

# **RURAL DEVELOPMENT COMMITTEE**

Tuesday 24 September 2002  
(*Afternoon*)

Session 1

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## **RURAL DEVELOPMENT COMMITTEE**

**21<sup>st</sup> Meeting 2002, Session 1**

### **CONVENER**

\*Alex Fergusson (South of Scotland) (Con)

### **DEPUTY CONVENER**

\*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

### **COMMITTEE MEMBERS**

\*Rhoda Grant (Highlands and Islands) (Lab)  
\*Richard Lochhead (North-East Scotland) (SNP)  
\*Mr Jamie McGrigor (Highlands and Islands) (Con)  
Mr Alasdair Morrison (Western Isles) (Lab)  
\*John Farquhar Munro (Ross, Skye and Inverness West) (LD)  
Irene Oldfather (Cunninghame South) (Lab)  
\*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)  
Elaine Smith (Coatbridge and Chryston) (Lab)  
Stewart Stevenson (Banff and Buchan) (SNP)

### **COMMITTEE SUBSTITUTES**

George Lyon (Argyll and Bute) (LD)  
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)  
John Scott (Ayr) (Con)

\*attended

### **WITNESSES**

Andrew Dickson (Scottish Executive Environment and Rural Affairs Department)  
Steve Dowell (Scottish Executive Development Department)  
John Gunstone (Scottish Executive Development Department)  
Jim Halley (Scottish Executive Environment and Rural Affairs Department)  
John Nicolson (Scottish Executive Environment and Rural Affairs Department)

### **ACTING CLERK TO THE COMMITTEE**

Tracey Hawe

### **SENIOR ASSISTANT CLERK**

Mark Brough

### **ASSISTANT CLERK**

Jake Thomas

### **LOCATION**

Committee Room 3



## Scottish Parliament

### Rural Development Committee

*Tuesday 24 September 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:00*]

**The Convener (Alex Fergusson):** Good afternoon, ladies and gentlemen. Without further ado, we will kick off. Mike Rumbles and I will try to attend the conveners liaison group's meeting at 4 o'clock, so that slightly dictates our agenda. We will do our best to get through the business in that time scale. I ask everyone to ensure that their mobile phones are off.

### Item in Private

**The Convener:** I suggest that we take in private agenda item 4, which is the committee's work programme, because it will involve discussion of potential witnesses. We have discussed the work programme in private in the past. Are members content with that?

**Members** *indicated agreement.*

## Cairngorms National Park

**The Convener:** Agenda item 2 is the draft designation order on the Cairngorms national park. With us are officials from the Scottish Executive's environment and rural affairs department and its development department, who will give evidence on the proposals for the Cairngorms national park.

The Deputy Minister for Environment and Rural Development was due to appear, but he has had—as have Stewart Stevenson and Alasdair Morrison, who are members of this committee—to attend a lengthy meeting of the Justice 2 Committee, which is considering the Land Reform (Scotland) Bill. Therefore, we will hear from the officials, who are Andrew Dickson, Jim Halley, John Nicolson, John Gunstone and Steve Dowell.

Members have received by e-mail the Executive's breakdown of responses to the consultation exercise. The Executive is working on the summary of responses, which is expected to be with us by the end of the week. I am told that 463 responses were made.

I invite Andrew Dickson to give a fairly brief introduction, because we are mostly aware of the issues. I would like to concentrate questioning on boundaries, planning and other aspects that have been brought to our attention.

**Andrew Dickson (Scottish Executive Environment and Rural Affairs Department):** I will remind members—I am sure that they know it well—of the stage that we have reached in the establishment of the Cairngorms national park. An iterative process of a fair number of consultation exercises has been followed. Scottish Natural Heritage, acting as reporter, undertook a detailed and comprehensive consultation exercise last year, which culminated in its report, which the committee will have seen. Ministers considered the recommendations in that report.

Ministers must consider the reporter's recommendations against the criteria for the establishment of national parks that are set out in the National Parks (Scotland) Act 2000. Those criteria are that the area should be

“of outstanding national importance because of its natural heritage or the combination of its natural and cultural heritage”,

should have

“a distinctive character and a coherent identity”

and its designation should

“meet the special needs of the area and ... be the best means of ensuring that the National Park aims”—

which are set out in the act, as members know—

“are collectively achieved ... in a co-ordinated way.”

Starting from those criteria, ministers took the view that the national park should be a rather more compact—if that is the right word—area than SNH had recommended. Clearly, thinking about issues such as the distinctive character and coherent identity of particular areas involves a subjective judgment to an extent. The fact that ministers did not always accept SNH's careful and carefully reasoned conclusions does not mean that they set aside those conclusions lightly. However, ministers were looking for an area in which the park could be subject to a system of genuinely integrated management by the national park authority.

The main issues that have arisen on consultation are, as I think that the convener said, the boundary issue—which parts should be in and which out—on which 394 of the responses commented, and planning powers. The ministers' proposals on planning powers were that local authorities should retain responsibility for structure planning, but the national park authority should be responsible for local planning and should prepare a single local plan for the whole park area. Local authorities should be responsible for development control, but with the possibility that the national park authority could call in applications of particular importance to the national park for its own determination. Those proposals gave rise to a lot of comments—286 in all. As the convener said, we are now examining all those comments and summarising them. As required by the National Parks (Scotland) Act 2000, the summary will be made available to the committee and the Parliament.

The next steps are for ministers to take decisions on the final content of the designation order. They plan to do that and lay the order before Parliament next month. Then, on the assumption that Parliament approves the order, elections for the elected members of the national park authority would be held in February to March 2003 and the authority would come into being in March or April. That is not set in concrete, but it is the basic working assumption.

That is just background. It is as much as I want to say by way of introduction.

**The Convener:** Thank you very much for the brevity of those remarks.

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I am grateful to the Executive for producing the initial breakdown of the consultation, which is helpful. I will concentrate on the boundary issue to begin with. From the Executive's figures on the consultation on the draft designation order, fewer than 10 per cent of the consultees are happy with the Executive's proposed park boundary and 75 per cent are opposed to it.

Almost 50 per cent of the Scottish Executive's proposed park area lies in my constituency. I know what my constituents feel about the park boundary—I have been to numerous meetings in my constituency about it. Frankly, many of my constituents are absolutely dumbfounded by the logic that the Executive has used to come up with the draft designation order. Their puzzlement over what the Scottish Executive has done knows no bounds.

SNH, which is often criticised, worked very hard over a couple of years to produce a consultation exercise with which most people were happy. Has not the process of consultation been brought into disrepute? We hear people saying, "This is a real consultation", because many consultations are not real.

The first SNH consultation offered people a choice between options A, B and C. The majority of consultees opted to have a larger park area, but the Scottish Executive, in its wisdom, chose not to listen to them. In the second consultation, 80 per cent of consultees expressed opposition to the proposals. Will the Scottish Executive listen to the consultees?

**Andrew Dickson:** Yes.

**Mr Rumbles:** I have specific questions about the park boundary. My constituents in Strathdon are outraged about the way in which the Scottish Executive has treated the area. Speaking almost as one—that will become clear to the committee when we hear evidence from representatives of the community—they say that they cannot understand the logic of the boundary in Strathdon. I agree with them.

SNH advised the Executive that the boundary should not run along watercourses and that communities should be kept together. In Strathdon, the proposed park boundary would follow the river Don. I have lost count of how many times the boundary crosses the A944, which runs through Strathdon up to Tomintoul through the Lecht ski centre. People driving along the road will be confronted by signs welcoming them to the Cairngorms national park, followed shortly afterwards by signs telling them that they are leaving the park, and then more signs welcoming them back to the park. That is a stupid way of drawing a boundary. I cannot believe that the Scottish Executive has come up with such a proposal.

I cannot understand why, against all the advice that was given to ministers, the park boundary runs right through the village of Dinnet, on the river Dee.

My final point concerns the special conservation area around Glen Tanar, which is a marvellous facility for visitors to the north-east. The proposed

park boundary runs through the middle of Glen Tanar. The entrance to Glen Tanar will not be in the national park, but the car park will be. However, when people cross a beautiful stone bridge over the burn they will leave the national park. I cannot understand the Executive's logic. Why has the Executive chosen to draw the boundary in that way in the three examples that I have given?

**Andrew Dickson:** A large number of comments have been made, which fall into different categories. Some relate to the detailed drawing of boundaries. We had to work with a small-scale map. It is difficult to apply the results of that paper exercise to a very large-scale map to indicate exactly where the boundaries are. We recognise that there will be inconsistencies; the member has pointed to three examples of possible inconsistencies.

At the end of the day, this is a decision for ministers, but in fine-tuning the boundaries of the park we have already done a great deal more work on the issues that Mr Rumbles has highlighted. We hope that, when ministers take their final decisions, the national park boundary will no longer divide communities. In general, we have attempted to set the boundary using natural features. In some cases, that leads to inconsistencies. We are examining the detail of those.

That, in a sense, is a different order of comment—there have been many such comments—from the comments of those who say that considerably larger areas or other areas should be included in the national park.

My colleagues Jim Halley or John Nicolson might want to say something on the details of the boundary.

14:15

**Jim Halley (Scottish Executive Environment and Rural Affairs Department):** We have had a look on the ground at a number of the areas that have been mentioned—Glen Tanar, Cromdale, Carrbridge and Dulnain Bridge. John Nicolson was out with some of the local people a couple of weeks back listening to some of their views about some of the anomalies and the difficulties that the proposed boundary line would cause. He has been considering possible alternative lines.

**Mr Rumbles:** May I ask a brief question?

**The Convener:** Yes.

**Mr Rumbles:** My exasperation and frustration on the matter are because the communities in my constituency—which, as I said, contains 50 per cent of the proposed park area—have been extremely positive about the consultation that

Scottish Natural Heritage undertook. It seemed to me that SNH was taking a great deal of time and effort to come up with the right solution by listening to all the arguments.

It has just struck me from what you say that it seems that somebody with a big hand suddenly placed it on a small map and said "That is where we're going to draw the boundary in the draft designation order." That is not how the operation should have proceeded. It is late in the day to say to the committee, after many years of consultation, that the boundary in the draft designation order can be sorted out. The boundary should have been walked. You should have local knowledge on the issues that I have raised. Those are just examples of issues on one side of the Cairngorms. I am sure that other committee members will raise issues from the other side of the Cairngorms.

**The Convener:** You said that it would be a brief question, Mr Rumbles.

**Mr Rumbles:** Can you tell me why ministers did not discuss the detail of the boundary with SNH rather than just drawing an administrative line on a map because it looked easy to draw? That is my impression. Do you have any comment on it?

**Andrew Dickson:** That is not entirely fair. It is fair to say that, as part of the process of formulating the draft designation order, we had a rather difficult task to undertake to get a line on a large-scale map that would read across from the relatively smaller-scale maps that SNH had provided because, although we worked from the sub-units that SNH used, the lines that were decided for the draft designation order would not always follow those sub-units. We had relatively limited time at our disposal. It may be that the task was done rather too fast. However, that is just how the situation was.

**The Convener:** Will the report on the consultation be published?

**Andrew Dickson:** Yes. The National Parks (Scotland) Act 2000 requires that a report from the consultation will be published, and that report will be laid before Parliament.

**The Convener:** When will it be published?

**Andrew Dickson:** It will certainly be laid before Parliament at the same time as the designation order. I am not sure whether we will be able to make it available before then.

**The Convener:** Given the facts that Mike Rumbles pointed out—that, on the boundary issue alone, more than 90 per cent of respondents have taken the trouble to make representations that dissent from the draft designation order—would it not be fair to ask that that report be published as soon as possible so that the reasoning behind the Scottish Executive's decisions thus far can be

further examined? If that does not happen, I do not know how we can be satisfied on an issue that no less a body than the National Trust for Scotland has raised with us.

The National Trust for Scotland sent us a letter that says:

"In the absence of any justification"

for the decisions,

"the area appears to be an arbitrary choice, driven by a desire to reduce the number of constituent planning authorities, and ... does not fulfil the criterion of a 'coherent identity' for the Park laid down in the National Parks Act",

as some of Mike Rumbles's examples showed. Given those circumstances, is not there justification for asking for the report to be published as soon as humanly possible?

**Andrew Dickson:** We will do our best to publish the report as soon as possible. When it is published is a matter for ministers, but we will consider that.

**Rhoda Grant (Highlands and Islands) (Lab):** I will ask a couple of general questions about the consultation before I make my substantive point. What weighting is given to the views of consultees, be they individuals or representative groups? You hope to publish the designation order next month and the committee cannot report to you before next month, because we plan to meet in Kingussie in October to take evidence on the proposals from invited witnesses and the public. What weighting will be given to the committee's report?

**Andrew Dickson:** No mechanistic weighting is given to different responses. People approach the proposals from many angles. Some organisations, such as local authorities, are closely involved, while others, such as individuals, might comment about only one point on the boundary.

I hope that we give full weight to every response. I said that ministers hope to place the draft designation order before Parliament by the end of October. They will certainly take into account the committee's views as expressed today and at its meeting on 11 October. I am sure that they will give those views due weight.

**Rhoda Grant:** I will move on to boundaries. Recently, I met farmers in Laggan who were disappointed that that area was not included in the national park and that many farming areas in the Cairngorms had been excluded from the national park.

One of the national park's benefits will be that it ensures sensitive land management. On the back of that, the farming community will have the benefit of selling its produce as that from a national park. The proposal is a strange way of

looking after environmentally sensitive areas. If those farming areas had the protection of the national park, the good work that has begun could continue. Not only the environment, but the farmers who work in those areas, could benefit.

**Andrew Dickson:** That relates to comments that I have made. Ministers want to identify a national park that has

"a distinctive character and a coherent identity"

in natural heritage terms. They must take into account all four aims of the park, which include the aim of social and economic development. At that point, deciding which areas are included becomes a matter for judgment.

Many strong representations were made in favour of including Laggan. SNH's consultation reported that the upper Spey catchment, which covers Laggan and areas to the north and west, had a strong case for inclusion. However, because ministers' overall approach is to have a relatively tightly drawn national park, they did not include Laggan in the draft order for consultation. Ministers will examine the representations that have been made about that.

I should say that the proposed park would be the largest national park in Great Britain. We say that it is compact, but it is compact only in comparison with SNH's recommendations and the much bigger Cairngorms Partnership area.

**Rhoda Grant:** Obviously I am concerned that although SNH made the point strongly that Laggan should be included, its recommendation was ignored. I am also concerned that the size of the national park appears to be the driver of the draft designation order. If Laggan were to be included in the national park, the amount of additional population would not be huge—indeed, it would be very small.

I am further concerned that, if all the representations on boundaries are listened to and acted on in the period between the publication of the draft designation order and the designation order coming into force, the park that is set out in the order may be vastly different to that which is being consulted on under the draft designation order. In saying that, it would seem that yet another consultation exercise might be called for if the park that we are being asked to consider is quite different from the one on which we have taken evidence.

**Andrew Dickson:** It would be up to ministers to consider whether what they decided to put forward was radically different from the draft designation order. In those circumstances, ministers would have to consider whether they should go one step backwards in the process and take another round of consultation. However, it is fair to say that we



have to come to a point, which is provided for in the National Parks (Scotland) Act 2000, where ministers decide to put a designation order before the Parliament. At that point, it is up to the Parliament to approve the designation order or to do otherwise.

**The Convener:** I should have thanked Rhoda Grant for circulating a report that she prepared following a visit to the Cairngorm farming and wildlife advisory group. I thank her now—the report was very helpful.

As two members of the committee arrived late, I repeat that we are concentrating our questions on the boundaries before we move on to planning and to other issues that relate to the draft designation order.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Over the summer, I spent a great deal of time speaking to people in Badenoch and Strathspey in my constituency about the boundaries. It is fair to say that their reaction was one of total hostility and opposition to the tightly drawn, compact boundaries that are proposed. In particular, they felt that the proposal to divide communities such as Cromdale, Carrbridge and Newtonmore is perverse. It goes against the criteria that SNH introduced a long time ago. The proposal is completely indefensible.

The Pattack watershed and the watershed immediately to the west of Glen Truim would be the logical areas in which to place the park boundaries at Laggan. The park boundary should include Laggan.

The SNH consultation was probably one of the most detailed consultations ever conducted in Scotland and yet the Scottish Executive and the ministers totally rejected and ignored SNH's recommendations on the wider boundary model. No reasons for the decision were given in the draft designation order, which caused a great deal of anger. If the Executive decides to reject an opus, after such a large consultation exercise was conducted, surely it is incumbent on ministers to give reasons for the rejection?

What criteria did ministers apply to produce the boundary proposals that are set out in the draft designation order?

**Andrew Dickson:** As I said earlier, it was a question of ministerial consideration. Ministers considered the criteria that are set out in the National Parks (Scotland) Act 2000. Those include the fact that the area has to be of outstanding national importance, distinctive character and coherent identity. The designation has to meet the special needs of the area and act as the best way of protecting and enhancing the area. All those factors are a matter of judgment. I accept entirely that the draft designation order gave few detailed

reasons. That is partly because the order is a legal document. As such, it gives relatively little opportunity for detailed explanation. Subsequent to the publication of the order, we produced notes that set out the ministers' reasons for going for the area that they went for.

We have held a number of meetings with major interested bodies in the Cairngorms area, local councillors, the community councils group, the local chambers of commerce and the National Farmers Union of Scotland. We have also held meetings with the relevant local authorities as part of the process of carrying forward the latest round of consultation. I think that we have a fairly clear view of what the views are.

14:30

**Fergus Ewing:** I wish that I could say that suddenly things are all clear; in fact, they remain opaque. I have no idea from what you have just said what were the criteria for the decision on where to draw the boundaries. I am afraid that the contents of your statement seem so vague and general that they do not, to be frank, amount to a set of criteria that could possibly be applied to create a coherent and defensible set of boundaries.

Let me ask you a fairly simple question. Has anyone from the Scottish Executive who is working on this actually walked the boundaries?

**Andrew Dickson:** We have been looking at the detail of the boundaries. John Nicolson, who undertook the same exercise for the Loch Lomond and the Trossachs national park, has been looking at the detail of a fair number of the boundaries in recent weeks.

**John Nicolson (Scottish Executive Environment and Rural Affairs Department):** The landowners and community councils who contacted us and requested a visit got that visit. I met them and discussed their concerns. I have met landowners at various locations, including Glen Tanar, Dinnet and the Glenfeshie estate. I have also met representatives from Cromdale and Grantown-on-Spey.

**Fergus Ewing:** I do not doubt that you have met people in the areas concerned but, with respect, that was not my question. The question was quite simple: has anyone from the Scottish Executive who is involved in the process of proposing and creating the boundaries actually walked the boundaries?

**Andrew Dickson:** I do not think that it would be necessary to walk every mile of the boundary, which will be very long. As we did at Loch Lomond and the Trossachs, we are looking at areas where there seems to be some doubt—where comments

made in response to the consultation suggest that the boundary should lie in one place as opposed to another—and we are checking things out on the ground.

**Fergus Ewing:** From that answer, I presume that you could not quite bring yourself to say, “No, we haven’t walked the boundaries.” The question was first put to me by a farmer in Grantown-on-Spey, in relation to the position of the boundaries near there. He said that no one in his or her right mind would have drawn the boundary where it has been drawn. He also made various other comments, which I will not repeat.

There is, in certain quarters, a feeling that the boundaries have been so tightly and compactly drawn because the plan is to give the Cairngorms national park authority a wholly inadequate budget. Therefore, the bigger the park’s area, the more obvious it will be that the budget is wholly inadequate. Has any sum been earmarked as the provisional budget for the national park? I am aware that the corresponding figure for the Loch Lomond and the Trossachs National Park Authority is about £4.9 million. Can you tell us what the Cairngorms national park budget is? Can you advise the committee whether the boundaries that have been set are narrow because the plan is to give the national park authority an inadequate budget?

**Andrew Dickson:** I cannot give you a figure for the budget, because one has not yet been determined. As members will know, the announcement that was made a couple of weeks ago as part of the spending review contained a figure for spend on the natural heritage for the next three years. That figure includes expenditure on Scottish Natural Heritage and on national parks—Loch Lomond and the Trossachs and the Cairngorms. Ministers have not yet announced a breakdown of the figures for SNH and the national parks, or a breakdown of figures between the two national parks. Decisions have not been taken on those matters. Fergus Ewing is right to say that the figure for Loch Lomond and the Trossachs national park is £4.8 million for the current year, 2002-03.

We are working on the basis of SNH’s estimate of the cost of the Cairngorms park. SNH suggested a funding requirement in the third year of operation—when the park will be fully up and running—of between £4.1 million and £5.5 million. That is not set in concrete and was estimated by SNH at an early stage, but it is the ballpark figure with which we are working.

Fergus Ewing asked whether ministers were concerned to restrict the size of the park because of financial considerations. It is fair to say that ministers wanted an area that could be managed in an integrated way, but I do not think that

financial considerations were uppermost in their minds.

**Mr Rumbles:** SNH’s consultation exercise involved three options—A, B and C. The consultation was good and I particularly liked the fact that SNH used local people and local community councils to get real involvement. Many people were impressed by SNH’s methodology. However, only 33 per cent of those who responded wanted option A, which was the smaller park, whereas 67 per cent—two thirds of the people involved in what was a large consultation—wanted option B, which was for a bigger park, or option C, which was the biggest option, or they wanted the park to cover the Cairngorms Partnership area, which is even bigger. Two thirds of the consultees wanted a bigger park.

SNH decided to go for option B, with which the majority of people would have been satisfied. As we have heard, the Scottish Executive’s consultation on the draft designation order found that more than 80 per cent of people objected to the order. Incidentally, the draft designation order boundary is remarkably similar to option A from SNH’s first consultation. That is amazing.

Do you believe that the process of consultation is brought into disrepute when the Executive launches an independent consultation, which is a statutory requirement and which it claims will be effective, but which ignores the results without telling anyone why? Fergus Ewing tried to elicit from you in more detail the reasoning behind the decision, but I am no better informed than I was. The consultation on the order was done at the last minute. I am not convinced that, when the minister lodges the designation order, he will have satisfied the consultees. Why has the Scottish Executive gone through several expensive and important consultations if, as it seems, it is intent on rejecting the results because it does not like what it hears?

**Andrew Dickson:** As you said, the process is set out in statute.

**Mr Rumbles:** So you are doing it because you have to.

**Andrew Dickson:** The procedure was established by the Parliament. Of course the Executive is carrying out the consultation; it has no choice. Equally however, it is ministers’ responsibility to determine, in the light of what SNH and others have told them, the content of the final designation order. Ministers are exercising that responsibility.

**Mr Rumbles:** I beg to differ, although I realise that you are one of the civil servants who advises the minister and that you do not make the decisions. A principle on which the Parliament is founded is that consultation must be real and

genuine. If the consultation produces results that the Executive does not wish to acknowledge, it is duty-bound to explain in detail why it has rejected the results. Following Fergus Ewing's questions to you, I am no further forward in understanding why the Scottish Executive rejected the results of the consultation—although it was entitled to do so. The Executive cannot come to Parliament and say that it is consulting, that it has received information, but that it does not like what it has heard and that it is going ahead anyway without giving us an explanation. The committee would be failing in its duty if it merely accepted the draft designation order that was laid before us.

**Jim Halley:** Table 4.2 on page 26 of the SNH report illustrates the spread of support for the three options, depending on which type of consultation is considered. One of those shows 65 per cent in favour of option A—the smallest option—although I recognise that the numbers involved were small. However, the table shows a spread of views for the three options.

**Mr Rumbles:** Indeed, one can read the figures almost any way, but I was referring to the greatest number of people involved in a consultation. We are trying to encourage consultation and to get people to respond and I am using the first figure in the SNH table. Option A—the smallest option—was supported by only 33 per cent of people, but 67 per cent of respondents wanted a bigger park: it is as simple as that.

**Mr Jamie McGrigor (Highlands and Islands) (Con):** I presume that if the SNH option is shelved, the walk round the boundaries will be considerably shorter than it would otherwise have been. I agree with all that has been said. However, the letter from the National Trust for Scotland states:

"Without coherence of boundary or proper integrated planning and management controls, the area (whatever it may be called by the Scottish Executive) will not be recognised as a 'National Park' by the international community, as it will not conform to the internationally accepted IUCN categories. As a result it will not be registered on the UN List of Protected Areas, any World Heritage Nomination will be ruled out, and it will be a 'National Park' in Scotland only; for the rest of the world it will be no more than a designated landscape."

Will you comment on that? Surely, the point of having a national park of this kind is for it to be an international attraction that will draw in many tourists.

**Andrew Dickson:** There are many different kinds of national park in the world; some are wilderness areas and some are areas where people live and work. The Parliament has decided on a system of national parks for Scotland, as set out in the National Parks (Scotland) Act 2000. We follow the guidelines that were set down by the Scottish Parliament.

The director of the National Trust for Scotland and his colleagues from Scottish Environment LINK came to a meeting with the minister at which the director made those points clearly. I am sure that the minister has picked them up. The overall picture is that of national parks for Scotland as set out in the 2000 act. It is from there that we must start.

**The Convener:** We have gone as far as we can on the boundary issue. We will now move on to planning, which is the second area of great concern.

**Fergus Ewing:** What estimate has the Executive made of the cost of the national park authority's undertaking its planning functions under the current proposals? What is the estimate of the cost of the national park authority's undertaking its planning functions, were it to be given primary responsibility for planning?

**Steve Dowell (Scottish Executive Development Department):** When considering the planning requirements in the park, we have not considered costs. We considered delivery of the service, but we did not compare different cost options.

**Fergus Ewing:** I am surprised that you have not gone into detail on the matter, given what you said about SNH going into detail and the importance of such matters. However, I have another question. What is the expected number of local council site visits in Badenoch and Strathspey this year?

14:45

**Steve Dowell:** We have an indication of the total number of applications that may fall to the national park area and our figures are based on that. However, we have not gone into the detail of the number of site visits. We are working with the total number of applications and comparing those with numbers in other planning authorities, including at Loch Lomond.

**Fergus Ewing:** At the weekend, a local councillor in Badenoch and Strathspey told me that the number of site visits will be 36 a year, which is a lot of work for a park authority. Why is no guidance given about the Sandford principle and how it will operate? It is the most fundamental element of planning decisions. Given that no guidance of any kind has been given in respect of the Sandford principle, how on earth can we make any judgment about how the planning system will operate in the national park?

**Andrew Dickson:** The National Parks (Scotland) Act 2000 provides for Scottish ministers to give guidance to the national park authorities, but they cannot do so until the national park authorities have been set up. There must also be

national park authority and local authority consultation, which is for a later stage.

**Fergus Ewing:** I do not understand that logic. The act says simply that where there is conflict the first principle will apply—namely conservation—but there is no definition of conflict. At stage 1, I asked repeatedly whether conflict exists if there is one objector, two objectors, a number of objectors, or whether there are broader criteria. Unless that question is answered, nobody knows what will happen, no matter who plans.

I want to signal clearly the concerns that I believe exist among a large number of people in Badenoch and Strathspey who have not responded to the consultation paper. I think that they are asking themselves whether there will be another big quango and whether it will make it impossible to promote sustainable economic development in their area. They are asking whether the budget, whatever it is, will be tied up in a huge planning bureaucracy that will duplicate the work of the existing local authorities which, by and large, do an extremely difficult job competently and professionally. How would you reassure my constituents, given that you do not have a clue how much the planning system will cost, that you do not know the volume of planning applications, that you have refused to give guidance about how the system should operate and that we have no idea what the total budget is nor what proportion of that budget will be deployed on creating a new superquango? How can I persuade my constituents that a national park in the Cairngorms will be an advantage to them, given the complete lack of information on those matters?

**Andrew Dickson:** All the principles relating to the national parks are set out in the National Parks (Scotland) Act 2000 and have been fully discussed by the Parliament. How those principles are applied will be up to the national park authorities as they come into being and settle down to their work.

You mentioned that you were told that there were 36 planning applications—

**Fergus Ewing:** I mentioned 36 site visits, all of which require all or the majority of councillors in the planning committee plus all the officials to go to the site.

I made that point because visits are time consuming and cannot be rushed. Carrying out such visits involves huge resources and I am concerned that those resources will not be spent on the environment, on repairing paths or on bringing young people to enjoy recreation in places such as Glenmore Lodge. Instead of money going on what people in my constituency want, it will support a bloated bureaucracy that will

be seen as a quango. That is the concern that I am expressing, and it can be addressed only if the Executive starts coming up with answers, facts, figures and guidelines.

**Andrew Dickson:** I have said that the way in which it discharges its functions will be a matter for the national park authority. I very much doubt whether a large number of people will have to be employed on the planning function. We cannot hazard a guess as to numbers, but we certainly hope that under the proposal in the draft designation order, development control protocols would be agreed between the national park authority and the local authorities. Those protocols would be designed explicitly to avoid duplication, as far as is humanly possible. The new authority should not in any sense be a bloated quango. On the contrary, that is not what the Parliament thought it was setting up when it passed the National Parks (Scotland) Act 2000.

**Fergus Ewing:** You said that you doubt that there will be a need for a large number of people to be employed in planning. Have you estimated the number of employees you expect the NPA will have in its planning department?

**John Gunstone (Scottish Executive Development Department):** Four to six staff has been considered likely. I would like to return to the point about site visits. Under the draft designation order proposals, we do not envisage that the national park authority would deal with all applications. We envisage the call-in power that it will have being used in cases of real significance to the coherence of the park.

**Fergus Ewing:** I accept that point, but site visits currently apply only where there is an element of controversy. I would therefore have thought that, for any applications that currently elicit controversy, the NPA would be bound to send people along, no matter what role it has. I would be astonished if you were suggesting that the four to six employees—a curious underestimate, if I may say so—would not go along to site visits. They would have to—people would be extremely surprised if they did not. Is that the situation that you are postulating?

**John Gunstone:** I am postulating the national park authority not needing to look at as many sites as a local authority would look at; certainly not all its members would go along to such visits.

**Rhoda Grant:** Why did the draft designation order not follow the same lines as SNH on planning?

**John Gunstone:** The views that were expressed to SNH were pretty mixed, very polarised and very finely balanced. To an extent, SNH was coming to a recommendation without huge support from the result of its consultation, so

the fact that ministers made a different proposal is not altogether surprising.

**Rhoda Grant:** In the draft bill, planning was originally a power of the park authority. However, as a result of consultation by the committee and by SNH, planning powers were moved to the designation order so that there would be a specific difference between Loch Lomond and the Trossachs and the Cairngorms where planning was concerned. Is that acknowledged?

**Andrew Dickson:** As far as the bill—now the National Parks (Scotland) Act 2000—is concerned, it has always been the case that there is flexibility as to what planning functions national park authorities could have. It has always been the case that the particular arrangements for individual national parks would be set out in designation orders. That is what we are doing.

**Rhoda Grant:** I do not think that you answered my question. The committee participated in the consultation over what was at the time the draft bill, which stated that planning powers would go to the park authority. However, the results of the consultation persuaded the Executive to remove that provision from the bill, which has now been enacted. Do you acknowledge that the strength of feeling in the Cairngorms and in Loch Lomond and the Trossachs led to local government being given the flexibility to retain planning powers?

**Andrew Dickson:** I had better say that I will take that point away. As I recall—my memory is probably not infallible on this topic—and as I have already described, the proposal that was embodied in the bill and that was kept in the act included a degree of flexibility. It was considered possible that different arrangements might be appropriate for, on the one hand, Loch Lomond and the Trossachs and, on the other hand, the Cairngorms or any other future national park. I do not recollect that a major amendment was made to the bill on that point. However, as I said, we will take that point away and write to the convener about it.

**Mr McGrigor:** My question is on the same point. In your eyes, what is the difference between how the Loch Lomond and the Trossachs national park will be managed and how the Cairngorms national park will be managed? Why should the management system for the Cairngorms national park differ from that which was recommended for the Loch Lomond and the Trossachs national park?

**Andrew Dickson:** Are you asking about the planning side?

**Mr McGrigor:** Yes.

**Andrew Dickson:** Apart from anything else, the areas have different histories. As you know, the

local authorities in Loch Lomond and the Trossachs have a long history of working together, first in the regional park and subsequently on the interim committee. Indeed, they had a system in which planning arrangements were to all intents and purposes conducted by the interim committee as the precursor, if you like, to the national park authority. There has been no such co-operation among local authorities in the Cairngorms, the historical basis for which is perfectly good and reasonable. We are starting from a rather different position in the Cairngorms.

**Mr McGrigor:** Does the same argument apply to existing national parks in England, where eight out of the 10 national parks are managed by national park authorities?

**Andrew Dickson:** I understand that all English national parks have full planning powers. I am not an expert on the constitution of English national parks, which are quite different from national parks in Scotland, but I understand that those that did not have planning powers from the outset have been granted such powers over the years. I do not mean to suggest that that is the right solution for Scotland.

**Mr Rumbles:** I have with me a letter that the Scottish Council for National Parks wrote to me, in which the council points out that

“The English experience assessed in the Edwards Report (1991) is relevant.”

I will read a paragraph from that report.

“We endorse the view that the present dual system for administering development control—involving both the district councils—

it is talking about the situation in England, of course—

“and the park authorities in handling, appraising and making a judgement on the merits of applications—is wasteful and confusing for the public. In the interests of efficiency and clarity, we propose that the national park authorities should have sole responsibility for”

the whole planning process. The report went on to say that that would be encompassed in the Planning and Compensation Bill.

I was interested in your response to Jamie McGrigor's question about why the management systems should be different. I take the view that the Executive got things spot on in Loch Lomond and the Trossachs. As a result of the consultation, the boundaries are right and the planning powers are right. However, the Executive got things completely wrong in the Cairngorms.

In your response to Jamie McGrigor, you said that the reason why we had a different proposal for the Cairngorms was that the history is different and there is no great tradition of local authorities working together in the Cairngorms area. I put it to

the Scottish Executive that time has moved on and that we should not be hung up about the history of the process. However, if you want to talk about history, you will be aware that, 10 years ago, the Cairngorms working party was established and that, seven years ago, the Cairngorms Partnership was established. I happen to live in the partnership's area, so I know what I am talking about—I received information from it before I become involved in politics.

15:00

Your consultation on the draft designation order showed that 80 per cent of respondents—229 people—want planning powers to rest with the national park authority, just as happens in the Loch Lomond and the Trossachs national park. There is no reason why the two national parks should be different in that regard. Although I accept that the bill allows the Executive some flexibility, when the committee was considering the bill I assumed that it gave the Executive the flexibility to respond to local consultation, not to impose a different regime on the Cairngorms national park because of a historical situation.

The problem relates to the fundamental principle of effective consultation. Not only has the Executive got it wrong on boundaries, it has got it wrong on planning.

**Andrew Dickson:** I found the result of the consultation on planning issues and the volume of support for the idea of the park authority having full planning powers interesting and striking. I know that many people, not just the national organisations, strongly believe that giving the park authority planning powers would be the best way to ensure coherent planning throughout the area. However, many other people believe equally strongly that that power should rest with the local and democratically elected authorities rather than with the national park authority which, although it has a high level of local accountability, is not a fully elected authority. We are dealing with a difficult area. That is as much as I can say about it.

**Mr Rumbles:** Not only do we have the evidence that 80 per cent of respondents want planning powers for the park authority but some community councils in the Braemar and Ballater areas have told me that they are worried about the bureaucracy that would result from having a split system. They do not want unnecessary delays in consultation and fear that, if there is a split system, they will not be consulted properly.

I have still not been convinced on this matter. What is the reason for the planning system to be different in the two national parks? I have not had an answer to that simple question.

**The Convener:** Can the officials give us an answer to that simple question?

**Andrew Dickson:** I have given the best answer that I can and have recognised that the position is difficult. Strong views are held on both sides. I do not think that I can go further than that.

**John Farquhar Munro (Ross, Skye and Inverness West) (LD):** The planning issue is quite controversial and, as the official has said, it has been so since the idea of the national parks was first debated.

An issue that was paramount in the minds of people and the various local authorities within the boundaries of the Cairngorms national park was that planning should be under the democratic control of the authorities within the park area. That was one of the main bargaining planks that the communities in those areas put to us and on which they insisted. If there is going to be a division over planning issues, the national park will not be the success for which everybody had hoped, particularly the people who are involved and want to make a living within the park area. Any suggestion that we should amend the agreed rules and regulations that govern the park to come up with a new concept of control and planning would be a retrograde step. To get agreement in the first place, we had to make concessions and reach local agreements. If the Executive were to change what has been accepted as good practice locally, we will find ourselves in a degree of difficulty.

**The Convener:** Do you want somebody to comment on that, or are you happy to leave your remarks as a statement?

**John Farquhar Munro:** I would like a brief response.

**Andrew Dickson:** John Farquhar Munro's remarks underline what I have been saying. It is a difficult issue and there are strong views on both sides, which ministers will have to take into account.

**Mr Rumbles:** I do not understand my good colleague John Farquhar Munro's comments about local agreements. I am not aware that local agreements have been entered into. Could he elucidate what he means?

**John Farquhar Munro:** By local agreements, I mean that the various local authorities made the case strongly that they wanted to be involved in the planning process. Some of the groups, agencies and individuals who work in the park area were adamant that planning should remain with the local authorities and should not be part of the structure within the national park.

**Mr Rumbles:** But there was no specific local agreement.

**John Farquhar Munro:** I think that the fact that the Executive drew up the total package for the establishment of Cairngorms national park, which

included the arrangements for planning, was sufficient agreement in itself.

**The Convener:** With respect, this conversation would be better continued at the Liberal Democrat group meeting this evening than in this particular environ.

As we have asked all the questions that we need to ask on planning, we will move on. I explain to Richard Lochhead, who has just arrived, that we have been through boundary questions, planning questions and will now have a brief session on any other issues that arise from the DDO while the officials are at the committee.

**Fergus Ewing:** I will try to help out the witnesses. Could it be that the reason why the proposals on planning for the Cairngorms national park are different from those for Loch Lomond and the Trossachs national park is that the economic situation is totally different? There is currently a great deal of pressure on parts of Loch Lomond and the Trossachs, particularly the Loch Lomondside stretch from Drymen to Rowardennan, but the feeling in Badenoch and Strathspey is that we could do with a great many more visitors and more sustainable development. In the spirit of helpfulness and co-operation, I put it to the civil servant witnesses that that might be one justification for the different approach that has been adopted.

**Andrew Dickson:** I am grateful for that helpful remark. I do not know whether my planning colleagues want to say anything about likely development pressures in the Cairngorms as against Loch Lomond and the Trossachs.

**Steve Dowell:** It is recognised that the national park will generate activity. In Loch Lomond there is currently quite a bit of pressure. To some extent, there is not the same pressure in the Cairngorms, but when the national park is created, there will be. The planning response to that will have to be up to measure. We recognise that there is a difference and that it will be an increasing difference.

**Fergus Ewing:** I am pleased to hear that answer. I am sure that you will all be aware of the terrific accolade that was recently won by Cairngorm mountain, because of the funicular railway. It has been awarded the accolade of the most improved skiing resort in the whole of Europe and will now be looking forward to as many thousands of visitors as possible enjoying the trip up the funicular and the view that it affords. Perhaps some modifications could also be made to the ludicrous restrictions in the absurd visitor management plan that has been foisted on the local community. I hope that the civil servants will take that point on board.

**The Convener:** Well advertised, Fergus.

**Rhoda Grant:** One of the problems in the Cairngorm area and throughout rural Scotland is the availability of housing. People are now buying holiday homes in the Cairngorm area at prices that push local people out of the market, as they do not have the type of job that allows them to compete with people who have hard cash to pay for property. Will the national park be able to address that?

**Andrew Dickson:** In the first place, the answer depends a bit on planning controls and we do not yet know whether the national park will exercise planning controls. Housing is obviously one of the areas on which the national park would have a view, but local authorities, housing associations and local enterprise companies would also have a view. Those bodies must work together in partnership on such issues. I will not go into more detail, as it is not my area of expertise, but that is broadly how I see things working.

**Rhoda Grant:** Let me give an example of some of the steps that other national parks have taken. They can give local people grants to compete with people coming into the area. If those people sell their house to somebody who is local to the national park and who lives and works in the area, they do not have to pay back the grant. However, if they sell it to somebody who does not live and work in the area, they have to pay back the grant. That gives local people the same leg-up as people coming into the area. Would such a scheme be within the powers of the national park?

**Andrew Dickson:** Off the top of my head, I would say that it probably would be, but it would be for the national park authority to consider whether it wanted to run such a scheme in the light of the experience of other national park authorities. I presume that your example is from England.

**Rhoda Grant:** It is.

**Mr McGrigor:** My question concerns agriculture in the national park area. The present arrangements make it difficult for many farmers to get into the rural stewardship scheme. There is a feeling in the agricultural community that it will be easier for farmers to access environmental grants if they are within the boundaries of the national park. What is your view on that? How can you dispel the feeling that there will be some sort of discrepancy between the two areas with regard to agricultural and environmental grants?

**Andrew Dickson:** The question whether there should be a special agri-environment scheme operating within national parks has been discussed, but I do not think that any conclusion has been reached. Again, that is rather outside my immediate responsibilities, and it might be best if I took the question away and agreed to write back to the committee.

**Mr McGrigor:** Thank you.

**Fergus Ewing:** I noticed that 11 people commented on the adoption of a bilingual name. Will the Executive provide a bilingual name? How did the respondents divide up? Were they for or against it? I guess that most were in favour.

**Jim Halley:** Most were in favour of a bilingual name, but one or two thought that the Cairngorms area was not a Gaelic-speaking area and therefore that there should not be a requirement to have a Gaelic name as part of the overall park name. From memory, I think that a majority was in favour of a bilingual name, although only a small number of people were involved.

**John Nicolson:** The split was 7:4.

**Fergus Ewing:** Are you going with the majority?

**John Nicolson:** The ministers will want to consider the issue.

**Andrew Dickson:** I can be a little more forthcoming than that. The proposal was put forward in the consultation document. As a matter of legal drafting, we will have to consider the issue. Members know that the draft of the designation order does not have any Gaelic in it and we will have to take a legal view, but the intention that the national park should be generally known by a bilingual name is accepted, I think.

15:15

**Fergus Ewing:** I am pleased to hear that. I am sure that you will be aware of the long-standing Highland Council policy on promoting bilingual signs and the feeling in some quarters that certain unknown mandarins are reticent about introducing a bilingual name. I hope that this is an opportunity to show that fears are ill founded.

**John Farquhar Munro:** There are many Gaelic-speaking communities within the park area, and I am sure that they would not be pleased if they heard us suggesting that they are not in a Gaelic-speaking area. The name Cairngorms is Gaelic and the Monadhliath mountains are within the park area. I do not know how much more Gaelic is needed before the area is given a Gaelic title. I am surprised that the Executive has once again declined the opportunity to support the Gaelic language and culture, which is still strong in that part of the world.

**Andrew Dickson:** Ministers proposed a bilingual name and we will consider that in drafting the final designation order.

**The Convener:** That brings us to the end of questioning on the subject. I am sure that the witnesses have a picture of members' intense concerns. I assure them that those concerns are reflected in letters that have arrived in our

postbags from august bodies and well-meaning individuals and I hope that they will take that message away.

I propose to members that I should write on behalf of the committee to the minister with two requests. First, he should consider publishing the consultation report as soon as he can, as the justification for some decisions seems to lie in that report. I do not think that some concerns have been satisfactorily or fully addressed this afternoon. The witnesses may not be in a position to address those concerns, but answers may lie in the consultation report.

Secondly, I propose to ask the minister not to lodge the designation order before the committee has met in Kingussie and preferably not before we have had a chance to report on both this meeting and the meeting in Kingussie.

**Mr Rumbles:** As no minister could be present today, will you enclose in your communication to the minister a copy of the *Official Report*, which will show everything that has been said in the meeting?

**The Convener:** Yes.

**Rhoda Grant:** I suggest that your letter be strengthened by saying that no designation order should be lodged until the committee reports after our Aviemore meeting.

**The Convener:** I would be happy to do so.

**Fergus Ewing:** That is a good suggestion. As the minister apparently did not have the opportunity to come to the meeting today, he should have an opportunity later, particularly after we have taken local evidence at Kingussie. We should have a chance to obtain further responses, information and answers from the minister before the draft designation order is lodged.

**The Convener:** Are you suggesting that I should invite the minister to appear before the committee before he lodges the designation order?

**Fergus Ewing:** Yes. That is essential, particularly in the light of today's evidence. We need to have an opportunity to quiz the minister about why decisions were taken and what credence will be given to the views of the consultees and the concerns of members of the committee. When we consider a major report, we always take evidence from the minister. I cannot see why the minister should be able to get away with it on this occasion. That said, I am not suggesting that the minister wants to shirk the opportunity.

**The Convener:** I am prepared to discuss that when we come to discuss our future work programme.

**Mr Rumbles:** If the deputy minister who has



responsibility for the issue is not available, I am sure that we could have a meeting with the minister.

**The Convener:** On that note, I thank the witnesses for attending this afternoon and for doing their best to answer the questions that were put to them.

## Subordinate Legislation

### Conservation of Seals (Scotland) Order 2002 (SSI 2002/404)

**The Convener:** Given the time, I will move straight on to the order on the conservation of seals, which we considered briefly last week under the negative procedure. There was considerable discussion last week on the policy behind the order and the procedure—or lack of procedure—associated with the order. Members should have a copy of the correspondence with the Executive, along with a cover note from the clerk outlining the procedure.

As I said last week, the Subordinate Legislation Committee has nothing to report on the order. Given the fact that the Executive has answered our letter, are members content for us to make no recommendation to the Parliament? I am happy to open the question up for discussion.

I am not entirely convinced that the Executive answered our letter in the most robust manner.

**Mr Rumbles:** I raised the issue in the committee when we first considered the order. My main point was that I did not agree that the Parliament, through the Rural Development Committee, should be asked to implement what was in effect retrospective legislation. The minister has not addressed that point.

**The Convener:** I agree entirely. We have two options. The first option is to submit a beefed-up report drawing attention to our concerns, but to make no further comment, on the basis that we do not wish to stand in the way of the order. The other option is for the committee to lodge a motion to annul.

**Mr Rumbles:** When we previously considered an order with retrospective effect, our decision not to object came down to the fact that if we had objected, we could have impinged on people's income. That is not the case in respect of this order. I would like to hear what other members have to say on the matter. At some stage, the committee should take a stand on retrospective legislation that comes before us in this way. I am not happy with that practice.

**Fergus Ewing:** One of the concerns that was expressed at our previous meeting was that the upshot is that we are dealing with retrospective legislation that could prejudice the interests of individuals who may commit a crime without knowing about that crime. That is because the order provides for the creation of a crime. In response to that point, the minister says:

"It is not for the Executive to advise the Crown Office".

He goes on to say:

"This would be a matter for the Crown Office to decide and any decision would be made according to the individual circumstances of each case."

With respect, the minister has not addressed the very simple point that was made by more than one member at the last meeting.

Like Mike Rumbles, I feel that the minister's reply is not satisfactory. I am not sure what action we can take. We could write to the Crown Office, asking what its position is on retrospective legislation. We could ask whether the Crown's policy is not to prosecute in cases where the creation of a crime has been made without that being known to the citizenry. Would that be the appropriate course of action to take?

**The Convener:** I do not disagree, but I am worried about pressure of time. The order has to be reported on by 7 October.

**Mr Rumbles:** Could we ask the minister to withdraw the order and to resubmit it with a different commencement date?

**Rhoda Grant:** Although I believe that no one could be arrested for committing a crime under the order because it was not laid and did not go through the parliamentary procedures properly, I am concerned about delaying it. We should be careful about doing that because the disease that is sweeping through the seal population is serious. If we were to delay the order, we could put the seal population at risk.

I share members' concerns because I do not like legislation that has already come into effect being put in front of us. At the same time, someone who arrests a person for shooting a seal would need to be able to cite the law that that person was breaking. If the law has not passed through the Parliament properly, how can that person be in breach of it?

**Mr Rumbles:** That is not the position as far as I understand it. The order has Executive authority: the law is already in place but is subject to the approval of the Rural Development Committee—that is what is meant by retrospective legislation. I am not happy to put my signature to retrospective legislation when there was no need for it to be retrospective in the first place. The Executive could have laid an order with a commencement date that would have been subject to our approval. We are being asked to rubber-stamp the order, in the same way that we have been asked to rubber-stamp a number of pieces of subordinate legislation. I was reluctant to do so on those occasions, but if we had taken a stand previously, farmers would have lost badly needed income. That situation does not arise in this case.

**The Convener:** I accept that point, but the Executive says:

"it was considered appropriate that the Executive should introduce this Order as soon as possible after the end of the close season in order to ensure compliance with its obligations under the EU Habitats Directive."

However, the Executive does not specify those obligations. It might be interesting to investigate that.

**Mr Rumbles:** Why are we being asked to approve the order retrospectively? The Executive has yet to justify the retrospective nature of that approval.

**The Convener:** Are members of the view that we should write back to the Executive to seek further clarification of those matters, on the grounds that we are unhappy with the robustness—if I may put it that way—of its reply to our original letter? Do members think that, if necessary, we should ask the Executive to delay commencement of the order? I am reluctant to go down that route if I can avoid it.

**Mr Rumbles:** Could you write to the minister on behalf of the committee to say that, if a similar situation arises in future, the committee will seriously consider the option of annulment?

**The Convener:** Do you make that suggestion because, in this case, there are no financial consequences for members of the electorate or anyone else?

**Mr Rumbles:** Yes.

**The Convener:** Rhoda Grant said that the disease is running rampant through the seal population, but is that the case?

**Rhoda Grant:** Cases have been reported in England. We know from past experience that once the disease takes off, it does so very quickly and can spread rapidly through the seal population. I think that that is why action has been taken so quickly.

I agree with Mike Rumbles that we should write about the order in the strongest terms. We should also ask the minister to clarify how a person can be prosecuted for an offence if the statutory instrument that includes that offence has not passed through the parliamentary process.

**The Convener:** Should we write directly to the Crown Office about that?

**Rhoda Grant:** We should ask the minister in the first place, as he laid the order before the Parliament.

**The Convener:** We have asked the minister that question, but he has not chosen to give us a particularly strong answer, other than to say:

"It is not for the Executive to advise the Crown Office on whether or not to proceed with individual prosecutions. This would be a matter for the Crown Office to decide and any decision would be made according to the individual circumstances of each case."

**Rhoda Grant:** In that case, it might be best to write to the Crown Office.

**The Convener:** From what members have said, I think that we are considering writing a strongly worded letter that outlines our very real concerns about the order. The letter would also point out what would happen if such circumstances were to arise again. We need to make the important point about financial consequences, as on previous occasions we have had to pass such instruments on, because people's pockets would have been hit had we not done so. Therefore, we will say that the committee would be minded to block similar statutory instruments in future, so long as there were no financial consequences for anyone. In addition, we will write to the Crown Office to seek its guidance. Given those criteria, we are prepared to make no recommendation to the Parliament on this occasion. Do members agree?

**Mr McGrigor:** I want to make two points. First, I am not sure of the argument about grey seals in the Moray firth being shot because people did not know whether they were grey or common seals. It is quite easy to spot the difference between grey and common seals. By the way, I am not suggesting that there should be a mass slaughter of seals—I am saying only that I do not think that those are good grounds for including grey seals in the order. Secondly, have we been given any information about the source of the outbreak? The letter says that 18,000 seals died in northern Europe, of which only 1,300 died around the Scottish coast. It was thought that many of those seals had been washed up from Ireland. My point is that, even during the last outbreak, the disease does not appear to have been a big problem in Scotland. Do we know what causes the disease? Could it be that seal populations are not being managed properly?

**The Convener:** Those are perfectly relevant, valid questions, but they are wider than we are able to go in this debate. We have to deal with a specific statutory instrument that the Executive is seeking to introduce.

**Mr Rumbles:** I propose that we take the action that you outlined in your summary.

**The Convener:** Are members content for the committee to take that course of action?

**Members indicated agreement.**

**The Convener:** On that basis, we make no recommendation to Parliament on the Conservation of Seals (Scotland) Order 2002.

We now move into private session to discuss our work programme.

15:31

*Meeting continued in private until 15:57.*



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