

# **TRANSPORT AND THE ENVIRONMENT COMMITTEE**

Tuesday 2 May 2000  
*(Morning)*

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## **TRANSPORT AND THE ENVIRONMENT COMMITTEE**

### **9<sup>th</sup> Meeting 2000, Session 1**

#### **CONVENER**

\*Mr Andy Kerr (East Kilbride) (Lab)

#### **DEPUTY CONVENER**

\*Nora Radcliffe (Gordon) LD)

#### **COMMITTEE MEMBERS**

\*Helen Eadie (Dunfermline East) (Lab)  
Linda Fabiani (Central Scotland) (SNP)  
\*Robin Harper (Lothians) (Green)  
\*Janis Hughes (Glasgow Rutherglen) (Lab)  
\*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)  
\*Mr Kenny MacAskill (Lothians) (SNP)  
\*Des McNulty (Clydebank and Milngavie) (Lab)  
Tavish Scott (Shetland) (LD)  
\*Mr Murray Tosh (South of Scotland) (Con)

#### **THE FOLLOWING MEMBER ALSO ATTENDED:**

Dr Elaine Murray (Dumfries) (Lab)

#### **WITNESSES**

Lloyd Austin (Scottish Environment LINK)  
Andrew Bachel (Scottish Environment LINK)  
Martyn Cox (Scottish Coastal Forum)  
Bill Dalrymple (Loch Lomond and the Trossachs Interim Committee)  
Stewart Fulton (Cairngorms Partnership)  
Ian Grant (Cairngorms Partnership)  
David Morris (Scottish Environment LINK)  
Councillor Gillie Thomson (Loch Lomond and the Trossachs Interim Committee)  
Gordon Watson (Loch Lomond and the Trossachs Interim Committee)  
Antony Wilks (Scottish Coastal Forum)

#### **CLERK TEAM LEADER**

Lynn Tullis

#### **SENIOR ASSISTANT CLERK**

Richard Walsh

#### **ASSISTANT CLERK**

Alastair Macfie

#### **LOCATION**

Committee Room 2



## Scottish Parliament

### Transport and the Environment Committee

Tuesday 2 May 2000

(Morning)

[THE CONVENER opened the meeting in private at 11:05]

11:17

*Meeting continued in public.*

**The Convener (Mr Andy Kerr):** We will begin the ninth meeting of the Transport and the Environment Committee in 2000. I welcome the press, public and committee members. I have received apologies from Linda Fabiani and Tavish Scott. Kenny MacAskill will be late.

### National Parks (Scotland) Bill: Stage 1

**The Convener:** Our main business today is to take further evidence for the stage 1 consideration of the National Parks (Scotland) Bill. Last week we took evidence from Scottish Natural Heritage, the Convention of Scottish Local Authorities, the Scottish Society of Directors of Planning and the Royal Town Planning Institute in Scotland. This week we will hear from the Cairngorms Partnership, the Loch Lomond and the Trossachs interim committee, Scottish Environment LINK and the Scottish coastal forum.

I welcome Ian Grant and Stewart Fulton from the Cairngorms Partnership. We will keep the meeting as informal as possible, but the nature of the committee's business requires some inflexibility in the way in which we proceed. I hope, however, that the witnesses will enjoy their experience here. I invite the witnesses to say a few words before I open up the meeting to questions from committee members.

**Ian Grant (Cairngorms Partnership):** I thank the committee for inviting us to give evidence. I should explain what the partnership is and does—that might clarify why we find ourselves giving evidence today.

The partnership is a private company that is limited by guarantee; it has charitable status. Five people make up the partnership—I am chairman, Stewart Fulton is chief executive and we have a company secretary and two non-executive directors. The partnership is core funded by the

Scottish Executive via Scottish Natural Heritage and its remit is set by the Scottish Executive and revised and updated as necessary to reflect changing circumstances.

The main business of the partnership in recent years has been the implementation of a strategy that was formed some years ago. I believe that Stewart sent members a copy of the strategy.

We service and facilitate what goes on among several different representational groups in the Cairngorms area. Our advisory panel is probably the most senior body below the partnership and comprises the conveners of the five local authorities that cover the area and, for the most part, the chairmen of the main agencies that operate in the area. The panel also includes senior representatives of the National Trust for Scotland, the Royal Society for the Protection of Birds and the World Wide Fund for Nature.

There are four peer groups—the operational groups—in the partnership. I chair the Cairngorm councillors group, which comprises the 15 ward councillors from the five local authority areas that are covered by the partnership territory. The Cairngorms community council group is made up of representatives of the 26 community councils in the area. The recreational forum takes representations from a variety of recreational interests, and the Scottish Landowners Federation has a Cairngorm liaison group, which examines the interests of landowners in the area.

We have been asked by the Scottish Executive to assist SNH in its task of spreading the news about what a national park is. Our role, therefore, is to enable capacity building. I am sure that all members are aware of what that is, but it was a new term to us six months ago. We are, however, doing the best that we can to introduce capacity building.

In conclusion, our job leaves us in a somewhat difficult position in responding directly to the committee, but we will be delighted to assist in any way that we can in explaining what is happening in the area and what we have been doing in recent years.

**The Convener:** The committee is aware of your position through your letter. We are quite happy about that—we realise the parameters within which you must operate.

**Nora Radcliffe (Gordon) (LD):** Should conservation and recreation be identified as the prime purposes of national parks?

**Ian Grant:** That would be my view at all times, but the partnership has, through the years, been in place to implement a strategy and work plan that considers not only conservation and the environment in the Cairngorms area, but

employment and economic benefit, which I believe are fundamental. Our interpretation of the draft paper from SNH was that it also examined economic benefit and employment.

**Nora Radcliffe:** Do you have concerns about unqualified application of the Sandford test under section 8(6) of the bill, and about the effect that that might have on co-ordinated delivery of aims?

**Stewart Fulton (Cairngorms Partnership):** There is no doubt that that test would be applicable in the core conservation areas. In the longer term, we would like some form of zoning to be applied in the park, so that it contained development zones and countryside management zones as well as the core conservation areas to which the Sandford principle would apply. Those zones could also act as buffer zones.

**Robin Harper (Lothians) (Green):** Many of the submissions made to the committee raised concerns about the adequacy of powers under the Civic Government (Scotland) Act 1982 for the national park authorities. What are your views on the desirability of having self-contained and comprehensive byelaw powers specific to national park authorities?

**Stewart Fulton:** That is one of the matters on which we do not have a view. Whatever the new model for the national park, there is no doubt that it must have adequate powers to do the job properly. Because much of our work is based on consensus—in fact, that is all that we can base our actions on—we think that consensus is fundamental. However, I suppose that everyone will expect powers of last resort to be in place, in order to deliver the specification for which the park has been set up.

**Robin Harper:** Are you convinced that the national park authorities will have sufficient means under the bill to influence the general activities of local authorities and public bodies and of the owners, users and managers of land and water?

**Ian Grant:** That is a difficult question for us to answer. The national park must have proper and adequate funding in order to ensure that it can operate in the way in which the country wants it to. I am not in a position to state whether the funding is adequate, because we have no idea what that funding will be.

**Robin Harper:** I believe that some rough, ballpark figures have been discussed.

**Ian Grant:** That may be so, but those figures are lined up against a lot of blank sheets of paper—we have no idea about park boundaries, about the scale of operation of national parks, or about how many national parks there will be. We know that there will be a national park at Loch Lomond and that there will be one in the Cairngorms area

eventually, but other issues about marine parks and so on have yet to be determined.

**Stewart Fulton:** A lot is said about the likely cost, but the figures that are being spoken about are the figures for the park authority. As you will see from our work plan, however, all the partners must be on board if the whole range of activities is to be delivered. Our work plan has investment in the parks of up to £100 million spread across the partners. That degree of support must continue after the park authority is in place.

**Robin Harper:** Do you have a view of what powers the bill should give to the authority in areas such as skiing and recreation?

**Ian Grant:** I do not want to sound negative, but I am not sure that we are in a position to respond to that directly as we are not engaged in that business. The Cairngorms ski lift operation is a stand-alone body over which we have no influence.

The partnership has achieved an enormous amount in getting people to understand the opportunities that exist within a wider area that might be embraced by a national park. The boundary that the Cairngorms Partnership has established has brought together a variety of disparate views and has ensured a fair degree of commonality. Ours is more of a strategy implementation body than a company that has money invested directly in bricks and mortar.

**Robin Harper:** Do you have any views on traffic regulation and designation of footpaths in the area?

**Ian Grant:** We have a keen interest in footpaths, as we expect the national park to have an expensive responsibility for the maintenance of paths. One of the issues that we are examining, irrespective of whether there will be a national park, is whether we can raise private finance that could be matched by Government money and would be available for the long-term upkeep of paths. We have found no evidence that people feel that paths should be tolled. Equally, it is hard to find someone who agrees that there should be tolls on roads.

**Stewart Fulton:** We have done a lot of work on the subject of paths with our partners. With the present rate of investment, it would take about 40 years to repair the worst-damaged bits of the best-loved paths. If the park is to be a national showcase, remedial action is needed as a matter of urgency. We have done research on this and have found that about £7 million will be needed in the next four years or so to make the necessary repairs, but that presages the need for a revenue stream, which might be the park's responsibility.

**Robin Harper:** There was a forecast recently—I

do not know whether it is good or bad news—that the amount of tourism worldwide could double in the next 10 to 15 years. Could the Cairngorms cope with a doubling in the number of tourists?

**Ian Grant:** The area could carry such an increase but it would be damaged. Other issues such as climatic change and higher rainfall also come into play—erosion is caused by the elements as well as by people. We have to think positively. I will put on one of my previous hats—I used to be chairman of the Scottish Tourist Board—and say that there are huge opportunities for Scotland to develop its tourism industry. However, it must be borne in mind that Scotland's assets can degrade and must be looked after.

**Robin Harper:** With respect to the powers of the national park authority to ensure the protection of the environment, Scottish Natural Heritage has suggested that the bill fails to provide a power of last resort to the authority. Do you have a view on that?

**Ian Grant:** I do not think that the partnership has a view on that. I go back to what I said initially—that if a national park is to be realised as a sensible and progressive way of moving forward, it must be properly established, funded and administered.

**The Convener:** Murray Tosh would like to ask about planning matters.

**Mr Murray Tosh (South of Scotland) (Con):** I would like to begin with a supplementary to the previous exchange. Ian, once or twice you referred to boundaries. We have received a letter on that issue from the convener of your community councils group. The group wanted the area of the park to cover all the communities that service and sustain the Cairngorms area. Your map shows a very broad area. Am I right in thinking that you and all the constituent parts of your partnership want to establish that or something like that as the boundary of the park?

11:30

**Ian Grant:** I should probably ask Stewart Fulton about this, as he has been here longest and is an expert on planning, which I am not. However, the time and effort that was put into establishing the Cairngorm Partnership area and the boundary some five or six years ago was sufficient to lead me to believe that that consultation came up with a sound and proper boundary. The panel members of the Cairngorm Partnership believe that it would be a sensible boundary for a national park.

**Mr Tosh:** I have a couple of questions about planning. We have received many submissions and last week took evidence on the separation of planning functions between the local authority and

the parks authority—that is an option envisaged in the bill. What is your view on that? What would you see as the practical implications of the park authority and the planning authority being different bodies?

**Stewart Fulton:** Since 1995, I have been on secondment from the Executive, but normally I am assistant chief planner in what was then the Scottish Office and is now the Scottish Executive. In my view, the best way ahead for the park is for it to have the maximum influence with the minimum intervention. I favour a model in which the park authority has strong powers of intervention—powers to input material and to be listened to at the various stages of the planning process. Personally, I do not think that it is necessary for the park to have a full-blooded planning department—at least not in the Cairngorms, where there are five different administrations.

**Mr Tosh:** Later this morning we will take evidence from witnesses who argue that the parks authority should be the planning authority. You do not regard that as appropriate.

**Stewart Fulton:** I believe that other structures could be equally effective, as long as the powers of intervention are recognised as credible and are backed up by the Administration.

**Mr Tosh:** Do you see that as something particular to the Cairngorm area, which is inapplicable in other potential plan areas?

**Stewart Fulton:** I would not go so far as to say that. About two years ago, we had a planning expert examine the situation in the five authorities, and the commonality of purpose in all the structure and local plans was very high, partly because the department issues a great deal of detailed advice. The methods for dealing with designated areas are crystal clear, as the European designations have to be handled in a particular way. That means that a good part of the area is dealt with in a manner from which people cannot deviate. The study showed that, although there were sub-regional differences here and there, by and large the plans were going in the same direction and being applied in the same way.

**Robin Harper:** Do you agree that, under your model, with the NPA having strong powers of intervention rather than being the planning authority, we would need much clearer delineation of the purposes and aims of the national parks than the bill currently provides for?

**Stewart Fulton:** That would come out of the park plan. The park plan has to be understood by everyone. People must know what they are to take away from it and deliver on the ground. That is the crux of the issue. The park plan must be strong and effective. The purpose of the development

plan is to make it absolutely clear what developers can and cannot do. In many ways, it is a facilitating device. One diverges from it at one's peril, as that would mean diverging from policy. However, if the park plan is clear, if the park authority has a strong input into it—as other authorities would have an input into structural plans and so on—and if the park plan represents consensus on what needs to happen, that should be strong enough to hold the ring.

**Mr Tosh:** Do you see a need for a trigger at the end of a planning process, which would allow you to refer to the Scottish Executive if you felt that significant planning applications were contrary to the approved plan, to the principles of the national park or to both?

**Stewart Fulton:** The answer to that is definitely yes. The referral system is already in place. If Scottish Natural Heritage is not content with the planning authority's handling and application of a national scenic area, it can refer the matter to the First Minister. His decision at that point is whether to intervene. If he decides to intervene, he calls the application in and determines it himself. There is nothing new about that; it is the same mechanism that gives the park authority strong powers to stop the clock from running on applications that would apply unfavourable conditions. That is part of the normal stock in trade of the planning process.

**Mr Tosh:** The novelty would not be the principle, but its extension over such a wide area.

**Stewart Fulton:** Yes, and that could be done. I do not think that there would be a problem if that was established as the procedure. In the old two-tier system, there was a development control scheme in the regions and districts whereby the regions would receive a routine list of applications that they had asked to see because of their type or scale. The regions screened those applications and decided whether they should be called in for regional processing if they were sufficiently large. Systems such as that have been in place, off and on, over the years—and over a wide area.

**The Convener:** You mentioned national park plans. That is a theme that we want to develop.

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** I have a couple of questions on that topic. In the evidence that we have received from several organisations, the effectiveness of the duty on public bodies to have regard to the national park plan has been commented on. It has been suggested that we should consider whether that duty should be extended to private organisations and individuals. Would you like to comment on how effective that duty on public bodies would be in practice?

**Stewart Fulton:** I am proceeding with caution

again. I agree with you; I do not think that "have regard to" is a strong enough phrase. Public bodies could have regard to something and still decide to do something else.

Some time ago—I think that it was before 1991—there was a duty on local authorities to have regard to the development plan in processing applications. At that time, the Prime Minister made it clear that, in the interpretation of that legislation, the development plan was only one of several documents. Despite the fact that the development plan had been through a process of public consultation before it became a legal document, it was only one of several documents that a local authority had to take into account in reaching a decision. In 1991, it was accepted that that simply would not do and the rules were changed to make the development plan the key determinant of what should happen.

That philosophy should be applied to the national park plan. If the plan is to protect one of Scotland's showcase areas—in everyone's interest, and in particular the interests of the natural heritage assets that are the core of the area's value—having regard to the national park plan is not enough. There should be an absolute commitment that what is in the plan must stick, which would make it far easier for everyone to understand the position when applications are made.

**Cathy Jamieson:** What would you expect the practical effects to be of failing to place some kind of statutory duty on land managers to implement the national park plan? What would happen in practice?

**Stewart Fulton:** If a land manager was in default?

**Cathy Jamieson:** Yes.

**Stewart Fulton:** I do not think that we can answer that question. That would be a new theatre of operations. In relation to some of the European zonings—other people are more qualified to talk about this than I am—if the land is not managed towards favourable conservation status, there are already sanctions in the system. The same would apply to sites of special scientific interest, for which a list of operations must be observed.

A wide range of management agreements, which perhaps do not get as much air time as they deserve, are also in place with land managers. The private landowners are, in many cases, the Government's agents, delivering nature conservation by way of special agreements. They are paid and they deliver on the ground. However, it is not really for me to say what would happen more generally if there were an infraction of the idea of good management.



**Cathy Jamieson:** Do you expect conflicts to arise between different organisations and bodies if there is not a strengthening of the duty?

**Stewart Fulton:** I do not know. It is horses for courses; it depends where you are and with whom you are dealing. There are difficulties here and there but, in the main, the landowners with whom we deal go in the same general direction as us—the partnership area is about 97 or 98 per cent privately owned. I imagine that, as new legislative measures on access and so on are implemented and landowners are further engaged with the public, things will soften up and there will be fewer difficulties, but others no doubt have a different view.

**Ian Grant:** First, we have the experience of the way in which landowners have accepted and administered SSSIs, European schemes and so on. Secondly, support for the biodiversity action plan in the Cairngorms has been widespread; the plan commands a lot of respect. That is a signal that people in the Cairngorms look on the countryside as something that they want to support. We do not come across evidence of the law being broken.

**Cathy Jamieson:** I want to clarify that. In general, you seem to be suggesting that you would support a strengthening of the duty or an extension of it to other bodies and individuals.

**Ian Grant:** We two individuals sitting here would probably say that the wording could perhaps be put another way.

**Cathy Jamieson:** We get your drift.

A number of the responses to the consultation relate to the reviews of the national park plans. Do you have an opinion on the optimum review period for evaluating the plans?

**Ian Grant:** It is difficult to say, as we do not yet know the colour or shape of the national park plan. In the broadest possible terms, I suggest that the plans should be subject to fairly frequent review. Times change quickly, in terms of environmental issues, let alone economic or labour issues.

**Stewart Fulton:** We see our strategy as durable and do not revisit it frequently, but we publish our work plan, which we gave you with the strategy. The partnership operates a policy of maximum transparency. In the work plan, we inventory everything that the partners are delivering. Everyone should be able to see where the money is going and what is being done to achieve each of the strategic objectives. The plan includes sections on communications and new work. If things needed done that had a bearing on monitoring or that might change the strategy, they would be included in those sections. The plan is serviced—if bits of the strategy look a little out of

date, the work plan will say what is happening to review the situation and to refine, improve and take the matter forward.

**Ian Grant:** Taking that analogy a shade further, I believe that it could be said that the strategy is well thought out, well planned and implemented, while the work plan provides a means to revisit the strategy annually to see how far down the line we have come. The members of the panel are keen to go back to the work plan every year to update it but, as yet, they have not said that the strategy needs to be changed. We would be comfortable with the national park authority adopting a similar proposal.

**Cathy Jamieson:** Are you suggesting that the strategic approach should be dealt with over a longer period, with regular annual reporting on the work plan?

**Ian Grant:** Yes. We need to keep an eye on that.

**The Convener:** As there are no other questions, I thank Ian Grant and Stewart Fulton. They have a busy day ahead of them, as they are going on elsewhere. As a frequent visitor to the Cairngorms area, I am excited about the prospects for us all. I hope that it will all go well. Thank you very much for coming along.

**Ian Grant:** Thank you very much for having us.

11:45

**The Convener:** It was our pleasure.

I invite Gillie Thomson, who is wearing a different hat today, and his colleagues Bill Dalrymple and Gordon Watson to join us. As members know, Gillie, Bill and Gordon are representatives of the Loch Lomond and the Trossachs interim committee.

Welcome to the committee. I will give you an opportunity to say a few words before we move on to questions.

**Councillor Gillie Thomson (Loch Lomond and the Trossachs Interim Committee):** Thank you. I am glad to be here again. As you said, convener, I am wearing a different hat this morning and will be speaking more about the nitty-gritty of what we are doing in Loch Lomond and the Trossachs.

For people who do not know, Bill Dalrymple is the park officer for the interim committee and was previously park officer for the Loch Lomond park authority. Gordon Watson is our planning officer and works directly for the interim committee. We have a small planning section, with Gordon as the senior planning officer. Bill and Gordon will take all your questions; I will sit in the middle and kid on, as usual, that I know what they are talking about.

As we go along, members will notice that our organisation is very different to the Cairngorm Partnership. I suppose one could say that we are almost an exact opposite of what has happened in Cairngorm. While we have been thrown in as an interim committee to act and to plan, the Cairngorm Partnership has been doing all the planning without—I hope that I do not sound critical—so much of the action so far.

We are willing to take questions from anyone.

**The Convener:** You know us too well in terms of who will ask what.

I invite Nora Radcliffe to ask some general questions.

**Nora Radcliffe:** Good morning. Your submission highlights a number of suggestions on the purposes and aims of national parks. Could you explain the effects of failing to include recreation and of the omission of “responsible” as a qualifier to employment? Why did you suggest substituting “well being” for “development” in the wording of the aim at section 1(3)(d)?

**Councillor Thomson:** Bill Dalrymple wrote the words, so I will ask him to respond to those questions. They are good questions, to which he has the answers off pat.

**Bill Dalrymple (Loch Lomond and the Trossachs Interim Committee):** If only.

The interim committee examined the aims closely and was in agreement, in principle, with the kind of spread that was being discussed, including the incorporation of the socio-economic aim. However, I ask members to bear in mind the fact that our views were gleaned through a process that involved a number of working groups that we have set up since autumn last year. I have brought along several leaflets, which I can leave for members to look at. The groups are examining the legislation as it goes through the parliamentary process as well as the development of strategy, which we hope to hand over to the national park authority at the appropriate time.

Included in those groups is a recreation and access working group. Over many decades, recreation has formed a key part of the heritage, so to speak, of Loch Lomond and the Trossachs; likewise, it is a key part of the enjoyment of the area. It was felt that the use of the area as a national asset for recreation was worthy of consideration both as one of the criteria for establishing a national park in that area and as one of the aims. The popularity of the Loch Lomond and Trossachs area has resulted in considerable visitor pressures, which there must be a means to manage, so a few factors came together.

Moving on to the words “responsible” and “well

being”, we attach the word “responsible” to enjoyment of the area rather than to employment. That suggestion came from our history of managing visitor pressures. Around this table, the word “enjoyment” probably means going out to enjoy the sun quietly on Loch Lomondside. However, to put it crudely, the word “enjoyment” on a Friday night on Loch Lomondside can cover the activity of the drinking merchants, who go there with whatever they have, and there is very little that we can do about that. These people are enjoying themselves.

One task that we have performed over the years in the Loch Lomond Park Regional Park Authority—and we have recently joined with our colleagues in the Trossachs—has been to provide a ranger service over that wider area. It is the primary task of the front-line rangers to try to enhance people’s understanding of the great qualities of the area. I am afraid that the rangers also have a policing role. Time and again, my rangers come to me, saying, “For goodness’ sake, give us the means to control” such-and-such a situation.

We feel that inclusion of the word “responsible” in the legislation earmarks, up front, the fact that some categories of enjoyment can lead to problems. Likewise, the word “responsible” is featuring in the on-going access debate. We will therefore also have to get across what is meant by “responsible” in that context. That is why we are keen for the word to be introduced into the legislation.

We have noted that the Loch Lomond park authority included among its triple objectives one of socio-economic well-being. The Environment Act 1995, applying down south, included well-being on the socio-economic side of things. Gordon Watson is now a planner, and I have to admit to my sin of also being a planner and of being a co-author of the strategies for Loch Lomond, going back 20 years.

There are development pressures. To a planner, development is translated into physical building on the ground, and that does not necessarily equate with the well-being of a community. The economic development there might not be associated with physical development, so we felt that the term “well-being” would be an improvement on the word “development”, with its connotations under planning legislation, and would give a meaning much closer to the general health of the area concerned.

**Nora Radcliffe:** That was a very clear and helpful explanation, thank you.

**Robin Harper:** Have you been considering the eventual total overall carrying capacity of the area for tourism?

**Bill Dalrymple:** The short answer is that we have not. The term "carrying capacity" always causes me concern. Currently, 5 million visitors pass through the Loch Lomond part of the Loch Lomond and the Trossachs area, through the area of the old regional park. We registered 5,000 powered craft on Loch Lomond last year. If you ask me at what point the visitor numbers start to damage the very resources that people come to see, I do not know the answer to that.

**Mr Kenny MacAskill (Lothians) (SNP):** I see where you are coming from as regards the inclusion of the word "responsible" before "enjoyment". Is that not based on a view that the interpretation will be subjective rather than objective? What makes you think that the legislation will be viewed subjectively rather than objectively?

**Bill Dalrymple:** From my point of view, the crucial thing is to have a bill that is capable of interpretation five years down the line or 10 years down the line. I am not so concerned about whether the act contains a certain word or not, provided that the debate has taken place and has been recorded, and provided that the national park authority, when it is given the task to manage an area, has a clear-cut framework in which to do so. The difference between objective and subjective is sometimes difficult, but, when push comes to shove with regard to a particular management problem, the more definitive the statement on what we mean by the act and the subsequent strategies the better.

**Mr MacAskill:** In planning, would you not accept that, when not dealing with individual rights but considering the overall definition of a national park, it is more likely that you are considering things objectively, and that somebody behaving in the manner that you mentioned would be viewed as acting in a manner detrimental to people's enjoyment anyway?

**Councillor Thomson:** There is such a problem with power craft on Loch Lomond that the introduction of the word "responsible" is important. Everyone has seen television programmes about how easy it is to hire a jet-ski and drive at 50 or 60 mph around a loch. If the word "responsible" allowed the park authority to require training or even licensing for people to use those lethal craft, it would be valid.

**Robin Harper:** In your submission, you note several concerns about present byelaw provisions and their reliance on current statute. Could you explain the main concerns of the interim committee about the practical effect of failing to incorporate specific byelaw provisions? Are there any specific byelaw provisions that you would like to be included?

**Bill Dalrymple:** We could talk about that at great length. The Loch Lomond area has had byelaws since February 1996, so we have a fair amount of experience of applying byelaws in a high-pressure area. When the draft bill was published in January, we were somewhat confused because, on first reading, it appeared that the various sections would give us sufficient scope to introduce an adequate backstop for byelaws. However, on second reading, and bearing in mind the link to the Civic Government (Scotland) Act 1982, we have found some shortcomings.

I have outlined briefly a few of our concerns. At the moment, anyone can go on to Loch Lomond with a high-powered speedboat or whatever, without any kind of third-party insurance. If that still applied to main roads, there would be great concern. It could be argued that that should be dealt with at a national level rather than a local one. However, we see at first hand the need for more responsibility in that area.

Currently, the byelaws can cover only boats used for pleasure purposes. In other words, commercial boats on the loch such as cruise boats voluntarily comply with the byelaws, but are not obliged to do so. We have had all sorts of craft on Loch Lomond. A few years ago, we seemed to be becoming a landing venue for boat planes and we had no control over that at all. What is the definition of a powered craft? There is a home-made hovercraft that operates on Loch Lomond. It has to be seen, because it is excellent in many ways and it is the chap's pride and joy. He puts on his byelaw sticker, but it is not really a boat.

Loch Lomond is a massive body of water and there are about 20 other water bodies in the Trossachs area. On Loch Lomond, there is a public right of navigation and, under current legislation, that precludes the possibility of zoning. We are constrained in the positive management practices that we can introduce. The byelaws currently focus on a speed limit, but there are more things that we could do.

Gillie Thomson mentioned jet bikes and personal watercraft. We have to be very careful not to show prejudice. Since 1989, the growth in boating activity has been very gradual, yet the use of personal watercraft has risen sharply. Between 1998 and 1999, there was a 24.9 per cent increase in the use of jet bikes on the loch. What can we do about that? We cannot determine the capacity of Loch Lomond or any of the other lochs within the Trossachs area to carry a growing number of jet bikes.

12:00

**Robin Harper:** So you are saying that you are

unable to balance the right of people to enjoy the beauties of Loch Lomond in peace and quiet with the right that others have to use those ghastly machines anywhere they want.

**Bill Dalrymple:** That is the word that I would use to describe them too.

**Mr MacAskill:** What you say about byelaws is important. However, how would those byelaws be enforced? Is the national park legislation sufficient? Would you expect the police to pursue someone who, for example, did not have third-party insurance? That would seem to be quite sensible.

**Bill Dalrymple:** It is important to remember that byelaws would be used as a back-stop, the last resort if other management means have failed. One of our problems is that if someone's persistent contravention of the regulations results in our attempting to pursue the matter in the sheriff court, we have to go through the police force, which does not regard an infringement of a byelaw as being as important as a serious crime, obviously. We work closely with the local sheriffs and I am aware that the procurator fiscal in Dunbarton is amenable to the notion that park rangers should be able to report directly to the procurator service. That would streamline the situation. My rangers are keen to be able to do that.

**Mr MacAskill:** Is the legislation that we are considering adequate in that respect, or would further legislation be required?

**Bill Dalrymple:** I would like the national park legislation to deal with this matter once and for all. I will be disappointed if we have to wait until other legislation is reviewed. I cannot speak for the Cairngorms area, but in Loch Lomond we are dealing with extraordinary pressures. No matter how sophisticated the strategy development becomes, there will always be a need for a back-stop, which should be applied efficiently.

**Robin Harper:** Your submission raises concerns about obligations on the Ministry of Defence and the Crown Estate and suggests that a requirement to consult the park authority should be placed on the MOD. Should that requirement be incorporated in the bill?

**Bill Dalrymple:** I am not a legal expert, so I am not sure whether the requirement should be incorporated in the bill or should be guidance. However, there is a need for close co-operation between the MOD, the Crown Estate and the interim committee; our position near Coulpport and Glen Douglas makes that important. We accept the Crown Estate's position while the land belongs to the Crown, but land should come under the planning legislation as soon as it is disposed of by the Crown.

**Robin Harper:** Many people have said that the phrase "have regard to" is not strong enough in this context. Some people are looking for a strong statement such as incorporating in the bill a requirement for public bodies to consult the park authority. Would you comment on that?

**Bill Dalrymple:** I will keep hammering away at that point. As far as I am concerned, the phrase "have regard to" is totally insufficient, as I am told that laymen may misunderstand it. However, in our response to the consultation, we suggested wording that tries to involve constructively all parties in potential national park areas in working together to realise the aims of the national park authority. In doing that, one must have stronger wording in place than "have regard to".

As in the Cairngorm area, over the years we have worked up strong partnership relations with many of the bodies that operate, and which will continue to operate, in Loch Lomond and the Trossachs. I do not think that they would object to the bill containing stronger statements than "have regard to". We must nail that problem.

**Robin Harper:** On the powers of the national park authority to ensure the protection of the environment, what do you think of SNH's suggestion that, by failing to provide a power of last resort to the national park authority, there is a gap in the bill?

**Councillor Thomson:** I answered that point last week. Bill?

**Bill Dalrymple:** That puts me in an extremely awkward situation, as I do not know what Councillor Thomson said last week.

**Councillor Thomson:** I will not tell you.

**Bill Dalrymple:** We did not make that suggestion, but anyone sitting around this table who thinks that every possible situation could be covered by legislation is living in a fool's paradise. Therefore, in principle, the power of last resort seems to me to be a sensible provision, to be used in the last resort.

**Councillor Thomson:** I want to reiterate the comments that I made last week, which I believe Bill shares. If the park plan is sufficiently robust, we should be able to avoid conflict.

**The Convener:** Murray Tosh will ask questions on planning matters.

**Mr Tosh:** I will start by teasing out the meaning of a couple of phrases that you use in your letter to the committee of 18 April. In paragraph 8 of that letter, you use the throwaway line that

"the statutory status of a National Park Plan vis-à-vis Development Plan should be clarified".

What did you mean by that and what clarification

are you looking for?

**Gordon Watson (Loch Lomond and the Trossachs Interim Committee):** We are concerned that the bill should be unequivocal about the relationship between the national park plan and the statutory planning system. At present, the bill states that the national park plan must consider the management of the area in general, but there is a question about how much of the content of the plan should address land use planning, as that is not clear.

Our concern stems from what will happen when planning decisions are made. Will the national park plan have equal primacy with other traditional development plans, such as local plans and structure plans, or will it be merely a material consideration? There should be clearer guidance on that question, particularly for those who prepare park plans.

**Mr Tosh:** Would it be sufficient for the legislation to make it clear that the national park plan should be a material consideration for those preparing the local plan for that area? Would that give sufficient weight to the national park plan?

**Gordon Watson:** It must be clear whether the national park plan is envisaged as having a similar status to other development plans, or whether it is only a material strategic statement. When one is faced with making a decision about a planning application, the policies of local plans and structure plans will be the first port of call, and the national park plan is almost secondary, because it is merely material to that decision rather than having primacy. We are concerned about that situation, which we would like to be clarified. Should policies in the national park plan help to guide planning decisions, by being the first port of call when that decision is being made?

**Mr Tosh:** Would that difficulty be resolved if the park authority had the right to make its own local plan, that is, if the park becomes a local plan area?

**Gordon Watson:** My answer is yes and no. At present, the Loch Lomond and Trossachs area is covered by three structure plan areas, and therefore by three structure plans. In order to consider an overall strategy for the area, there is a need for the park plan to be able to provide a long-term integrated and coherent approach. A local plan, by its nature and as described in statute, is a shorter-term document, which covers a maximum period of five years and which considers the detail of site-specific developments and so on. A national park plan may be a more strategic document and therefore may have a strategic planning role. If the park authority does not become the local plan authority, the policies prepared in the park plan would not have primacy

and therefore the park authority would not have a primary role in land use planning policy.

**Councillor Thomson:** It could also be said that both the interim committee and the component councils are relaxed about and keen to implement the idea that the national park should be both the development control authority and the local plan authority, although it should not be the structure plan authority. All three councils are fairly happy with that.

**Mr Tosh:** I will come back to that point in a moment. I would like you to expand upon the remark made in your submission that

"there are also other options which are not mentioned"

and you call for

"the full range of options to be outlined".

We were not clear what you meant by that. What further options do you think exist other than those that are envisaged in the bill?

**Gordon Watson:** The bill outlines two possible options for planning powers for national park authorities. Other permutations of powers could be considered as well, and it seems strange that an enabling bill specifies two particular options when other options exist. Our position is that if the bill does not outline all the options, it should not outline any at all, leaving the matter to be determined at the designation order stage.

**Mr Tosh:** Gillie, you referred to the division of powers between the local authority and the park authority. As a witness from the Convention of Scottish Local Authorities last week, you suggested that, ultimately, the two authorities should be unified. A lot of the evidence presented to us suggested that there should be a definite commitment to unifying the development control and local plan roles as quickly as possible.

In your evidence to the Executive, you suggested that the effectiveness of the application of the Sandford principle would be called into question in any situation where the national park authority was not also the planning authority after designation. With your role as a member of the Loch Lomond and the Trossachs interim committee foremost, do you think that, in the long, medium or even short term, the national park authority must become the planning authority for the system to work properly and, in particular, for the Sandford principle to be upheld?

**Councillor Thomson:** As I said, the three authorities and the interim committee share the belief that the local plan should devolve to the national park authority, which would still have to happen, whether in the short or medium term, although not in the long term. Everyone is relaxed about that.

You asked about the possibility of complications with the Sandford principle. The situation could become complicated if the park does not become the local plan authority. However, that is only one reason why the national park should become the local plan authority.

**Mr Tosh:** Do you consider that the bill, as introduced, fails to place a duty on the councils, or whoever the planning authorities would be, to give greater weight to the conservation of heritage resources in the event of conflict with the other three aims?

**Councillor Thomson:** The interim committee and the councils in the Loch Lomond and the Trossachs area are happy with the legislation's equal emphasis on the four aims—obviously I cannot speak for councils in the Cairngorms area. Furthermore, we are content with having the backstop of the Sandford principle in the legislation, although we hope that it will never be drawn out of the cupboard.

12:15

**Bill Dalrymple:** In our response, we were keen to stress that the Sandford principle is associated with conflict. In that respect, the national park plan will be a crucial document, and there will obviously be differences of views and emphasis in its development. Such a philosophy should be built into the whole process.

Although we were not asked to comment specifically on planning powers for Loch Lomond and the Trossachs at this stage in the bill's progress, my report to the interim committee makes clear my professional view on planning powers. Our response highlights our opinion that the body that eventually has the planning powers should also apply the Sandford principle.

**The Convener:** We may have covered some of these issues already; we are now considering just the role of the national park plan.

**Janis Hughes (Glasgow Rutherglen) (Lab):** I think that my first question about privacy has already been answered.

On the issue of other parties' duty to have regard to the plan, you have suggested that the bill should include a duty on bodies to co-operate in furthering the aims facilitating the implementation of the plan. What are the practical implications of fulfilling such a duty?

**Councillor Thomson:** Although that statement is good enough where public authorities are concerned, it is more difficult to achieve such an aim with private individuals. It is not hugely practical to require individuals to have regard to the national park's good when they are planning some kind of action. However, the aim of bodies

such as local authorities and the Forestry Commission should be the betterment of the park itself.

**Janis Hughes:** Of Loch Lomond and the Trossachs, you have suggested in your response that

"the special National status of the area should be reflected in enhanced financial support for those undertaking resource management in the area".

Can you outline what financial support is required and how that should be reflected in the bill?

**Councillor Thomson:** We have prepared three budgets to date. The initial budget bid reflected our opinion on the support needed to prepare the way for the creation of the national park authority in summer 2001. When that bid was not successful, we submitted an amended budget, which was £400,000 less and also unsuccessful. In the end, the final budget was about £800,000 less than the initial budget.

We believed that the initial budget reflected what we needed. However, the minister's opinion was that we might have been undertaking some of the national park authority's tasks instead of preparing the way for the national park authority itself. We do not absolutely agree with that opinion.

**Bill Dalrymple:** The interim committee has been asked to provide a smooth transition to the national park; however, the question is at what stage we provide that transition. We believe that we should be as far as possible along the road to allow the national park to get up and running as quickly as possible. SNH believes that it will be three years before the national park is running smoothly. As the interim committee has been dealing with national park issues in Loch Lomond and the Trossachs for some years, it should have a strong role in providing for that transition. However, we need the funding to do that. Next year, funding arrangements will be a nightmare because there will be a transfer part way through a financial year.

I will give the committee an idea of the figures. At one time, our budget bid for this year was £2.1 million; the final budget is about £1.35 million, so we are well down. As a consequence, I have had to spread a fixed range of service across the whole of Loch Lomond and the Trossachs, which means that I am pulling a service level away from one part of the area to feed it into another. That is not the sort of smooth transition that we had hoped to provide.

**Councillor Thomson:** We are not complaining, however; we will do what we can in this intervening year. However, such work will only prepare the way for the national park authority; it will not put into effect any real action, which would take resources that we do not have.

**Bill Dalrymple:** I should add that we are working with a fairly heavy capital programme of about £6 million, the catalyst money for which is provided by local authority contributions through section 94 of the Local Government (Scotland) Act 1973. If we had decided not to continue with this programme in the interim period, we would have given up the opportunity to pull in at least £2 million of European funding under the old objective 2 and objective 5b programmes. We will be handing over a smooth-running operation.

**Mr Tosh:** As a national park authority rather than an interim committee, would you be in a better position to tap into sources of funding such as lottery money and millennium projects? Would you be in a stronger position to help other partners and agencies to do so?

**Councillor Thomson:** The old Loch Lomond park authority has an exemplary record in nailing down money for capital programmes and the experience of the people who have been involved in that authority will stand the Loch Lomond and the Trossachs area in very good stead. Those people know the ropes; they know where the money is and where to get it—indeed, Karen Tobin, for one, has a good track record of getting the money where necessary. Funds from sources other than the Executive will be needed and the people involved in finding such funding will not let the grass grow under their feet. However, a strong element of core funding is still needed.

**The Convener:** As members have no further questions, I thank Gillie Thomson, Bill Dalrymple and Gordon Watson for attending the meeting and for giving us a good, practical and strategic overview of the issues facing us.

I invite the representatives of Scottish Environment LINK to join us. I welcome Andrew Bachell, David Morris and Lloyd Austin to the meeting; we appreciate your coming along. Following our usual practice, I invite you to make a few opening remarks.

**Andrew Bachell (Scottish Environment LINK):** Thank you for inviting Scottish Environment LINK to give evidence to you today; we welcome this opportunity to do so.

The three of us represent Scottish Environment LINK, which is an umbrella organisation representing 38 environmental and conservation bodies in Scotland with a joint membership of nearly half a million people—people who care about Scotland's heritage and environment. I convene a LINK task force that looks at special areas. I am also the director of countryside for the National Trust for Scotland. David Morris is the director of the Ramblers Association Scotland and is also a member of the World Commission on Protected Areas. Lloyd Austin is the head of policy

operations with the Royal Society for the Protection of Birds.

LINK, as we call ourselves for short—we were formerly called the Scottish Wildlife and Countryside Link—has been actively engaged in the debate on national parks for many years. In 1997, we produced a document, "Protecting Scotland's Finest Landscapes", which we believe was influential in triggering the current debate. That publication was followed by two seminars, which coincided with the then Secretary of State for Scotland's announcement that Scotland would have national parks.

The thrust of LINK's argument has always been that many of Scotland's landscapes are in need of special management. We think that it is right that national parks should become a focus for national attention and national pride. It is after all a Scot, John Muir, who is credited with establishing the principles of the need for national parks internationally. It is ironic that Scotland stands alongside Albania and Iraq as the only countries without national parks.

We see the bill as an important step in the long debate that has taken place. We must now start from the right starting point. If we are to have national parks, perhaps Scotland can once again lead international thinking on this subject. In the written submission that you have received from us, the consensus view of 27 organisations is represented. I think that the fact that 27 organisations have taken the trouble to reach consensus, not only on the bill but on the draft bill and on submitting written evidence, is testament to the importance that we attach to the issue.

The bill represents a model for national parks with a diversity of aims. One could argue that the diversity of aims was so all-embracing that those aims should apply to all land and not just to national parks. The thrust of our evidence is to emphasise what is special about national parks that requires something in addition to those aims. In fact, the programmes for implementation and management need to be backed by a clear vision that ensures that the special reasons for designation—the core purposes—are never undermined, weakened or detracted from. We believe that, without such a vision, there is always a risk of gradual erosion of the special characteristics of those important places.

Such a vision puts a high priority on conservation, but it also places an onus of responsibility on park managers and planners to ensure that people living in, working in and visiting national parks can thrive under the new regime of objectives. That principle underlies everything in our evidence to the committee. We are arguing for significant powers to be vested in national parks and we acknowledge and endorse the view that

the best conservation practice will be achieved only when the benefits of conservation are transferred to people in the park.

I hope that that brief introduction sets the scene. We will be happy to answer questions.

**Janis Hughes:** Your submission raises concerns about the consultation process. Can you elaborate on those concerns?

**Andrew Bachell:** We feel that there has been thorough consultation since Scottish Natural Heritage was asked to undertake the task. The more recent steps have been rather hurried and the period between comments on the draft bill and the position that we are in now has been short. We are not criticising the process, other than to say that, at times, it has been rather a struggle for an organisation such as ours to reach a consensus from the views of 27 of our member bodies in the time available.

**Nora Radcliffe:** You note concerns the omission of references to the recreational purpose of national parks. Do you think that the bill should stand as drafted? If so, what do you think will be the consequences of failing to include recreational purpose?

12:30

**David Morris (Scottish Environment LINK):** We think that there should be some changes to the bill. First, the SNH evidence acknowledges that, worldwide, virtually all national parks treat as fundamental the conservation of natural and cultural qualities and the recreational experience. We think that section 1(2)(a), which refers to the conditions, should contain a reference to recreational quality as well as to "natural and cultural heritage".

Our second point is what we call the East Lothian question. As the bill is currently drafted, those conditions do not all have to be met. One could take only the condition in section 1(2)(b)—

"that the natural resources of the area have a distinctive character and a coherent identity"—

and argue that such an area should be a national park. One could argue that, because there is a distinctive intensive agricultural landscape in the area, East Lothian should be a national park. We would like the wording to be modified so that all three of the conditions in section 1(2) have to be met. That might be best done by inserting the word "all" in the opening line of the bill, so that it reads, "The Scottish Ministers may, if it appears to them that all conditions in subsection (2) are satisfied . . ."

**Nora Radcliffe:** On the collective achievement of aims, your submission says that the combination of diversity of aims and the relatively

weak balancing duties could serve to generate rather than to relieve conflicts. Could you expand on your concerns and explain your proposal that the aims should be seen to have an element of hierarchy?

**Andrew Bachell:** We accept that the four aims are all valid; we have no argument about them. However, the national park will have been selected and designated on the basis of the purposes that have been discussed. Any steps that were then taken to meet one or other of those aims, but that undermined those purposes, would undermine the whole concept of the national park. We have some difficulty with the lack of an explicit statement that the core purposes of the national park should never be detracted from in meeting those aims. We do not have a difficulty specifically with the aims, but we feel that the difficulty that I have described may arise. An authority will be faced with making decisions where it might favour the short term and, through a gradual but unintended process, begin to undermine the core purposes of the national park.

**Lloyd Austin (Scottish Environment LINK):** The international standard for national parks is that the conservation of the natural heritage is the core reason for the park's designation. The key thing is not that any of the aims in section 1(3) should be downgraded, but that the aims in paragraphs (b), (c) and (d) should be fulfilled in a manner that is consistent with the conservation aim.

**Nora Radcliffe:** Are you suggesting redrafting the bill to specify that?

**Lloyd Austin:** We suggest a minor amendment to section 1(3) so that the aims in paragraphs (b), (c) and (d) must be fulfilled in a manner that is consistent with the aim in paragraph (a).

**Nora Radcliffe:** I think that you have covered the other question that I wanted to ask, which was how the word "collectively" would affect management and practice. You think that a lack of such a provision could lead to gradual erosion.

**Andrew Bachell:** We think that that is a risk. There should be an onus on the park authority in every decision that it makes to consider the long term and the whole purpose of the park, rather than the merits of each individual case.

**The Convener:** You may have heard the phrase "as a nation" used in connection with the priorities that may determine what area of the park we are talking about. Do you have a view on the concept of the nation?

**Andrew Bachell:** We believe that the phrase "as a nation" is a powerful tool for separating some aims that will be of higher priority than others. Any of the four aims could be zoned to take a higher



priority. If there is a consistent rationale for creating zones within a national park, that provides the framework within which decisions can be made.

**Mr Tosh:** We have asked virtually everyone who has appeared before the committee about the planning arrangements within the national park authority area. Will you explain what the consequences would be if the local authority were to remain the planning authority—that is what the Cairngorms people are pitching for—and what the practical consequences would be if development control powers were separated from development planning?

**Andrew Bachell:** I shall ask David Morris to address the latter point. Planning is not just a means of control; the whole planning process is about facilitation and negotiation, both in development planning and development control. In the context of a national park, it is fundamental that those processes of control and negotiation should both be vested in the national park authority, if it is to be able to work effectively. That is the principle. I ask David to pick up the point about development control.

**David Morris:** In recent years, we have felt uncomfortable that, for several developments in the Loch Lomond area and in the Cairngorms area, the decision lay simply with the local planning authority. One hotel at Luss is right on the side of the loch, and there is the Cairngorm funicular railway issue. Grampian Regional Council was strongly opposed to that planning application, but the scheme went ahead primarily because the Highland Council was in favour of it. The national park authority must be the planning authority, as has been the experience in other countries.

**Mr Tosh:** If it is starkly clear that the national park authority should be the planning authority for both purposes, why is that not what we are hearing from the various organisations that are involved in the Cairngorms area? The broad evidence that we seem to be receiving from every quarter is that people want planning powers to remain with the local authority.

**David Morris:** It is recognised that this is a sensitive question, particularly further north and west in Scotland, as some of the organisations that have given evidence to this committee have shown. Judging by some of the key planning decisions that have been made in the Cairngorms area over the years, we stand by the view that it would be better to have a mix of local authority representatives from various sides of the massif involved in decision making. We are not saying that that should be absolute, however. In our evidence, we say that it should be normal for the national park authority to be the planning authority,

but if there are cases—in other national parks that may lie further north or west—in which it is decided that things should be different, those should be regarded as exceptions and the case for that should have to be made.

**Mr Tosh:** In your submission, you suggest that marine national parks might constitute special cases. What sort of planning regime would be appropriate in a marine national park?

**Lloyd Austin:** There is no town and country planning in those areas, as that would extend only down to the low water. The key issue in a marine national park would be to get all the relevant authorities to agree on a park plan and on the way in which those bodies would implement the measures that are required in the park plan. The concept of a marine national park raises other issues in relation to responsibilities that are reserved matters.

**Andrew Bachell:** A national park authority should be able to act as the advocate for the place and the people of the park. One of the key interactions between place and people will be in planning; for the sake of clarity, the best place for that to happen seems to be within the park authority.

**Robin Harper:** I am trying to work out where we have got to.

**The Convener:** We were discussing the “have regard to” question. The strength of that phrase has been discussed in all our consultation.

**Robin Harper:** Ah, yes. Scottish Environment LINK has expressed strong concern over the drafting of section 12 and the phrase “have regard to”. You suggest that a duty should be placed on public bodies requiring compliance with the park plan. What would be the effect of retaining the current wording of the bill, and what duties should be placed on private landowners, occupiers and managers?

**Lloyd Austin:** It is necessary to remind ourselves that there is a distinction between public bodies and private landowners and so forth. Section 12 relates to public bodies and the like. There was particularly strong feeling among all Scottish Environment LINK’s bodies that “have regard to” is a weak phrase; we agree with what Stewart Fulton and the Loch Lomond witnesses said about that. The phrase would enable a public authority to examine the plan and note what was in it, then do something different.

I was particularly struck by Stewart Fulton’s comment that the previous responsibility on planning authorities was to “have regard to” development plans, but that the Government thought that that was inadequate and amended the phrase to “act in accordance with”. That is

what we suggest should be done in the bill, so that authorities will act in accordance with the national park plan. That does not mean that the plan must be written in tablets of stone; the phrase “unless material considerations indicate otherwise” can be included. However, to invoke that phrase, application would have to be made to the Executive. Exceptions to the park plan would have to be in the national interest, and would be the responsibility of ministers and the Parliament.

To encourage private landowners to comply with the plan, the park authority needs to have powers to issue conditional grants to encourage better management of privately owned land.

**Robin Harper:** Could you expand on that? That is a fairly new idea, and would be in addition to such things as agri-environment schemes.

**Andrew Bachell:** It would be an extension of the same principle. Having established the objectives in a national park plan, the public agencies would seek creative ways in which to further those aims through the provision of incentives. That could apply equally to the conservation of listed buildings and to aspects of the wider landscape. The phrase “have regard to” has negative implications. People need to think a little more creatively about supporting the objectives, rather than simply having regard to them. One mechanism for encouraging private agencies—organisations or individuals—to do that would be the provision of incentives and grants.

**Robin Harper:** Scottish Natural Heritage has raised concerns over the powers of the national park authority to ensure the protection of the environment. It suggests that there is a gap in the bill, which fails to provide a power of last resort for the national park authority. Do you have a view on that?

**Andrew Bachell:** Scottish Environment LINK bodies have not collectively taken a view. We listened with interest to the evidence that was given earlier this morning, and found it very persuasive.

**The Convener:** Good answer.

**Robin Harper:** Yes. I shall try another tack.

**Andrew Bachell:** I was not trying to be evasive.

**Robin Harper:** Many submissions to the committee have commented on the adequacy or otherwise of the byelaw powers and the transfer of the powers of the Civic Government (Scotland) Act 1982 to the national park authority. Do you have a view on byelaws?

**Lloyd Austin:** We have considered the matter briefly, mainly with members who are concerned with the Loch Lomond area. We listened to what Bill Dalrymple said about the need to ensure that

the byelaw powers are enforced, perhaps through enabling rangers to enforce them if necessary. Those are concerns that our member bodies have also expressed.

**David Morris:** We think that it is very important that any byelaw proposals or management rules under the Civic Government (Scotland) Act 1982 are subject to full public consultation. There is concern that that has not happened so far.

**Robin Harper:** Do you think that the bill as it stands provides adequate powers to the national parks authority to deal with speedboats, navigation on water bodies and jet-skis?

12:45

**David Morris:** Yes. We are conscious that in many situations byelaws are a very powerful tool. Loch Lomond is a difficult case, because of the right of navigation that exists there, which includes motorised craft. However, water bodies such as Loch Leven near Kinross, to which byelaws are applied, have a very tight regulatory regime. Some of us would argue that it is too tight. As a member of the access forum, I am aware that this debate is going on throughout Scotland. We are content that the byelaw power will be a sufficiently powerful tool for local authorities and national park authorities. We merely want to ensure that there is adequate consultation on byelaws and management rules.

**Robin Harper:** Do you believe that the bill provides enough powers with respect to the marine environment?

**Lloyd Austin:** It could do, if the responsibility on other public bodies to have regard to it is strengthened. That would mean that those public bodies to whom the relevant section applies would have a responsibility to act in accordance with the plan for the marine area. The big question to which we have not been given an answer relates to the role of those bodies that have a responsibility for reserved matters. The Department of Trade and Industry, for example, has a responsibility for navigation. We believe that that issue should be investigated during consideration of the bill.

**Robin Harper:** I will finish with an open question. Is there any question that we have not yet asked you this morning that you wish we had asked and would like to reply to?

**Andrew Bachell:** I am sure that there is, but I cannot think of one offhand. The main issue that we have not mentioned is the Sandford principle, which is set out in section 8(6) of the bill. We believe that it is written into the wrong part of the bill and should be associated with section 1(3), which deals with the aims of national parks. The

Sandford principle should apply to all public bodies and others taking decisions within the context of the national park and not be specific to the work of the park authority.

**Mr MacAskill:** I am interested in the byelaw provision—not so much in how it affects this legislation, but in the effect that it may have in due course. Where do you see the revenue that is raised from byelaw infringement going? Should it be hypothecated? Such revenue could go either to the Treasury, as happens in the case of offences caught by speed cameras, or to the local authority, as happens in Edinburgh in the case of infringements registered by traffic wardens.

**Andrew Bachell:** We have not addressed that issue as an organisation, so I am in no position to give you an answer on behalf of LINK. However, I accept that this is an important issue.

**Nora Radcliffe:** I want to return to the section of the bill that deals with marine national parks. Do you have any suggestions for amendments that might make its intentions more open? In particular, do you think that we should enshrine in the bill the provision of proper consultation of all parties with an interest in the area of sea that is under consideration?

**Andrew Bachell:** We believe that at all stages public consultation on the selection of national parks is incredibly important. It is known worldwide that a park will be most successful when people are behind it.

**Lloyd Austin:** I agree completely with what Andrew Bachell has just said. The mechanism set out in the early parts of the bill for the run-up to the designation order requires public consultation, and that is one way of ensuring that it happens. One concern that we have about section 29, on marine national parks, is the inclusion of the phrase

“with such modifications as the Scottish Ministers may by order prescribe.”

That seems very open. It could allow ministers to prevent large chunks of the bill from applying to marine parks. I know that the committee will shortly hear from the Scottish coastal forum on that. Some amendments could be made to section 29 to ensure that the consultation and designation process takes place and that duties on other bodies remain. The core functions of national parks need to apply in marine areas.

**Nora Radcliffe:** So you think that an amendment of the sort that you have suggested would be useful as a belt and braces, so to speak.

**Lloyd Austin:** It could be.

**Robin Harper:** I would like to have a last crack at the Sandford principle. Are there other parts of the bill which are seriously deficient as regards to

how the Sandford principle has been incorporated?

**Andrew Bachell:** The Sandford principle is often portrayed as something that is brought to bear when everything has gone wrong, when, in fact, having it in the background ought to enable people to think about solutions rather than about heading for conflict. A number of provisions in the bill are designed to address conflict rather than to promote good practice and to encourage people to look for problems before they arise. For that reason, we believe that the closer the Sandford principle is to the aims of the bill, the more robust the bill will be.

**Lloyd Austin:** The name of this principle is derived from a committee chaired by Lord Sandford, which examined how the national parks in England and Wales could be corrected. It is a shame that the English and Welsh parks had to be brought up to standard in 1995, after having existed for so many years. It would be a shame if Scotland took the same route and had to correct its parks later on.

**David Morris:** We discussed this with officials of the Scottish Executive. Some member bodies in LINK were slightly uncomfortable about using the Sandford principle, as it dates from 1974. We thought that there was a case for setting the issue in a more international context, as it is the same issue worldwide. We thought that a more modern interpretation of the Sandford principle, based on international criteria, might be more appropriate.

**The Convener:** I thank Andrew Bachell, Lloyd Austin and David Morris for giving evidence to the committee. We share your desire that Scotland should lead the way on national parks. We hope that the work that you have done and that the committee is doing will assist that process.

I welcome our next witnesses, who are from the Scottish coastal forum. Thank you for your written evidence and for coming to give oral evidence. You may make some short introductory remarks.

**Antony Wilks (Scottish Coastal Forum):** Thank you. On my right is Martyn Cox, who is the coastal project officer and, therefore, a full-time employee of the Scottish coastal forum. In that sense, he is unique. I am the independent chairman of the forum. I thank the committee for giving us the opportunity to give evidence this morning. After I have set out briefly the background to the forum's establishment, I will be happy to answer questions.

The Scottish coastal forum was established by the Government in 1996, following publication of a Scottish Office consultation paper, “Scotland's Coasts”, which highlighted the complexity of managing Scotland's coastline. The Government invited the full range of people with an interest in

the coast to become members of the Scottish coastal forum, which they did. The Scottish Executive services the forum. We strive to fulfil the forum's terms of reference—to advise Government on the development of coastal policy.

Members will be aware that the concept of marine national parks—by which I mean a park that includes sea bed below the low-water mark—has not previously been progressed in the UK. The forum tried to identify whether the draft bill could make appropriate provision for a marine national park. Integration between coastal waters and the land, in the form of integrated coastal zone management, is the key to sustainable management of the coast. The forum is therefore pleased to note that the legislation has been framed to allow for the possibility of national parks that encompass a marine element.

**The Convener:** Thank you for those opening remarks.

**Nora Radcliffe:** I want to zero in on that key element. In your submission, you welcome collective achievement of the aims and emphasise integration. Will you expand on why that is key? What do you mean? Why is integration particularly important in the marine context?

**Antony Wilks:** I am sorry. I missed the early part of your question.

**Nora Radcliffe:** Will you expand on the collective, integrated approach, explain what you mean by it and say why it is particularly important in the marine context?

**Antony Wilks:** The previous group touched on the fact that many marine areas, which are beyond the control of local planning authorities, are organised sectorally: different departments of state deal with specific aspects. It is generally accepted that an integrated approach will be an essential aspect of managing the coastline in the future. If a marine national park were to be designated, it would be essential to ensure that planning capability for the park would come under the jurisdiction of one authority, so that there would need to be fairly major changes to the laws governing marine areas.

**Robin Harper:** When you say one authority, do you mean that one local authority should manage beyond the low-water mark or that a new authority should be set up? The suggestions in the national parks legislation do not make it clear what sort of authority would be appropriate for managing a marine park.

**Antony Wilks:** That is absolutely right. I do not think that anyone knows yet what nature of authority would be given the task. However, whatever authority finds itself in the position of managing a marine national park, it would need to

have the same authority as is being considered for terrestrial parks.

**Robin Harper:** One organisation?

**Antony Wilks:** Yes. One organisation.

**The Convener:** Janis Hughes wants to ask about consultation on boundaries.

**Janis Hughes:** In your evidence, you suggest that consultation on marine boundaries is particularly important. Can you elaborate on the particular consultation arrangements required for marine areas and how they differ from the arrangements needed for terrestrial parks?

**Antony Wilks:** That is a very deep and searching question and I am not sure that I am entirely competent to give an altogether useful answer. As yet, measures have not been put in hand to deal with the marine aspects of national parks. If a future national park were to embrace a marine area—whether a wholly marine area, an area that enclosed islands or an area including a terrestrial element, in which the coastline was simply extended offshore by a given distance—many aspects of the current law governing marine areas, which is sectoral, would need to be resolved, so that powers could be given to whichever authority was selected to operate the national park to ensure that it did not have to have recourse to the different departments of state to achieve its aims.

13:00

**Janis Hughes:** So the main difference is the separate laws that apply to marine areas?

**Antony Wilks:** Yes. The single biggest difference is the changes that would need to be put in place for the designation orders for terrestrial and marine parks.

**Janis Hughes:** You mentioned the possibility of a park covering a marine and a terrestrial area. How could that be dealt with?

**Antony Wilks:** Again, it is early days, but planning arrangements would need to be put in hand that allowed marine areas to be embraced by the same organisation as was dealing with the terrestrial areas. That takes us into fairly major changes, because local authorities currently have no planning powers beyond the low-water mark.

**Janis Hughes:** Are the arrangements set out in the bill inadequate for marine national parks because of the specific difficulties that may have to be overcome and the specific laws that may have to be changed? Does the legislation need to be more specific to accommodate marine parks?

**Antony Wilks:** The bill is enabling legislation, so as long as it includes sections that adequately

permit marine national parks, should they ever be identified or needed, it will have achieved its aim at this stage. My concern is that the single section in the bill referring to marine areas will stand or fall alone. Should it for any reason fall, the door will be closed on the possibility of marine areas being included.

**Robin Harper:** In your submission, you raise a number of concerns about the powers of the national park authorities in marine areas. What do you consider to be the main problems? Do any changes need to be made to the system described in the bill for marine areas? What needs to be added to the bill to address the problems? Would they be solved by setting up a unitary marine authority? Is that the best way of doing it?

**Antony Wilks:** If such an authority were already in place, it would make the wording of the bill a great deal easier than it is. So far, it has been felt appropriate to establish only one section, which comes quite late on in the bill, after the miscellaneous section. It is obviously an afterthought. That is fine, provided that the section goes through as it is, although it does talk about areas comprised wholly or partially of sea, as though they were exclusive. The forum might have preferred something less prescriptive; however, there is no great worry about that. The main worry is that if a marine dimension is to be included at later stages of designation, it will open up major areas that will need to be resolved, although there is no reason why that should not be achieved in due course.

**Robin Harper:** You state that there is no certainty that byelaws would be able to achieve the required level of management. SNH, in its evidence to the committee, also highlights that reliance on the Civic Government (Scotland) Act 1982 is inadequate as, for example, it provides only for the use of powers within 1,000 m of the coast. What changes to the bill are required, specifically to cater for the marine environment?

**Antony Wilks:** Inevitably, the questions that surround areas of sea are more complicated than lines drawn on maps, which can so easily be resolved by the parties involved. As soon as we go seaward from the coast, questions arise about the area that we might wish to enclose. Is it within territorial waters? Does it go out to some sort of median line or does it go out to the extent of the economic zone? All those aspects would come into question in the event of a marine national park being designated.

**Robin Harper:** What changes are required to the provision of powers derived from regulations 34 to 36 of the Conservation (Natural Habitats etc) Regulations 1994, to provide for a national park authority to establish management schemes, and to make byelaws and orders under Scottish

fisheries legislation?

The whole area of Scottish fisheries legislation—

**Antony Wilks:** I will confer with my expert to confirm whether we can give you a helpful answer or whether we might try to investigate that.

Martyn Cox has made a useful point. In the consultation that would inevitably take place in such a situation, all those who have a responsibility—there is a diverse group within a national park area—would have to be consulted properly, so that the answer to your question would be teased out. It would need to be, because it is one of many questions that would arise, should a marine national park be designated.

**Robin Harper:** Would you rather see that section in the bill as drafted left as loose as possible to allow for as much freedom as possible?

**Antony Wilks:** My subjective answer is yes; it is one of a range of detailed questions that would need to be considered carefully, should marine national parks be introduced.

**Janis Hughes:** You mentioned in your response that the bill should explicitly recognise that statutory bodies other than local authorities would have lead responsibilities in marine areas below the low watermark. Which bodies should be recognised in that respect? How should the bill take account of that recognition?

**Antony Wilks:** Perhaps it goes a little beyond what might be necessary within an enabling bill. However, harbour authorities, for instance, would need to be carefully consulted if anything were seen as imposing on their designated areas of jurisdiction. There are issues around energy, particularly off the shore of Scotland. Oil and gas extraction and so forth would merit exactly the same treatment. Fisheries are much involved, to say nothing of expectations relating to public rights of navigation. The matter is complex, but it would need to be resolved so that a park authority, as constituted, would have the necessary powers.

**The Convener:** We shall move on in a similar vein, to planning powers.

**Mr Tosh:** Before I come to planning powers, I would like to pick up on the last point. You talked about the need to ensure that the park authorities had the necessary powers. However, as was pointed out earlier, many of those powers refer to non-devolved areas. Given that, to such a large extent, energy and fisheries are non-devolved, is it conceivable that the Scottish Parliament could create a marine national park covering the broad range of powers that you have just indicated?

**Antony Wilks:** I agree—a number of major questions arise, on how those powers could be

achieved. However, I imagine that if the need were clearly established and, after due consultation, it were felt that that was an essential extension of national parks legislation, ways would be found in which to achieve those powers.

The forum's concern at this stage is limited to ensuring that the enabling legislation is there, should it be required in future. However, as you say, such questions have to be answered. There will undoubtedly be difficulties.

**Mr Tosh:** Your submission has been that the provisions of the bill might be insufficient for the purpose of planning in a marine national park, specifically because the existing planning legislation does not go beyond the mean low watermark. Will you explain what might be required to ensure that the park authority could be granted appropriate and adequate statutory powers of planning?

**Antony Wilks:** It is beyond my brief to answer that on behalf of the forum. However, on my own account, I would say that planning powers will be needed offshore; as things stand, they could not go beyond the 12-mile territorial limit. Should a marine national park be introduced in their area, local authorities will need to be able to plan offshore in the way that they are able to on land.

It is beyond my competence to suggest what specific changes will be needed. However, as things stand, marine national parks are inhibited by the fact that there are no local authority planning powers beyond the low watermark.

**Mr Tosh:** That is an interesting question for us, too—we will need a committee bill to test our powers.

**Janis Hughes:** In your response you mentioned an area on which other agencies have made similar comments—the lack of facility in the bill for a plan to be reviewed. You obviously consider that as important; is there an optimum period in which a review should take place? Should a requirement for such a review to take place be enshrined in the legislation?

**Antony Wilks:** The forum feels quite strongly that any new legislation of such enormous importance should have a review period locked into it—there should be at least consideration of a review. In that way, people who might not have been part of the consensus will at least feel well served, as they will know that the period of the legislation is only so many years. Again, it is beyond my competence to say how many years that should be. However, there should be a short period for new legislation of this type: enough time to settle and enough time for a review.

**Janis Hughes:** Would the complexities of a marine national park necessitate an earlier review

period than would a wholly terrestrial park?

**Antony Wilks:** I am sure that they might, but—and again this is a personal opinion—I would not propose that the review period be different. If the period was considered reasonable at the time, I am sure that it would suffice. My guess is that it should be a short to medium-term period. It should certainly not be long; for instance, something of the nature of the common fisheries policy is too long.

**Nora Radcliffe:** There are many concerns about the drafting of section 29. You seem to be looking for something that opens the door to marine parks, but does no more than that, because it is a complex area. Do you have any suggestions about how the section could be amended to achieve that?

13:15

**Antony Wilks:** Our concern centred on the fact that although we suggested changes in order to introduce the marine element, when the bill was drafted, it included only one section on the marine dimension. That is a simplistic approach. If Parliament decides not to accept that approach and deletes the section from the bill, the possibility of marine national parks will be removed.

**Nora Radcliffe:** Should we be looking for something that leaves the door open and which does not seek to apply provisions that are relevant only to a terrestrial national park? At the moment, the bill simply says that we can change the provision for terrestrial national parks to cover the marine environment, which raises all sorts of problems. Should we be saying that we would also like to have marine national parks, but that we should revisit that matter with a separate set of aims and objectives when necessary?

**Antony Wilks:** In so far as the application to marine national parks has been drafted, the bill says what it needs to say. The concern of the forum is that if the section were to be altered or completely withdrawn from the bill, we would lose any opportunity under the legislation to permit marine national parks. The current feeling is that the slightly simplistic approach of using one section on marine aspects makes it vulnerable. If individual parts of earlier sections had mentioned the marine dimension, the forum would be happier with the bill.

**Nora Radcliffe:** Do you think that we could include some protection in the current section to serve you better?

**Antony Wilks:** It would be better if that section could be protected; as enabling legislation, it does all that is necessary. However, if the section is not protected, it is open to the possibility of being

withdrawn or altered beyond recognition.

**Mr Tosh:** Would there be any merit in amending the bill to make explicit the possibility that a terrestrial national park might include marine areas, given that there is speculation that the third national park might be in Wester Ross? We cannot know about the boundaries, but it is not beyond the bounds of possibility that some of the lochs and islands in the area would be included. Does the section give adequate provision to allow the park to extend over those areas? If the section fell—for whatever reason—would you feel that the possibility of including marine areas no longer existed? Should we specify the possibility of a park that covered marine as well as terrestrial areas?

**Antony Wilks:** At the moment, section 29 includes 90 per cent of what the forum would like to be included in legislation. However, it focuses “wholly or mainly” on sea, which is slightly different from the forum’s concept, which as you said, would be a national park that is predominantly terrestrial, but with a certain amount of water attached to it—perhaps nursery areas for fish. The forum does not imagine an area wholly of sea. We think that provision should be made for any designation, including the sea. Your description of a terrestrial park that enclosed an area of islands or sea off the coastline is entirely consistent with what the forum has concluded is appropriate.

**Mr Tosh:** If the section were to fall, would the bill be incapable of including marine areas?

**Antony Wilks:** Yes.

**Robin Harper:** How do you imagine protecting section 29? Would you suggest that whenever the bill mentions a national park authority, we should say “a national park authority or marine park authority”? The double phrase would then run through the bill. Is that consistent with your thinking?

**Antony Wilks:** Yes. That would be far safer.

**Nora Radcliffe:** I want to return to the wording of the section—“may by order prescribe”—and the reservations held by the Loch Lomond and the Trossachs interim committee. Although I do not expect the minister to act by diktat, the current wording would allow that. Do you think that there should be something to enshrine proper consultation?

**Antony Wilks:** I am sure that that would strengthen the section. However, that issue is not particularly in doubt. The marine dimension of the national park is a complex business—it is subject to sectoral control—and would need to be debated and consulted on widely before anything could be changed. The forum is more concerned to ensure that the door is open for a marine dimension to

national parks in the enabling legislation, without suggesting that there will be marine parks in the near future.

**The Convener:** In a sense, the Government has set up your group to debate matters such as this, yet most of your recommendations appear to have been ignored. Do you have any comment on that?

**Antony Wilks:** It is new ground and I am wholly sympathetic to the fact that we are in pioneering territory. The forum is very conscious that much of what we are debating has never previously been debated. Scotland’s coasts are among its finest assets and we are hellbent to achieve anything that we can to strengthen integrated management of the coastline, including the sea areas off the coastline. The National Parks (Scotland) Bill is the first piece of legislation in which marine national parks can enter into people’s imagination, leading to further debate. The more that people know, the more they are likely to protect.

**The Convener:** Thank you for attending the meeting, which has been most interesting and productive.

The evidence that we heard today and at our previous meeting will be extremely useful in our consideration of the stage 1 report. We are meeting tomorrow to consider the draft report. Do members agree to discuss that in private?

**Mr Tosh:** It might be very useful for us to have the *Official Report* of this morning’s proceedings for our meeting tomorrow. I know that that makes demands on the official report, but it would be very helpful for us to have it tomorrow morning. Perhaps the official report could examine its work programme.

**Lynn Tullis (Clerk Team Leader):** The official report has given priority to this meeting, but I cannot confirm the time at which the report will be completed tomorrow.

**Robin Harper:** I realise that this is the last evidence session that we will have on stage 1 of the National Parks (Scotland) Bill but, at the weekend, I consulted some environmentalists who told me that Yosemite park is going through an intense review. There might be much to learn from the problems faced by Yosemite. Why reinvent the wheel when we could consider the review of one of the world’s most famous national parks, which has been running for some time? Could we find a way of gaining evidence from Yosemite, either by writing or by e-mailing?

**The Convener:** We can consider that. It is not a matter for stage 1, but we can look into it.

Do we agree to hold tomorrow’s meeting in private?

**Members indicated agreement.**

**The Convener:** We also need to discuss areas of questioning on the SSI under the affirmative procedure, on the annual budget process, when the minister will give evidence. Do members agree to discuss that in private at the next meeting?

**Members** *indicated agreement.*

## Subordinate Legislation

**The Convener:** Subordinate legislation is my big challenge of the day. I refer members to SI 2000/95, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000. Members will also have copies of the Executive covering note and the committee covering note. The regulations come into force on 8 May 2000 and the time limit for parliamentary action is 26 May 2000. Any MSP may table a motion to propose to the lead committee to annul the regulations. We are required to report on the instrument by 22 May 2000. Should annulment be required, under rule 10.4, the Transport and the Environment Committee will have to debate the issue and report to the Parliament on its decisions. The Subordinate Legislation Committee considered the instrument on 25 April and had nothing to report.

Do we agree that we have nothing to report on the instrument?

**Members** *indicated agreement.*

## Committee Report (Debate)

**The Convener:** The next item is a discussion on a chamber debate on the committee's report on telecommunications development. Does the committee agree to discuss that in private?

**Members** *indicated agreement.*

13:27

*Meeting continued in private until 13:31.*



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