the unintentional by-catch of poorly set **snares**; we therefore welcome the proposal to tighten the regulation of snare use but also believe that where rare and endangered species may be inadvertently caught, there is a case for short-term or localised prohibitions. The Committee may wish to consider such a proposal.
- **New measures to address non-native species and inappropriate re-introductions.** Since the draft Bill was published, the Executive has consulted separately on legislative proposals regarding non-native species. We would recommend that these are brought forward at stage 2 as Executive amendments, and would encourage the Committee to seek such a commitment from the Executive.
- **Financial gain/conservation impact.** Penalties for wildlife offences are set by WCA, S.21. At present, for most offences, the maximum penalty is a £5000 fine and/or six months imprisonment. We believe that, like offences against SSSIs (see S.47(1)), a Court should, when determining the level of penalty, bear in mind the possible financial gain accrued as a result of the offence. In addition, we would recommend that “conservation implications” should also be considered – as some offences (eg stealing eggs of white-tailed eagles) may accrue little financial gain but have major conservation implications.
- RSPB Scotland is content with the proposals to streamline the processes for **the variation of schedules**. However, the intention of the original legislation, that such variation should be based on sound scientific advice, should be maintained. Scottish Ministers should therefore be required, before making such an Order, to consult with SNH and others, and to publish the consultation results.
- **Single witness provisions.** At present, S.19A of the WCA (inserted by the Prisoners and Criminal Proceedings (Scotland) Act 1993) allows that an accused charged with egg-taking (and/or destruction) to be convicted on the evidence of one witness (albeit with other corroborating evidence). We recommend that the Committee consider extending this provision to other wildlife offences that may take place in remote areas where multiple witnesses are very unlikely. Alternatively, the Committee may consider a wider review of single witness provisions – such as those relating to poaching, littering, etc.

Appendices

Figure 1 – poisoning and confirmed, probable and possible bird of prey persecution in Scotland 1995 to 2001

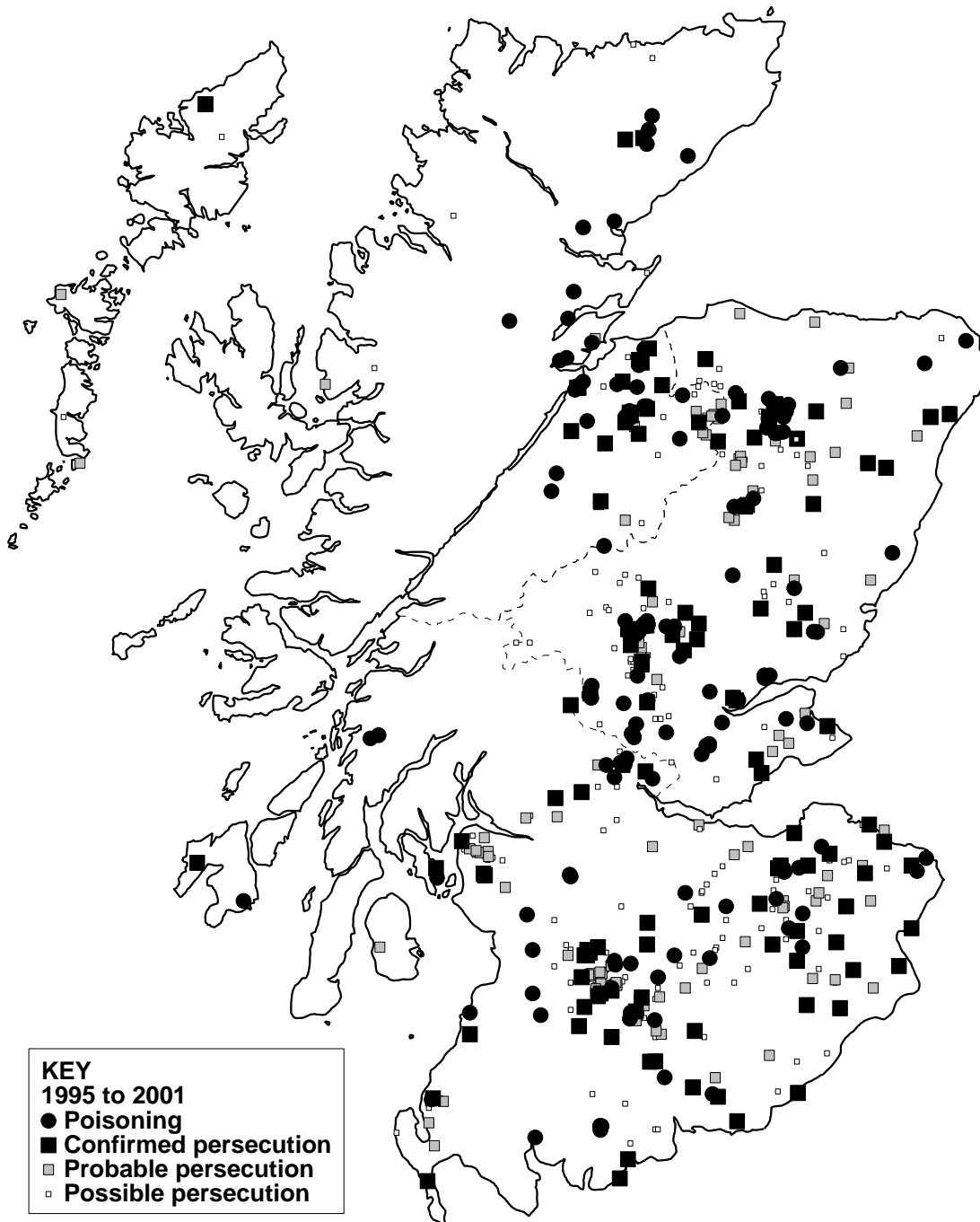
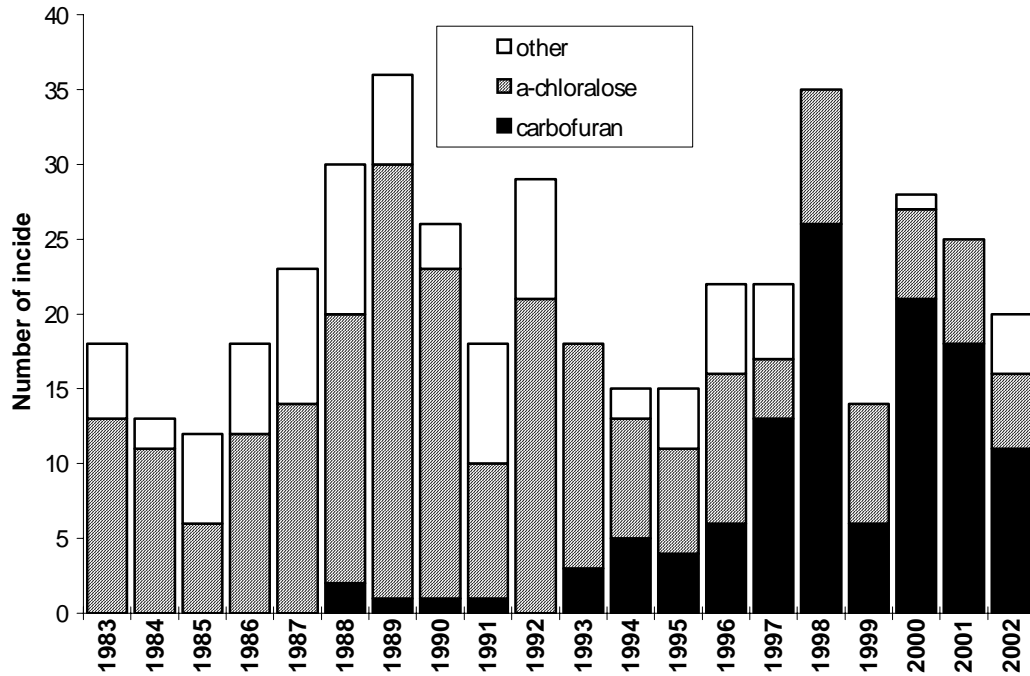


Figure 2 – alpha-chloralose and carbofuran use in Scottish wildlife poisoning incidents – 1983 to 2002



Sources: RSPB, SASA, DAFFS/SOAFD/SOAEFD/SEERAD

This includes all incidents known to the RSPB but excludes cases where it was deemed that no threat existed to birds of prey. Excluded incidents mostly involve the killing of companion animals – usually cats – in urban and suburban areas. Carbofuran has also become the most widely used poison in these urban cases. Note that the chart shows 20 records for 2002 rather than the 18 reported for the year. This is because in two incidents both carbofuran and alpha-chloralose were recorded.

SUBMISSION FROM SCOTTISH WILDLIFE TRUST

"Protecting the environment will in itself make our public services and our communities stronger over the long term."

Jack McConnell, 18th February 2002

Summary

- Scottish Wildlife Trust (SWT) welcomes this important Bill and its provisions for biodiversity action, the improved protection and management of SSSIs, and effective prevention of wildlife crime.
- We strongly recommend that Part 1 (2) of the Bill is strengthened to ensure that implementation of the Scottish Biodiversity Strategy across Scottish policy areas is effective and targeted.
- We welcome the provisions for SSSIs, but recommend some minor changes to the Bill on various provisions. It is essential that sufficient funding is made available for positive management of **all** SSSIs.
- We fully support the provisions in Part 3 on wildlife crime, and again recommend some minor changes. In particular, the issue of non-native species should be addressed in this section.
- SWT commends the Scottish Executive for the way it has developed this legislation, including thorough consultation and teamwork with a wide range of stakeholders.

SWT strongly welcomes the Nature Conservation (Scotland) Bill as a long-overdue revision of our nature conservation legislation. We have worked closely with the Scottish Executive and Scottish Environment LINK in development of the Bill and its provisions. We have also played an important role in the recent development of the Scottish Biodiversity Strategy and its Implementation Plans.

We consider that the Bill can still be improved in a number of areas, notably Part 1. However there are some more general issues that SWT would like to raise before dealing with the detail of the Bill.

(1) Finance

One of the most important aspects of this Bill is the shift in emphasis of the legislation from defence of SSSIs (compensating landowners not to do damage) to their positive management (restoring and maintaining sites at favourable status). Whilst the designation and protection of sites obviously remains imperative, it must be recognised that positive management requires funding. Scottish Natural Heritage must have adequate resources available to ensure that **all** SSSIs can be managed positively.

According to the draft Financial Guidelines published by the Executive earlier this year, there are two key routes for funding positive management of SSSIs. One is the Natural Care Programme; the other is the Rural Stewardship Scheme and subsequent Rural Development Plan schemes under the reform of the Common Agricultural Policy. It is essential that sufficient funding is available through these two initiatives to meet the positive management requirements for SSSIs required by this Bill.

SWT's recommendations for finance

- **SNH must be provided with sufficient funding to develop the Natural Care Scheme in line with the requirements of this Bill. This funding allocation should not be at the expense of other SNH commitments, particularly those for wider biodiversity action.**
- **In developing the CAP Mid-Term Review package for Scotland (decision February 2004), the Minister must recognise the requirement for Rural Development Plan funding towards SSSI management, and wider biodiversity actions that could also be undertaken, redirecting subsidy through modulation.**

(2) Marine nature conservation

Despite the fact that over two-thirds of Scotland is marine and of great conservation importance, this Bill focuses on terrestrial issues. Marine legislation is a hotch-potch of over 80 different Acts covering fisheries, fish-farming, navigation, etc, some devolved, some reserved, meaning that marine interests are neither adequately protected nor managed holistically.

SWT strongly supports the fact that some of the principles of a modern nature conservation system, set out in this Bill, will extend to the marine environment. Notably, marine biodiversity protection will be supported by the proposed biodiversity duty and links to the Scottish Biodiversity Strategy marine plan.

However, a simple extension of this Bill to cover the seas, 'tagging' marine yet again on to terrestrial measures in the absence of reform of marine legislation, would **not** be appropriate. This is because Scotland still lacks a legal basis for designating and managing areas for nationally important marine species and habitats, as well as a broader legislative and policy framework that addresses the 'free for all' approach to the sea.

SWT is contributing to LINK's campaign for separate legislative reform to address these issues, through support for a system of marine spatial planning, a marine strategy, a national 'body' to plan and co-ordinate marine and coastal management, the establishment of local marine management structures and nationally important marine sites. We welcome the Executive's commitment to addressing some of these broader marine issues in the medium term via, for example, consultation on a Scottish Marine Strategy. We would expect this to mean that marine conservation legislation will be brought forward in the next 2-3 years.

SWT's recommendations for marine nature conservation

- **While not pressing for additional measures in this Bill to cover the marine environment, SWT seeks assurances from the Executive that plans to address marine nature conservation issues are in hand, and that comprehensive marine legislation will be brought forward to Parliament within 2-3 years.**

(3) Local Sites

While SSSIs are crucial to the conservation of important habitats and the species which exist in them, they are only one part of conserving biodiversity in Scotland. In practical terms, even with LBAPs and a Scottish Biodiversity Strategy to guide actions, where do we start with the 'wider countryside' outside SSSIs? This is where Local Sites can help.

Local Sites (sometimes called Wildlife Sites or Sites of Interest to Nature Conservation) are a system of non-statutory sites complementing SSSIs, that aim to identify all land within local authority areas that is of high biodiversity value. They provide an ideal mechanism for prioritising biodiversity action, for example in site protection through the planning system and in targeting land management advice.

There are over 3,000 Local Sites in Scotland, with 29 out of 32 local authorities operating various systems with different criteria and standards. Scottish Wildlife Trust has been heavily involved with helping to identify and survey sites, contacting landowners, and encouraging local authorities and advisers to use these sites as a means of prioritising their biodiversity work.

However, the picture across Scotland is complicated and incomplete. SNH has already recognised that further work is needed in the future by a number of stakeholders to develop Local Sites systems. Local Sites could then be taken into account in planning and development strategies to assist in the creation and fulfilment of LBAP targets, for example by issuing planning guidance on Local Sites.

SWT believes that the effectiveness of Local Sites as a toolkit for prioritising biodiversity action should now be maximised. These actions should be developed through a partnership approach, led by SNH and local authorities.

SWT's recommendations for Local Sites:

- **A review of the state and status of Local Sites must be undertaken as soon as possible.**
- **Common standards should be developed for Local Sites systems throughout Scotland.**
- **The Scottish Biodiversity Strategy must recognise Local Sites as a key mechanism for prioritising action.**
- **Guidance and support should be given to local authorities on Local Sites systems.**

Part 1: Biodiversity

The first part of the Bill, on biodiversity, is welcomed and strongly supported by SWT. It is important because it demonstrates the Government's ongoing commitment to the conservation of biodiversity as required by the UK's implementation of the UN Convention on Biodiversity. It is also important as a contribution towards sustainable development in Scotland.

Some of our wildlife is so rare or important that it is rightly protected by the SSSI scheme. Yet, as Ross Finnie says¹, it doesn't make sense to rely on maintaining special sites within an otherwise depleted natural environment. Scotland thus needs a comprehensive approach to biodiversity, integrated into all land and water management decisions across all public bodies. This doesn't just mean the identification of particular special projects, and carrying on with potentially conflicting practices elsewhere: it means the change of attitudes, the promotion of positive action and, sometimes, the redirection of existing resources. At present there are a number of blocks at policy level in Scotland that are preventing this from occurring.

¹ Foreword to *Nature Conservation (Scotland) Bill: A Draft for Consultation*, March 2003, Scottish Executive Paper 2003/10

Section 2 of the Bill suggests that the Scottish Biodiversity Strategy can be used as a key tool for implementing biodiversity action through policy change. The Scottish Biodiversity Strategy (SBS) has been developed over the last two years by stakeholders of the Scottish Biodiversity Forum, led by the Scottish Executive and including Scottish Wildlife Trust. The SBS is a long-term document identifying general aims. Implementation plans for the SBS are currently in draft by members of the Scottish Biodiversity Forum with wide stakeholder involvement, identifying actions and targets for the next three years.

We consider that the Bill, in its current form, is too weak and general to ensure that the biodiversity process in Scotland is implemented effectively by all public bodies through the SBS. Taking action for biodiversity, and integrating it into other policy areas, is complicated: it requires a clear structure, guidance, identified actions and priorities. It is essential that the Bill is explicit in not only requiring designation of a Scottish Biodiversity Strategy, but requiring its implementation. To achieve this, the structure and subject matter of the SBS should also be defined on the face of the Bill (a similar approach to River Basin Management Plans in the WEWS Act). We welcome the provision for three-year reports on progress to Parliament, and we suggest that this is linked to the three year cycle of implementation plans currently being developed within the SBS.

The definition of biodiversity given in the Bill refers to the UN Convention. However, if an explicit definition of biodiversity is not given it is possible that biodiversity will be interpreted in varying ways by local authorities and other bodies who are drawing up their own strategies for implementing the duty, which in turn may lead to confusion by the wider public. Therefore SWT would also like to see a clear definition of biodiversity outlined in the Bill.

SWT recommendations for Part 1 of the Bill

- **We strongly welcome the duty on all public bodies to further the conservation of biodiversity.**
- **The designation of a Scottish Biodiversity Strategy must be obligatory rather than optional.**
- **There must be a requirement on Ministers and public bodies to take action, or promote the taking of action, to further the conservation of biodiversity through the Scottish Biodiversity Strategy.**
- **The general structure of the Scottish Biodiversity Strategy (SBS) should be defined in the Bill, to include an implementation plan, plus habitat and species lists.**
- **An explicit definition of biodiversity in the Bill would avoid ambiguity and confusion.**
- **SWT would welcome the Executive's commitment to a continued participative approach with stakeholders in developing the SBS.**

Part 2: SSSIs

SWT strongly welcomes the provisions within Section 2 to strengthen the protection and management of the SSSI series. Modernisation of the legislation is long overdue, and it will ensure that the purpose and maintenance of this important series of sites is clear to all involved. In particular, we hope it will serve to address the current situation where 45% of SSSIs in Scotland are not in favourable condition².

We consider that the Bill in its current form largely fulfils the aspirations set out in the original 'Nature of Scotland' consultation. However, we would suggest a few minor changes to improve the legislation still further.

² Butterfly Conservation, National Trust for Scotland, Plantlife, RSPB Scotland, Scottish Wildlife Trust and WWF (2000) *Time to Act: Saving Scotland's Wildlife*.

SWT recommendations for Part 2 of the Bill

- **SWT welcomes the provision of a 'statutory purpose' for the SSSI series for the first time. However, we feel that as stated, the statutory purpose concentrates too much on designation of SSSIs, and not enough on the need for their positive management. We recommend that this section is changed to include conservation and enhancement of SSSIs, and that the duty should be broadened to all public bodies. The statutory purpose should also include some reference to rarity as a criterion for SSSI notification.**
- **We believe that Site Management Statements should include clear definitions of management objectives for the site in question, and how this links with the wider SSSI series.**
- **We support LINK in the call for a general duty on all public bodies relating to broader policy that could affect the integrity of the site series (Section 12).**
- **We believe that disturbance of fauna for which an SSSI is notified should be specifically described as an offence in section 19 or section 56 (2).**

Part 3: Wildlife Crime

SWT fully supports the proposals in Part 3 and Schedule 6 on wildlife crime, to update the current legislation contained in the Wildlife and Countryside Act (1981). We support the early enactment of these measures. We suggest the following improvements to this section:

SWT recommendations for Part 3 of the Bill

- **New measures to address the problems caused by non-native species would be appropriate for inclusion in this Section. Legislation could help to strengthen current control measures for problematic non-native species, and to deter further introduction of non-native species into the wild. The Executive has recently consulted on legislative proposals regarding non-native species. SWT strongly encourages the Committee to request amendments from the Executive on this issue at Stage 2.**
- **Paragraph 17 of Schedule 6 should require consultation with SNH and other interested parties as part of a transparent process, before the Minister makes any Order to change schedules.**

Scottish Wildlife Trust (SWT) has over 24,000 members, 70 staff and many active volunteers. Our aim is to achieve a Scotland rich in wildlife, enjoyed by all. We manage 124 wildlife reserves, 57 of which are SSSIs. We are key players in the Biodiversity Action Plan process at local and national levels. SWT is a major partner in the Scottish Biodiversity Forum and we have dedicated considerable time and resources to development of the Scottish Biodiversity Strategy and its Implementation Plans. We have also recently completed a major project to identify and survey Local Sites throughout Scotland, working with local authorities and SNH.

SWT has worked closely with the Scottish Executive and SNH in development of new nature conservation legislation in Scotland, both through our own work and through membership of Scottish Environment LINK's Special Areas Task Force. We will continue to contribute our expertise and experience to the successful implementation of the new Nature Conservation Act in Scotland.

Scottish Wildlife Trust also supports Scottish Environment LINK's views on the Bill.

SUBMISSION FROM WOODLAND TRUST SCOTLAND

Woodland Trust Scotland is limiting its evidence to Part 1 & Part 2, Sections 3 and 4. Comments on the remaining sections of the Bill have been submitted via Scottish Environment LINK.

General comments

Woodland Trust Scotland strongly **supports the overall principles and purpose of the Bill**. We welcome the change in emphasis of financial incentives for the management of some of our most important natural heritage sites (SSSIs). However, we believe **a site-centred system alone will not deliver adequate protection for our natural heritage** in the face of increasing habitat fragmentation and climate change. We therefore sincerely welcome the proposed duty on public bodies and office holders to further the conservation of biodiversity in Scotland.

The **dual approach** of wider biodiversity conservation and site designation will help deliver greater protection and enhancement of our natural heritage throughout the **wider countryside** and, crucially, avoid the 'ghettoisation' of our native flora and fauna in a series of ecologically isolated and vulnerable sites.

The Scottish Biodiversity Strategy will help deliver nature conservation on a scale beyond the artificial boundaries of designated sites, moving instead towards a **landscape scale approach** to nature conservation. The creation of semi-natural habitat networks and functional ecosystems, integrated into other land uses, will be key to delivering this approach.

Part 1 Biodiversity

Woodland Trust Scotland believes there are a number of additions and amendments which will help clarify the Bill. These are:

- The replacement of 'may' with 'must' in clause 2 (1) thereby making the designation of a Scottish Biodiversity Strategy by Scottish Ministers obligatory rather than optional. A duty, without a strategy to outline what the duty means in practice, will have little validity. The Strategy will be essential in providing a steer to those public bodies and office holders involved in implementing the duty.
- Clauses 1(2)(a) and 2(4). It is important that the definition of 'strategy' in clause 1(2)(a) also **incorporates the strategy's associated delivery plans**. These delivery plans will enable Scottish Ministers to accurately assess progress regarding the implementation of the strategy, as described in clause 2(4).
- In clause 2(4) the inclusion of a commitment to 'lay a report before the Scottish Parliament regarding the implementation of the strategy' is welcomed. However, as the strategy is designed to deliver a longer term vision (25 years) the reporting period should extend to **'every subsequent 3 year period'** in addition to 'within 3 years of the date' on which the strategy is designated.

Part 2, Chapter 1 SSSIs

Woodland Trust Scotland particularly welcomes the proposal to give SSSI's a 'statutory purpose' (Section 3). However, we are concerned that the '**statutory purpose**' as drafted is **too narrow in its scope**, restricted as it is to SNH's duties regarding notification, enlargement and de-notification. A broader statutory purpose to **conserve and enhance** the site series is required to provide a statutory underpinning to SSSI management.

We are also very concerned that clause 3(2)(a) refers only to the 'development of a series of Sites of Special Scientific Interest in Scotland *representative* of the diversity and geographic range' of the natural heritage. We would wish to see the '**irreplaceable**' aspects of our natural heritage included within this clause. The development of a series of SSSIs would then be focussed not only a achieving a representative sample of Scotland's habitats, but also safeguarding the irreplaceable ones (ancient woodlands and un-cut raised mires are both examples of habitats that once lost cannot be re-created – see case example).

Case example

25% of Ancient Woodland of semi-natural origin in Scotland lies within SSSI boundaries leaving 75% with no statutory protection¹. Following the World Summit in Johannesburg in 2002, the Scottish Executive and other partners within the UK Forest Partnership for Action, including Woodland Trust, signed up to a commitment to 'Develop joined up approaches to ensure effective support for protection and restoration of wooded landscape habitats; including the establishment and management of protected areas, to ensure all ancient woodland is adequately protected'². One way of ensuring ancient woodland is adequately protected is to designate more ancient woodland sites as SSSIs. The SSSI system *should be* the most effective way of protecting a significant part, or preferably all, of the 2% of Scotland's land area covered by irreplaceable ancient woodland.

Woodland Trust Scotland believes that clause 4(2) would benefit from the inclusion of a third sub-clause relating to 'a set of long-term management objectives'. This will ensure SSSI owners and managers are clear as to the longer term vision for conserving and enhancing the natural heritage value of their SSSI.

¹ Figures supplied by SNH 22nd October, 2003

² UK Forest Partnership for Action (2002) (published by Forestry Commission)

SUBMISSION FROM PROFESSOR ROGER CROFTS

Overview

1. The Bill as introduced is an improvement on the earlier consultation version. The important positive features of the Bill are:

- Definition of purpose of SSSIs
- Wildlife protection provisions updated and extended
- Biodiversity duty on public bodies
- Powers for Land Management Orders and Restoration Orders
- Appeal mechanisms on management to independent authority
- Provision for denotification of SSSI
- Clarification on the role of the SSSI Advisory Committee
- Halting frivolous objections to SSSI Advisory Committee
- Ability to vary notification without total renotification
- Clarification of authority on operations affecting SSSIs.

2. The Bill is however deficient in a number of ways. It requires clarification and amendment as recommended below on the following points:

- biodiversity duty and biodiversity strategy
- purpose of SSSIs
- enlargement of SSSIs
- relative roles of SNH, Scottish Ministers and Scottish Land Court
- sentences on conviction.

3. The Bill focuses entirely on the traditional aspects of nature conservation, i.e. sites for species and habitats protection and wildlife protection measures. It ignores a number of points which are essential such as the marine environment and wider countryside measures beyond SSSIs. It also ignores protection of the cultural landscape and scenic heritage of Scotland including statutory protection of National Scenic Areas and a mechanism for implementing the provisions of the European Landscape Convention once it is ratified by the UK Government. Specific commitment on legislative action should be sought from Executive Ministers on all these issues during the passage of this Bill.

Biodiversity

4. Sections 1 and 2 on biodiversity are very weak and require strengthening.

- The phrase 'must have regard to ...' in Section 1(2) does not force bodies to do anything other than that and therefore lacks any bite. It should be replaced with the phrase 'shall comply with' as the responsibility in terms of the Convention on Biological Diversity is not an opt out one.
- Surprisingly there is no reference to sustainable development as the contextual policy framework within which biodiversity fits, especially given the emphasis on sustainable development by the First Minister and in the Partnership for government agreement. This should be introduced as a new section.
- The Scottish Biodiversity Strategy provision in Section 2 is, on the face of it perfectly reasonable. Unfortunately the current Strategy is remarkably deficient and does not conform to the Convention itself or to the subsequent decisions by the Conference of Parties. It gives the impression that the drafters are not familiar with the provisions of the Convention and the benefits that its implementation in Scotland would provide to improving nature conservation and

its benefit to civil society. The provision should be amended to require the Strategy to be entirely in accord with all of the provisions of the Convention as from time to time amended and with the Decisions made by the Conference of Parties. Subsection (4) should be retained.

Purpose of SSSIs

4. Section 3(2)(a) provides the first ever statutory definition of SSSIs. In general this is welcome but the specific provision is muddled in the extreme and takes no account of the well-tried and tested definition, which has been in use for many years by SNH.

- There is no reference to such fundamental issues such as rarity and uniqueness, threats and vulnerability of species and habitats. These should be specifically referred to.
- In addition the geographic range is confused referring to Scotland, GB, and the EU, but ignores the global significance of species and habitats in Scotland, such as blanket mires, Atlantic oak woods and Caledonian pine ecosystem. It is therefore not clear whether the SSSI series, which the Bill helpfully refers to, relates to Scotland or to the wider geographical entities mentioned. This must be clarified by amendment.
- The spatial units for the selection of SSSIs are ignored in the Bill. This is a significant omission and must be filled through amendment. At present the spatial unit in the so-called Area of Search based on the administrative county: a unit which has no legal definition and had been defunct for many decades. Biogeographic units, in accordance with global best practice, should be used. The Natural Heritage units used by SNH as the basis for its Futures Programme are the most objective basis available and should be referred to.
- It is quite unnecessary for Ministers to have a power to 'guidance' on such technical definitional matters especially when the SSI Advisory Committee would be in a much better position to do so and the provision in Section 3 (2)(b) should be removed or amended as suggested.

Enlargement of SSSIs

5. Section 5 deals with enlargement of SSSIs. What is not at all clear is whether the enlargement is on the basis of the strict criteria set out in Section 3 or, as with the current SSSI legislation in England and Wales, as an element of buffer zone between the core area of stricter protection of the Site and the surrounding land beyond the boundary. This needs to be clarified in the form of an amendment to the Section.

Roles and responsibilities

6. The role of the independent Scottish Land Court is welcomed in dealing with cases on appeal about land management issues. However, there is inconsistency in the approach to using this body.

- Section 7 requires SNH to obtain Scottish Ministers consent on urgent cases where there is the potential of damage being caused. This seems to be unnecessary step and should be removed. If a check were needed then it would be more sensible to give the role to the Scottish Land Court.
- Section 29 requires SNH to obtain the consent of Scottish Minister for a Land Management Order. The arguments in the previous bullet point apply equally here.

- Section 34 curiously gives the Scottish Land Court the appellate function in relation to appeals against Ministers decisions on Land Management Orders and related Orders. Again the arguments in the first bullet point above apply.
- In Section 38 the new version of the power for SNH to acquire land the role of the Scottish Land Court has been removed. This should be reconsidered with the appeal function being undertaken by the Court and the decision not being referred to Scottish Ministers.

7. In addition, the parliament in scrutinising the Bill should take particular care to consider the extra layers of bureaucracy put into the decision-making system compared to the current system. There is recognition of the need for checks and balances to safeguard both public and private interests, but not to the extent that decision-making is slowed down and that costs rise.

Sentencing policy

8. There is inconsistency between the provisions on sentencing in the Criminal Justice (Scotland) Act 2003 which allows for custodial sentences. And the present Bill which makes provision for fines and not for custodial sentences. There appears to be an implicit assumption that crimes against animals are more unwelcome than crimes against other species and against habitats. This should be reconsidered as the present drafting will create an anomaly and potentially which the potential undertaker\ of an illegal will act no doubt seek to exploit.

Agenda Item 4

**Environment and Rural
Development Committee**

12 November 2003
ERD/S2/03/11/4g

SUBMISSION FROM PROFESSOR C.H. GIMINGHAM

I am grateful for the invitation to submit evidence to the Committee, relating in particular to the biodiversity and land management aspects of the Bill.

For the greater part of my professional career I was Lecturer and latterly Professor and Head of the Department of Botany (now the Dept. of Plant and Soil Science) in the University of Aberdeen, retiring in 1998. My research interests concentrated largely on the ecological aspects of land use and vegetation management of the Scottish and west European heaths and moorlands (especially the effects of burning and grazing), and on nature conservation in the uplands generally, and in coastal areas. I have had a long association with the development of nature conservation in Scotland, having served on the Scottish Committee of the Nature Conservancy and Nature Conservancy Council, the N.E. Regional Boards of NCC(Scotland) and SNH, and the Science Advisory Committee of SNH. From 1980 to 1991 I was a Member of the Countryside Commission for Scotland, and I was for a time Chairman of the Conservation and Science Committee of the Scottish Wildlife Trust. I have also been a member of the North East Scotland local Biodiversity Action Plan Public Awareness Sub-group, and am currently on the Advisory Panels for two nature reserves in the Aberdeen area.

The new Bill, in my view, is most welcome and should make a very significant contribution to the stewardship of Scotland's priceless assets of biodiversity and natural and semi-natural environment. I would therefore encourage your Committee to do all it can to secure rapid passage of most of its provisions into legislation. It is particularly timely because serious shortcomings have become evident in existing legislation, despite the advances made in certain areas. However, I believe that some of the provisions in the new Bill could be more robust and should be strengthened or more fully defined, and the mechanisms for realizing them made more explicit. Some omissions are disappointing, although it is clear that certain of these are to be addressed by the Executive shortly.

Part 1. This 'biodiversity duty' is admirable and, if anything, needs to be set out in more detail. In Scotland (as elsewhere) the populations of many characteristic and valuable native plants and animals have suffered serious reductions in recent years, and their habitats have often been damaged or destroyed. It is therefore extremely important to have this 'duty' enshrined in the Bill and clearly laid on all public bodies and office holders in such a way that they cannot ignore it, while the same attitudes need to be widely promoted in the private sector. Although some branches of National and local government, and some private companies, are doing much to promote awareness of the social and economic consequences of current losses of biodiversity, still far too little attention is paid to the potentially adverse effects of some of their decisions in the fields of planning, development, construction, engineering, countryside and environmental management, to name but a few. For the 'biodiversity duty' to become really effective, it will be necessary to define in as much detail as possible exactly what is expected. While the most important and richest sites will in future be better protected by the national SSSI and Natura 2000 schemes, these will not be sufficient by themselves to stem the losses of biodiversity and sympathetic management in the wider countryside is also essential. While in general I support the paragraphs 49-56 in the Policy Memorandum, I strongly believe that the new duty requiring Local Government to have regard to conservation and enhancement of natural heritage should not be limited to SSSIs but should extend to sustaining biodiversity throughout their areas, including the recognition of 'local wildlife sites' and respecting these when developments are under consideration.

Part 2. The SSSI system has made a very important contribution to nature conservation throughout the UK by identifying and designating the top rank of sites in terms of species richness and habitat representation. However, it is now clear that provision for their protection and good management has in many cases been weak and ineffective, and too many have been lost or degraded. I would therefore urge support for the new provisions to secure sustainable management of SSSIs through the preparation by SNH of Site Management Statements, underpinned by penalties to be incurred if owners or occupiers fail to abide by these or carry out, without approval, 'operations requiring consent'. This will be a big improvement over the costly, and too often abused, system of paying compensation to 'buy out' speculative developments which were never part of established land management. Financial incentives for positive management of SSSIs should make an important contribution towards securing their key features of natural heritage for the future. I therefore welcome the provisions contained in the 'Natural Care' programme for financial incentives and hope the Committee will support them. However, it will be vital to ensure that the financial provisions for operating 'Natural Care' will be adequate. It is most important that the management schemes and agreements should be supported adequately by non-competitive funding as well as by the existing Stewardship Scheme and other grant schemes with more specialised objectives. Currently the effectiveness of some of the latter suffers from budget restrictions. There seems to be a need to integrate the new arrangements closely with agricultural policy, and to prevent the whole system from becoming excessively complex and time-consuming. I therefore suggest that this aspect of the financial memorandum may require further consideration and simplification if the desired influence on land management is to be achieved, so that those participating in these schemes can be spared excessive bureaucracy and better steered towards the most appropriate sources of funding.

The aim of improving relationships between SNH, as operators of the system, and landowners and managers is to be commended – notably discontinuing the daunting lists of Potentially Damaging Operations and substituting briefer lists of Operations Requiring Consent, targeted to the needs of the site in question. Greater flexibility in the operation of the SSSI system should help to reduce conflict, and it is to be hoped that increasingly land owners and managers will be proud to have an SSSI on their land, rather than the converse. The possibility of notifying 'extra land' contiguous to or otherwise associated with an SSSI where this has special importance for the maintenance of the natural heritage of the site itself is an excellent addition, and should help to avoid the instances of serious damage to important sites which have occurred in the past.

The smooth operation of most of the proposals contained in the Bill clearly rests on the 'voluntary principle' and I believe this should be supported, but at the same time I hope that the intention to retain the provisions for the imposition of Nature Conservation Orders and Land Management Orders will be approved and accepted, and that the powers to enforce more realistic penalties than are available at present, when such orders are infringed, will be enacted. Also I would hope that support will be given to retention of the power of Compulsory Purchase, albeit to be used only as a last resort.

Part 3. The previous legislation proved far too weak in countering 'wildlife crime' and is in urgent need of being brought up to date and strengthened to provide a more effective deterrent. I would therefore urge strong support for the proposals contained in the new Bill, and in particular the more realistic penalties, including the option of custodial sentences in appropriate cases.

Some matters not covered by the Bill. A matter also urgently requiring attention is provision for dealing with and controlling invasive non-native species, including plants, animals and birds. I would encourage of the Committee to urge Ministers not to lose the opportunity to include legislation on this aspect in the current Bill, especially in so far as control of invasive alien plant species is concerned, perhaps along the lines currently under consideration by DEFRA.

In addition, while I note that the present Bill is not intended to extend to maritime and marine environments, and that the Executive will be turning to this matter in the future, I would wish to underline the need for new legislation to address the problem of rapid degradation of biodiversity in these habitats. I believe that no time should be lost in proceeding to a Bill to tackle this complex area.

SUBMISSION FROM FORESTRY COMMISSION SCOTLAND

1. The context: Forestry Commission Scotland and Biodiversity

An amendment to the Forestry Act, introduced through the Wildlife and Countryside Amendment Act, 1985, gave the Forestry Commissioners a duty comparable to Part 1 of the Bill. It was a duty (so far as may be consistent with their functions under the Forestry Acts) to '*endeavour to achieve a reasonable balance between:*

- a. *the development of afforestation, the management of forests and the production and supply of timber, and*
- b. *the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest'*

This duty has encouraged us to seek to conserve special interest sites and enhance the nature conservation (and biodiversity) value throughout forests and woodlands.

2. The Bill: comments

FCS was represented on the expert groups that helped to shape parts of the Bill and is currently helping to develop the Scottish Biodiversity Strategy. We welcome the Bill which will help to consolidate the progress already made in integrating biodiversity objectives into forestry. Our experience since 1985 suggests that the Bill will not require anything greatly different in respect our activities but we welcome the clear statement of the duty and reference to biodiversity.

Part 1

The furthering duty proposed for public bodies in the Bill is comparable with our interpretation of the existing balancing duty in the Forestry Acts. FCS therefore expects that no radical changes would be required in respect of current forestry policies or practices, but the proposed new duty would be very helpful in encouraging a systematic approach to developing, monitoring and reviewing our biodiversity policies and programmes.

The Bill will create a common benchmark for policy integration across the public sector and beyond, which should give a strong consistent stimulus to collective action, especially important for the wider environment outside protected sites.

The proposed form of linkage of the 'furthering' duty to the Biodiversity Strategy provides encouragement without being over-prescriptive or rigid. It will allow the actions in Scottish Biodiversity Strategy to be developed and adapted by partners in a pragmatic and flexible way. Our experience with the balancing duty (which is not prescriptive) is that it has encouraged us to respond to the biodiversity agenda as it has developed.

Parts 2 and 3

We have few comments on the SSSI proposals. We believe they will be effective in general. There are few aspects which will impact significantly on FCS.

The total area of SSSIs on the national forest estate is 33,265 hectares (5 % of the national forest lands). Management plans have been, or are being, prepared for all designated sites in consultation with SNH. SNH are monitoring the condition of these sites in relation to the designated features and the results are being used to adapt the plans as necessary. Management plans have also been prepared by FCS for many key native woodlands and other priority habitats that are not designated. There may need to be some adjustment of the Forestry Acts to allow FCS to act as regulatory authority in the way proposed in Section 15 (6)(b) by passing on conditions as advised by SNH in respect of felling licence or grant applications by private owners. We consider that the management plans which are already agreed between FCS and SNH on SSSIs on the national forest estate could avoid the need for SNH consent to be sought for individual operations under section 13, and we are discussing this with SEERAD.

The protection of wildlife measures are also welcome. We support the various 'intentional and reckless damage' offences and the defence in relation to lawful operations if undertaken with reasonable precautions etc. These should not present problems as long as they are interpreted to strike a reasonable balance between lawful operations and protection.

The use of best practice guidance will be vital to strike this balance and avoid risking an offence, and we have a strong basis for this in the various forestry guidelines. Some further development with partner stakeholders may be needed for particular issues, for example guidance in relation to capercaillie lekking.

3. Conclusion

Forestry Commission Scotland welcomes the Bill, especially the duty for public bodies to further biodiversity, and the linkage to the biodiversity strategy.

Our experience since 1985 of a legal duty rather similar to the one now proposed more generally for all public bodies suggests that Part 1 of the Bill will have far reaching and positive consequences in requiring bodies to demonstrate how they are furthering biodiversity.

The common framework provided by the Bill will encourage people and organisations to work together to tackle biodiversity country-wide as part of wider sustainable development and land use policies.

We look forward to helping to implement the Bill, working with other parts of the Executive, and with partners in the private, voluntary and public sector.

4. Forestry Commission Scotland experience

Forestry Commission Scotland was established in April 2003, following the Forestry Devolution Review which sought to explore what changes need be made to enable the Forestry Commission to work more closely with the devolved administrations. Forestry Commission Scotland serves as the forestry department of the Scottish Executive, with a mission to protect and expand Scotland's forests and woodlands and increase their value to society and the environment. It is responsible to Scottish Ministers and funded by the Scottish Parliament.

Forestry Commission Scotland remains part of the Forestry Commission, a cross-border public body, as certain aspects such as international policy are reserved to Westminster, although these matters are subject to agreement at meetings of the Forestry Ministers of Scotland, England, Wales and Northern Ireland.

The powers and duties of the Forestry Commission (established in 1919) are set out in the Forestry Acts 1967 to 1979.

We work closely with colleagues in the Executive, and our partners to deliver the Scottish Executive's forestry policies - as set out in the Scottish Forestry Strategy - through:

- working in *partnership* with others to promote the interests of forestry;
- managing *the national forests of Scotland* for public benefits, developing and demonstrating good forest practice;
- encouraging good forest management which optimises public benefit by providing *targeted grant-aid for woodland owners*;
- regulating *forest practice* through consultation over new planting and felling and through environmental impact assessments.

We are guided by the principles that underlie the Strategy; the over-arching principle of which is sustainability. Scottish forestry must contribute positively to sustainable development, and meet internationally recognised standards of sustainable forest management

The Strategy requires good integration of forestry with other land uses: agriculture, conservation, deer management, fishing, recreation and tourism. The Strategy also recognises the contribution of forests and woodlands to the wider aims of Scottish Ministers in jobs, transport, health, education, and sustainable development.

Since 1985, and particularly since the signing of the Biodiversity Convention in 1992, the Forestry Commission has developed ***policies, guidelines, and indicators*** based on first hand experience in managing the national forest lands, and after extensive consultation, to

conserve and enhance nature conservation/biodiversity value in balance with other forestry objectives. A suite of guidelines and best practice guidance has been developed for nature conservation, biodiversity, water, soil, landscape, archaeology, recreation, community involvement and other aspects of sustainable forest management. These have been drawn together in the UK Forestry Standard as an expression of best practice for forestry. A set of sustainable forestry indicators

(including biodiversity) has also been developed. Through our colleagues in FCGB we have also been engaged with international processes seeking to integrate biodiversity into sustainable forest management at global, pan-European and EU levels.

We have been actively engaged with the **UKBAP** process from the start in 1994, and FCS is lead partner or strongly involved in a number of Habitat and Species Action Plans, notably those for all native woodland habitats and for capercaillie, black grouse, red squirrel, wood ants, and juniper.

All the ***national forest lands*** are managed to enhance biodiversity in accordance with best practice guidelines. The development of a certification system for sustainably produced forest products (the UK Woodland Assurance Scheme) has also provided a valuable market pull. All the national forest estate is now certified.

Biodiversity has been integrated into planning and management systems with stakeholder consultation to help identify sensitivities and agree priorities in relation to national and local biodiversity priorities (HAPs SAPs LBAPs). Data systems are being developed to record action in relation to habitats and species.

FCS has played a major role, through the management of national forests (about 40% of Scotland's forests), by providing grants for private owners, and in partnership projects for biodiversity on an extensive scale, especially in drawing on EU LIFE funds for enhancing Natura 2000 sites. Such projects include Atlantic oakwoods, Caledonian pinewoods, Bog woodlands, and capercaillie. Many of these focus on restoration of native woodlands, but in some we have restored key peatland habitats by removing forest.

The new conifer forests are being diversified by felling and replanting in new patterns, more in sympathy with the ecological potential and history of the landscape, with greater use of native species, retention of old and dead trees, and enhancement of edge and open ground habitats. Some forests are being managed particularly for priority species, some requiring extensive areas such as capercaillie and red squirrels.

For the forests and woodlands outside FCS management we have promoted biodiversity in new and existing woods using grant schemes since 1985, combined with advice and guidelines. Native pinewoods were amongst the earliest such schemes and over 41,000 hectares of new native pinewoods have been established in the last 14 years. Targeted Woodland Improvement Grants were successful in improving many existing native pinewoods and upland oakwoods, e.g. by removing exotic trees and rhododendron, by reducing deer browsing, and by removing fencing where it is a risk to woodland grouse.

The new ***Scottish Forestry Grants Scheme*** has been designed to help implement priorities in the Executive's agriculture and forestry strategies, including native woodland expansion and restoration to develop habitat networks for maximum biodiversity advantage. A suite of biodiversity related grants are available with higher rates of support on designated sites.

SUBMISSION FROM THE DEER COMMISSION FOR SCOTLAND

Introduction: the work of the Deer Commission

1. The Deer Commission for Scotland (DCS) undertakes a wide range of activities related to the management of wild deer throughout Scotland. As well as exercising a range of regulatory functions (e.g. Deer Control Agreements, Authorisations, Statutory Returns), it publishes Best Practice Guidelines, consults and advises widely on deer management issues including annual cull targets, promotes and actively participates in the operation of Deer Management Groups (DMGs), undertakes and commissions research projects, conducts deer counts, assists in training, works with other agencies on wider policy issues, and advises Scottish Ministers on all deer matters in Scotland. The Commission currently consists of 9 appointed Members and a Chairman. It has 22 Staff (Director, 14 Technical, and 7 Administrative Staff) based in offices in Inverness and Stirling. The Commission's annual budget from SEERAD for 2003-2004 is £1,184,000
2. DCS has in place a Vision, a Long Term Strategy and the necessary management systems to ensure that these can be delivered. The Vision was the subject of a full public consultation, and the Strategy to implement it was developed in close liaison with other key partners including Scottish Natural Heritage (SNH) and Forestry Commission Scotland (FCS).
3. DCS explicitly now focuses some of its resources on specific priority sites where deer are causing significant damage (for example to the natural heritage) or danger to public safety. This is approached through a clear and transparent procedure for assessment, discussion and action. At the same time, DCS remains committed to providing advice, support and collaborative action with all DMGs. For example, DCS staff attend at least one meeting of every DMG, and provide advice when sought.
4. Providing advice on best practice is a key objective. DCS is publishing a comprehensive suite of guides. These are readily available, easily updated and make full use of information technology. Critically, the guidance is developed not just by DCS but through a Best Practice Steering Group, chaired by DCS with representatives from Association of Deer Management Groups (ADMG), Scottish Gamekeepers Association (SGA), Land Training Agency (LANTRA), British Association for Shooting and Conservation (BASC), British Deer Society (BDS), and FCS. The Steering Group has agreed on a programme of Best Practice Guides and reviews and endorses each guide as it is developed. The first tranche of guides were published in July 2003.
5. In all its activities DCS seeks a co-operative and consultative approach. DCS has well-developed liaison arrangements with a range of organizations including the ADMG, SGA, SNH, FCS, and the Scottish Society for the Prevention of Cruelty to Animals (SSPCA). The Deer Management Round Table, made up of representatives of over 20 national organisations, is convened by DCS at least twice yearly to discuss key deer management issues.
6. DCS was actively involved in the development of the new Scottish Forestry Grant Scheme which provides specific support for deer management. DCS is also working with SNH to establish mechanisms through which incentive schemes might be used to support deer management aimed at delivering clear public benefit.

7. A significant proportion of DCS' work arises out of establishing, assessing, seeking solutions to and monitoring damage by deer to the natural heritage. This work is undertaken in close liaison with other agencies including SNH. It is fair to say that DCS now has an effective working relation with SNH at all levels, and the two organisations regularly address both policy and casework issues of mutual concern.
8. DCS has here restricted its comments to address how the Nature Conservation (Scotland) Bill might affect DCS functions or deer management in general.

The Draft Bill

9. DCS welcomes the Bill as a timely approach to modernising a key part of SNH's statutory framework. There are a few proposals on which DCS would comment as they are likely to impinge on DCS' work or on deer management in Scotland.

Part 1: Biodiversity

10. DCS regards the new duty on all public bodies and office holders "*to further the conservation of biodiversity so far as is consistent with the proper exercise of (its) functions*" as a sensible way of engaging all public bodies without imposing too onerous a duty. DCS hopes that this can be interpreted as including a sharing of the responsibility for furthering sustainable deer management.

Part 2: Conservation and Enhancement

SSSI

11. There are three main issues for DCS in this Part:
12. It is not clear whether DCS would be covered by the definitions of who must be notified of SSSIs (clauses 3 and 49), although there is a discretionary catch-all of "*such other persons appearing to the person giving the notice or notification thinks fit*". It is unlikely that DCS would need or wish to be consulted in each case, and indeed would not have the resources to give considered advice if there was a large caseload. However, there will be times when DCS input should be sought. The best approach might be for DCS and SNH to agree a consultation protocol once the new Act is in place. DCS would therefore argue that it should not be a requirement to consult DCS in all cases, but that the option to do so should remain.
13. The second issue arises from clause 12. This establishes a requirement on public bodies (or office-holders) to consult SNH before exercising any function on or affecting an SSSI. As the Bill reads at present, this could appear to apply to a great many of DCS' functions, including authorisations, deer censuses, some research, etc. Whether this is intended is not known, but clearly the potential implications in terms of workload (both for DCS and SNH), delay and uncertainty could be serious. DCS would argue strongly against a blanket requirement applying to all of its functions, many of which are routine but require speedy disposal. In practice at present DCS and SNH enjoy close liaison and DCS does consult SNH on those occasions where DCS proposed action might have a significant impact on designated sites. It would be helpful if the Bill were more explicit as to which if any of these functions might be covered by the requirement to consult SNH, and that there would be scope for protocols to be established with SNH.

14. The third issue arises in Clause 19, which strengthens the existing offence of “intentionally or recklessly damaging any aspect of natural heritage”. Just how far this concept could be carried is unclear. The drafting appears to apply to “operations”: i.e. something somebody does, rather than something which somebody fails to do – such as properly manage or control deer. DCS has a particular concern about the lack of controls to prevent or remedy the introduction of exotic species of deer into the wild, and is currently exploring what might be done under existing secondary legislation. There may be scope for considering how the Bill could help address this important nature conservation issue.

Nature Conservation Orders

15. It is noted that *Nature Conservation Orders* would be purely prohibitive: they could prevent operations but not require them. So such an Order could not, for example, require a landowner to cull deer or erect fences.

Land Management Orders

16. One regulatory power available to DCS under the Deer (Scotland) Act 1996 (“The Deer Act”) is section 8. This allows DCS to seek Ministerial approval for a compulsory deer control scheme where a voluntary deer control agreement (under section 7 of the Deer Act) cannot be reached or implemented. To date section 8 has not been used.
17. The proposed *Land Management Order (LMO)* device (clause 25), though only available for SSSIs or land contiguous to an SSSI, has some parallels with Section 8 of the Deer Act: an LMO could only be sought when a voluntary agreement was refused or had failed. The LMO may specify operations which must be carried out to conserve or enhance the site. SNH may carry out operations if not carried out by due date.
18. However, the Committee may wish to note that there are some differences from Section 8, notably procedural. Whilst Section 8 requires the Minister to hold a Public Inquiry if there are any objections to a proposed Control Scheme, in the case of a LMO the Minister merely has to give time (3 months) for representations, after which he may grant the Order: it is then open to appeal to the Scottish Land Court. The initial burden of proof on SNH also appears to be somewhat lighter: they may propose a LMO where they “*consider it to be necessary or expedient for the purpose of conserving or enhancing any aspect of natural heritage by reason of which an SSSI notification has effect*”. DCS, in seeking a Section 8 Control Scheme, must establish that deer have caused and are causing specific serious damage and that direct action is necessary to prevent it.
19. Clarification would be helpful on whether damage by deer would be covered by LMOs. The Deer Act (section 7 control agreements/ Section 8 control schemes) route might have as an alternative a land management agreement/land management order route for SSSIs where deer damage was an issue: how will the best option be chosen, and by whom? Issues of cross-compliance may need to be resolved through co-operation and protocol; it will be important that two pieces of legislation are not inadvertently used to address the same problem through different routes.

Supplementary

20. There is little here of direct relevance to DCS. Clause 42 would empower Ministers to issue or approve guidance, after consulting SNH and other interests. DCS would clearly expect to be consulted on any such code which might impinge on deer management.
21. DCS will be happy to expand on these comments when it gives evidence to the Committee.

SUBMISSION FROM THE ADVISORY COMMITTEE ON SITES OF SPECIAL SCIENTIFIC

INTRODUCTION

1. The Advisory Committee on Sites of Special Scientific Interest (ACSSSI) welcomes the opportunity provided by the Environment and Rural Development Committee to comment on the Nature Conservation (Scotland) Bill.
2. The role of the ACSSSI is an issue that is directly addressed by the Nature Conservation (Scotland) Bill (Section 21, and Schedule 1, paragraphs 10 & 11). The Committee has already provided written comment to the Scottish Executive on the draft Nature Conservation (Scotland) Bill published in March, and at that time had discussions with staff of the Executive and Scottish Natural Heritage (SNH).
3. In this memorandum the ACSSSI has confined its comments to those aspects of the Bill that it believes will affect or influence its work. These are contained in Part 2 of the Bill: Changes to the existing arrangements for the establishment and protection of sites of special scientific interest (SSSIs). The Committee has also taken account of its role in relation to specific questions raised in the call for evidence issued by the Environment and Rural Development Committee (8th October), namely:
 - “Do the proposals for changes to the SSSI regime mesh appropriately with other legislation in this area, both domestic and at an EU wide level?”
 - “Will the proposals achieve the stated aim of encouraging stakeholder involvement and making the administration of SSSIs more transparent and accessible?”
 - “Do the proposals strike the right balance between the public interest and the interests of land managers?”

BACKGROUND

4. The ACSSSI was established under section 12 of the Natural Heritage (Scotland) Act, 1991. Its role under that act is to advise Scottish Natural Heritage (SNH) on unresolved scientific objections to SSSIs notified under the Wildlife & Countryside Act 1981. The Committee is not a decision-making or arbitration body. It does provide independent advice to SNH to assist it in reaching its decisions.
5. Committee members are appointed by Scottish Ministers, and are selected for their scientific knowledge of the plants, animals, geology, landforms and soils of Scotland, as well as a general appreciation of the principles that underlie the scientific evaluation of sites for nature conservation. Further details of the role and remit of ACSSSI can be provided on request.

GENERAL COMMENTS

Support

6. The ACSSSI welcomes the publication of the Bill, and specifically provisions for establishing a clearly defined purpose for the SSSI series, for the amendment or denotification of sites, in extending the time available to SNH to confirm notification, and in making a new requirement to produce site management statements.

Nevertheless it has some concerns that the implications of the Bill for the work of the Committee require further clarification.

Role of Science

7. As a scientific Committee the ACSSSI has commented previously that it would like to see stronger references to the role of science and scientific principles in underpinning decisions about natural heritage. The methods used to collect and analyse information about potential sites should be transparent, and should have been validated. This is particularly true when SNH relies upon data collected by other organisations in selecting SSSIs. Explicit reference to the role of science e.g. in identifying sites of special **scientific** interest (page 2, Chapter 1, section 3 (2)) is still lacking in the Bill.
8. The Committee welcomes the reference in section 3 (2) (b) to production of guidance to define the special interest of sites. The current guidance, produced by the Joint Nature Conservation Committee,¹ acts as the benchmark for the Committee's work, but is currently out of print, making it not readily accessible to land owners and occupiers. Priority needs to be given to making such guidance publicly accessible, especially given the proposed right of a wider range of individuals or authorities to object to a notification.

DO THE PROPOSALS FOR CHANGES TO THE SSSI REGIME MESH APPROPRIATELY WITH OTHER LEGISLATION IN THIS AREA, BOTH DOMESTIC AND AT AN EU WIDE LEVEL?

9. Sites selected for both their national and European importance have prompted many recent referrals to the ACSSSI. Some objectors have had difficulty in understanding the different procedures applicable to each type of designation. Thus, the ACSSSI welcomes paragraph 3 (2) of the Bill, which establishes a purpose for the SSSI series that recognises the role of Scottish biodiversity in a local, GB and European context. The publication of guidance would also assist in public understanding of the inter-relationships between different types of site designation, especially where criteria for the selection of European sites may differ from that of national sites.

WILL THE PROPOSALS ACHIEVE THE STATED AIM OF ENCOURAGING STAKEHOLDER INVOLVEMENT AND MAKING THE ADMINISTRATION OF SSSIs MORE TRANSPARENT AND ACCESSIBLE?

Role of the ACSSSI

10. The Committee welcomes the retention of an independent committee charged with providing peer review and validation of sites selected by SNH as SSSIs. Past experience has shown that many landowners and occupiers have welcomed the opportunity for independent scrutiny. Indeed, some objectors have wanted the Committee to take a wider view of the designation, including consideration of the science underpinning management activities, and the justification for selection of land as Natura sites (SACs and SPAs). This is not possible under the current

¹ Guidelines for selection of biological SSSIs. 1989. Nature Conservancy Council, Peterborough; Guidelines for selection of biological SSSIs: non-vascular plants. 1992. Joint Nature Conservation Committee, Peterborough; Guidelines for selection of biological SSSIs: bogs. 1994. Joint Nature Conservation Committee, Peterborough; Guidelines for selection of biological SSSIs: intertidal marine habitats and saline lagoons. 1996. Joint Nature Conservation Committee, Peterborough; Geological Conservation Review.1996 *et seq.* Joint Nature Conservation Committee, Peterborough.

legislation, and the ACSSSI's ability to review management of a site under the new Bill requires further consideration (see paragraphs 13 & 14).

11. Under the terms of the Bill, ACSSSI may be asked by SNH to provide advice in relation to new sites, extension to existing sites, and denotification of sites. Objections may also be forwarded for existing sites after an elapse of ten years since designation (or the last objection, whichever is the later date). This represents an increase in the number of opportunities for those with an interest in land to comment upon its scientific value, and is welcomed by the Committee.

Potential duplication of effort

12. ACSSSI has highlighted its concerns about the potential for landowners etc. to be confused about the range of bodies involved and their respective powers. For example, ACSSSI provides *advice* to SNH, which is then responsible for making a decision, whilst the Land Court will adjudicate. Some of these processes could, as the legislation stands, be triggered almost simultaneously. This could mean that SNH staff and the objectors are replicating material for different groups of people. ACSSSI believes that further work and discussions are required to ensure that the process is as streamlined and transparent as possible. During informal discussions with the ACSSSI, staff of the Scottish Executive have suggested the development of a flow chart that clearly sets out the role, function, and timing of each of the referral processes.

Independent review of site management statements and operations requiring consent

13. The Committee believes that further clarification and consideration is required of the range of issues that can be referred to it for advice. It is not clear to the Committee from the wording of the Bill (Section 21 (6) (a)) whether objections to either the site management statement or the list of operations requiring consent (orcs) can be referred to ACSSSI for comment. It is the Committee's understanding that SNH do not interpret these items as falling within the matters that can be referred to the ACSSSI for advice, and this appears to be the interpretation adopted by the Explanatory Notes accompanying the Bill (paragraph 40).
14. If the scientific elements of Site Management Statements and orcs do not come within the definition of the criteria for objection (as set out in section 21 (6) (a) of the Bill), then it would appear that there is no mechanism for an independent review of these items. Under the proposals the Land Court's role would be triggered only when a landowner makes an application to carry out a specific activity listed within the orc list, which has been refused. Based on past experience, it is inevitable that some objectors under the new legislation will wish to raise scientific issues regarding site management statements and orc lists. In such circumstances it would be logical for SNH to be able to request a view from the ACSSSI (see also paragraph 15). But, the Committee would wish to stress that it is not seeking (and is not currently qualified) to provide advice about the socio-economic implications of site designation. The Committee provided further comment on this issue in paragraphs 30 – 37 of its written response to the draft Nature Conservation Bill. Copies of these can be provided on request.

DO THE PROPOSALS STRIKE THE RIGHT BALANCE BETWEEN THE PUBLIC INTEREST AND THE INTERESTS OF LAND MANAGERS?

15. Paragraph 21 (6) sets out the criteria under which ACSSSI's advice must be sought by SNH. The Committee would comment as follows:
 - The Committee welcomes the new power of SNH to consider whether representations are "frivolous", and if so decline to refer these to the

ACSSSI. It is important that objections should be based on sound facts, but it must also be remembered that some individuals may not have the necessary scientific knowledge or experience to phrase a concern in a comprehensive manner.

- Paragraph (6) (a) suggests that “any” person may make an objection. This is further defined by Schedule 1, paragraph 10 (a) as referring to those people to whom a notification was given by section 49(2), and those “with an interest in the land to which the notification relates.” There is some ambiguity as to who, legitimately, may make an objection. Currently ACSSSI only considers objections raised by landowners, managers and occupiers. The range of organisations listed in section 49(2) represents a significant increase in the potential pool of people who may trigger a referral to the ACSSSI.
- The same paragraph states that the representation may be “in relation to an aspect of natural heritage by reason of which an SSSI notification has effect.” As noted in paragraph 14, this would appear to be interpreted by the Explanatory Notes accompanying the Bill to refer only to the reasons for site designation. As highlighted above, this would mean that there is no independent review process of the science justifying decisions about orcs or Site Management Statements at the time a site is designated.

16. The proposed role for the Land Court in considering objections to a refusal by SNH to consent a particular orc provides an independent review process of the socio-economic arguments affecting management of an SSSI. But, it is not clear how the Court will address the **scientific** elements of management. It is also not clear whether the ACSSSI might be called upon as a witness to provide evidence to the Land Court, especially where its advice on the scientific basis for an SSSI may be different to SNH’s view.
17. The legislation allows for the revision of site management statements. If ACSSSI is able to provide advice to SNH on the statements when they are issued at notification, its position with respect to objections to revised statements will require clarification. On balance, the Committee feels that it would be consistent to retain its advisory role to the time of designation, but would be happy to discuss this further with the Scottish Executive and SNH.

MISCELLANEOUS COMMENTS

18. The Committee is disappointed that the timescale within which advice should be provided has still not been stated. Currently there is no specified time period within which ACSSSI should provide its response to SNH, although SNH cannot make a final decision about the confirmation of a site until it has received ACSSSI’s advice. A working arrangement has been developed between the two organisations. But, to avoid future doubt, the ACSSSI would recommend the inclusion of a stated *minimum* three month time scale within which it has to prepare its advice to SNH. This should effectively increase the time available for ACSSSI to prepare its advice to SNH.

12 November 2003
ERD/S2/03/11/4f

SUBMISSION FROM PROFESSOR JOHN McMANUS
(in response to the Executive Consultation on the draft Bill)

Scottish Executive Environment Group
Legislating for the Nature of Scotland
Proposals to conserve and enhance Scotland's natural heritage

Part 1 Nature Conservation (Scotland) Bill

Comments on Draft from Professor John McManus,.

Dear Sir,

Firstly say that I greatly welcome the opportunity to look through the proposals, with which in general I find myself in pretty strong agreement. There are a few items upon which I feel that I should comment: My reactions are those of a geologist who has been active in serving on the Eastern Region Board of Scottish Natural Heritage, and is currently serving on the similar Board for Scottish Environment Protection Agency. I am, therefore, an individual with hands-on experience of trying to help and play a role in environmental issues.

Section A Introduction and overall vision

A13 Part 1 of the 1981 Act provided for the protection of wildlife, safeguarding birds, animals and plants. Under its aegis we have some protection for selected geological sites classified as SSSIs, but they are not specifically addressed in the Act as far as I know. Geological and geomorphological issues are addressed later in the proposals and I strongly welcome this change.

A24 The focus is very much upon SSSIs, but today we also have National Nature Reserves, Local Nature Reserves, Regional Parks and the newly created National Parks to consider. Will they have consideration in this legislation, or will all protection measures need to be addressed through the SSSI system?

Section B Key Features of the draft Bill

Biodiversity. I am very happy to see that Biodiversity is to be used as a springboard for the Act and I strongly support the first 6 sections.

B8. and B 12. I do recognise the burdens which can be placed on landowners and managers by the introduction of SSSI status to their land. However, the old systems whereby the first a landowner knew about the possibility of an SSSI being established was the arrival of a set of documents listing what could no longer be done with the land. This was totally unacceptable, and it is most important that contact and full discussions should be held between SNH and the landowner before any steps are finalised. This proposal may well be catching up with present practice as we were aiming at this target before I left SNH Board in 1999.

Improved Protection

B13 This is a major step forward as I can recall at least one occasion on which severe damage was caused to a loch by a landowner wishing to improve fishing access and develop a commercial fishery, but destroying a significant vegetation pattern in the process. Should an external arbiter be available to assist in such cases?

B14. This proposal is a good one. Will there be a system of fines to deal with the fires and fly-tipping issues?

B16. I support this

B17. This is current practice, which I support, but it does seem to be been exploited in cases where the landowner or manager puts forward a proposal to use the land for some unlikely purpose, e.g. woodland development, which would destroy either a plant community or completely hide a geomorphological feature for which no similar development occurs elsewhere. There have been suspicions that the systems has been worked and milked under some circumstances. I would not wish that to continue. SNH was taken to the cleaners on one such case.

B18 Strongly agree.

B19. I agree there is a need for such provision, but there are always dangers concerning the cost factor of legal actions.

B22. Strongly agree, but I believed it to be normal practice already.

B23. Yes the penalties need to be updated. Is there a way in which they could become inflation-related, otherwise there will be need to update them at say 5 year intervals? I do agree that it would be wrong to impose custodial sentences normally, but willful repetition of an offence would make me wonder.

B27 and B28. This is reiterating the 1981 and 1994 Acts which make no mention of geological or geomorphological factors, which are significant parts of the natural heritage. Could they be written in quite specifically? In the first bullet point of B28 perhaps rocks, fossils and minerals could find a place?

The Bill (Draft)

3 (1) "SNH must, where it considers that any land is of special interest..." I believe that this covers my worry about potential geological exclusion.

3 (2)(b) I believe that this is a major change in concept. Previously I understood that SSSI's for plants and animals were of importance in a local, regional context, not national context. This was used to explain why we have so many protected bogs throughout Scotland. By contrast Geological and Geomorphological sites all had to be of National significance. This is what has given rise to the RIGS (Regionally Important Geological or Geomorphological Sites) movement, whereby 'second level' but still important for educational or local examples have been identified and are given some status, similar to SWT sites. If this proposal is accepted there could well be a lot of de-designations ahead.

5. I agree strongly with this provision.

6. The review period of at least 6 years is sensible. It reappears frequently later on and I agree with the provision on each occasion

7. This is a very important point with which I agree. I have worried about designation of sites as SSSIs because they have 2% of the UK dotterel or seal breeding population. Natural systems change, so that in a few years the creatures may have gone elsewhere. Under those circumstances denotification should occur, if anyone notices the fall in numbers.

8-13 Agree

14 This is a necessary provision, although in practice I do not believe that it will occur often.

18. I strongly support this point.

Chapter 2

19 Is there a mechanism whereby others outside SNH could bring forward proposals. Currently SNH has different ways of assessing geological and non-geological SSSI sites. eg could the British Geological Survey make recommendations directly, or perhaps SEPA (less likely).

19 (1) (b) this would enable identification of sites such as those now being identified by RIGS groups throughout the country. Currently these are reported directly to the planning departments of Authority councils. Is some new mechanism envisaged?

20 Agree, but what mechanism is foreseen?

23 Very good.

24. This worries me, as it did when I served on SNH Board. How do non-locals know that they are entering a SSSI? There are no markings to indicate the status of the site in UK let alone in Scotland. In Germany the sites are marked by discrete badges on gateposts etc so that you know there you are at a favoured site. Indeed it is often very helpful in identifying the site being sought. A visiting geologist might be attracted to a site through intellectual deduction and unwittingly damage it, without knowing it is subject to a conservation order. I am not urging a parallel to blue flag beaches, but some simply and readily recognised marker of the site.

25. Very sensible suggestions.

34. Could this also apply to SEPA e.g. purchase of land beside mine water outfall where reed beds could be installed to filter the waters and improve water quality in the stream below the outfall?

36 Yes. This is necessary, and I would wish to stress "at any reasonable time"

Schedule 1

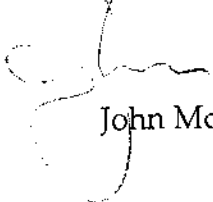
2. Could a copy be displayed in local libraries?

Section D Species Protection and Wildlife Crime.

Since the 1981 Act came into force there have been many examples of the removal of fossils from SSSI quarries for sale to continental museums and collectors. All of the provisions under Section D relate to Wildlife. Could an extension be incorporated to include fossils and minerals? These are also important heritage features which, once destroyed are not replaced. Here I refer to Achanarras quarry, where powered diamond saws were used to extract fossil fish.

I hope that these comments may be of some value to your committees,

Yours sincerely,



John McManus

SUPPLEMENTARY SUBMISSION FROM RSPB SCOTLAND

Further to our oral evidence session on 12 November, the following clarification may be of assistance to the Committee.

At column 390 I commented that the figure of 45% of SSSIs not being in favourable condition came from a survey of a sample of around 10% of sites in Scotland that we organised as a group of the six non-governmental organisations that are listed. This information is from the "Time to Act" leaflet, which should be read alongside the longer, technical document (Bain et al, 2000 - as referenced on the back of "Time to Act").

Time to Act, the summary of the longer document, only looked at SSSIs designated for biological interests (that is, it did not address sites that had geological interest only). Thus, the "base" figure is lower than 1430 - however, I do not at the moment, have to hand the exact number that are geological alone. This information could probably be obtained from SNH if the Committee wishes.

In addition, the Bain et al (2000) study looked at SSSIs in two ways - first, a randomly selected sample (a stratified selection process based on the extent of different habitat groups in Scotland) and, secondly, by examination of case studies. There were, originally, 50 sites in the random sample and 40 were examined by detailed, on-the-ground ecological assessment (using SNH's criteria). The 10 that dropped out were for logistical reasons of travel and/or access issues.

The second section were case studies compiled from a number of sources, including SNH annual reports and the case work files of RSPB, SWT, NTS and Plantlife - all of these were in the SNH annual report and/or our casework files because of reports of damage and/or deterioration. The report summarises these at Table 4, explaining the types of issue that were the cause of the damage/deterioration. This assessment was done to highlight the issues that the (then) proposed Bill should address - such as third party damage, need for positive management etc. Detailed accounts of these case studies are in annex 2. In total, there are over 70 sites covered in this section.

Therefore, in total, the study looked at and reported on over 110 SSSIs - that is, roughly 10% of the biological SSSIs. This was the basis of my comments.

Having explained that, I recognise that my comments might be a bit unclear. The 45% being not in favourable condition is based on the random sample - however, if you were to include the non-random sample the percentage in unfavourable condition would rise dramatically (as most were damaged/unfavourable by definition - the non-random element). This is the basis for the comment (Bain et al, 2000) that "it could be argued that the information presented is a cautious analysis of SSSI condition and may be an under-representation of the scale of the damage".

Because the sample was a random and representative sample, the "headline" figure of 45% was based on this part of the work - while the proposed solutions (many of which are in the NC Bill) were based on the whole project.

Returning to my comments at c.390, it depends on whether you read my statement "sample of about 10%" as referring to the random sample or the whole study - as

explained above I think it could be clarified as meaning the whole study; with the 45% (next sentence) clarified as indicating this is derived from the random sample.

For your information, English Nature have published similar work that shows that 40-45% of the English SSSI series is in unfavourable condition, a figure that tends to support our conclusions, as their legislation (and therefore management problems) were, until recently, more or less the same.

I hope this information is of assistance, but if you need any further explanation (or the full Bain et al report) do let me know.