



The Scottish Parliament

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

AGENDA

13th Meeting, 2003 (Session 2)

Wednesday 26 November 2003

The Committee will meet at 10.15 am in the Hub.

1. **Subordinate legislation:** Allan Wilson MSP (Deputy Minister for Environment and Rural Development) to move—

motion S2M-607 in the name of Ross Finnie MSP— That the Environment and Rural Development Committee recommends that the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518) be approved; and

motion S2M-608 in the name Ross Finnie MSP— That the Environment and Rural Development Committee recommends that the Mink Keeping (Scotland) Order 2003 (SSI 2003/528) be approved.

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

Ian Jardine, Chief Executive, Jeff Watson, Director of Strategy and Operations (North) and Alan Hampson, National Strategy Officer, SNH

Not before 11.45 am

Ross Finnie MSP, Minister for Environment and Rural Development.

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

The following papers are attached:

<u>Agenda Item 1</u>	
The Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518)	ERD/S2/03/13/1a
The Mink Keeping (Scotland) Order 2003 (SSI 2003/528)	ERD/S2/03/13/1b
Extract from the Subordinate Legislation Committee's 12th Report 2003 (<i>to follow</i>)	ERD/S2/03/13/1c
<u>Agenda Item 2</u>	
Submission from SNH	ERD/S2/03/13/2a
Report from the Finance Committee on the Financial Memorandum of the Nature Conservation (Scotland) Bill	ERD/S2/03/13/2b
Letter from the Minister for Environment and Rural Development	ERD/S2/03/13/2c

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Introduction

1. Scottish Natural Heritage is a Non-Departmental Public Body established under the Natural Heritage (Scotland) Act 1991 to promote the care and improvement of the natural heritage, its responsible enjoyment and appreciation by the public, and its sustainable use. Much of SNH's work is achieved in partnership with others: local councils, other statutory agencies, communities and the voluntary sector.
2. The Nature Conservation (Scotland) Bill concerns a substantial part of SNH's remit. Of our total spend of circa £50 million for 2002/03, 36% is directly attributable to the conservation of biodiversity and geological diversity, including our work relating to SSSIs, species protection and wildlife crime. A further 24% can be partly attributed to biodiversity conservation, for example our work on National Parks and support for Ranger Services. Adding the associated administrative support costs would increase these percentages.
3. SNH welcomes the Bill which we believe will enable the development of a more open and effective approach to nature conservation. We have been closely involved with the Scottish Executive during its preparation and we have contributed substantially to SEERAD's consultative working group.
4. We believe the Bill will achieve much of the Executive's policy agenda for nature conservation set out in the *Nature of Scotland*. We strongly support this agenda which aims to increase public awareness of, and commitment to the conservation of nature and to provide better protection to wild animals and plants and to nature conservation sites. Since publication of this policy paper in 2001, SNH has been progressing many of the recommendations that did not require legislative change, including measures to improve understanding of, and commitment to the SSSI system. For example:
 - SNH has developed the Natural Care programme (launched by Rhona Brankin MSP in October 2001) as the basis for securing assured management of the SSSI series. This puts in place a streamlined and more efficient mechanism for drawing up and funding management agreements with owners and occupiers.
 - We have undertaken a customer survey of owners (which revealed that most are content with their relationship with SNH though a number of areas for improvement were identified).
 - We have prepared Site Management Statements for all SSSIs in order to explain more clearly the management required to maintain their conservation interest.
 - We have introduced *SITELINES*, a bi-annual newsletter for SSSI owners and occupiers.
 - We are developing a system to make information about SSSIs available over the Internet.

The wider context

5. The arrangements for protecting and managing SSSIs should be seen in the context of other measures which help to conserve the biodiversity and wider natural heritage of the

countryside in general. Wider environmental legislation, for example for the control of aquatic pollution, the use of pesticides, or the environmental impact regulations, offers significant protection to many SSSIs. Cross-compliance on agricultural support payments, introduced in the recent reform could substantially add to the existing instruments. Agri-environment schemes (such as the Environmentally Sensitive Areas Schemes and the Rural Stewardship Scheme, which are implemented under the CAP Rural Development Regulation (RDR)) contribute to the conservation management of many sites. As the emphasis in the CAP moves away from payments which support agricultural production to payments for agri-environmental and related measures under the RDR, this contribution is likely to increase.

6. The decisions of other regulatory bodies, particularly SEERAD, the Forestry Commission and SEPA, which are responsible for implementing this wider legislation and administering land management incentive schemes, play an important part in securing the conservation objectives for SSSIs. The new legislation in this Bill will increase the responsibilities of these bodies – both in the general obligations relating to biodiversity and the SSSI series, but also in the authority that it gives to particular bodies to consent to certain kinds of land use operations.

Improving the SSSI system

7. Statutory protection for the most important nature conservation sites provides essential controls beyond those which currently apply to land outside SSSIs. Over the past fifty years the SSSI system has safeguarded an important sample of the best areas for nature conservation against a continuing loss of natural habitats in the countryside as a whole. Between 1947 and 1988 it is estimated that the overall area of semi-natural wildlife habitats in Scotland declined by 17%.
8. The new SSSI designations, which were notified for the purpose of complying with the EU Birds and Habitats Directives, brought into sharper focus the need for changes to make the SSSI system more open and user friendly. Part 2 of the Bill promises to foster greater recognition and commitment to SSSIs as well as providing greater protection where this is necessary.
9. SSSI designation is based on published scientific criteria, which provide an objective basis for identifying the best and most representative sites. We believe it is important to retain this objectivity and openness, and a system of selection which is broadly consistent across Great Britain.
10. The present system recognises, however, that there is a need for judgement and flexibility when it comes to the arrangements that need to be made for the management of SSSIs. We therefore welcome the intention in Part 2 of the Bill to increase the scope for judgement, for instance in emphasising the importance of the Site Management Statement and increasing the opportunity for consultation between SNH and owners or occupiers.

Clarifying management requirements

11. The requirement for a Site Management Statement to accompany all notifications will mean that the implications of designation are expressed in terms that owners and occupiers can relate to. This will increase the opportunity for constructive dialogue about desired management and how it can be achieved. It should also mean that the implications are more readily understood by the wide range of interested parties who would be consulted about the proposed management.

Flexibility

12. Under the present arrangements changes can only be made to a designation by re-notifying the site. This has made the system highly inflexible, as renotification would only be justified in extreme situations. The Bill introduces much new flexibility by making provision for SNH, in consultation with owners, occupiers and appropriate stakeholders, to alter citations, change boundaries, de-notify parts of a site, and to review Operations Requiring Consent (ORCs) and consents. This creates a designation which can be adapted in the light of changing circumstances, for instance where other controls on land use are available, or where new features of interests come to light. The Bill also contains provision to de-notify sites where SSSI designation is no longer appropriate.

Securing Positive Management

13. While the existing system has generally been successful at preventing direct loss or damage to the special interest of SSSIs, SNH's Site Condition Monitoring programme is starting to confirm the widely held view that on a significant number of sites some features of interest are gradually deteriorating through lack of appropriate management. The Bill and the associated financial arrangements will shift the focus of the relationship between SNH and the owner and occupier from site protection to positive management. Restricting the right to compensation will help address the criticism that the system has, hitherto, tended to reward owners/occupiers for not damaging a site. It would ensure that in future the available resources would be directed towards active management of the special interest, in line with the approach that we are currently developing through the Natural Care programme.
14. SNH will make every effort to secure the management required on SSSIs by encouraging good stewardship and by offering appropriate incentives. In situations where these approaches may fail, however, and a feature of interest is likely to be lost through lack of positive action, the Bill would make available a power of last resort by introducing the provision for SNH to apply for a Land Management Order. We strongly support this.

Strengthening Protection

15. The Bill introduces several new measures to strengthen the protection of SSSIs against accidental or wilful damage. Under the current arrangements it has been extremely difficult in some instances to prevent third parties damaging SSSIs, for example in the case of motorcyclists on sand dunes, and commercial cockling. By making it clear that Nature Conservation Orders can be applied to "third parties", and by making it an offence for any one to damage an SSSI, the Bill provides a mechanism which can be used to address such situations.
16. Giving public bodies and statutory undertakers a stronger role in the SSSI system will help ensure that responsibility for protection is shared by those who regulate the land use activities undertaken on SSSIs. It places an obligation on SNH to work more closely with those bodies, in advising them of the nature conservation requirements.

Species Protection and Wildlife Crime

17. SNH's work in relation to wildlife crime is largely progressed through the Partnership Against Wildlife Crime (PAW), which we also support through grant aid. We welcome the improvements Part 3 of the Bill makes for the protection of individual species, which cover the issues that have been raised by SNH and other partners in PAW. In particular

the efficacy of measures to deter wildlife crime should be greatly improved by introducing the offence of reckless disturbance and by closing a number of loopholes which previously allowed the threats to and persecution of certain species to go unchallenged by the law.

Implementation

18. The chief operational implications of this legislation for SNH arise from the proposed changes to the SSSI system. While SNH has clearly already adopted some of the arrangements that will be required by the Bill, there are others which will be new and can only be developed once the Bill becomes law. Given the impact the Bill will have on SNH's work, we have adopted a project-based approach to organising, resourcing and monitoring the work needed to develop new procedures and guidance. This work includes adapting SNH's business systems, training staff, informing owners and occupiers and other stakeholders of the new system, and bringing the new provisions into practice. A particularly demanding obligation will be the reviewing of Operations Requiring Consent (ORCs). SNH has submitted evidence to the Finance Committee on the additional costs likely to be involved in implementing this legislation.
19. SNH's existing Site Condition Monitoring Programme, periodic use of customer satisfaction surveys and the uptake of Natural Care will be used to assess the success of the new provisions.

Outstanding Issues

20. SNH remains concerned over the definition of the natural heritage used in the Bill. The full title of the draft Bill suggests it makes provision for the conservation of the natural heritage as a whole, rather than that part of it concerned with biodiversity and nature conservation. Section 1 of the Natural Heritage (Scotland) Act 1991 states that "the natural heritage of Scotland includes the flora and fauna of Scotland, its geological and physiographical features, its natural beauty and amenity;" This definition is widely recognised and has entered into common usage during the 11 years since SNH was established. It is also the definition used in the National Parks (Scotland) Act 2000. The definition of the natural heritage in Section 56 of this bill, however, effectively redefines the natural heritage to mean the flora, fauna and geological and geomorphological features of Scotland. As this bill concerns only nature conservation and biodiversity aspects of the natural heritage, this should be clearly stated.

Scottish Natural Heritage

20 November 2003

Finance Committee

**Report on the Financial Memorandum of the Nature Conservation
(Scotland) Bill**

The Committee reports to the Environment and Rural Development Committee as follows—

Background

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill's Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.
2. This report sets out the views of the Finance Committee in relation to the Financial Memorandum published to accompany the Nature Conservation (Scotland) Bill, for which the Environment and Rural Development Committee has been designated by the Parliamentary Bureau as the lead Committee at Stage 1.

Introduction

3. At its meeting on 11 November 2003, the Finance Committee took oral evidence on the Financial Memorandum from—

Jeff Watson, Director of Strategy and Operations (North) and Alan Hampson, National Strategy Officer, Scottish Natural Heritage.

Alan Stewart, Wildlife and Environment Officer, Tayside Police.

Duncan Isles, Bill Team Manager; David Reid, Head of Development and Rural Affairs Finance Division; and Jane Dalglish, Head of Wildlife and Habitats Unit, Scottish Executive

4. In addition to the oral evidence heard at this meeting, the Committee considered written evidence submitted by the Scottish Land Court; the Crown Office and Procurator Fiscals Service; the Scottish Court Service; Alan Stewart, Wildlife and Environment Officer with Tayside Police; the Advisory Committee on Sites of Special Scientific Interest (ACSSSI); the Keeper of the Registers of Scotland; Scottish Natural Heritage (SNH); and the Convention of Scottish Local Authorities (COSLA). These submissions are reproduced at Appendix 1.
5. The Committee would like to express its gratitude to all those who took the time to provide evidence in relation to this Financial Memorandum.

Financial Memorandum

6. The Financial Memorandum published to accompany the Bill states that the Scottish Executive does not anticipate that the Bill will lead to significant additional expenditure as each part of the Bill is “building on and modifying well-developed established structures and existing legislation”¹. The Financial Memorandum goes on to state that the Bill aims to ensure that any additional costs will be accommodated within existing budgets.

7. Whilst the Committee was broadly content that the level of detail given in the Financial Memorandum accurately reflects the costs of implementing the Bill, it does have some concerns which have been outlined below.

Summary of Evidence

Biodiversity Duty

8. Part One places a ‘biodiversity duty’ on public bodies and office bearers to give consideration of the impact of their activities on biodiversity. The Financial Memorandum states that the majority of public authorities in Scotland are already compliant with this duty², and thus the duty will be cost neutral. In addition to this duty, the Bill provides Scottish Ministers with an obligation to publish any strategy which they have designated a Scottish Biodiversity Strategy. In its implementation of the biodiversity duty, public authorities will need to have regard to this Scottish Biodiversity Strategy.

9. In its written evidence, COSLA stated that it was difficult to quantify the full financial impact of the Bill on local authority resources until the detail of the Scottish Biodiversity Strategy has been published. In its response, the Scottish Executive agreed that it would have been more helpful if the Scottish Biodiversity Strategy was in a more finalised form, and highlighted that COSLA are involved in the consultation on it. The Scottish Executive did not agree, however, with COSLA’s assertion regarding the costs of implementing subsequent Local Authority biodiversity strategies. The Scottish Executive assured the Committee that the Scottish Biodiversity Strategy was not intended to compel organisations to undertake biodiversity work, but to act as a guide to public authorities in developing the biodiversity duty.

10. COSLA also commented that local authorities would be better placed to implement this duty if an effective support structure, consisting of a network of Local Biodiversity Action Plans (LBAP) Officers who were adequately funded, was in place. In response, the Scottish Executive stated that:

“Co-ordination might help to promote the implementation of the Bill, but it is not an essential part of the implementation”³.

11. The Committee acknowledged that whilst the cost of producing a biodiversity strategy as stated in the Financial Memorandum may be accurate, it also recognised that in order for the policy intentions of the biodiversity duty

¹ s 352, Financial Memorandum

² s 362, *ibid*

³ Dalgleish, Col. 541, Official Report

to be fully realised, additional funding may need to be considered by the Executive to enable public authorities to actually undertake the biodiversity work they may identify in their strategies.

The SSSI System

12. Part Two seeks to revise existing legislation relating to the Site of Special Scientific Interest (SSSI) system in order to improve the protection of SSSIs, increase transparency, widen consultation and introduce a new dispute resolution process. As these are mainly revisions to an already operational system, the Financial Memorandum anticipates that the financial implications of these changes will be minimal.

13. One of the main changes to the SSSI system is that the Bill introduces a culture change to the management of SSSIs whereby landowners are encouraged to enter into positive management schemes rather than the current system of paying people not to undertake work. It is as a result of this culture change that SNH asserted that the amount of money set aside for compensation would drop as a result of current arrangements coming to an end⁴. This is reflected in the Financial Memorandum's assumption of a projected decrease in the number of Compensatory Management Agreements (CMAs). In addition, the Committee was told that the Bill will make the availability of CMAs much more circumscribed than is the case under the current arrangements⁵ and that as current CMAs end, SNH will encourage parties to enter positive management schemes.

14. The Committee questioned whether sufficient publicly identifiable funding would be available to those who wish to enter into positive management schemes.

15. SNH responded that its current natural care strategy had identified a programme (which should reach £7.5m by 2008-09) to which landowners could seek funding, and it hoped for additional contributions from the rural stewardship scheme and the Scottish Forestry Grants Scheme⁶.

16. The Committee acknowledged that these new schemes would go some way towards compensating landowners for undertaking positive land management practices, however, the Committee also recognised that for the Bill's intentions in relation to culture change to be fully realised then it was essential that funding should be quickly available and clearly identifiable by landowners and those who wish to undertake such practices.

17. The Committee expressed concern over the condition of some SSSI sites, and welcomed SNH's reassurances that the positive management schemes under the Natural Care initiative should encourage the maintenance of sites at an appropriate standard.

⁴ Watson, Col 535, Official Report, 11 November 2003

⁵ Watson, Col. 535, Official Report

⁶ Watson, Col. 534, Official Report

18. When questioned about the Land Management Orders (LMOs), the Scottish Executive explained the method used to calculate their cost and frequency. The cost was based on the number of Nature Conservation Orders (NCOs) in operation currently, although the number of NCOs is expected to reduce as a result of the Bill. Their frequency was estimated on a balance of the frequency of NCOs, the expected consequences of the Bill and the number of Compulsory Purchase Orders to date.

19. As the Financial Memorandum states that a key effect of the Bill will be:

“that existing resources can be deployed more efficiently and effectively, producing improved results for the same input of resources”⁷

the Committee was keen to satisfy itself that SNH has the appropriate mechanisms to ensure this. In its response, SNH stated that the Bill seeks to revise and lessen the bureaucratic nature of, and to widen the public commitment to, the SSSI system. The Committee was reassured that SNH intends to measure the improvements which result from the Bill by the take up under the Natural Care scheme, and through periodic customer surveys. When questioned about the mechanism for measuring public support, SNH stated that they had conducted one comprehensive survey, which had led to site management statements being drawn up for each SSSI.

Species Protection and Wildlife Crime Measures

20. Part Three of the Bill seeks to improve the mechanisms for police forces and law enforcement agencies to ensure species protection and tackle wildlife crime. The Financial Memorandum expects the improved likelihood of the police being able to raise an action will be balanced against the deterrent effect of the new measures and that, therefore, the Bill will not lead to additional costs for these bodies.

21. The Committee expressed concern over the assumption that any resulting workload or costs arising from the provisions of Part Three can be absorbed within the existing remit and resources of the Scottish police Wildlife Liaison Officers.

22. Alan Stewart, a Wildlife and Environment Officer for Tayside Police, responded that he agreed with the Financial Memorandum that there was unlikely to be significant financial implications. It was explained that Wildlife Liaison Officers work mainly to promote compliance with the law, through training, talks etc, and that the new provisions could easily be integrated into their current practices. Of the few cases handled, these tend to be non-urgent, and can then be dealt with when Wildlife Liaison Officers become available. In addition, most police officers have sufficient knowledge through their general training to deal with such cases. Alan Stewart did, however, acknowledge that ultimately it would be for each chief constable to decide whether they wanted more police officers specially trained to accommodate the new set of functions that may arise from the Bill's implementation.

⁷ s 356, Financial Memorandum

23. In evidence, the Scottish Executive stated that the Bill sought to improve the mechanisms to enable the police to more effectively carry out the work they are currently doing, rather than significantly increase the number of responsibilities.

24. When questioned specifically about the possible costs associated with the additional provisions relating to the theft of specimens from abroad, the Committee heard evidence that such cases were likely to be uncommon, and that any additional costs would be kept to a minimum as most of these cases were dealt with by the National Wildlife Crime and Intelligence Unit.

25. The Committee accepted this explanation but remains concerned about whether the culture change and increased significance the Bill is attempting to introduce can be realistically achieved within the existing budget of the police force.

Conclusions and Recommendations

26. Overall, the Committee is content with the financial assumptions contained within this Financial Memorandum and welcomes the level of detail given in relation to the cost and resource implications the Bill.

27. The Committee does, however, remain concerned that a Bill which seeks to encourage a culture change to positive land management schemes and wildlife crime measure is expected to do so within the existing budgets of the affected organisations.

28. The Committee would recommend that the Environment and Rural Development Committee seek reassurances from the Minister on whether existing budgets will be able to satisfactorily nurture and sustain any culture change in relation to Nature Conservation. This is particularly the case with wildlife protection officers who may currently undertake work without any remuneration and who will be expected to accommodate the new crime measures within their existing duties.

29. On a more general point, the Committee continues to have problems scrutinising Financial Memorandum of Bills where guidance yet to be agreed may play an important role in determining the costs of such legislation. In this Bill, the Scottish Biodiversity Strategy which has yet to be finalised, will be a guide to public authorities on how they may wish to implement the biodiversity duty. If public authorities are to take up the ethos of this biodiversity duty, such guidance may have cost implications, and on this occasion the Committee has been unable to question whether the costs of such guidance are reasonable.

30. The Committee would, therefore, recommend that the Environment and Rural Development Committee seek further information from the Minister on the Scottish Biodiversity Strategy, particularly the relative costs to public authorities signing up to the activities which may be contained within this guidance.

**EQUALITY GUIDELINES – NATURE CONSERVATION (SCOTLAND)
BILL**

Thank you for your letter of 31 October 2003 in which you requested further information on the equal opportunities aspects of the Nature Conservation (Scotland) Bill.

The Executive shares with the Parliament and the Committee a strong and clear commitment to equality and to the mainstreaming of equal opportunities issues. The Executive's approach was outlined in its equality strategy, published in November 2000. That strategy is based on research, consultation and expert advice and is underpinned by an approach which seeks to mainstream equality issues. This is a long-term strategy which recognises that effective change requires equality issues to be built into the policy process from the earliest stages, and that responsibility for equality lies with everyone.

The Executive is continuing to develop tools and guidance to secure the mainstream integration of equality issues. But the set of six questions developed by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission and used in your letter provides a familiar framework within which to evaluate the potential impacts of the Bill. That evaluation is set out in the Annex to this letter.

I hope that the attached information is helpful to the Committee and that it will assist both the Executive and the Parliament to progress their shared agenda on equality issues.

ROSS FINNIE

NATURE CONSERVATION (SCOTLAND) BILL STAGE 1 CONSIDERATION - EQUALITY GUIDELINES

RESPONSE TO THE ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

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

The Nature Conservation (Scotland) Bill delivers key legislative measures necessary to the implementation of the Executive's overall vision for a new, integrated system of nature conservation. That vision was set out in the consultation paper *The Nature of Scotland*, published in March 2001, and it was developed further in the March 2003 consultation paper, *Legislating for the Nature of Scotland*, which provided a first draft of the current Bill.

The desired and anticipated outcomes of the Bill are essentially threefold:

- to secure improved protection for wildlife generally;
- to better safeguard protected areas through an enhanced SSSI system which more adequately recognises the role played by a wide range of interested parties; and
- to extend nature conservation efforts beyond these existing site-specific and species-based approaches, by promoting wider action on biodiversity as a whole.

The policy which informs the Bill is one which seeks to ensure that Scotland's remarkable natural environment is conserved and enhanced, both for its own sake and because it is one of our nation's most valuable assets. In striving to safeguard our natural heritage we are therefore seeking to go beyond traditional concepts of nature conservation.

We are, for example, explicitly acknowledging the interconnectedness of human activity and the natural world. Whilst much of the Bill consists of relatively technical provisions relating to Sites of Special Scientific Interest ("SSSIs") or to the fight against wildlife crime, the legislation is very much concerned, in terms of both its provisions and its outcomes, with the actions of people and with the interests of society at large. This breadth of vision and emphasis on a whole-system approach is typified by the new biodiversity duty which stands at the head of the Bill, in section 1.

It is, for example, evident that the health of Scotland's natural heritage is a key factor in relation to quality of life issues for a great many people in Scotland, as well as being essential to our broader economic well-being and to the delivery of important "life-support" systems, ranging from clean drinking water to leisure and recreation opportunities. In this respect, whilst focused specifically on natural heritage matters, and ultimately on securing the conservation of biodiversity, the policy being pursued in the Bill has clear affinities with wider Executive thinking on the need for sustainability and for environmental justice.

The answer to the question "Who is the policy for?" is therefore a straightforward one. The outcomes sought in the Bill are intended to benefit the people of Scotland

(and visitors to Scotland), as well as reflecting the concerns of those of us who care passionately about the health and well-being of Scotland's natural environment. Ultimately, the provisions in the Bill are intended to benefit society as a whole. Indeed, the aims of the Bill go beyond the Scottish context and, in all three core policy areas (biodiversity, the SSSI system and wildlife protection) the Bill has relevance to wider communities, including those which exist at a British, European or indeed global level.

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

The effects of the Bill have been carefully considered in relation to their potential impacts on different equality groups.

It is important to stress that the policies implemented through the Bill are intended to be applied universally, throughout Scotland. Moreover, there is no intention that the Bill should have any differential or discriminatory impact on equality groups. It is also our belief that the Bill does not inadvertently or indirectly give rise to such effects.

In terms of general principles, a core aim of the Bill (expressed for example within the SSSI system in the form of provisions extending the list of "interested parties" or introducing site management statements) is to improve the transparency of decision-making and to develop a more inclusive system, within which stakeholders (and in particular the land managers and local communities most directly involved with individual SSSIs) find it easier to register their views and influence policy at a practical level.

More specifically, with reference to the equality groups identified in Schedule 5 of the Scotland Act, it is our view that the Bill does not impact in any differential or discriminatory sense upon groups which are defined by personal attributes or characteristics such as gender, marital status, age, race, disability, religion, sexual orientation, language, social origin or political belief.

The Executive is of course mindful of the difficulties which members of some equality groups may encounter when seeking to access information, when responding to communications or when wishing to register their views. There are important components within the new SSSI system which depend upon the successful exchange of information between individuals or communities and Scottish Natural Heritage ("SNH"). It is therefore important that such communications can take place effectively.

Provision is made within the Bill (for example in paragraph 2(a) of schedule 1) to ensure that SNH has the flexibility to provide information in such manner as it sees fit, and this includes the provision of information in a variety of accessible formats, where required. The Bill should not however be considered in isolation from existing

statutory obligations under the Disability Discrimination Act, the Race Relations Act and the Sex Discrimination Act. All three Acts make discrimination in service delivery unlawful. In particular, service providers have a duty not to discriminate and a requirement to make “reasonable adjustments” for disabled people to ensure that information is accessible.

It is therefore anticipated that SNH (or the Executive, where Ministers are the relevant authority) will, where required and where possible, provide documents in alternative formats such as audio, large print or Braille, or will make appropriate arrangements by means, for example, of personal visits by staff to meet individual needs.

Alternative arrangements, such as visits, are of course likely to be particularly important in relation to explaining and obtaining views in relation to documentation (such as SSSI notifications) which contain maps or diagrams. Close working relationships between staff and land managers involved with the SSSI system are an existing feature of SNH work and accommodating individual’s requirements in this context is not expected to be onerous or to require significant innovation.

Access to institutions and processes is a similarly important requirement and again the objective must be to ensure, as far as is reasonably practicable, that the systems instituted by the Bill do not indirectly disadvantage members of equality groups. The distributed nature of SNH’s organisational structure, with Area Offices across the whole of Scotland, is clearly helpful in this context.

So too, the Scottish Land Court, which will act as the principal body for appeals under the Bill’s provisions, has the significant attraction that its established mode of working includes the practice of hearing cases *in situ*. In effect the Court is able, where appropriate, to go to the site of the dispute rather than requiring appellants to come to Edinburgh. This can be expected to have benefits for members of equality groups involved in such cases. The Scottish Land Court Act 1993 also already makes explicit provision in relation to the Gaelic language.

More generally, the principal public bodies charged with administration and implementation of the new systems instituted by the Bill include the police, the courts and SNH. All are bound by existing statutory requirements to act in accordance with equalities legislation. SNH, which is arguably the key public body for implementation purposes, already produces detailed internal guidance on equalities issues ranging from access to the countryside to staff training to the provision of written materials in accessible formats. It is also, through the Race Relations (Amendment) Act 2000, under a statutory general duty to promote race equality.

Given existing policy, and the framework already provided by current anti-discrimination legislation, it is felt that the detail of such arrangements should continue to be dealt with via administrative arrangements for implementation, and that it is unnecessary to specify additional formal requirements on the face of the Bill.

In relation to gender, it is incidentally known that wildlife offenders – who are a very specific target of the proposals in the Bill – are overwhelmingly, although not exclusively, male. It is our view however that the primary defining attribute of

wildlife offenders is not their gender, but their involvement in criminal conduct. On this basis, we do not regard the wildlife crime elements of the Bill as raising issues in relation to sex discrimination.

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

The policy being pursued in the Bill has been the subject of exhaustive consultation with a wide range of stakeholders.

Groups representative of equality interests, as well as the Scottish Council for Voluntary Organisations (which is itself representative of voluntary bodies working with equality groups), have been included in consultation arrangements. Objections to the Bill on equality grounds have not, however, been registered by such groups. Consultation papers have, in addition, been openly available on the Executive's website in line with normal Executive policy. Again, there have been no concerns expressed in relation to equality matters.

Thinking on the SSSI components of the Bill has been developing since at least 1998 when the then Scottish Office published its consultation paper *People and Nature*. Two further formal consultations have followed, in March 2001 and March 2003, and there was separate consultation in relation to the proposed Scottish Biodiversity Strategy during the first half of 2003.

In addition, the proposals in the Bill have been informed by detailed discussion and advice provided via the Expert Working Group on SSSIs, the Partnership for Action against Wildlife Crime and the Scottish Biodiversity Forum. These widely-drawn fora, which have brought together representatives of a broad range of stakeholders, have contributed immeasurably to the evolution of the policy thinking behind the Bill.

A key outcome of this consultation and engagement with stakeholders has been the explicit extension of notification arrangements within the SSSI system to encompass a significantly expanded range of "interested parties" (section 49). These include groups such as community councils and community groups which have registered under "right to buy" arrangements. In both cases, it has been recognised that local communities, as well as the legal owner of an SSSI, have a legitimate right to be involved in arrangements for selecting and safeguarding top quality natural heritage sites. In addition, by formally providing for Site Management Statements (section 4) the Bill provides a mechanism by which wider socio-economic issues – including those which are significant to individuals living in isolated communities - can now be addressed.

In summary, the extensive consultation and partnership working which has taken place since 1998 has not uncovered any equal opportunities concerns or objections relating to potential discrimination or the disadvantaging of equality groups. As a result, the Executive is confident that its own assessment of the equal opportunities

implications of the Bill is one which is supported by a broad consensus of interested parties.

What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of proposals been taken into account?

The intended outcomes and consequences of the proposals in the Bill are, as noted above, to secure the protection and enhancement of Scotland's natural heritage, and to do so in a context which recognises both the significance of human factors (including the needs of land managers, local communities and society as a whole) and the wider imperatives which exist, at a global level, in relation to biodiversity.

Within this overall policy objective, certain specific goals of relevance to equal opportunities policy have been pursued in more detail. Stakeholder involvement in the SSSI system (via the new list of interested parties) is being extended in order to address the legitimate desire for greater consultation and involvement which has been consistently expressed by local communities.

Overall, the Bill is intended to bring benefits and to impose sanctions by reference to criteria and objectives which derive from the wider public interest in securing the conservation and enhancement of Scotland's natural heritage, rather than by reference to criteria which might give rise to direct or indirect discrimination against identifiable equality groups.

How have the policy makers demonstrated they have mainstreamed equality?

The Bill has been subject to extensive consultation, as indicated above. The detailed policy within the Bill has also been developed with the significant assistance of key representative groups, including environmental non-governmental organisations, representatives of farming, crofting and landowning interests, local authorities, the police and professional bodies. Throughout this process the Executive, assisted by SNH, has been vigilant for the possibility of discriminatory or significantly differential impacts. Despite extensive consultation and work with stakeholders, the Executive has received no representations to suggest that the Bill will negatively impact upon equality groups.

How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?

Much of the implementation of the legislation will be for public bodies, including in particular the Executive, SNH, the police and the courts. We are confident that the existing framework of anti-discrimination legislation, combined with internal commitment to equality and to good practice within such bodies, will properly secure equal opportunities objectives and ensure that the Bill is put into practice in a manner which is sensitive to the needs of particular equality groups. The effects of the

proposals on equality groups will be monitored by the bodies involved, in accordance with statutory requirements and good practice.

SCOTTISH EXECUTIVE

NOVEMBER 2003



SCOTTISH EXECUTIVE

Minister for Environment & Rural Development
Ross Finnie MSP

Pentland House
47 Robb's Loan
Edinburgh EH14 1TY

Sarah Boyack
Convener
Environment and Rural Development Committee
Scottish Parliament
George IV Bridge
EDINBURGH
EH99

Telephone: 0131-556 8400
scottish.ministers@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

November 2003

I am writing, subsequent to Wednesday's evidence session on the Nature Conservation (Scotland) Bill, to correct any inadvertent confusion which may have arisen in relation to our proposals on snaring. I am also able to provide some further information on the status of the Achanarras quarry site, which was a particular point raised by Maureen Macmillan.

You will recall that Alex Johnstone had asked about the possession of snares. The policy being pursued in the Bill on this point is as follows:

- Used correctly, snares provide a legitimate and effective means of dealing with certain animal species (such as rabbits or foxes) which can cause difficulties for land managers. Free-running snares therefore remain legal.
- The Bill does however control both the possession and use of such legal, free-running, snares to the extent that a person must have obtained the permission of the owner or occupier of any land before he either a) sets such a snare on that land or b) has a snare in his possession when on that land.¹
- As officials explained, these provisions will give the owners and occupiers of any area of land the ability to decide whether or not to permit snaring on their land and, if they permit it, to determine how, when and by whom legal snaring may be carried out.
- This is an important measure since it gives explicit control to the person – that is, the owner or occupier - who knows the area of land best and is therefore best placed to evaluate both the suitability of snaring as a pest control method and any potential risks to protected species. The land manager will then be able to ensure that snaring on his property is carried out professionally and in accordance with the law. Where snares are set without authorisation he will be entitled to enlist the assistance of the police and to remove and destroy any unauthorised snare.

¹ Proposed section 11(3D) in Part I of the 1981 Act to be inserted by paragraph 10(6) of Schedule 6 to the Bill.

- The Bill also enhances the existing prohibition on snares which are self-locking. The use of self-locking snares is already banned by section 11 of the Wildlife and Countryside Act 1981. The Bill supplements that existing offence by making it illegal to possess or sell any self-locking snare.²

In answer to Alex Johnstone's question therefore, a land manager who comes across either an unauthorised free-running snare, or any self-locking snare, on his property will be able to report the matter to the police and, as appropriate, to disable, destroy or remove the offending snare. Similarly, if a land manager finds that one of his own free-running snares has become rusted or damaged, to the extent that there is a genuine danger of it acting as a self-locking device, he should either destroy and discard the snare or ensure that it is rendered incapable of operation until a satisfactory repair can be effected.

Turning to Maureen Macmillan's concern about the status of Achanarras quarry and the protection which fossils at the site will enjoy under the proposals in the Bill, I can confirm that:

- Achanarras quarry remains an SSSI. Specimens at the site will therefore be protected, under the terms of section 19 of the Bill, against damage by third parties as well as any owner or occupier. As I indicated, it is this introduction of third party offences which is the principal innovation in the Bill in terms of securing the protection of fossil sites such as Achanarras.
- I understand from SNH that removal of NNR status was a consequence of concerns in relation to the safety of visitors. Given the potential risks inherent on the site it was felt inappropriate to promote the site as an NNR. This does not, however, affect the legal protection afforded to specimens at the site.

On fossils, I would add to what I said on Wednesday by noting in passing that the unauthorised removal of specimens from any land – whether or not it is an SSSI – is likely to constitute the offence of theft. Where specimens are of high value – and Maureen herself referred to payments of up to £20,000 being made – it is very clear that the owner of the site will have been unlawfully deprived of valuable property if specimens are removed without permission.

I trust that the information provided above will be helpful to the Committee in concluding its review of evidence and in reaching a view on the general principles of the Bill.

ROSS FINNIE

² Proposed section 11(3C) in Part I of the 1981 Act to be inserted by paragraph 10(6) of Schedule 6 to the Bill.

To the Clerk of the Scottish Parliament Rural Affairs and Environment Committee

Briefing from Scottish Natural Heritage

The following is provided in response to a request from the Committee during the visit we hosted on 27 October for briefing on the species licensing process. SNH's main submission to the Committee will be provided separately.

SNH's understanding is that the Committee requested briefing on:

1. SNH's role as an adviser in relation to applications to control species;
2. The different levels of protection afforded to different species and what this means; and
3. An explanation of the sources of information used to form our views in any advice we give.

We understand that SPICe will be providing the Committee with background information on Point 2 above, so this briefing is intended to cover Points 1 and 3.

SNH's role as an adviser in relation to applications to control species

As the statutory nature conservation authority, Scottish Natural Heritage (SNH) acts as adviser to the Scottish Executive on matters concerning the Executive's licensing remit, and acts as licensing authority on other licensing matters. As set out in Section 16 of the Wildlife and Countryside Act, the Scottish Executive is the licensing authority for various purposes primarily involving economic or social interests, whilst SNH is the licensing authority for scientific or conservation interests.

The Executive departments at Pentland House and Victoria Quay consult SNH on all the licence applications they receive.

SNH's advice is centrally co-ordinated to ensure consistency in the approach and the advice provided.

Once a licence application from the Executive is received by SNH, the appropriate SNH advisor and Area Officer will be consulted to draw together relevant information from a national perspective and to consider this in the context of local and regional variations.

Once the SNH Area reply is received, the SNH formal advice will be prepared. SNH's formal advice will include a recommendation as to whether or not the licence should be granted.

When SNH recommend a licence should be granted, a suggested list of conditions to the licence are proposed. Where the SNH recommendation is that a licence should not be granted, SNH will explain the reasons why that recommendation has been made. SNH will normally provide the Executive with their advice within two weeks.

The Executive will then consider SNH's advice and make a decision as to whether or not a licence should be granted. SNH will be informed of the Executive's decision on the licence application and, where a licence has been issued, the Executive will send a copy to SNH which will be held both centrally and copied to the appropriate SNH Area.

An explanation of the sources of information used to form our views in any advice we give

In providing its advice to the Executive on the species for which a licence is sought, SNH uses information on the species' local as well as national population, as well as any knowledge of its population structure and dynamics and the movements of individuals. This enables judgements to be taken on the effect of the loss of adult individuals on the species' population size and distribution, and whether the loss of one individual is likely to be replaced by another. Data and information used comes from a variety of sources. It may include information managed directly by SNH, published in scientific literature, provided by the applicant, or gathered by other bodies including the voluntary conservation bodies.

SNH also encourages conditions on the use of licences so that information is gathered which can inform future licence applications, e.g. monitoring of the numbers of species locally. SNH can, if requested, assist in providing advice to licence applicants on appropriate survey methods for such monitoring.

Where the Executive is the licensing authority SNH's advice is focused on the implications for the species concerned, and any implications for the wider natural heritage. However, evidence for the need for such a licence is, by its nature, linked to information on the local population of the species and the behaviour of the species, including its feeding behaviour. Therefore, SNH may be involved in advising on the gathering of information required in support of an application.

Where SNH is the licensing authority we take into account whether the proposal is necessary, the availability of alternatives, as well as the implications for the species concerned and the wider natural heritage.

With regard to various issues raised by the Committee concerning data and species issues, Scotland's Moorland Forum Research Group will be considering "The Impacts of Predatory Birds on Wildlife". The draft terms of reference of the Forum follow.

DRAFT TERMS OF REFERENCE

1. The Rural Development Committee considered two petitions from the Scottish Gamekeepers Association (SGA) regarding birds of prey. The Committee asked that Petition 187 should not be considered any further at this stage, but that Petition 449 should be put to the Minister for advice on how he proposed to address the apparent research issues raised during consideration of the petition. The petition called for an independent investigation into the impacts of predatory birds on: (1) waders and songbirds; and (2) private stocks of fish and game birds.

2. On behalf of the Rural Development Committee, the Scottish Executive has asked Scotland's Moorland Forum to commission this investigation, and to consider its findings.
3. The Forum has requested its Research Group to address the above issues, notably to:
 - i) Agree the scope of a commissioned investigation into the numbers, status, and impacts of predatory birds on wildlife and private fish stocks and game, and then commission the work;
 - ii) Review relevant scientific work published since the UK Raptor Working Group Report (2000);
 - iii) Identify any significant remaining gaps in information or research; and
 - iv) Advise on how any further research could be conducted which commands the respect and engagement of all parties.
4. The Research Group is asked to undertake this work, and should report periodically to the Forum.
5. The Forum agreed at its meeting on the 29 August 2003 that the following organisations should be co-opted on to the Research Group to consider these matters:

Scottish Gamekeepers Association (SGA), British Association for Shooting and Conservation (BASC) and the Scottish Association for Countryside Sports (SACS).

The Research Group currently consists of: Scottish Natural Heritage (SNH) (Chair), Centre for Ecology and Hydrology (CEH), Macaulay Institute (MI), Scottish Agricultural College (SAC), Heather Trust (HT), Royal Society for the Protection of Birds (RSPB), Scottish Raptor Study Groups (SRSG) and the Game Conservancy Trust (GCT).
6. The Forum will report to the Scottish Executive in Autumn 2004.