

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 12 November 2003
(Morning)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

11th Meeting 2003, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

*Roseanna Cunningham (Perth) (SNP)
*Rob Gibson (Highlands and Islands) (SNP)
*Karen Gillon (Clydesdale) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Janis Hughes (Glasgow Rutherglen) (Lab)
Jim Mather (Highlands and Islands) (SNP)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Allan Wilson (Deputy Minister for Environment and Rural
Development)

THE FOLLOWING GAVE EVIDENCE:

Lloyd Austin (Scottish Environment LINK)
Professor Roger Crofts
Professor Donald Davidson (Advisory Committee on Sites
of Special Scientific Interest)
Professor Charles Gimingham
Jonathan Hughes (Scottish Environment LINK)
Dr Bob McIntosh (Forestry Commission Scotland)
Professor John McManus
Nick Reiter (Deer Commission for Scotland)
Lisa Schneidau (Scottish Environment LINK)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone
Roz Wheeler

LOCATION

The Chamber

Scottish Parliament

Environment and Rural Development Committee

Wednesday 12 November 2003

(Morning)

[THE CONVENER opened the meeting at 09:32]

Subordinate Legislation

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

The Convener (Sarah Boyack): I welcome committee members, witnesses, the press and members of the public to the meeting. No apologies have been received, but I think that Karen Gillon is caught in traffic. I remind everyone to switch off their mobile phones.

Agenda item 1 is subordinate legislation. Copies of the Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (Draft) have been circulated to members. The instrument is subject to the affirmative procedure, so the Parliament must approve it before it can be made. The Subordinate Legislation Committee reported on the draft instrument in its ninth report and made only one technical comment on it. Members have copies of an extract from the report.

We must consider a motion in the name of the Minister for Environment and Rural Development, Ross Finnie, that invites the committee to recommend to the Parliament that the instrument be approved. The Deputy Minister for Environment and Rural Development, Allan Wilson, is here to move the motion. I welcome him and his officials.

Before we debate such motions, it is our usual practice to clarify any purely technical matters and to allow explanation of details while officials are at the table; the officials cannot participate in the debate once the motion has been moved. I invite the minister to introduce his officials and to make opening remarks.

The Deputy Minister for Environment and Rural Development (Allan Wilson): Thank you, convener. I am accompanied by David Milne from the Scottish Executive Environment and Rural Affairs Department, Graham Fisher from the Office of the Solicitor to the Scottish Executive and our man from the legal department who will be happy to answer members' questions about the proposed order.

As its name suggests, the draft Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 makes consequential amendments to other legislation following the recent passing of the Agricultural Holdings (Scotland) Act 2003. The draft order has been made principally using the order-making power that is contained in section 92 of the 2003 act.

The schedule to the act contains numerous consequential amendments to other legislation that arise from the act. However, we always recognised that the schedule was not complete and that other provisions would have to be considered and developed in a period of time that the tight bill timetable did not allow. That is why we included, on introduction, an explicit power to make such an order in the bill, as members will recall. Over the summer, we have developed, and consulted fully on, the proposals that are contained in the draft order.

The draft order will amend six acts. The purpose of each amendment is to ensure that those acts take account of the existence of the new types of tenancy that the 2003 act created, namely limited duration tenancies and short limited duration tenancies—LDTs and SLDTs. Those other acts deal with such matters as the compensation that is payable to a tenant farmer when compulsory acquisition of the land brings a tenancy to an end, and interaction with the rules on the protection of children in a tenant farmer's family. As a result, it could be said that the consequential amendments deal with issues that might not arise frequently in practice, but will be significant when they do arise. We have taken care to ensure that, as a result of the consequential amendments, the treatment of SLDTs and LDTs in those acts is consistent with how the acts already apply to other types of farm tenancy.

It might be helpful to the committee if I explain our intentions with regard to the implementation of the Agricultural Holdings (Scotland) Act 2003 itself. Two commencement orders have already brought into force some sections of the act. There is strong demand in the industry for the provisions of the 2003 act to come into force as soon as possible and in particular for the provisions to be available for Martinmas on 28 November, which is a significant term date in the industry. For those reasons, we intend to commence most of the act—other than the right-to-buy provisions in part 2—on 27 November.

The industry and professional advisers will expect as much notice of the details of the commencement arrangements as possible so that they can prepare for introduction. We therefore wish to sign the commencement order that will confirm the implementation date within the next 24 hours in order to provide the detailed advance

notice that the industry and Parliament need. We delayed announcement of our intention to do so in order that the committee be told first.

I hope that the draft order will not prove to be contentious to committee members—I do not think that it will—and I commend it to them.

The Convener: Thank you. Members have no factual questions to ask and do not want any clarification, so the minister's introductory remarks were obviously convincing.

Motion moved,

That the Environment and Rural Development Committee recommends that the draft Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 be approved.—[*Allan Wilson.*]

The Convener: I remind members that rule 10.5.2 of the standing orders provides for up to 90 minutes' debate on the motion, although we need not use the whole 90 minutes.

Alex Johnstone (North East Scotland) (Con): I was going to say something, but the minister cleverly pre-empted everything that I was going to say in his opening remarks.

I have read through the draft order, which simply deals with consequential amendments. As a result, I fully support it. The primary reason for that is that, as the minister is well aware, the industry is keen for the provisions for LDTs and SLDTs to be brought in at the earliest possible opportunity. I therefore welcome the minister's announcement about likely implementation on 27 November.

It is important for the industry that the opportunity is given for the tenancies to come into existence. If, given that we are debating a piece of subordinate legislation, the minister chooses to make any closing remarks, I would appreciate an indication of the likely take-up on that date, and of whether any further work is necessary to encourage the agriculture industry to become involved in the new types of tenancy.

The Convener: As there are no other questions from committee members, I invite the minister to respond to Alex Johnstone's questions.

Allan Wilson: We welcome Alex Johnstone's support for the measures. We have found widespread support throughout the industry for our proposals, and it would have been disrespectful to the committee to have made an announcement on their introduction without making an announcement here first.

It is impossible to predict the take-up at this point, but I assure Alex Johnstone that my officials will do everything in their power to encourage take-up of the measures in the 2003 act and to liaise effectively with the industry, as they have been doing, to ensure that the industry takes full

advantage of the measures as they are introduced.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 be approved.

The Convener: I thank the minister and his officials for coming along and thank the minister for giving the committee his mini-announcement here at our meeting in the chamber.

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

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

The Convener: Under agenda item 2, we have two statutory instruments before us to be considered under the negative procedure: the Horticultural Produce (Community Grading Rules) (Scotland) Regulations 2003 and the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Amendment (No 2) Order 2003. The Subordinate Legislation Committee has already considered both and confirmed that it has nothing to report to us. Do members have any comments?

Alex Johnstone: I wonder whether any Highland members bothered to plot the co-ordinates in the order to make sure that they were right.

The Convener: I commend you for having read the subordinate legislation in detail.

Mr Alasdair Morrison (Western Isles) (Lab): The typographical error in the original amendment order is a bit unfortunate, but the people who are most affected by the measures—the fishermen in my constituency—certainly welcome SSI 2003/514. It dovetails nicely with all the efforts in other fisheries throughout the industry, such as the scallop—if I dare mention scallops—and lobster fisheries. The good thing about those efforts is that many of the initiatives are industry led. It is good to find in parts of Scotland progressive fishermen who are taking the initiative and insisting that the Government respond and put the conservation measures in place.

The Convener: Are members content with the instruments and happy to make no recommendation to Parliament?

Members indicated agreement.

Mainstreaming Equality

09:42

The Convener: Item 3 on the agenda concerns mainstreaming equality. Committee members have in front of them a report from the convener of the Equal Opportunities Committee, Cathy Peattie, which follows on from the recent debate in the chamber on the Equal Opportunities Committee's report on mainstreaming equalities in the Parliament. The paper contains a number of recommendations on how subject committees can consider equalities issues as part of their daily business, their scrutiny work and the overall approach to their work. I invite comments from the committee.

Rob Gibson (Highlands and Islands) (SNP): I would like to discuss disaggregation of statistics, which is discussed in paragraph 21 of the equality guidelines. It seems to me that we should try a small pilot exercise, if possible, and apply that guideline to some piece of work that we are doing to find out how well it fits with the job that we do. The principles are excellent, but the question is whether discrimination takes place in our subject area. It would help to sharpen up our ideas about the kind of work that we are doing if we could perhaps find some way of highlighting that issue specifically through the disaggregation of statistics. I wonder whether you could help us with that to give us a better idea of how it might affect our work.

The Convener: That is an interesting point. I have written to the minister about the Nature Conservation (Scotland) Bill with the six points from the checklist, so it will be interesting to see his response. When it comes to the statistics, there is also the question of which statistics to disaggregate, because we might want to consider how a bill or act would impact on different members of society in relation to different issues.

09:45

Nora Radcliffe (Gordon) (LD): I agree with Rob Gibson. In the spirit of the advice, we should apply the principle to everything, not just to a small part of our work. The point of mainstreaming is that we should do it every time for every piece of legislation and every piece of work. That way, if there is an equality issue, we will flush it out, and if there is not, at least we will have gone through the checklist and the routine to ensure that we have considered equalities. To get into the habit of thinking about those things, you have to do it every time.

Alex Johnstone: There is something in what Nora Radcliffe says. I, being a good old-fashioned

Conservative, am one of those people who are inclined to say that it is all bunkum anyway, but I am becoming enlightened and am beginning to understand the priorities that are before us. It is important to ensure that we deal with the matter in such a way as to minimise the impact on our work and maximise its effect. Nora Radcliffe's suggestion that it should be part of the procedure that we go through has its dangers, because we can always become complacent, but it also means that we will be able to employ the procedure across the board without its having an undue impact on the time that it takes to deal with the committee's work.

The Convener: If we are to ask the minister regularly to look at the checklist in relation to bills or other issues that come before us, we must, when we get answers, consider them and ask whether there is anything else that we would add to the list. We can use the list as an aide-memoire, in a sense. Alex Johnstone is right to say that it does not need to be time-consuming; it is more about the quality of thought that goes into it. If we feel that there is something that we really need to tease out on a specific issue, the list should act as a memory jogger for all of us.

Maureen Macmillan (Highlands and Islands) (Lab): The last thing that we want is to be doing things by rote, as it were, without thinking about what we are doing. There are obviously considerable inequalities built into the rural dimension, which must be teased out and underlined. Those inequalities will not necessarily be the ones that are highlighted by the committee, to be honest, and perhaps we should make that clear. I know that rurality has been highlighted in some pieces of legislation, but I do not know that that is always the case.

Mr Morrison: From memory, I think that all legislation has to pass an islands test as well.

Rob Gibson: I asked the question because of two things. First, members of the committee need to go through the exercise step by step each time, but we must do so very carefully the first time, so that we can see the process in action. Secondly, disaggregation of statistics has to play up the rurality aspects, about which members from all parties expressed concerns in the integrated rural development debate. It would be of great help to us, convener, if you could facilitate such an exercise.

The Convener: We have a bill in front of us at the moment—the Nature Conservation (Scotland) Bill—and I expect a response from the minister on the six questions that have been sent to him about that. It could prove to be quite a nice test, because it is not a bill that one would automatically think of in the context of equalities, but equalities will have implications for the bill.

I draw members' attention to the definition of equal opportunities in the Scotland Act 1998, which defines what we are meant to be working with. In the light of Rob Gibson's comments, that could provide some food for thought. The next bill that we expect to deal with after that will probably be the water bill and I can think of lots of equalities issues in relation to that. Let us have a look at the minister's responses to our questions on mainstreaming equalities for the Nature Conservation (Scotland) Bill and see what we think about them. From now on we should be applying those principles and thinking about policy and about statistics that might tease out some of the policy issues. We need to take on board all of those comments and issues. Are members content to adopt the recommendations of the Equal Opportunities Committee?

Members *indicated agreement.*

The Convener: Are members content for me to reply to Cathy Peattie to pick up on the points that members made about how we implement this policy in our day-to-day scrutiny work?

Members *indicated agreement.*

Nature Conservation (Scotland) Bill: Stage 1

09:50

The Convener: Item 4 is our consideration of the Nature Conservation (Scotland) Bill. This is the third of our five planned evidence-taking sessions at stage 1. Our task is to examine and report to the Parliament on the general principles of the bill.

We chose a representative selection of witnesses. Today, we will hear from three panels of witnesses. The panels comprise environmental groups, experts on biodiversity and land management, and representatives of other regulatory bodies. I welcome the members of the first panel, who comprise representatives of Scottish Environment LINK. We have Lloyd Austin, head of policy operations of RSPB Scotland, Lisa Schneidau, the policy and campaigns officer of the Scottish Wildlife Trust and Jonathan Hughes of the Woodland Trust Scotland.

In line with previous practice, we will not ask for opening statements. We have received submissions from Scottish Environment LINK and the three other organisations, all of which are extremely useful. Before I bring in members, I ask them, in light of time constraints, to be brief and focused in their questions. I ask the witnesses to answer in a similar manner. I also ask members to declare any relevant interests.

Eleanor Scott (Highlands and Islands) (Green): I declare membership of WWF and Friends of the Earth Scotland, if that counts as an interest.

Rob Gibson: I declare membership of the Scottish Crofting Foundation.

Mr Morrison: Similarly.

The Convener: Right. We move to questions from members.

Maureen Macmillan: Welcome, everybody. I was interested in what you said in your submissions about wildlife crime. You said that you were anxious that landlords might use prohibition of wildlife crime to prevent access. Am I right in saying that that statement came from Scottish Environment LINK?

Lloyd Austin (Scottish Environment LINK): Yes.

Maureen Macmillan: It was to do with recklessness and so on. Is such action a real possibility, and how would we guard against it?

Lloyd Austin: The concern was expressed by our member bodies, which are interested in access to the countryside. As an umbrella body,

we are very supportive of the access policies that are being implemented under the Land Reform (Scotland) Act 2003. We are working with Scottish Natural Heritage to comment on the development of the code.

Although we are supportive of the proposals on recklessness, a number of member bodies have experience of landowners who put up signs that are not based wholly on the law as it stands, in order to exclude access. Our members want reassurance from the Executive, SNH and local authorities that if the recklessness provision was misquoted as a reason to exclude access that would otherwise be allowable under the Land Reform (Scotland) Act 2003, the local authorities would take action under the act to ask landowners to amend their signs.

Maureen Macmillan: Should some guidance to that effect be attached to the bill?

Lloyd Austin: That might help, although a clear commitment from the Executive in the debate that it would work with the local access forums to cover that issue would be sufficient.

Maureen Macmillan: So, if we can get the minister to say on the record that the recklessness provision should not prevent access—

Lloyd Austin: Yes—it should not prevent access that is compatible with the code.

Maureen Macmillan: That would be sufficient. Thank you.

Rob Gibson: I have a follow-up question. Responses to questions about signage and so on can be varied. The exchange that we have just heard shows that different interpretations could be made by different landowners. Should a range of phrases that are allowed to be used in those circumstances be set out under the provisions of the bill?

Lloyd Austin: The matter relates less to the bill than it does to implementation of the Land Reform (Scotland) Act 2003, which contains the access legislation and the code. Implementation of the code is a matter for Scottish Natural Heritage and the local authorities through the local access forums. In implementing the provisions, they should take into account the legislation that we are discussing today.

Eleanor Scott: You have all mentioned how part 1 of the bill might dovetail with the Scottish biodiversity strategy and how it might be improved. Would you like to amplify that a little?

Lisa Schneidau (Scottish Environment LINK): A number of improvements could be made to part 1. We welcome the duty to further biodiversity that is put on public bodies but we feel that, for that to work, a lot of detail is needed in section 2 of part

1, which deals with the Scottish biodiversity strategy. The priorities and actions that need to be taken as part of the strategy need to be outlined and a duty must be placed on public bodies to act in accordance with it. As is the situation with the standard planning cycle, if we are to achieve our goals using a strategy that needs action to be taken across all public bodies, there must be clear guidelines. For example, the strategy must contain a species list, specific actions to be taken and details of monitoring mechanisms.

Eleanor Scott: Do you think that there should be much more of a “must” rather than a “may” in relation to the duties of public bodies?

Lisa Schneidau: Yes. Public bodies should be required to fulfil the duties in the strategy.

Jonathan Hughes (Scottish Environment LINK): The use of the word “may” is a little bit vague and we would like it to be changed to “must”.

The link between the duty and the strategy is somewhat vague. The strategy, as drafted, is just a set of broad principles. We would like delivery plans, implementation plans or some sort of link to action to be associated with the strategy. If that is not to be the case, the strategy will be no different from the duty, in the sense that it will merely state broad principles.

The Convener: You mention the related issues of priority habitats and species that would come under the Scottish biodiversity strategy. You talk about reporting on states and trends in relation to species—whether they are growing or reducing in number, essentially. How comprehensive would that reporting be?

Lloyd Austin: The process has already begun in relation to preparation of the draft strategy and through the UK biodiversity action plan in relation to the implementation of the Rio convention.

Lisa Schneidau mentioned the standard planning cycle of surveying, setting priorities and objectives, planning, implementing, monitoring, reporting back and so on. The species lists and the habitat lists—it is important to consider biodiversity in a habitat context as well as in a species context—are the priority-setting mechanisms by which we can decide on the actions that are to be taken to ensure that the highest priority issues are addressed first.

Jonathan Hughes: Much work has been done under the auspices of the UK biodiversity action plan and local biodiversity action plans. I believe that they will continue to provide a valuable framework for the prioritisation of species and habitats work. The Scottish biodiversity strategy is not simply a list of habitats and species; it takes a more integrated approach that tries to tie

biodiversity in to other areas of public policy. If the strategy is doing its job, it will provide an overall steer in relation to where and how nature conservation is implemented in Scotland. It will therefore sit above the UK and local biodiversity action planning processes, which would be vehicles for the prioritisation of work.

10:00

Lisa Schneidau: I have been working on the freshwater implementation plan of the Scottish biodiversity strategy. We see the Scottish biodiversity strategy as a key means of dealing with some of the policy blocks that are preventing the local biodiversity action plans from being implemented on the ground. There are seven priority freshwater habitats and 20 priority freshwater species. Local biodiversity action plan offices have been surveyed and they consider that some of the major blocks to achieving those plans include agricultural pollution, inappropriate management of water courses, habitat destruction and invasive species.

About 22 of the 28 actions in the draft freshwater implementation plan are to do with integrating freshwater biodiversity targets into other policies, such as—members will not be surprised to hear this—the common agricultural policy mid-term review. The Water Environment and Water Services (Scotland) Act 2003 is a big delivery mechanism. We need to ensure that the biodiversity actions are flagged up. This is all about getting an integrated approach and flagging things up so that they are dealt with at the policy level as well as on the ground.

Rob Gibson: Your comment that 45 per cent of sites of special scientific interest are not in a favourable condition, and the Woodland Trust's argument that

"we believe a site-centred system alone will not deliver adequate protection for our natural heritage"

point to the need to develop more partnerships where particular species are affected.

I will give an example, and you can tell me if it would be a good idea to build in such a partnership. There are rare whitebeams on the Isle of Arran, and Glen Diomhan, the national nature reserve, is being downgraded. It is a site of special scientific interest, and presumably the management of the reserve will need to involve people with specialist knowledge of trees, because those trees do not grow anywhere else. Do you see a role in the bill for bodies such as the Woodland Trust Scotland to work in partnership with Scottish Natural Heritage and the landowner, in order better to manage the habitat and to extend the life of the species?

Jonathan Hughes: It is heartening that you mention whitebeams, because they are one of my

interests. I could not agree more. The mechanism for such working is probably through local biodiversity action plan partnerships. As I said, a lot of work has already been carried out throughout the country. In some ways, the local biodiversity action plan partnerships demonstrate well the groundswell of public support for nature conservation initiatives. An awful lot of people are involved in the local biodiversity action planning process. It is almost as much about people as it is about wildlife. The case of the Arran whitebeams is a perfect example of a situation where the stakeholders could get together to achieve better action on the ground.

Rob Gibson: So we should look for that in the bill.

Jonathan Hughes: I think that the mechanism in the bill is to use the implementation plans and the biodiversity strategy. Clearly, as Lisa Schneidau said, important gaps have been identified in the UK and local biodiversity planning processes, which the strategy is trying to tackle.

I have jotted down a couple of examples of things that are in the draft implementation plans at the moment. Enhancing farmland biodiversity in the wider landscape is not really tackled under the UK biodiversity action plan, because it is very habitats and species-focused. Bringing biodiversity into the heart of our towns and cities through better management of green spaces is also not really tackled because it does not fit the traditional species-habitat approach. Another example is the development of semi-natural habitat networks at a landscape-scale level, which involves thinking at a scale above habitats and species. That is being tackled in some ways through the new Scottish forestry grants scheme, which incentivises the development of forest habitat networks. However, we still have a long way to go in thinking about multiscales.

Rob Gibson: Do the other two witnesses have any comments on the matter? We need to be more specific when we think about the principles of the bill.

Lloyd Austin: I will comment on the 45 per cent issue and how that might relate to the kind of partnerships that you talk about. The figure of 45 per cent of SSSIs not being in favourable status came from a survey of a sample of about 10 per cent of sites in Scotland that we organised as a group of the six non-governmental organisations that are listed. We used SNH's criteria to conclude that 45 per cent of the sites were not in a favourable condition. However, it is important to note that that lack of favourable condition was, in most cases, because of issues such as the absence of positive management or neglect and damage by third parties. Those issues are addressed by the bill through the changes in the

management regime and in the types of offences relating to SSSIs. That is one of the reasons why we warmly welcome the bill.

Many of the proposals have come from the expert working group in which we took part. The bill specifies only that the way in which those positive management arrangements are implemented on the ground is a matter between SNH and the owner-occupier—the farmer or crofter concerned. If SNH and the farmer or crofter concerned find that implementing that positive management can be done better by involving an NGO, a local community or other partners, I see no reason why they should not do so. I am not sure how one would legislate for that. One would probably give them the power to involve third parties in the arrangement because there could be any number of third parties that SNH and the owner-occupier could mutually agree to involve in positive management.

Rob Gibson: Thank you. I will note that for future explanation.

Nora Radcliffe: I go back to the issue of signage. One of the other submissions suggested that there is nothing on the ground to indicate the location of an SSSI. It suggested that some discreet signage would be helpful. Would that be desirable?

Lloyd Austin: Issues relating to the management of an SSSI would vary on a case-by-case basis. If an SSSI were damaged by a third party, as in the case of fly-tipping—[*Interruption.*]

The Convener: Sorry. That was Alasdair Morrison's pager. Please continue.

Lloyd Austin: Let us take a case where an SSSI suffers damage such as fly-tipping by third parties. One of the new provisions in the bill is that it would be an offence to damage an SSSI if one knew that it was an SSSI. That would be a case for having a clear sign that said, "This is an SSSI and damage here would be an offence beyond the normal environmental offence". Signage in such a case could be beneficial for SNH and the owner-occupier. It might not be necessary in other cases where there are no access or third-party issues; we would be cluttering the countryside with unnecessary signs.

Jonathan Hughes: I agree with Lloyd Austin completely. Many SSSIs in Scotland have excellent access and we can attract people to them to show off our wonderful natural heritage. There are others, however, that are more sensitive. There are also some large SSSIs where signage might be inappropriate. I reiterate what Lloyd Austin said about dealing with the matter case by case.

Nora Radcliffe: That is helpful. I move on to a separate topic. You all mention non-native

species. Will you elaborate on what you see as the threats and the possible remedies?

Lloyd Austin: A number of issues relate to how non-native species such as those that are already established in the countryside can be controlled. Those vary from species such as giant hogweed and Japanese knotweed to the ruddy duck. The matter can be contentious; equally, such species can cause a lot of damage to native biodiversity.

Another issue is how one can prevent the establishment or the escape into the wild of non-native species that are not yet in the wild but which may pose a significant risk to native biodiversity. Recently, the Department for Environment, Food and Rural Affairs asked a group to consider on a UK basis how the legislation could be improved to deal with non-native species. The Scottish Executive and SNH were members of that group, which proposed legislative changes.

In the summer, the Executive consulted on how it might develop those legislative proposals. As our submission says, we hope that the result of that consultation is that the Executive lodges stage 2 amendments to the bill to update section 14 of the Wildlife and Countryside Act 1981 and to put in place stronger measures to control established non-native species and reduce or prevent the risk of non-established species escaping into the wild.

Nora Radcliffe: That is almost like putting a bell on a cat. How is such a risk prevented?

Lloyd Austin: That is achieved through a combination of legislation, policy and incentives. As I said, the Executive and SNH were involved in the production of the DEFRA report, which considered the matter in detail. The task with plants involves bringing plant experts together to identify the species that are most likely to pose a risk. The issue is one of risk assessment.

Restrictions must be placed on where species that are known to pose a significant risk if they become established in the wild can be grown and sold. A licensing scheme must be created for high-risk species so that they cannot just be sold in any garden centre or planted anywhere with a risk of escape. The number of such species is limited and such decisions are based on expert risk assessment.

The Convener: The minister wrote to me about the issue. Perhaps that letter has been circulated to members before, but we will recirculate it to give members a sense of what the minister was thinking about legislating on. That will give people a chance to do useful background thinking about the matter before stage 2, rather than get stuck into drafting amendments immediately.

Maureen Macmillan: I will ask about wildlife crime. RSPB Scotland is concerned that the protection of birds is insufficient. It wants nest protection for some rarer birds and lekking protection and short-term provision for capercaillie. Will you expand on that?

We have had some evidence that suggests that the bill should include measures against the use of poisoned bait. Does the recent Criminal Justice (Scotland) Act 2003 provide sufficient protection, or should more protection be written into the bill? I am concerned about the issue because I live in the Black Isle, where we have had problems with the poisoning of red kites to the extent that the population has become static when it should be growing exponentially year on year.

Lloyd Austin: I know that the committee will receive further evidence on wildlife crime next week, so I will be brief. We welcome and support the changes that the 2003 act introduced, which we hope will increase deterrence. We also welcome the proposal in the bill on the possession of pesticides, which are the most widely abused chemicals in poisoned baits. We hope that that will enable the Scottish Executive Environment and Rural Affairs Department and the police to crack down on the use of those chemicals.

A few species use the same nest year in, year out. The question whether those sites should be protected in winter when the birds are not there falls under the birds directive and we would like the bill to be amended to cover that.

I will leave more details to the specialist crime witnesses who will appear before the committee next week.

Maureen Macmillan: That is fine, thank you.

The Convener: Okay. You have logged those points. Are you happy with that, Maureen?

Maureen Macmillan: Yes. If Lloyd Austin feels that the Criminal Justice (Scotland) Act 2003 and the proposal in the bill on the possession of pesticides are sufficient to protect against the use of poisoned bait, I am happy.

Lloyd Austin: Yes, they go a long way towards that. Equally, the other measures in the bill on increasing the ability of the police to carry out searches are important.

Maureen Macmillan: So you are happy that the provisions are quite tight.

Lloyd Austin: Yes—I think that we are getting there.

Roseanna Cunningham (Perth) (SNP): Good morning. I am sorry that I was late.

The witnesses appear to have some concerns over the drafting of a couple of areas in the bill. As

such concerns are generally the forerunner to specific stage 2 amendments, I wonder whether they could comment on them. I am thinking specifically about the use of the phrase “Statutory purpose” in the policy memorandum and the general duty in relation to SSSIs. If they have concerns about the drafting and are likely to produce stage 2 amendments, it would be useful if they could say something about their concerns now.

10:15

Jonathan Hughes: I shall say something very general about the statutory purpose. Both the Woodland Trust Scotland and Scottish Environment LINK welcome the proposal on the statutory purpose for SSSIs. However, we are concerned about the scope of that measure, as it is restricted to SNH’s specific duties regarding notification, enlargement and denotification. We would like there to be a broader statutory purpose that would cover conservation enhancement of the series of SSSIs. That would be required to provide a statutory underpinning to SSSI management. Lloyd Austin can probably expand on that.

Lloyd Austin: I underline what Jonathan Hughes has said. The purpose of SSSIs is twofold. First, it is to find out and label the places of most importance; secondly, it is to look after and manage those places. Because of the way in which the purpose is drafted, it appears that only the notification—the labelling process—is part of the purpose. Therefore, we would like the purpose to be expanded to encompass the long-term management and care of the sites.

Even on the selection aspect, the definition of the purpose could be perceived as being a bit narrow. It argues for sites that are representative of the diversity of the natural heritage, and could be read narrowly as being purely a matter of representativeness. It excludes rarity, irreplaceability, conservation importance and other such issues. We would, therefore, like either some clarification or a broadening of the wording.

At the moment, the statutory purpose applies only to the work of SNH, although as a result of the bill lots of bodies are going to make decisions about SSSIs and those bodies should be working to the same purpose as SNH. The two bodies that are most relevant in that context are the advisory committee and the Scottish Land Court. If the purpose of SSSIs is to be achieved, all the bodies that make decisions about the notification and management of SSSIs should be working to the same purpose. We would like the advisory committee and the Scottish Land Court to be brought into that.

I have a final comment on the general duty in relation to SSSIs that is outlined in section 12. The

expert working group discussed the matter and was supportive of there being a general duty. However, the present wording could make it appear as though that duty relates to public bodies that make decisions about specific activities on individual SSSIs, such as putting a pipeline here or a road there on a particular site. As well as those day-to-day specific decisions, the other public body decisions that affect SSSIs can be policy decisions, such as the development of agri-environment schemes or forestry grants, which can affect the way in which SSSIs are managed generally. We would like the general duty to be broadened, so that public bodies will have a duty to develop broad policies and strategies that will contribute to the good conservation management of SSSIs. For instance, premium payments for looking after woodland SSSIs could be added to a forestry grant.

The Convener: I will pick up a point in the Woodland Trust's submission about how SSSIs are defined. You suggest that the potentially irreplaceable nature of sites should be taken into account. Can you say more about what would be achieved by adding the word "irreplaceable" to the definition of SSSIs?

Jonathan Hughes: Lloyd Austin touched on the issue. Section 3(2)(a) refers only to the development of a series of SSSIs in Scotland that are

"representative of the diversity and geographic range"

of our natural heritage. A lot of sites are exceptionally rare and some are irreplaceable in the sense that if they are modified it is impossible to recreate them. For example, it is impossible to recreate an ancient woodland once it has been destroyed or a raised bog once it has been stripped of peat. We see those irreplaceable sites as being of crucial importance to the conservation of our natural heritage. Hence the suggestion that we broaden out the definition of SSSI purpose to include irreplaceability.

Lisa Schneidau: The SSSI series is only representative. There are a number of sites out there that are of SSSI quality but which are not designated as SSSIs. A number of them come under the local site systems that we have mentioned. We would like a commitment from the Executive that the development of local site systems will be progressed so we can ensure that such sites are prioritised through the biodiversity process, that there are common standards throughout Scotland and that local authorities and others get guidance to ensure that those sites are protected.

Roseanna Cunningham: I think that we will get evidence from other witnesses about the big omission in the bill, which is a strategy for marine

conservation. I know that we will hear evidence from others who want to see that brought into the bill. Do you want to comment on that issue? That is a huge element of potential conservation measures, but it is not addressed in the bill.

Lisa Schneidau: Marine conservation is covered by the biodiversity aspect of the bill, in that there is a marine section in the implementation strategies of the Scottish biodiversity strategy. The Scottish Environment LINK marine task force feels strongly that there should not be an attempt to add marine conservation on to the rest of the bill. It feels strongly that there should be a separate effort to introduce new, comprehensive legislation to address marine nature conservation in respect of the identification of sites, spatial planning and the wider issues involved in sustainable development and sustainable management of the seas.

We welcome the minister's commitment, which he made last month, to a Scottish marine strategy. However, we would welcome a commitment from him that there will be a complete overhaul of the legislation, which is of course partly reserved and partly devolved. We would like an overhaul of the legislation to come to Parliament in the next two to three years. The Scottish Environment LINK marine task force would be happy to provide more information on that to the committee, if that would be useful.

Roseanna Cunningham: The issue might be one of timetabling. It is unlikely that an extensive piece of legislation such as that would be possible in this session of Parliament, given the priorities that the Scottish Executive has already set out for the session. Are you content that such legislation might well not happen for another four or five years?

Lloyd Austin: We are not privy to the legislative timetable that lies ahead but, whether it happens in two to three years or in four to five years, it is important that any marine conservation legislation results from a proper review and overhaul of what we have described as the hotch-potch of different acts that affect the marine environment. If we were to add on to the Nature Conservation (Scotland) Bill some provision for nationally important sites in the marine environment, we would increase the number of different acts that affect the marine environment from 80 to 81, rather than address the issue of the complexity of existing legislation.

A commitment to a proper review and overhaul of the marine legislation would be better than trying to do an add-on to the bill although, as Lisa Schneidau says, the bill affects the marine environment through the biodiversity duty and, on the wildlife crime side, the provisions on the harassment of cetaceans and basking sharks.

The Convener: It is useful to have clarification of that point. One of the things that struck me in the introduction to your paper is the acknowledgement of the engagement with stakeholders in the development of the bill, which does not rule out amendments and discussions between the different stakeholders. The point is well made about the complexity in the different acts that are in force. I commend the way in which the bill has been produced and suggest that those principles be taken on board in future marine legislation. The question will be important in relation to our discussions with the minister when we hear his evidence.

Maureen Macmillan: I was interested in what Lisa Schneidau said about how sites that are not SSSIs are often of the same value as an SSSI. It struck me that I do not know how SNH chooses its sites, which is a really basic point. Have you any insight into why one site is chosen over another?

Lisa Schneidau: SNH and the UK statutory conservation organisations have designated guidelines for the selection of SSSIs, whether they are biological or geological, and those guidelines have been followed. Some SSSIs were designated decades ago and some were reassessed against the guidelines after the 1981 act. The statutory purpose sets it in stone that those sites are the representative series. Of course, the situation is always changing a little bit.

Lloyd Austin: The biological guidelines and their geological equivalents are the basis on which SNH selects sites. What we have said about rarity and irreplaceability is important in that, in the context of selection criteria, sites that are so rare or irreplaceable will be SSSIs. SSSIs that are a representative sample of particular habitats will be selected on an area-of-search basis, so that there is a geographic spread. SNH chooses two or three sites within each area of search across the countryside. That does not mean that those sites are the only examples of a particular habitat type in the area of search; SNH chooses those that are most representative. Those that are not chosen are the types that Lisa Schneidau was talking about, which we feel should be protected under some sort of system of local sites. On the need to include management of the sites, if one of the sites that is chosen is damaged or destroyed in some overriding national interest, the statutory purpose should require SNH to review what is in the area of search and say, "This site is no longer in our network, so the network as a whole is now deficient." Then SNH would look again at the area of search to see whether any of the other sites should be brought into the network to bring the network as a whole back up to scratch.

Lisa Schneidau: It all comes back to the idea that SSSIs are essential, as the representative

series is the best that we have. We do not consider that that will be enough in itself. On a local or regional basis, the SSSIs plus the series of local sites are the best that is left. That is a good structure, but wider biodiversity work is needed to hold it together.

Jonathan Hughes: I do not disagree with anything that has been said. Some 12.8 per cent of Scotland's land area is covered by SSSIs, of which approximately 45 per cent are in an unfavourable condition. Only 25 per cent of our ancient woodland sites, which are our most biodiverse habitat—they hold more species than does any other habitat in Scotland—are protected by SSSI designation. It is crucial that we take the dual approach to wider biodiversity conservation in association with site designation. The way to tackle wider biodiversity conservation is through mechanisms such as local sites and the Scottish biodiversity strategy. That is why it is crucial that there is a strong link between the strategy and the duty and that the strategy is well defined.

Maureen Macmillan: Thank you. That was helpful.

The Convener: This is a good point at which to finish this part of the evidence taking. I thank the witnesses for their written evidence and for being prepared to answer all sorts of questions this morning.

10:29

Meeting suspended.

10:32

On resuming—

The Convener: We move to our second panel. I welcome Professor Roger Crofts, Professor John McManus and Professor Charles Gimingham. Thank you all for attending this morning and for giving us your written evidence in advance; that was most helpful. As with our previous witness sessions, we will not ask you to make opening statements, because we have all read your written submissions. I am keen to go straight to questions. I ask members and witnesses to keep their questions and answers as focused and brief as possible.

Eleanor Scott: I have a question for Professor Crofts. You describe the Scottish biodiversity strategy as "remarkably deficient", which is fairly strong language. How do you think that the strategy could be improved and how could the bill ensure that it is effective? Do you agree with the comments about species lists, targets and actions and the duty to take those actions?

Professor Roger Crofts: I believe that the strategy is deficient because it starts at the wrong end of the business; it starts with species. We have hundreds of species action plans, relatively few habitat action plans and no ecosystem plans at all. If we are trying to protect species we have to consider the health of the systems in which they live. I would much prefer to see more emphasis on a Caledonian pine ecosystem plan than on a plan just for capercaillie or the Scottish crossbill.

You asked how the strategy could be improved. We need to collapse the individual species and habitat action plans into broader-based plans, which would be a much more effective use of resources. We have a bit of an industry in habitat, species and biodiversity action plans—HAPs, SAPs and BAPs—at the moment, and we are not achieving as much as we could with the same application of resources.

I am concerned that the strategy is deficient because its leaders are not keeping in touch with international thinking. The conference of the parties to the Convention on Biological Diversity meets each year and has a subsidiary body on scientific, technical and technological advice—SBSTTA—which is meeting in Montreal right now. The focal point for that is in the Department for Environment, Food and Rural Affairs in Whitehall, and there is not a lot of evidence to show that we in Scotland are up to date on what is happening. Of particular importance to SSSIs is the fact that the SBSTTA meeting that is happening now, and the conference of the parties next year, are majoring on protected areas, of which SSSIs are a particular subset. There is a lot to be learned from those bodies.

I have made it clear that I would like the duty in section 1 of the bill to be much stronger. I have lived with the “have regard to” type of measures for probably 20 years as an environmental bureaucrat of one sort or another; once one has had regard, one can forget the matter, to paraphrase legal advice that I have been given on many occasions. Also, it seems to me to be a missed opportunity to expect the minister to produce a biodiversity strategy and to leave it at that without trying to home in on what its content should be and without stating that the strategy should meet international requirements and follow the best international advice.

Alex Johnstone: My question will allow me to move on from that, although I apologise to the other two witnesses, because it is another question for Professor Crofts.

One of the points that concern you and that you bring to our attention in your submission is the

“relative roles of SNH, Scottish Ministers and Scottish Land Court”.

At a number of points in your submission, you question the minister’s role in the process. Have you had any difficult experiences with ministers that caused you to take that view? If we were to eliminate the minister and ministerial decision making from the process, how could the public, who elect Parliament, have an on-going role in the process?

Professor Crofts: I looked to see whether the media were in the gallery.

The Convener: They may be watching.

Professor Crofts: Sorry?

The Convener: The meeting is all on the record.

Professor Crofts: It is all on the record—thank you.

We need a system that satisfies two criteria: it needs to be efficient and effective so that we cut out unnecessary layers of bureaucracy, but it must on the other hand have checks and balances. What I like about the bill is that it has many more checks and balances than the old system. I lived for 10 years as the chief executive officer of SNH without some of those checks and balances, so I recognise the validity of the criticisms on that.

However, it is confusing that although SNH is given the duty to further conservation of biodiversity, the minister can interpose on certain issues and, at the same time, we are introducing the Scottish Land Court into the system. Why is that? I find the bill to be extremely confusing on the relative roles of SNH, the responsible minister and the Land Court. I strongly advise the committee to examine that matter and to ensure that there is absolute clarity about those roles.

Ultimately, any non-departmental public body, such as SNH, is responsible to Parliament; I have doubts about, and difficulties with, a system that does not allow an NDPB to be fully accountable to Parliament except via the minister. I am not suggesting for one moment that Parliament or the Environment and Rural Development Committee should have to scrutinise particular complaints or try to take decisions—that would be far too cumbersome. That is why the role of the Land Court is extremely important. I see no reason why, under the new system—which I hope is approved—Parliament could not request that SNH include a particular outcome of its work on SSSIs in its annual report to Parliament.

Nora Radcliffe: I am bothered by your suggestion to take out the minister and put in the Land Court. Surely that muddies the waters of the Scottish Land Court as the court of appeal? If the Land Court is seen as the final court of appeal, should not it be left in that pure state rather than become involved at other levels? Is that a valid argument against the one that you have just made?

Professor Crofts: It is a valid argument. However, there is confusion and lack of clarity in the bill. In some cases, the Land Court will be the court of appeal against a ministerial decision, but in other cases it will be the court of appeal against an SNH decision. The Land Court is either the court of appeal in all cases and all cases would have to go to it via the minister, or it is a court of appeal to which objectors and those who feel that they have been done down by the system can go straight away.

In my experience, ministers have to give an opinion, for instance on a management agreement above a certain sum of money—I think that it is about £300,000—on a nature conservation order or on a special nature conservation order. I am not saying that that is not a legitimate role for the minister, but I would like to see a simple system that owners, occupiers and all of the other interests understand. The bill is too confused.

Roseanna Cunningham: Both Professor Crofts and Professor Gimingham comment on the lack of real direction in the bill with regard to the marine or maritime environment. Do you wish to comment on that issue on the record? Do you believe that the bill should have been extended to encompass the marine environment? If not, could the bill be amended in such a way as to begin to make some kind of inroad in that direction?

Do you agree with the evidence that we heard this morning about the need for a separate bill that makes provision for the marine environment? Given that both of you referred specifically to that omission, I am curious to know your views on the subject.

Professor Charles Gimingham: Because deterioration is taking place so widely, the matter is extremely urgent. As a direct answer to the question, I would say that the marine environment merits thorough consideration in the form of a new bill. Merely to amend or extend the provisions of the present bill would be unsatisfactory and hurried. I will come down on the side of a request for recognition of the matter, which should be progressed with the minimum possible delay in the form of a new bill.

Professor Crofts: I would have liked to have seen a bill that was much more embracing. I would have liked a natural heritage bill that covered activities outside SSSIs and below the low water mark and which also covered landscape and so forth. Although that is not in the bill, the Minister for Environment and Rural Development said in the foreword to the consultation version of the bill that was published earlier this year that the matter is in the Executive's mind. I hope that the committee will take the minister to task and get something on the record that is rather more definitive than the words that are to be found in that foreword.

On the marine environment, I agree with Charles Gimingham. We have two specific protected area provisions. One is for marine nature reserves, of which we have none in Scotland—thank goodness, because they are a bureaucratic nightmare. There are reasons why we did not push for one at Loch Sween, in Argyll, for instance. We also have provisions in the National Parks (Scotland) Act 2000 for marine national parks. The situation is terribly fragmented. In addition, we have responsibilities and requirements under the EU habitats and species directive and the EU birds directive. I would like all those to be brought together in a series of sensible provisions.

If necessary, given the fact that some of the issues are reserved matters, I would like us to deal with the matters that are devolved—that is, those that are in territorial waters.

Roseanna Cunningham: But not in the bill.

10:45

Professor Crofts: I do not think that we have time to deal with them in the bill, but I would like the minister to commit to a firm timetable sooner rather than later. I would like to see a consultation paper that the committee could have a look at well ahead of the end of this parliamentary session, even though that is not in the partnership for government programme. I think that it is important to press for that.

Mr Morrison: The first question that I was going to ask, relating to the marine environment, has just been answered by Professor Crofts. My second question relates to paragraph 7 of your submission and the concerns that you raise about decision making slowing down and costs rising. What should the Executive do during the process of the bill to ensure that that does not happen?

Professor Crofts: The first thing that the Executive should do is give a level of devolved responsibility to SNH. In the past, there have been struggles to get a level of delegation delivered by the Scottish Executive—under the formal documentation that is called the financial memorandum—to give SNH the authority to negotiate deals without having to refer back to the Executive. Having such devolved responsibility has the advantage for your constituents, for instance, of enabling SNH to do deals much more quickly and to resolve problems before they arise.

Secondly, more consultation prior to activities' being undertaken is very important in reducing costs. It is important to establish informal local groups that can nip problems in the bud before they go to either the SSSI advisory committee or the Scottish Land Court. I also emphasise the importance of ensuring that any objections are

really substantive. I have made it clear that I am pleased with the proposed provisions on preventing frivolous objections that would force cases to go before the SSSI advisory committee, which would not do the objectors or the system any good and would cost more money.

On the other side of the cost argument—I have not referred to this in my submission, although other witnesses have—is the question of how much this is all going to cost anyway. It will cost more in administration—there is no doubt about that, but that should be accepted, provided that there is, in the financial memorandum, clear guidance about the additional cost. That must be accepted, because we need a bit more democracy and stakeholder participation in the decision-making process. That is the point that I often made when I was at SNH; I think that members have heard me make it more than once.

The issue is about creating a better system that will cost a bit more, and about devolving responsibility through a proper accountability line that goes right up to Parliament.

Maureen Macmillan: I was absolutely delighted to read in Professor McManus's submission about his concerns about Achanarras quarry and depredation of the fossils there. People who live in the area regularly contact me about that. I tried to get some protective measures into the Criminal Justice (Scotland) Act 2003, but was told that the Nature Conservation (Scotland) Bill would possibly be the right place to do that. However, it has been hinted to me that the bill is not the right place to protect fossils and that perhaps the forthcoming planning bill will be.

I have written to SNH and have had difficulty finding out what its policy is on protection of fossils. I know that we have fossils at Achanarras that are of international importance. Could you put on the record your concerns about the way that fossils in Scotland are, or are not, protected, and what you think we need to do about it?

Professor John McManus: Fossils, along with minerals and other rock types, are seen, I am glad to say, as part of the natural heritage. The problem with a fossil is that it does not reproduce—it used to, but does so no longer—so once it is gone there is no replacement. That fact can be overlooked. Fossils are like screws and nails to the geologist—we find plenty of them around, but some are distinctly rare and unusual. I am in a quandary about how we can protect them. It is possible to designate a site as an SSSI and find for some reason or other that the fossil seams have run out. They often exist only in specific horizons. I can think of one example of an SSSI where the seam was literally quarried out. The specimens are now in museums worldwide and there are no longer any to be seen on the site. The site has actually

been de-designated, which is mentioned in the papers that we are discussing.

Maureen Macmillan: I am aware of that.

Professor McManus: My particular worry is that once sites are noted in geological literature as having something really exciting, people literally turn up with James Bond-type diamond saws to cut out the fossils and take them away. There have been moves recently to get some of the fossils back for the Achanarras collections, some of which disappeared into various—am I allowed to say this?—German museums. The fossils are not just being moved to British museums. Many of the specimens that do not go on display in museums go into private collections and nobody sees them—there is no access to them. I do not know how we can protect the fossils. It is an issue that I have worried about greatly and discussed with SNH boards, but I cannot give a definitive answer to the question, although I wish that I could.

Maureen Macmillan: I presume that we could protect fossils by imposing swingeing fines on people who steal them. That would mean keeping an eye on specific quarries, in the same way that we keep an eye on the nests of rare birds to ensure that egg collectors do not steal the eggs.

Professor McManus: Yes, but the difficulty is that whereas you can look after nests during the nesting season, you would have to look after the fossils all the time. One of the techniques that was used for a while to protect many of the fish fossils in the north-east was to flood the quarry, so that anybody who wished to get at the fossils would have to pump out the water, which was not trivial. That measure, which could be done for good scientific purposes, was perfectly acceptable to the geological community.

Maureen Macmillan: We are still left with the puzzle of how to address the problem.

Professor McManus: I am afraid so.

Professor Crofts: May I comment, convener?

The Convener: Yes, if you have a thought on how we might legislate on this issue.

Professor Crofts: The role of local people has been extremely successful in bird protection. I look at Mull, where the view is, "How dare people come in and steal our eagles' eggs?" That is a wonderful turnaround, because that community realises that there are various economic benefits. I wonder whether we should also be thinking about local custodians of the sorts of facilities Maureen Macmillan describes.

I am wearing my National Trust for Scotland tie this morning, and we in the NTS obviously use that sort of approach as custodians of property, as

does Historic Scotland. I am not sure that that could be put in a bill, but informal mechanisms like that are important, as is the recognition under the legislation that fossils, rock types or strata, or geomorphological features are protected on exactly the same basis that species and habitats are. There should be a level playing field for the lot.

Maureen Macmillan: It would be wonderful if someone opened an interpretive centre at Achanarras so that local people could take pride in the site; a lot of them probably do not know that it exists. It would be a great tourist attraction. I believe that such things happen in Australia, where the fossils are not a patch on the ones that we have.

The Convener: That is something that we may want to follow up with the minister.

Maureen Macmillan: It is important that we follow it up.

Professor Crofts: There is another point, convener. The geological conservation review series, when it is complete, will consist of 51 volumes—an introductory volume, which has already been produced, and thematic volumes of various types, which will identify sites. Not all the sites that are in the volumes that have been published already, or those that are in gestation, have been designated as SSSIs; there has been an issue as to whether they should be so that they have proper statutory protection. That is something that you might want to ask SNH about. In the past, we did not regard those sites as a priority compared with some of the other, much more endangered sites. SNH's policy position on that would, I think, be useful evidence for your committee.

The Convener: We shall ask the SNH representatives whether they have read the 51 volumes, or whether they intend to.

Nora Radcliffe: I have two questions, one of which is specific and detailed and one of which is more general. Both Professor Crofts and Professor McManus have spoken about how we select SSSIs, the area of search and the technicalities of the process. That is one thing that I would like you all to comment on. I also get a sense from all three submissions that perhaps the bill is too focused on SSSIs and does not do enough to set them in the context of other designations. Some of that is picked up in the duties on other bodies to do things and we hope that some of it will be picked up through the Scottish biodiversity strategy, but do you think that the bill should look at the wider picture as well as focusing on SSSIs?

Professor McManus: The areas of search for geological SSSIs were defined some years ago as national, which meant United Kingdom national.

Any site that was designated had to be of top quality in a UK sense; I do not need to expand on that too much. That contrasts with the areas of search that we have for many of the biological SSSIs, which include good examples of an area, a region or a district—whatever administrative body you wish to use to define them. The result is that quite a lot of bogs may be preserved in Scotland, whereas only one form of igneous intrusion might be protected, although there may be lots of them in Scotland. There is a big difference.

The geological conservation review was set up about 20 years ago and it has defined the arrangements quite clearly, as Roger Crofts has said. The SSSIs are important areas for focusing one's energy and thoughts, but in many cases they will sit within a regional park. I am thinking of the Lomond hills regional park in Fife. There are two or three SSSIs in that area, but the regional park is a much bigger area for people to roam, wander and look in.

The other sites for which there is a slightly lower-level designation—it is really an unofficial designation, but it is UK wide—are the regionally important geological and geomorphological sites. Those sites would almost certainly have been designated SSSIs if we had applied biological criteria. In other words, they are high-quality sites, but they are not quite top quality. We use them a lot for educational purposes, such as for taking student groups to, and for research purposes.

The sites are being drawn up in Scotland; the Scots are lagging slightly behind the English and Welsh in that respect, but the listing is growing. The RIGS group within a particular region will define where the sites are and notify the planners. If it is possible to persuade somebody to take a road route or a housing development to a different site, the group will do so. The group has no statutory power, but it plays an advisory role. The system is beginning to develop. We had the UK meeting on it just outside Edinburgh a fortnight ago and it is clearly being seen elsewhere as a powerful and useful tool.

11:00

Professor Crofts: On how we select SSSIs, the bill has got itself in a real muddle about the geographical framework. It cannot make up its mind whether it refers to Scotland, Great Britain—England, Scotland and Wales—or the European Union, but it has to get that right. The SSSI series applies traditionally to Great Britain. Northern Ireland has always had a separate system, which is right, because that allows us to deal with the whole of Ireland together as a geographic entity. I would much prefer the bill to say that the Scottish sites are seen within a context and within a series representing the best of natural heritage in Great

Britain as a whole. It is superfluous to include the European dimension. Why not include the world dimension? We have already covered the European dimension in the Natura suite.

The units used for the areas of search are bogus, because they have no relevance in nature. The old county boundaries are used, which I recall disappeared formally in 1929. We have Clackmannanshire on the one hand and Sutherland on the other, which are rather peculiar units. I have suggested in my evidence that the Executive think about the type of units that we developed when I worked in SNH as part of our natural heritage futures programmes. That involved looking systematically at how we define natural units using the data on distributions on the ground.

What should the sites be for? I refer to the evidence from the previous panel. I think that Lloyd Austin made it clear that the bill really ought to come clean on issues such as rarity, uniqueness, threats and vulnerability. Those issues are all in the standards guidelines, but they are not in the bill. It is important that they are registered, because people understand those terms.

On selection, we have substantive documentation and guidelines—which staff in SNH can use and anyone can look at—for biological sites and for geological and geomorphological sites. There is documentation for Great Britain as a whole and I advise strongly that we do not throw it out or try to tangle it, because it has stood the test of time—it has been developed by experts and has been tested in practice. Perhaps we need to demystify the system and give guidance for owners, occupiers and communities about what it really means. It is really good stuff and I would hate to have it thrown out so that we had to develop separate Scottish guidance.

In a sense, SSSIs are a peculiar beast in Scotland. They range from small postage-stamp areas, in which people are trying to protect a piece of relict species or habitat, through to large areas of upland. SSSIs were never really invented for the latter; they were devised way back in the 1930s to protect bits of relict habitat in agricultural land in southern England.

Many of us have wanted a broader-based approach to be taken. The Natural Heritage (Scotland) Act 1991 provides for the designation of natural heritage areas. That was a deliberate attempt, to which I was party, to try to describe a tiered system, which covers everything from the bits that are very special or vulnerable, for which tough protection is required, to the bits about which you need not bother. Under the system, it is possible to say that you can lighten up as you come out from the bits that are very special and

move towards the point where you can say that things are fine because you are in the middle of a settlement, industrial estate or whatever and you need not bother any further.

The idea of having a zonation provision in the bill is good. It allows for what in international parlance are called core, buffer and development zones. We might get that provision in the national parks, but there are only two national parks in Scotland at the moment and others may be slow in coming about. I would like the committee to ask the Executive in particular and SNH about those points.

It is also vital for us to think about the things that happen outside SSSIs but that have an impact inside them. Animals move across boundaries—they do not recognise fences, water flows and so forth. The recognition of wider countryside measures is critical, particularly in relation to agriculture and the outcome of the consultation on the mid-term review of the common agricultural policy.

My final point is that we should ensure that proper duties are provided for, not those that people can take account of and then forget about. I apologise, convener, if I went on for too long.

The Convener: We will cover those points.

Professor Gimingham: We were asked whether too much emphasis is placed on SSSIs. The biodiversity duty and duties in connection with SSSIs are directed towards ministers on the one hand and public bodies and officers on the other. However, specific mention should be made of local authorities. They should have a specific duty to consider not only the SSSIs in their area, but the importance of conserving and enhancing biodiversity throughout their territory. Sympathetic consideration at least needs to be given to local wildlife sites. A specific duty should be placed on local authorities, because they have control of planning and development and all the other functions that can affect these issues. I am thinking in particular about biodiversity and important wildlife sites. I ask the committee to ascertain whether specific mention of the role of local authorities could be made in this context.

The Convener: It might be an idea to look back over the *Official Report* to check the responses that were made by representatives of the Convention of Scottish Local Authorities to questions that we raised about biodiversity, the extent to which duties should be applied to local authorities and what local authorities should do. Thank you for that useful comment.

Nora Radcliffe: I have another brief question.

The Convener: If it is brief, you may ask it. I want to keep us moving at this point.

Nora Radcliffe: My question is about the area of search and spatial units. Would there be merit in tying those into river basins in the context of the water framework directive? Is this an opportunity for a bit of joined-up thinking?

Professor Crofts: No. Just remember that mountains are units as well and that river basins divide mountains.

The Convener: That was very brief, thank you.

Rob Gibson: Professor Crofts suggested that the bill does not take account of spatial units for the selection of SSSIs. I suspect that we will need to lodge amendments to deal with that issue, so do you have any final points that you wish to make on it? I am terribly concerned that the definitions were drawn up in a British context for small areas of land in the south of England and that the view is that those definitions should remain sacrosanct. That view is illogical, of course, because we are now dealing with large areas of land with different biogeographic units within them, if your definitions of mountains and river systems are taken into account. Could you clarify the issue of spatial units and say whether the bill needs to be amended?

Professor Crofts: The bill should refer to a definition of a spatial unit for the biological sites, which would be a biogeographic definition, and a definition for the geological and geomorphological sites that follows the GCR. I think that that would be relatively simple. However, I offer one word of warning, which SNH may be a bit nervous about. If you suddenly change the spatial unit, potentially you will have to review the whole series. Some sites might become redundant, but other sites may need to be added. I offer that word of caution, but I agree that there needs to be clarification in the bill.

Rob Gibson: You think that it is unnecessary for ministers to have powers to issue guidance on technical definition matters and that the Advisory Committee on Sites of Special Scientific Interest would be in a much better position to do that. Would matters relating to designation—for example, the designation of national parks—be better dealt with by the advisory committee than by ministers, because of the buffer zones and so on that you talked about?

Professor Crofts: Not at all. There is a significant distinction. We are talking about detailed technical guidance on the selection of SSSIs. As we all know well, there is a broad-based approach to national parks, which is laid out in the National Parks (Scotland) Act 2000. Ultimately, the Parliament decides on designation. Why are areas national parks if the Parliament does not decide on them?

Rob Gibson: Perhaps we missed some points on the first question from the other two witnesses.

Professor Gimingham: On the designation and selection of SSSIs, I remind the committee that we are talking about sites of special scientific interest—I emphasise the word “scientific”. Maintenance of the sites’ scientific value is among their various functions. Therefore, we can overdo the concept of representativeness. If you are seeking representativeness for its own sake, one such site may do for a whole area of search, but that goes against the conservation of biodiversity, because it ignores a number of other sites that may have equal scientific value. Therefore, we should bring into play the science base and the importance of a scientific review of sites, not just their representativeness. The explanatory notes do not take enough account of the scientific foundation of SSSIs and the biodiversity problem. Specific mention should be made of the science base and the importance of maintaining it and, indeed, of financing it, although that is another question.

The Convener: I have a couple of points that I want to clarify in relation to Professor Crofts’s paper. The first is an issue that has not come up this morning. You say that there should be a new section on sustainable development. What would that add to the bill and how should it be structured?

Professor Crofts: I realise that you are going to investigate sustainable development. My concern is that SSSIs are seen in isolation, as has been clear from some of the questioning. My concern is also that biodiversity is seen in isolation. However, SSSIs may be of some benefit in that context, although the issue is not well connected in the Scottish Executive’s strategy. Biodiversity, after all, is one of the key components of sustainable development. I would like to see that linkage.

I recognise that you might feel uncomfortable about including a section in the bill before doing your review, but we might consider some wording about which we could have a debate, because biodiversity is an important part of the context. If we do not consider it, we will tend to see sustainable development in terms of resource use, energy, transport, enterprise, development and the interaction with the environment—we will miss off the biodiversity bit.

The Convener: My other point is on the definition of biodiversity. Previous witnesses talked about the need to cross-reference a definition to the Convention on Biological Diversity and to include such a definition in the bill. How should we do that? Should we define biodiversity differently in the bill or should we cross-refer to the Convention on Biological Diversity?

Professor Crofts: I would much prefer the definition to be in the bill, as that would make the bill a comprehensive document. However, we

should use the definition that has been agreed by the 160-odd signatories to the convention, which include the UK Government and therefore, by implication, Scotland.

Professor Gimingham: I support the need for a definition of biodiversity in the bill. It would be very useful to have it there.

The Convener: If there are no further questions, I thank the three witnesses. The questions that we asked you were technical and we appreciated being able to pick your brains on these important issues. We will take a few minutes to allow the next panel of witnesses to come in.

11:16

Meeting suspended.

11:22

On resuming—

The Convener: Moving on to our third panel of witnesses, I welcome to the meeting Dr Bob McIntosh, director of Forestry Commission Scotland; Nick Reiter, director of the Deer Commission for Scotland; and Professor Donald Davidson, who is the chair of the Advisory Committee on Sites of Special Scientific Interest.

Again, we will not take opening statements from the witnesses. Instead, we will simply record the fact that your written submissions have been extremely helpful and have all been read by committee members. We will now move on to questions. As in the previous two evidence-taking sessions, I ask members to keep their questions relatively brief and witnesses to do the same with their answers.

Alex Johnstone: I want to provide an early opportunity for us to move on from the previous discussion about the definition of sites of special scientific interest and the areas where we should consider such sites. Professor Davidson, do you have any views on the comments made by previous witnesses? I hope that you were able to hear them.

Professor Donald Davidson (Advisory Committee on Sites of Special Scientific Interest): Yes, I was very interested to hear the witnesses' comments on areas of search. Our committee has examined the issue very carefully, because when we are asked to judge the scientific quality of a particular site with regard to notification we have to do so within a wider geographical frame. We have certainly come across instances in which the areas of search seem rather arbitrary and are based on old administrative units. I support in principle Professor Crofts's comments that there needs to be a more environmentally based system for areas of search.

Alex Johnstone: Professor Crofts was also keen to retain the UK-wide context in that respect. Do you agree with his approach? Do you feel that his negative comments about a Europe-wide search were appropriate or might we need to consider Scotland in a northern European as well as a UK context?

Professor Davidson: We must judge the importance of sites very much on scientific criteria and within a much wider context than a Scottish one. I also strongly support the view that judging SSSIs within a UK and European context is fundamental to our approach. As SSSIs are used as the basis for European designations such as special areas of conservation and special protection areas, we are inevitably linked in with the European approach. As a result, we must establish a wider framework.

Rob Gibson: I want to turn to the issue of deer. In your submission, Mr Reiter, you suggest:

"Clarification would be helpful on whether damage by deer would be covered by LMOs"

or land management orders. Moreover, you say:

"Issues of cross-compliance may need to be resolved through co-operation and protocol."

Will you expand on that statement?

Nick Reiter (Deer Commission for Scotland): That comment was based on the fact that the Deer (Scotland) Act 1996 gives the Deer Commission for Scotland some powers. In particular, section 8 of that act confers a power that has some procedural parallels with the proposed land management orders. Moreover, the section 8 power also involves a process similar to LMOs that can lead to a body taking a certain amount of compulsory action. We have come close to using section 8 powers on several occasions, but have not yet done so, mostly because we managed to resolve the issue before we went down that road. We also feel that section 8 is a rather difficult and convoluted piece of legislation that is not designed to be used easily. Indeed, that was probably the intention behind its wording.

The proposals for LMOs follow similar lines. From my reading of them, the chances are that such orders would cover cases in which deer were causing damage to an SSSI. As a result, we need to consider whether SNH or the Deer Commission would use its particular powers and find out how those bodies would decide which power was the most apt. The point is that the 1996 act requires us to invoke section 8 if all else fails: it uses the word "shall", not "may". If we reached a point where SNH felt that an LMO was needed and the DCS decided that it was under a duty to move towards using section 8 powers, we would have to find out which body would have primacy and how to ensure that the bodies did what the legislation

required them to do without treading on each other's toes or putting in so many layers of bureaucracy that everything slowed to a crawl. We might simply be looking for problems that will not exist in practice, but I think that the issue needs to be borne in mind.

Rob Gibson: I want to follow up that response. Earlier, I cited an example of a national nature reserve on the Isle of Arran that is being downgraded and where the main problem is that deer are damaging rare whitebeams. Do we need more than "co-operation and protocol" in that respect? Perhaps we need clarification of the Deer Commission's powers specifically built into the bill to deal with the matter.

Nick Reiter: There are two key triggers for the use of section 8 powers. First, that is triggered when an agreement process under section 7 of the 1996 act either has not been possible or has failed.

The other trigger is where we can establish with a great degree of certainty that serious damage has occurred, is occurring or is likely to continue to occur because of deer. The second trigger is a technical requirement, but we would have to be certain that we could prove that deer were the problem. I do not want to go into the specifics of the Arran whitebeam, because we might want to have a discussion elsewhere about whether deer are the main problem there. Deer tend to get the blame and, although they are often the cause of at least some damage, sometimes they are not; sometimes sheep, hares or rabbits come into play.

Rob Gibson: Voles are another possibility.

Nick Reiter: We have to be very clear about the situation because, if we ever use section 8 of the 1996 act, the chances are that we will be using it against someone who can easily afford to use some of the best Queen's counsel in the land to challenge us. There is a very high burden of proof on the Deer Commission in relation to the use of section 8. Although I am not a lawyer, it strikes me from my reading of the bill that the burden of proof on SNH for showing that an LMO is required is perhaps slightly lighter than the equivalent burden on the Deer Commission for the use of section 8 of the 1996 act. There might be cases in which we have trouble proving beyond doubt that deer are the main cause of the problem, but SNH might be able to move a bit more quickly, because it has to show only that there is a problem that needs to be tackled. At the moment, it is tricky for us to meet the requirements for triggering the use of section 8 powers.

11:30

Rob Gibson: Thank you for that. It would be very large voles indeed that could break off branches 4ft above the ground.

Eleanor Scott: In the bill as drafted, is it your understanding that failure to control deer, to prevent damage by them and to control their numbers, if that is what is required, would count as recklessness and therefore be a crime under the section on wildlife crime?

Nick Reiter: No, my understanding is quite the opposite. I am not a lawyer but, in my view, the bill's definition of recklessness seems to apply to things that people have done, rather than to things that people have failed to do. That is a constant issue. In many cases, the issue with deer is not that people are doing things that are leading to damage to the natural heritage, to forestry or to agriculture, but that they are failing to do things—more specifically, that they are failing to cull adequately. My understanding of recklessness as it is defined in the bill and elsewhere is that it applies to doing something that one should not be doing rather than not doing something that one should be doing.

The Convener: That is interesting. Do you have another question, Eleanor?

Eleanor Scott: I did, but it has been dealt with.

Maureen Macmillan: I would like to ask Dr McIntosh about the importance of woodland in promoting biodiversity. I notice from your evidence that you are perfectly happy with the SSSI proposals as they relate to forestry. The last panel of witnesses talked about the ripple effect, whereby the SSSI receives paramount protection but, as one moves from the wild parts into settlements, the protection decreases. It was felt that there should be a gradation of protection.

I am quite concerned about woodlands around settlements and cases in which part of the woodland changes hands. The next thing that happens is that the mature trees are cut down before a tree preservation order can be put on them and then someone applies for planning permission to build a house. There seems to be a distinct lack of protection in that area and a potential loss of biodiversity. Do you feel that the bill should be amended or that, as it stands, it protects such patches of woodland?

Dr Bob McIntosh (Forestry Commission Scotland): The protection should be there. We have a statutory duty to balance social, economic and environmental issues in everything that we do, not just in relation to SSSIs. In devising our incentives and regulatory schemes, we are continually trying to build in the biodiversity component.

There is existing legislation—in the relevant forestry act and in the planning laws—on tree preservation orders, which are designed to stop the situation that you described from arising. In that sense, I do not think that there is anything that

could be added to the bill that would help to add value in that area.

Maureen Macmillan: Those pieces of legislation are patently not preventing such situations from arising.

Dr McIntosh: People are going ahead in spite of the legislation. The legislation is not deficient; it is simply the case that people are prepared to risk infringing it and to take their chances in court. There is perhaps an issue around the size of fines in such situations, but the legislation should be sufficient.

The Convener: I would like to move on to the role that the Advisory Committee on Sites of Special Scientific Interest will play. I turn to the end of the submission that we received from the advisory committee. The issue of duplication of effort and bureaucracy is raised, and it was teased out when we were talking to the previous panel. I draw your attention to paragraph 12 of your submission, Professor Davidson. You have already had discussions about how the bill could be made clearer with regard to how the process would work in practice. Could you say a little more about that? Having read paragraph 12, I found myself wondering exactly how the system would work. Is there a way to make the process simpler or more effective than you hint that you fear it might be?

Professor Davidson: Our committee feels that there is a need for far greater transparency on the precise procedures by which the bill would be implemented. We make a number of suggestions in that regard. Paragraph 12, to which you refer, raises the issue of the Scottish Land Court. Under the bill, the Land Court will operate when a landowner refuses a request from SNH to carry out an operation requiring consent—an ORC. The landowner has the right to appeal to the Land Court in that instance.

I will explain the potential duplication. Our view is that, when landowners object, the advisory committee has a role to play under the bill at the notification stage. We would look carefully at the scientific basis of the notification. We ought also to be examining the range of ORCs, but I would like to come back to that later. There is a scientific evaluation at the initial, notification stage. If the case goes before the Land Court, then there appears again to be the need for scientific evaluation. We are not sure how that will work out in practice. That is what we have highlighted in paragraph 12. Some of the processes could be triggered almost simultaneously.

There needs to be some joined-up thinking with regard to the precise procedures and establishing who does what when. That has to be transparent for the general public and landowners. Looking at

the bill, I do not think that the landowners will get an immediate and clear impression of the precise procedures and of who is responsible for what.

Our advisory committee has had informal discussions with the Scottish Executive. We agreed the need for a flow chart or something of that sort to specify clearly the procedures. There is some confusion there, however. There is a potential duplication of effort, and there is a question about how to bring in the science at the notification stage at the beginning, as well as the question of dealing with the Land Court.

The Convener: The matter has been raised by a few witnesses, and we might want to tease out from the minister how all the different bits of the process will hang together in a way that we—never mind anybody else—can understand when we scrutinise the bill.

A linked point is raised in paragraph 16 of your submission, on the composition of the Land Court. There is a question about its ability to make any scientific assessment and about the extent to which that is your job or that of the Land Court, given that it represents the final point of review. Could you make a few comments about that? The issue has come up before with previous witnesses.

Professor Davidson: There is obviously an issue to be addressed there. The Advisory Committee on Sites of Special Scientific Interest is set up to evaluate the science. We have a range of scientific expertise relevant to SSSI cases, and we make use of independent advisers. We also hire consultants to provide further advice in particular cases. A lot of background work is done by the advisory committee when it deals with cases, and over quite a short time. The expertise is there, and it looks to me as though the Land Court might well need access to the same sort of expertise. We would highlight the importance of a lack of duplication.

The Convener: So we are talking not necessarily about membership of the Land Court, but about the ability of the Land Court to draw on that expert evidence.

Professor Davidson: That is correct.

Alex Johnstone: I will put to you two suggestions that have been made to us in evidence. The first is that your committee might function as a court of appeal. Can I assume that you dismiss that and that you think that the appropriate route for any appeals process would involve your committee working in conjunction with the Land Court?

Professor Davidson: The advisory committee's view is clear: we are scientists who deal with subjects that are relevant to SSSIs. Our expertise

is in those matters, which should be the main thrust of our committee's work. I detect no strong wish among committee members to take on a wider role that would change the committee's function substantially. We are concerned primarily with judging the quality of the science, which is essential.

As I waited to give evidence, I heard Professor Gimingham say that it was important for science to underpin SSSI designations. Our committee has a fundamental role in peer reviewing the scientific basis of such designations. That is central to our operation. I assume that Professor Grace agrees that that is the committee's main focus and that we want to stick to the science side.

Alex Johnstone: The second point was made by a previous witness who was extremely complimentary about your committee, to the extent of suggesting that your role as an advisory committee needed to be beefed up so that SNH was required to accept, rather than simply take into consideration, your committee's advice. Do you have any views on that?

Professor Davidson: That suggestion is interesting. We certainly believe that our advice is good advice, but any committee believes that, of course. We want SNH to take our advice on board seriously, which it does in the vast bulk of cases.

The ultimate decision is made by SNH boards, which have wider representation and can take into account other considerations. That is the right way forward, because it provides a wider and more public airing of issues if sites are in contention. I am a little hesitant about giving our committee the right to make the final decision and to override SNH.

Nora Radcliffe: Your submission points out the lack of clarity about what the committee can be expected to give advice on—that concerns particularly the measures that follow designations, such as ORCs and site management statements. Why is it important that it is clear that your advice should be sought on those matters?

Professor Davidson: I am glad that you have raised that issue, because we are concerned about it, as our submission says. The bill defines what the notification consists of and our committee has the remit to judge scientific issues and the quality of the notification. The question is what precisely the notification includes. I suggest that clarification is needed on that. For example, the list of operations requiring consent concerns operations that landowners require permission from SNH to perform. Whether that is part of the notification is slightly ambiguous, so I make the strong plea to the committee that that needs to be sorted out and made clear.

When we visit sites that are in contention, more often than not, landowners wish to ask site

management questions about what they can and cannot do on the land. That is where problems can arise in certain cases with SNH. Underneath those questions there are often core scientific questions. I suggest to members that SNH should have the right to pass scientific questions about ORCs to our committee for advice. That is my plea. It is not utterly clear in the bill whether that would be within our remit. Our committee's view is that it should be. We seek clarification of the issue.

11:45

The issue of the site management statement is also slightly fuzzy. If we are on a site that is contested and the landowner or landowners raise scientific questions about site management—an associated, rather than an integral, part of the notification—do those come before the committee? We argue strongly that if there are scientific queries and a point is disputed with SNH, the matter should come before the committee. That is much more logical, as it will allow a more integrated discussion of the scientific points to take place with landowners or others who are contesting sites.

The Convener: That might address a point that one or two witnesses have made to us about the transparency of the process for land managers—their knowing why a site was designated and understanding what is meant to be precious about it when they continue to look after it. We will want to ask the minister how the process may be made more transparent.

Nora Radcliffe: How do we determine what should or should not be referred to the advisory committee for advice? Do you tell SNH that you should be advising the minister, or is it entirely for SNH to decide whether to approach you for advice?

Professor Davidson: The ball is entirely in SNH's court. It refers to us questions that landowners raise. We respond to those by conducting investigations within short time spans and providing advice to SNH. We are in responsive mode and are an advisory body to SNH.

Nora Radcliffe: In your submission you express concern about time scales.

Professor Davidson: Yes. In recent years, we have had to operate within very short time spans. In our submission, we make a specific recommendation that would ease our situation considerably and would be fairer to landowners, as the operation would not be compressed into such a short period. I emphasise the importance of the recommendation for a slight change in the timings.

Rob Gibson: I have a question for Dr McIntosh. I would like to explore the role of the Forestry Commission in partnership with SNH. I am thinking of situations in which woodland may be degraded. I do not know whether you have much practical experience of helping to regenerate woodland, but your submission indicates that, under the Wildlife and Countryside (Amendment) Act 1985, one aim of the Forestry Commission is

“the conservation and enhancement of natural beauty”

and so on. Can you expand on that, as we may want to take up the theme?

Dr McIntosh: We work extremely closely with SNH on a number of such issues. We are most concerned with the enhancement and restoration of native woodlands, which is a big issue for both organisations throughout Scotland. The Scottish biodiversity strategy will set some new targets for the restoration and enhancement of native woodlands. That is probably the best document to use to quantify what we want to achieve in that area.

Rob Gibson: You are talking about enhancement in the sense of extension.

Dr McIntosh: The extension of native woodlands, the creation of new native woodlands and the restoration of native woodlands on degraded sites are all high priorities for both organisations.

Eleanor Scott: I have a brief question for Nick Reiter. In your submission, you say that you work closely with SNH. However, you are also concerned that the bill might require you to consult SNH when exercising any function that would affect an SSSI. How might that cause you problems?

Nick Reiter: The problem is in the drafting of the bill. Section 12(1) says:

“This section applies to the exercise by a public body or office-holder of any function on, or so far as affecting, any land which is a site of special scientific interest.”

As members can imagine, much of our day-to-day work takes my people on to SSSIs, whether it is to count deer, to monitor habitat or whatever. A literal reading of section 12 would mean that, every time we planned to do such work, we would have to consult SNH first and have regard to any advice that it gave us. In practice, we might come to some sort of agreement. A protocol might say that if we are going on to an SSSI simply to do what we normally do, we do not have to consult SNH. Having such an agreement would be fine. However, the section is wide ranging. We would not want a huge amount of paperwork to go backwards and forwards between the two organisations merely to comply with the letter of the law. Because of how the bill is drafted, I have

a slight worry that we could create a huge bureaucratic to-ing and fro-ing for no good purpose at all.

Eleanor Scott: So you think that it is simply a drafting issue.

Nick Reiter: We would like a redrafting or simply a reassurance that we could deal with such matters in a protocol. That protocol would say that, if all we were doing was going on to an SSSI to count deer, we would not have to consult SNH on each occasion. We would simply have an agreement. We would be aware that an area was an SSSI and, if there was going to be a particular issue on a particular day, we would consult SNH.

Eleanor Scott: You spoke earlier about your current powers under section 8 of the Deer (Scotland) Act 1996 and about the difficulty in implementing those powers. Does the bill not beef up your powers in the way that you would have liked? For example, would you have liked to have more effective ways of compelling people to reduce deer numbers?

Nick Reiter: That is a huge question, which asks whether we would like new legislation. There is no immediate prospect of a review of the deer legislation, so we will have to use the tools that we have. There are some things in this bill that may well make the partnership between DCS and SNH more effective in these sorts of cases. The proof of the pudding will be in the eating. There is a long way to go before we know how the new bill will work, assuming that it becomes law. Eventually, there will be a case for reconsidering the deer legislation. I am not sure how much can be piggy-backed on to this bill—on the deer issue anyway, although there are one or two other issues, such as exotic species, that we mention in our submission and feel could be taken on in this bill.

The Convener: Running through our discussions this morning has been the issue of further guidance, after the bill becomes an act, to clarify to people the intent of the bill and how they are meant to implement it. All the organisations that will have to take ownership of the bill will have to consider what it means for them. It is interesting that, at the moment, Forestry Commission Scotland does not foresee any changes in the way in which it will work. However, there are clearly issues that it will have to take on board. When we speak to SNH and the minister, we will be able to discuss the guidance that they think will be important. We can also discuss the points on transparency that the panel has helpfully raised.

Your written evidence sparked off a lot of questions and your answers have given us a lot of food for thought. Thank you for coming.

11:53

Meeting continued in private until 12:04.

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