ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 26 November 2003
(*Morning*)

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
13th 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 GAVE EVIDENCE:

Jane Dalgleish (Scottish Executive Environment and Rural Affairs Department)
Ross Finnie (Minister for Environment and Rural Development)
Alan Hampson (Scottish Natural Heritage)
Duncan Isles (Scottish Executive Environment and Rural Affairs Department)
Ian Jardine (Scottish Natural Heritage)
Frances Reid (Scottish Executive Environment and Rural Affairs Department)
Jeff Watson (Scottish Natural Heritage)
Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone
Roz Wheeler

LOCATION

The Hub

Scottish Parliament

Environment and Rural Development Committee

Wednesday 26 November 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:15*]

Subordinate Legislation

The Convener (Sarah Boyack): Good morning. I welcome committee members, witnesses and members of the press and public. We have received apologies from Alasdair Morrison and Roseanna Cunningham. Jim Mather is here as a substitute for Roseanna Cunningham—I welcome him to his first meeting of the committee. I remind people to turn off their mobile phones.

We move swiftly to agenda item 1, which is subordinate legislation. We have two statutory instruments before us, both of which are to be considered under the affirmative procedure. Copies of both instruments have been circulated to members: they are the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 and the Mink Keeping (Scotland) Order 2003. I welcome the Deputy Minister for Environment and Rural Development, Allan Wilson, and his officials.

Under the affirmative procedure, the Parliament must approve the instruments before they come into force. There are two motions before us, both of which are in the name of the Minister for Environment and Rural Development, Ross Finnie, and which invite the committee to recommend to Parliament that the instruments be approved. As the instruments deal with different matters, I propose that we deal with them separately. Before we debate the motion on each instrument, while the officials are at the table with the minister we will have a session to clarify any technical matters or to explain details. As members know, the officials cannot participate in the debates on the motions.

Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518)

The Convener: The Subordinate Legislation Committee reported on SSI 2003/518 in its 12th report and raised a point about state aid for environmental protection. The relevant extract from the report has been circulated to members. I invite the minister to make his opening remarks on the instrument, during which he may wish to address the Subordinate Legislation Committee's point.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I welcome the opportunity to introduce to the committee the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003, which amends the nitrate vulnerable zones grants scheme proper. The amendments are required as a condition of the state aid rules. Some members were present when I discussed the NVZ grants scheme with the then Transport and the Environment Committee, but I will give some background.

The scheme delivers on a commitment that was given by ministers in March 2000 by offering a 40 per cent grant to farmers in areas that are designated as nitrate vulnerable zones. It is a capital grant scheme and is designed to assist farmers with meeting the close period requirements of the action programme for NVZs. NVZ designations and the action programme stem from the 1991 European Commission nitrates directive, which aimed to reduce water pollution that is caused by nitrates from agricultural sources.

One of the most significant aspects of the compulsory action programme is that, during close periods, organic manures and slurries cannot be spread on agricultural land. Therefore, a farmer in an NVZ needs sufficient storage for manure and slurry to comply with that requirement. As members can imagine, the cost of provision of that storage can vary considerably depending on the facility that is required, but it is likely to involve a significant capital outlay for most farm businesses that are required to make the change.

As I said, the amendment measures that we are considering stem from the need to ensure that the scheme complies with the state aid rules. When I introduced the NVZ grant scheme at the then Transport and the Environment Committee in February, I said that I believed that the scheme would comply with those rules. We did not want to hold up the scheme's introduction as a not-dissimilar scheme had been in place in England and Wales since 1996.

However, at that juncture we made it clear that no decisions would be taken on applications until clearance had been received from the European Union. Over the past few months, through correspondence the Commission has sought assurance about administrative functions relating to the scheme. At a meeting with officials in July, it expressed concerns about the length of time over which the scheme would run.

The Scottish NVZ grant scheme allowed farmers a five-year period during which they could apply

for grant assistance. During the negotiations, it became clear that the Commission would not approve the scheme unless Scottish ministers agreed to reduce the time for completion of the capital works. The assurance that was sought and given was that the scheme would be amended to require all improvement works to be completed by 31 October 2005. On that basis, state aid approval was granted in September.

The crux of the amendments in the instrument that is before us is the bringing forward of the closure date by which works must be completed and the undertaking to that effect that applicants for grants are required to provide. That provision is related directly to the assurance that we have given to the Commission, which I mentioned previously. Most of the other measures in the instrument follow on from the introduction of the new date, which is the critical factor in securing state aid approval.

Members may have concerns about the impact that the amended provision will have on farmers who have already applied for grants. I assure the committee that the Scottish Executive Environment and Rural Affairs Department has kept them up to date on developments. As an interim measure, arrangements were put in place for urgent works authority to be given to any applicants who felt that they could not delay commencement of their works until state aid approval came through. All applicants who were in that position were notified individually when EC approval was granted. They were also asked to provide further information relating to their farming experience and the economic viability of their holdings—additional conditions that were attached to the state aid approval.

I do not expect that bringing forward the closure date will have an impact on current applications. Guidance on the scheme indicates that applicants will normally be expected to claim their grant assistance over an 18-month period from the date on which their application is formally approved. Farmers who did not apply for grant in the first tranche will have to do so within the constraints of the time limits that we are now setting.

Those are fairly minor amendments to what is an important grant scheme, especially for the 12,000 or 13,000 farmers whom it affects. I know that it is sometimes tempting to criticise the Commission, but I can understand its unease about the relatively long time scale of the original scheme. Under that scheme, in some cases farmers might not have completed their grant-aided works until 2010, but would have been able to comply with the mandatory requirements of the NVZ action programme during that period, which would have obvious environmental implications. I know that the committee agrees that environmental pollution is an important enough issue to warrant restriction of the time scales in this instance.

The amendments that are before the committee address the Commission's concerns about time scales; the scheme will now have the full approval of the Commission. I commend the instrument to the committee.

The Convener: Thank you. I invite members to ask questions and to raise issues for clarification.

Alex Johnstone (North East Scotland) (Con): We will not debate the instrument at great length, so I seek answers to my questions at this point. Like the minister, I am content that it is necessary that the instrument be approved, but there are a couple of issues that I would like to have clarified.

First, I could probably have done more research on the funding streams that the money associated with the scheme follows. Will the minister reassure me that the fact that the scheme is being brought forward will not have a direct impact on the funding of the Scottish Executive Environment and Rural Affairs Department over the two-year period into which the scheme has been compressed? If all the work that should have been done can be brought forward into that period, it will cost more to finance it.

Secondly, will the minister or his officials give the committee an estimate of how much of the work will be brought forward and how much might not be done at all? Do you expect the entire scheme to be compressed or will the total amount of work be reduced as a result of compressing the scheme?

Those questions cover my concerns. I understand why the minister has had to introduce the instrument, but it is always a disappointment when time scales are compressed. Is the time scale that has been allocated for completion of the scheme adequate to achieve its original aims? Has the time scale been compressed too much?

Allan Wilson: I will address the first point about the financing of the scheme before I ask Frances Reid to address some of the related issues about applications. The amounts that we allocated originally to the NVZ grant scheme were £6.8 million in the current financial year; £4.8 million in the next financial year; and £5.8 million in the following year, which is 2005-06.

One can imagine that it is unlikely that the sums that were allocated for this financial year will be met and that, likewise, there might be pressure at the tail end. However, by truncating the time scale over which the applications are required to be submitted, processed, approved and implemented, I imagine that the total allocated sums will be taken up in full, although that will depend on the

level of application for the grant. There is no intention on our part to take account of the truncated time scale over which grant applications will be submitted and approved by reducing the sums that have been allocated.

In large part, the answer to the second part of the question is dependent on the level of applications that we receive. We are confident of our ability to process the applications in the truncated time scale. The onus is now on individual farmers to submit proposals rather than to wait, as they might have done, for a couple of years before so doing.

Frances Reid (Scottish Executive Environment and Rural Affairs Department): We have not had a high level of uptake of grant in the first round. The estimates were really guesstimates and we have no feel for how many people will need improved or replacement storage. It is up to farmers to apply within the tighter time scales. We feel that there will be enough money in the scheme; although the scheme is to close earlier, we will be able to pay farmers after the closing date. However, there is much work to be done before that date.

If the scheme had been over the original five-year period, we might have had underspends and people might have delayed making applications until the nearer the end of the period. We have a substantial amount of money in the scheme and I feel fairly confident that we will be able to meet all aspirations.

Nora Radcliffe (Gordon) (LD): You have answered my question partially, but have also indicated that you will be partially unable to answer it. Do you have any idea about the likely level of uptake? What is the total number of applications that you expect to be made? From what you said, it does not seem that a lot of the applications that are lying on the table are waiting for state aid approval.

Allan Wilson: Perhaps I should give an outline of what has happened to date, although it is not possible to extrapolate from that what will happen in the next tranche of applications. The situation at the moment is that 39 applications were received by the closing date of 30 June. By area office, they are: 16 from Inverurie; seven from Perth; five from Gala; and 11 from Dumfries. If nothing else, there is a fair geographical spread.

In the light of state aid approval having been granted, one would expect the process to pick up speed. There is now no obstacle to the grants being paid. Although people might to date have been proceeding on a fairly speculative basis, subject to the committee's approval, after today one would expect that there would be no more speculation about state aid approval.

Nora Radcliffe: Is there any indication that truncating the scheme might affect the practicalities of getting the work done? I do not know how many people supply slurry tanks or whether there is any likelihood that there will in the industry be pressure to supply the physical infrastructure.

Frances Reid: That is difficult to judge, because we do not know what uptake will be. It would probably have been preferable to have a longer period, but that was not an option as far as the Commission was concerned, so our hands were tied.

10:30

Nora Radcliffe: How are farmers being notified about that? Are they notified individually?

Frances Reid: Yes.

Nora Radcliffe: So everybody in an NVZ will have had individual notification that they are now eligible to apply and that there is state aid.

Frances Reid: Everybody was notified originally; they were all told about it. We put out a press release when we got the state aid approval, and we told the National Farmers Union in Scotland, which also put out a press release. We will be announcing a fresh tranche before the end of the year, so it will be up to applicants to apply during the next tranche. The union will probably press its members to take up that option.

The Convener: Are you highlighting to people the fact that the time is now shorter than was originally envisaged?

Frances Reid: Yes. That was clarified in the press release.

The Convener: As there are no other questions, I invite the minister to move motion S2M-607, in the name of Ross Finnie, on the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518).

Motion moved,

That the Environment and Rural Development Committee recommends that the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518) be approved.—[*Allan Wilson.*]

The Convener: Would you like to make any opening remarks to introduce the debate, or do you feel that everything has been adequately covered?

Allan Wilson: I think that we have covered everything.

The Convener: I invite contributions from members.

Nora Radcliffe: I would like to make a general statement. The instrument indicates the importance of tackling EU legislation in a timeous manner, but the fact that we are dealing with a 1991 directive says it all. That is not the fault of the Scottish Parliament, I hasten to add.

The Convener: That is a well-made point.

The question is, that motion S2M-607, in the name of Ross Finnie, be agreed to.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518) be approved.

The Convener: Excellent. We shall pass that on to Parliament.

Mink Keeping (Scotland) Order 2003 (SSI 2003/528)

The Convener: We now come to the Mink Keeping (Scotland) Order 2003. The Subordinate Legislation Committee has considered the instrument and has nothing to report. I therefore invite the Deputy Minister for Environment and Rural Development to make opening remarks before we move on to points of clarification and information.

Allan Wilson: The purpose of the Mink Keeping (Scotland) Order 2003 is not to introduce new legislation but simply to continue existing legislation—the Mink Keeping (Scotland) Order 2000, which will cease to have effect on 1 January 2004.

It may be helpful if I set out the background to mink keeping legislation in general. As members know, mink have been kept in Britain for their fur since the late 1920s. Escapes from mink farms led to the current feral population, with mink recorded as breeding in the wild in the late 1950s. In 1995, it was estimated that there were 52,000 feral mink in Scotland. As everybody here will know, mink are semi-aquatic carnivorous mammals which, in the wild, are a pest and pose a threat to wildfowl, seabird colonies and vulnerable mammals such as water voles. They also predate on farmed fish and small livestock such as poultry. Restrictions on the keeping of mink were first introduced in 1962 to prevent further escapes adding to the existing feral population. Between 1965 and 1970, a feral mink eradication campaign was mounted by the agriculture departments. Total eradication has proven not to be possible and that campaign was abandoned.

There are currently two pieces of legislation controlling the keeping of mink: the Mink (Keeping) Regulations 1975 and the Mink Keeping (Scotland) Order 2000, to which I referred and which the 2003 order is intended to replace. Both instruments were made under the Destructive Imported Animals Act 1932 and are intended to ensure that mink are kept in secure conditions. The 1975 regulations prescribe the manner in which mink are kept in Britain and the precautions that are to be taken to prevent their escape. They also prescribe the form of the licence that is to be granted to persons who keep mink and the level of the licence fee. The 1975 regulations are not under consideration today.

The Mink Keeping (Scotland) Order 2003 prohibits the keeping of mink in some parts of Scotland and ensures that mink may be kept only under licence in the remainder of Scotland. The order prohibits absolutely mink keeping on any Scottish offshore island other than the island of Arran—which, for the order's purposes, includes Holy Island—and it prohibits mink keeping in Caithness and Sutherland. That means that mink may be kept in other parts of Scotland only under a licence that is granted under the 1932 act.

Section 3 of the 1932 act provides that licences may be issued to keep mink for commercial reasons. Members who were present in the previous parliamentary session will know that since the beginning of 2003, when the Fur Farming (Prohibition) (Scotland) Act 2002 came into effect, the keeping of animals solely for their fur has been banned, so licences under section 3 can no longer be granted to keep mink for fur farming. At present, no other commercial use has been identified for keeping mink. However, section 8 of the 1932 act permits the issue of special licences to keep mink for exhibition, scientific research or other exceptional purposes. SEERAD currently issues only one such licence annually, at a cost of £60, to keep mink for exhibition purposes. The fee is set at that level to cover the cost of inspecting the premises before reissuing the licence.

Mink keeping orders are made for a fixed period, as the 1932 act does not contain a provision to revoke such orders. If the Mink Keeping (Scotland) Order 2000 is not renewed, the keeping of mink and the conditions in which they are kept will be deregulated. The consequence would be that any person could keep mink at any location for any purpose other than fur farming, and in any conditions.

The 2000 order requires to be renewed to continue Scottish ministers' power to ensure that any mink that are legally kept are retained under stringent security to prevent their escape into the wild, which would add to the significant feral population or, worse, spread feral mink into areas that are free of them. Failure to renew the order would lead to deregulation of mink keeping, which would not be good.

The Convener: I thank the deputy minister for that statement, which was extremely clear. That was a useful history of mink in Scotland.

Maureen Macmillan (Highlands and Islands) (Lab): I wonder to whom the solitary person who has the licence exhibits his mink.

Why is the legislation not being tidied? Why does an order not ban mink keeping throughout Scotland? It is strange that mink cannot be kept in Caithness or Sutherland, but can be kept in Ross-shire, from where they could run over the hill. That is not logical. I understand that two bits of legislation are involved, but is the Executive considering tidying the law? Perhaps once this man has retired from exhibiting mink—

Rob Gibson (Highlands and Islands) (SNP): The exhibitor might be a woman.

Maureen Macmillan: I am sure that it is a man. Once he has retired, could we not have a total ban in Scotland?

Allan Wilson: I understand that mink exhibiting takes place in Cumbernauld, of all places. I have always had my worries about Cumbernauld.

To be serious, I understand the point that is being made. There are several anomalies, not least in my constituency; Arran is excluded from the island-wide ban simply because of the preponderance of feral mink there, yet Cumbrae down the road is included. We have discussed the matter with Scottish Natural Heritage. To an extent, it is a question of supply and demand. We are continuing the existing provision.

There would obviously be financial and other implications in extending current provisions for eradication programmes. If, like the rest of the Highlands, Caithness and Sutherland are free of mink—as we believe they are—it is important that we keep them that way. Mink are already a serious problem in other parts of Scotland. However, extending the provision would be problematic and would require separate legislation. It would also require separate consideration—this is not simply a question of moving swiftly from one position to another.

Rob Gibson: Most of my points have been made, but I echo Maureen Macmillan's wish that the minister consider further legislation. One part of the mainland is obviously easily accessible from another.

Allan Wilson: I have learned about this issue only comparatively recently and it is quite extraordinary that Caithness and Sutherland should be free of mink when we consider how prevalent they are in other parts of the mainland. I am not sure why that is the case; Scottish Natural Heritage might be able to enlighten us.

The Convener: We will not ask SNH that question today, although the point certainly stands out.

As members have no further questions, we can move to the formal debate. I invite the deputy minister to move the motion.

Motion moved,

That the Environment and Rural Development Committee recommends that the Mink Keeping (Scotland) Order 2003 (SSI 2003/528) be approved.—[*Allan Wilson*.]

Motion agreed to.

The Convener: We will report our decisions on both statutory instruments to the Parliament. I thank the deputy minister and his officials for attending.

10:41

Meeting suspended.

10:45

On resuming—

Nature Conservation (Scotland) Bill: Stage 1

The Convener: Agenda item 2 is our final evidence-gathering session at stage 1 of the Nature Conservation (Scotland) Bill. Our task is to examine and report to the Parliament on the bill's general principles. Our open call for evidence concluded on 20 November and we have received 23 submissions, all of which have been circulated to members along with several supplementary papers, including the Finance Committee's report and the minister's letter on equalities issues, which we requested.

Members might want to ensure that the following recommendations from the Finance Committee's report are raised during questioning today: first, that we seek reassurances on existing budgets, and secondly that we seek further information on the Scottish biodiversity strategy. We will come to those issues at the relevant point in the meeting.

We have two panels of witnesses. First, we have representatives from Scottish Natural Heritage, and later we will have the minister and his officials. I welcome the panel from SNH, who are Ian Jardine, the chief executive; Jeff Watson, the director of strategy and operations (north); and Alan Hampson, the national strategy officer. We will not have an opening statement, but SNH has provided a useful written submission. I move straight to members' questions.

Nora Radcliffe: One aspect of the bill that has been raised with us frequently is that it does not contain a clear definition of biodiversity. Do you think that that omission is significant?

Jeff Watson (Scottish Natural Heritage): We acknowledge that people have raised that concern, and we recognise that an accepted definition—or, at least, a well-publicised definition—is available in the convention on biological diversity. It might be of merit to consider using that definition in the bill, in order to avoid confusion.

Nora Radcliffe: Your submission mentions that your remit is

"the conservation of biodiversity and geological diversity".

Is the bill sufficiently strong on the protection of geological and geomorphological features?

Jeff Watson: It was important that the relevance of geological and geomorphological features was mentioned in the bill. I am not clear whether there is anything more that could be done to specify that interest, but it is covered in the bill.

Maureen Macmillan: Professor John McManus, from whom we took evidence a couple of weeks ago, did not think that that provision was strong enough. He mentioned in particular the fact that the bill contains no protection for fossils. I have an interest in that, because I have been lobbied by palaeontologists about the lack of protection for fossils in Scotland. There are some important fossils in Scotland. Achanarras quarry was mentioned particularly as a place where there are fossils of world significance, but people are drilling them out with diamond saws and selling them on the continent for as much as £20,000 a fossil. The bill should provide some protection for such rare fossils. Have you considered that at all?

Jeff Watson: There is certainly a loophole in the way in which fossils are protected under sites of special scientific interest in respect of third-party damage, and we believe that the bill addresses that. Damage by collectors is the principal area of concern and there is a question whether it would be appropriate to make explicit an additional offence in relation to fossils under the wildlife crime measures. That may be worth considering, but, in principle, the third-party damage measure that is covered by the changes in the bill would address the most obvious current loophole. Perhaps Ian Jardine would like to comment on that.

Ian Jardine (Scottish Natural Heritage): It is clear that damages by third parties are covered. The bill contains other provisions on the offence of damaging SSSIs and on offences in relation to nature conservation orders that can apply to third parties. As Jeff Watson said, the question is whether there would be any point in including in the bill an explicit offence relating to fossils to make that point clear.

Rob Gibson: We have had considerable evidence that there has been some deterioration in the condition of SSSIs; you mention that in your submission, although you believe that you have prevented a lot of direct loss or damage. That is a major area of concern for us as we move towards more positive management. Can you tell me, in all honesty, that if some sites are deteriorating and have not had money spent on them, you will be able to compensate for past reduction in compensatory management agreement payments with the amount of money that will have to be spent in future to bring some SSSIs up to scratch?

Jeff Watson: We strongly welcome the change in emphasis from the driving force being the availability of compensatory payments to championing positive management. On whether the transfer of the moneys that are currently available for compensation will be adequate to cover the costs of incentives for management, we have made provision for the investment of

incentives through the natural care programme for the next two to three years in the first instance. We are comfortable that that is affordable and that part of it will be delivered by the transfer of payments that are coming out of compensation, but that is a slow process and will take a good number of years to bear full fruit. The provision for natural care beyond that time requires further discussion, but we are confident that we have sufficient money in the budget for the next two to three years to make the commitment to positive management that is inherent in the bill.

Rob Gibson: It seems to me that, if the situation gets bad, as could happen in some well-known instances, the proposed move towards using land management orders, for example, could open up a new range of expense. The Deer Commission for Scotland felt that the level of proof that SNH has to bring to bear is easier than that which the commission has to bring to bear, but that there could nevertheless be considerable expense in getting the landowner to agree to the sort of approaches that will be required under the positive management regime. Because of the survey that shows that a potential 45 per cent of SSSIs are in a poor condition and deteriorating—I know that that was based on a sample of 10 per cent—I am concerned that a number of cases might have to come to court, whereas none has come to court in the past. Will you expand on that?

Jeff Watson: I will start, and then ask Ian Jardine to build on my comments.

It is our firm intention to see the land management order provision as a last resort. We would not wish to see it being used excessively or widely. The intention of the positive management arrangements is to secure voluntary agreements and there are provisions within SNH's budget to seek to address that. If we do not get provisions through other sources of public funds, for example through an enhanced agri-environment programme and enhanced opportunities through the Scottish forestry grant scheme, it will be much more difficult to make some of the changes that you suggest are necessary and which we agree are necessary. That is an important part of the process. The natural care strategy explicitly recognises the role that those sources of funding need to play, but in respect of SNH our natural care budget is also key.

A piece of work is under way jointly with the Deer Commission for Scotland on the preparation of pilot schemes, particularly within the key European sites—the Natura 2000 sites—in the first instance, to consider ways in which the natural care programme can help to deal with some of the issues of deer management. However, that will take some time to come through.

Rob Gibson: At an earlier stage, we believed that the Forestry Commission Scotland seemed happy to come in as part of a partnership agreement—as are certain non-governmental organisations—where positive action is being taken. How much do you use the specialist knowledge of outside bodies to help you get restitution of situations that have gone downhill?

Jeff Watson: We work very closely with the Forestry Commission, which we commend for the quality of advice that it gives us on woodland management. We have to overlay specific natural heritage questions on to its woodland production objectives. The most explicit evidence of the Forestry Commission's contribution is its commitment to the biodiversity action plan, to which it probably contributes more than any other public body. We are building good relationships over management expertise exchange.

Ian Jardine: It boils down to two things, the first of which is the balance between regulation and incentive. A big issue in the bill is where Parliament wants to strike the balance. The second thing is whether the incentives are sufficient to get the results that we want.

The existing compensatory schemes have tended, in some celebrated cases, to give large quantities of money to individuals not to damage things. The shift towards positive schemes is intended to give more people sufficient incentive to invest in the natural heritage qualities of their land. We remain optimistic that incentives can be pitched at a level that will be sufficient to achieve that change at reasonable cost to the public purse. What happens in agri-environment payments and woodland grant schemes will cause that shift; it is not only about SNH.

The issue about deer will be particularly difficult, because it is widespread. There is a big debate about incentive versus regulation. The question, which is untested, is whether the section 7 provision in the Deer (Scotland) Act 1996 will be sufficient. We believe that under the new financial guidelines, SNH will be able to do something on the incentive side to help to address that question, but I am not sure that we can solve it.

Eleanor Scott (Highlands and Islands) (Green): Your final point has answered my initial question, so I will move to site management statements. Will the statements have clear, quantifiable and measurable objectives? Will they be in the public domain and will people—at least the people near the site—be notified of them?

Alan Hampson (Scottish Natural Heritage): SNH has prepared a site management statement for each SSSI. We are setting up an internet-based system that will enable us to make each statement publicly available.

11:00

The Convener: We welcome that. When the committee visited the Loch of Clunie and Marlee loch, it was interesting to see the site management statement, which allowed us to get a grasp of what will be available. One point that arose in our site visits was the importance of local communities, landowners and everyone with a key interest in an SSSI knowing what is protected and what the choices are about how to protect the site properly. The system is a big step forward—we have seen the pro forma that will be used.

One issue that has come out loud and clear is how to get across information on the management of species. If we make the management statement process more transparent, that will help with some of the bill's provisions that will be hotly contested when it comes to individual choices on the ground.

Alan Hampson: The management aspect of the statements is one point, but the fact that they enable us to present the implications of notifications in terms that can be understood by land managers and other interested parties is extremely useful for us, because hitherto we have had to express everything strictly in scientific and formal legal terms.

The Convener: Your submission mentions finance and we have talked briefly about natural care and the funding for management agreements. You made the point, which members picked up on, that the rural stewardship and forestry grant schemes need to move to a more positive framework for the future. How will that happen? We know that the minister is conducting a review of, and inviting comments on, the reform of the common agricultural policy. Will SNH make a submission about the regime that it wants for the future? The key stakeholders will require sufficient resources to implement the bill.

Jeff Watson: We recognise that the implementation of the bill has implications for SNH and more widely. An important dialogue needs to take place over quite a long time scale with owners and occupiers to ensure that the management of the sites is effective. That dialogue, which is principally a matter for SNH, will involve discussions about the site management statements. On the involvement of others in the process, we are making a submission on CAP reform, on which Alan Hampson may want to comment.

Alan Hampson: I will begin by mentioning the Scottish forestry grant scheme, which is the other main source of funding that contributes to the natural care process. The year before last, the Forestry Commission and the Executive set up a steering group to review the old WGS. The new Scottish forestry grant scheme recognises the importance of SSSIs and offers a higher level of funding for management and establishment work that is associated with SSSIs. We were involved in that review process and supportive of it. We are always keen to bear in mind and to consider thoroughly the need to balance the amount of the available pot of resource that goes into the special sites rather than the wider countryside. That important issue was debated in the discussion over the new forestry grant scheme.

It is difficult to say what might come out of the consultation on the mid-term review of the CAP, because there are a lot of options. We will submit our views and make the case for SSSIs to receive a high priority within the resource allocation, while pointing out that we should not ignore the wider countryside.

The Convener: One of the specific points about finance that you made in your submission was:

> "A particularly demanding obligation will be the reviewing of Operations Requiring Consent (ORCs). SNH has submitted evidence to the Finance Committee on the additional costs likely to be involved in implementing this legislation."

Will you tell us a little more about that? The Finance Committee has identified questions that we need to ask the minister, but I am keen to explore with you the extra costs that are associated with the bill. Can you quantify those costs?

Jeff Watson: Our assessment is born out of experience—especially the work that we had to do to implement the provisions of the European directives. It is necessary to spend an adequate amount of time in consultation with owners and occupiers about changes that affect their relationship with these pieces of land. We recognise that the bill requires us to make those changes or at least gives us the option of making them. Generally, the changes are likely to be well received, especially the reduction in size of the list of operations requiring consent.

We would like to proceed objectively, alongside the programme of site condition monitoring that is under way over six years. Such an approach will make the process more manageable. If we open the door to the new provisions on day 1, with 1,450 sites and up to 13,000 individual occupiers, it may be impossible to achieve our objectives. We envisage that the changes will be tied into the logical framework of the site condition monitoring programme and the review of site management statements. However, we do not seek, and have not sought, to underestimate the fact that delivering the changes in a way that is truly consultative, and does not involve our simply telling people what we think, will take up a considerable amount of staff time.

Ian Jardine: I endorse those comments. It would be a false economy to cut back on consultation. All the experience of notifying SSSIs shows that the list of potentially damaging operations and, now, ORCs is a very sensitive area. Failing to take time to deal with owners and occupiers—individually, if they wish—would be a false economy.

The Convener: I have a final question about resources. In its supplementary evidence, the Convention of Scottish Local Authorities expressed concerns about how effectively community planning can be co-ordinated and about how biodiversity issues can be embedded in the community planning process.

When giving evidence to us, representatives of COSLA emphasised the importance of the advice that they receive from SNH. Although most local authorities have allocated people to delivering local biodiversity action plans, they also draw on outside expertise. Have you given consideration to SNH's role in providing advice to individual local authorities, both on the overall strategy that they need locally and on the implementation of local authority approaches to biodiversity?

Ian Jardine: We are addressing that issue. Next week, or the week after that, I will meet representatives of COSLA to discuss it. SNH will have a role in working with local authorities and already inputs to the community planning process. We must be clear on the guidance that local authorities are seeking and whether we can provide that, but we hope and expect that we will be able to support local authorities. We are a major funder of local record centres and biodiversity action plans. I expect that we will continue to play that role.

The Convener: So you envisage a gearing-up of your activities, rather than something that will necessarily require extra resources from SNH. Local authorities see the new provisions as challenging.

Ian Jardine: If we are talking largely about producing guidance and advice for local authorities, a significant gearing-up of our activities will not be required. If a bigger long-term support role is envisaged—especially the provision of grant aid to local authorities—that may have resource implications for SNH. However, I am not sure that that has been suggested; the concerns relate largely to guidance and advice. I am not worried about the impact that that will have on resources.

Alan Hampson: We are developing new ways of working, to get information out from SNH to the partners as they become increasingly involved in this work. Large programmes—mainly internet-based systems—will ensure that information is much more readily available.

Jim Mather (Highlands and Islands) (SNP): What practical steps will SNH take to ensure that the implementation of the bill will have a positive impact on the rural economy in Scotland?

Jeff Watson: Anticipating the bill, we have taken a number of steps to ensure greater awareness among individuals who are involved with the sites, and greater appreciation of the reasons for having them. We touch on that in our submission. As members will know, our statutory role is principally to do with the natural heritage, but we have a balancing duty as well.

We have explored benefits by considering the opportunities that are offered by the sites for wider public appreciation. That can lead to some socio-economic benefit. However, it would be unwise to promote these special places actively and uncritically. We should promote SSSIs, but do so carefully so as not to put the special interest of the places at risk.

Through our review, we have been able to give a greater profile to the national nature reserves that are part of this suite of designations. The emphasis has been on national awareness and public benefit. Furthermore, the Executive is leading with work into the economic benefits that accrue from some of the designations. We will have to await the outcome of that work to see whether we can learn lessons.

Jim Mather: What grates just a little is the implied presumption that local people and businesses might not cherish the local environment as much as SNH. There must be a mechanism by which you could work more closely with those people, for whom the environment might be their key asset. You would be pulling on 10-league boots by having them co-operating with you.

Jeff Watson: I certainly did not want to give the impression that we do not want to work with local communities—we work very actively with them to promote the natural heritage assets in local areas. The note of caution that I introduced was simply that we have to be responsible. I think that communities are equally concerned about that and we try to listen to their concerns.

Within the limits of our statutory responsibilities and financial capabilities, we are open to opportunities to celebrate these sites more and to ensure that there is a more tangible local benefit. I would like enterprise companies, which have great expertise, to have a role in that. There have been good examples of SNH working closely with enterprise companies to extend and share benefits more widely—economic benefits, and benefits that come through investment in nature.

Alan Hampson: We have to consider a wider context as the role of the countryside changes

from being primarily one of production to being one of provision of a range of goods and services. I am thinking of SSSIs in particular, but we must also consider biodiversity, nature conservation and the natural heritage, which must be more recognised as assets that can generate wider economic activity. The main spin-off is obviously related to tourism.

Jim Mather: When was there last a meeting of SNH, VisitScotland, NFU Scotland, local enterprise companies and RSPB Scotland? When did you last sit round a table to consider what could be done to develop local economies?

11:15

Ian Jardine: I cannot give you a date. Such a meeting would probably be held through the tourism and environment forum. Almost all, if not all, the bodies that you mentioned are members of that forum, so there is a network through which those organisations can work together. It has been going for a number of years, and a number of initiatives have come out of it. I do not think that there is any reluctance to address the issues.

We also have to look beyond tourism, to the effects that natural care can have on investment in local activity and local employment. I know that the overall figures are not that high, compared with a lot of Government schemes, but if you consider that a lot of the big schemes are in places such as Caithness and Sutherland and Lewis, they can have an effect on the economy. Working with local interests, NFU Scotland and the Crofters Commission can also have an effect. Not everywhere can be a tourist attraction, so we need to look a bit wider.

Alan Hampson: The study "Nature Conservation Designations and Land Values" that the Macaulay Land Use Research Institute undertook for the Executive in 2002 indicated that support for positive management of designated sites can be a major contributor to maintaining farm incomes, so there is already some evidence of the positive role that the likes of natural care can play in maintaining incomes in the countryside.

Rob Gibson: I have a follow-on point with regard to the downgrading of certain national nature reserves, the management of sites of special scientific interest and relations with the local community. I have asked previously about the rare whitebeams in Glen Diomhan on the Isle of Arran. It is a site of special scientific interest, but it is being downgraded from national nature reserve status to one in which normal management practices will be followed. There seems to have been little discussion with the local community, which is quite proud of the fact that it hosts a pretty rare tree. There is the potential for people on the island to welcome folk who come to see the trees, but part of the reason for the downgrading is the fear that people will twist their ankles on a hill path.

We need to be much more robust with such examples, which is why I and others asked earlier about the discussion of site management statements with the local community. You ought to give us some indication of whether you think that there will be a change in the type of behaviour that happened in the past. The environment has been not aided—it has been downgraded—the local community has not been involved in discussions, and the issue about confronting the excess number of deer has been ignored.

Ian Jardine: I shall make a start, but I am not sure that I can answer all the questions. I do not know the detail of the level of consultation on that particular site, for which I apologise. I can say a little bit about national nature reserves and NNR policy. I challenge the point about downgrading, in the sense that the protection for the site remains the SSSI designation. The NNR designation itself does not imply greater protection. It depends entirely on the strength of the nature reserve agreement with the landowner.

With the NNR review—and I know that it has not been entirely popular—SNH has taken the view that we should stop kidding ourselves that some of the sites concerned are nature reserves, because they are not. The levels of protection and management that were available on some of those sites were not that good. They got the NNR label for historical reasons. With the review, we took the view that we should be clear that if something has an NNR label, we can do several things. For example, we can be proud to promote it and to attract the public to it so that they can see it. Obviously, the site that you mention is one of the sites where the judgment was made that that approach was not possible.

That question can be turned round so that it becomes, "How do you make it possible?" That takes us back to the bill. Making it possible depends on two things. The first is our ability to provide an incentive to the owners of the site to manage it in a different way. That is a line that we can pursue. The question of deer grazing relies first on a view being taken by the Deer Commission on whether it can use its section 7 powers in the area. I am reluctant for SNH to come in with a cheque book if there is a regulation that should be considered first. The matter can be tackled in that way.

I do not want to say anything in particular about the site that you mention, but in general there are last-resort powers for particularly difficult cases in which nothing else works. The removal of the NNR

label, if you like, was a signal that the quality of the site's management was not good enough for it to be called a national nature reserve. Therefore, other things must come into play.

I do not want to put this too strongly, but we have discussed whether national nature reserves should be defined in the bill, as the existing definition is from 1949. The definition does not cause us great difficulties, but there is a question about whether it should be modernised.

Rob Gibson: We will note such matters in considering the implementation of the bill. It strikes us that the principles in question are good, but we wonder what will happen in practice. There are areas in which specific examples begin to raise doubts that the site management statements, discussions with local communities and the ability to intervene will work any better.

The Convener: We certainly have experience of where things have not worked.

I have a couple of questions about designations and SSSIs. Some of our witnesses have discussed how SSSI procedures fit with other designations, such as special protection areas, special areas of conservation and Natura 2000 sites. We have received evidence that suggests that if all those sites were underpinned by an SSSI designation, there would be a much more consistent backdrop for appeals and enforcement processes. Do you agree with that?

Jeff Watson: As a rule, we certainly support the underpinning of European sites, which is consistent with the UK Government's policy. In Scotland, we made a case—which ministers accepted—that there are circumstances in which it might be appropriate to proceed without underpinning those sites where aspects of positive management and active management in particular were necessary to maintain the interest. From the start, there was much more of an incentive rather than a prescription or a list of requirements to consult, which is the mechanism that comes through an SSSI. Sites where there are proportionately large numbers of individuals—which tend to occur where there are crofting interests—were also involved. Sites that have been taken forward as SPAs for corncrakes and the big Lewis peatland site are particular examples.

The Executive's view was that there was a dispensation not to proceed at that point with an SSSI designation, so that we could test whether the management-led approach for those specific sites with those particular challenges would work. Our judgment is that that approach has worked. That has been particularly evident on the corncrake sites, for which we can provide the measurable benefits that have resulted. People's commitment to the Lewis peatland site through that approach was evidence of its benefit in respect of buy-in. There were more than 2,000 consultees—which is more than for any other site that we have ever had to deal with—without a single objection.

However, the mechanism to proceed with an underpinning SSSI designation if the protection approach is not deemed to be appropriate is still there. That is a pragmatic approach that we should continue to adopt in special circumstances.

The Convener: I want to move on to consider the statutory purpose of SSSIs, which is another issue that has been raised by some witnesses. Some were of the view that the bill did not go far enough. Several witnesses mentioned the need to provide for the rarity, conservation value and irreplaceability of some sites as well as for the representativeness of diversity. Do you have a view on that? Should the statutory purpose be extended to the work not only of SNH but of the ACSSSI? I cannot remember what ACSSSI stands for.

Alex Johnstone: It stands for Advisory Committee on Sites of Special Scientific Interest.

The Convener: That is right. Does SNH have a view on that?

Ian Jardine: I have a concern about the definition of the purpose of SSSIs. I know that there is a legal argument as to why I should not be concerned, but I do not understand that legal argument. I share the concern that, as it stands, the bill talks about SSSIs being representative. It seems to me that there is a logical argument that, if something is unique, it is almost by definition not representative.

The definition might be better if it recognised that there is an issue of quality as well as an issue of representativeness. SSSIs should not just be representative but meet a quality standard. That quality standard could recognise uniqueness as a justifiable quality for the selection of a site. In our response to the bill, we propose a definition that is accepted in the rest of Great Britain—that is not necessarily a selling point, but it is accepted in England and Wales. I still recommend the definition that we propose, as its meaning is clearer.

The Convener: Right, we will test that issue with the minister. If you are not sure how the definition works legally, I hope that the minister will be.

Nora Radcliffe: My question is slightly related to that point. The submission from the Natural Environment Research Council suggests that

"The Bill represents an opportunity to produce a comprehensive strategy for Nature Conservation in

Scotland at both International and Local levels. It is important to recognize that while SSSIs are exemplars other sites exist, in some cases just as good, which also merit special attention. These 'near misses' should be included in an accredited Local Sites System … that is governed by a respected system of site selection criteria and legislative support."

Will you comment on that suggestion?

Ian Jardine: We have local designations as well. I suppose that I question whether the bill is the place to do what has been suggested.

I also question whether a national agency such as ours should have a role in stipulating what ought to happen at the local level. Several local authorities have taken steps within their planning powers to identify sites at a local level. We would certainly encourage local authorities to do that, but I am not sure that we would seek to dictate to them how they ought to do that.

If there was a view that there were problems with that approach, I suppose that we could consider providing national guidance and support in the way that we were asked to do for local landscape designations. That is how I would tend to see our role, but I am not entirely sure that legislating is necessary to achieve local action.

Nora Radcliffe: Would doing so not tidy up and clarify things?

Ian Jardine: It might, but at the expense of flexibility. That is a balance that people might want to think about.

Jeff Watson: I add that an opportunity might be provided through the Scottish biodiversity strategy, which local authorities will closely observe and contribute to. That mechanism might allow for what has been suggested without necessarily putting the onus of identification and selection and all that goes with that back on to SNH. Frankly, I think that that would be unmanageable.

Alex Johnstone: Part 2 of the bill in particular confers significant additional powers on SNH. One of the groups of people with whom I speak regularly—I am sure that you know them, too—believes that SNH has too much power at the moment. Although I approve of what part 2 is trying to achieve, I want to pursue my concerns on the issue of accountability. To whom are you directly accountable?

11:30

Ian Jardine: Our direct accountability is to the minister and through the minister to the Parliament.

Alex Johnstone: Yes. It was suggested by various people—and by one witness in particular—that that process of accountability needs to be loosened. They said that the minister needs to be less involved. I take it that you would not agree with that approach.

Ian Jardine: I suppose that I do not follow the reasoning for it.

Alex Johnstone: There was a very interesting submission, which, if you have not read it, we should perhaps pass to you.

Some people who gave evidence to the committee said that, on occasion, decisions are taken that go contrary to the advice that the Advisory Committee on Sites of Special Scientific Interest has given to SNH. Why would you do that?

Ian Jardine: We would do that only if the main SNH board did not accept the ACSSSI's advice. The ACSSSI provides advice, but it is open to the SNH board to accept or not accept the advice in its entirety. Given that we are talking about scientific advice, the board would not accept the ACSSSI's scientific advice only if it believed that other strong scientific evidence was available to it. It would also have to be happy to defend its decision publicly, as its meetings are always held in public. The SNH board has not taken the ACSSSI's advice on only relatively few occasions. Even when that has happened, the SNH board did not reject all of the ACSSSI's advice but accepted only one or two points. At the moment, it is open to the SNH board to do that.

As I said, in terms of openness, all those decisions are taken in open public session and are recorded in minutes that are available on the internet, so it is made clear why the board has taken a decision. The board could be legally challenged if one of its decisions was taken on incorrect grounds or for spurious reasons.

Alex Johnstone: You would not take decisions that were based on economic arguments, local public opinion or something of that nature. Decisions are taken exclusively on the basis of contrasting scientific advice.

Ian Jardine: That is correct.

Alex Johnstone: Where such situations or other pressures arise, what authority does the minister have to intervene? SNH is very much an arms-length organisation. What I am trying to get at is how long the arm is.

Ian Jardine: At present, the Wildlife and Countryside Act 1981 gives SNH the power to notify sites. I think that the minister could intervene to direct by using section 11 of the legislation that founded SNH—the Natural Heritage (Scotland) Act 1991. My understanding is that that is a wide power. The minister could use it to direct SNH on any matter and SNH would be obliged to follow the direction.

Alex Johnstone: The provisions that are contained in the bill introduce the idea that the Scottish Land Court would have a role to play as a court of appeal. Does the present system contain any structures that duplicate that provision or is it completely new?

Ian Jardine: I think that those provisions are new. At the moment, the standard appeals procedure—judicial review—can be used to appeal against a daft decision that has been taken by a public body. Someone could also take a civil action in a case in which their interests were affected.

In the past, disputes over management agreements have landed up in the Scottish Land Court. However, I think that that was done by agreement, using the arbitration role of the court. I think that the role for the court that is proposed in the bill in respect of land management orders and so forth is a new provision. The ability to refuse a notice of intent but not to enter an agreement is a new provision and it requires an appeals process. As Alan Hampson is looking at me, I had better check that I am right.

Alan Hampson: Let me try to clarify that point. The issue was discussed and debated at length by the expert working group, and the principle that was eventually agreed upon was that the process of designation itself does not impose any limitation on the way in which an individual can exercise his or her right to that land. An imposition may arise at the time when SNH does not consent to a notice of intent or where a land management order is served by ministers. It was felt that the appeal mechanism had to be available at that point. Until then, it is a judgment of the merits of the designation and of whether the process has correctly identified and designated the site for a specific range of interests. The appeal then kicks in at the next stage, if a situation arises in which there is an imposition on what individuals can do with their land.

Alex Johnstone: I referred at the outset to the general principle that there are people who fundamentally disapprove of the activities of SNH, and we all know that there are those who will not be persuaded. As the legislation progresses, it is important to ensure that, wherever possible, those relationships are improved. Do you think that the structure that the bill puts in place offers the opportunity to improve those relationships, or is it simply a dispute resolution system?

Ian Jardine: Overall, the new structure offers opportunities to improve the situation. In general, relationships have improved—if I think back to relationships with the agriculture and forestry sectors 10 years ago, I can see that we have moved a long way in that time. I see the bill as helping to progress that, because it envisages a system that is more focused on interests in and effective management of sites and because it involves a more consultative and less legalistic process.

As Alex Johnstone said, there is a philosophical view that public sector interference in land management is not a good thing in principle and should be kept to a minimum. I am not sure that SNH is going to win that argument outright, but if we can demonstrate that we are being more consultative, open and responsive to interests—particularly the interests of those who earn their living from the land involved—the majority of people with such interests will at least see us as a reasonable organisation doing a job on behalf of Government and Parliament in a reasonable way, even if they do not much like public sector bodies and the fact that they interfere in the first place. In my view, the bill is a modernisation of a previously rather legalistic system, and that must be a good thing for relationships.

Alan Hampson: The other way in which it helps with relationships is that it introduces a lot of flexibility. The existing system is very rigid, so it was difficult for us to adapt the designation, or indeed the system, to reflect local circumstances or changing circumstances. The bill provides a range of measures that enable us to work more flexibly, which is always a good basis for developing more constructive relationships.

Ian Jardine: One of the accusations made against SNH is that it is always judge and jury. However, the bill contains a lot of checks and balances in terms of appeals and the necessity to get ministers' agreement. If you look at the bill as a whole, you can see that there are safety nets to ensure that SNH refers cases that could have an impact on an individual's economic or other interests.

Alan Hampson: Many submissions have asked whether SNH would act reasonably. As we have indicated, the test of reasonableness will ultimately lie with the Land Court, to which any appeal must be made.

The Convener: Alex, do you still have a number of questions to ask? There are two other members who want to ask questions and you are getting into a bit of a dialogue with the witnesses.

Alex Johnstone: There is just one other point that I want to pursue.

The moment that I read through part 2 of the bill, I believed that it was trying to achieve something desirable. However, to some extent it fails to reflect principles such as extending partnership that the Executive has operated under in other pieces of legislation. The bill appears to confer additional powers on SNH without taking the opportunity to encourage greater dialogue and

consultation over their implementation. You have already expressed the desire to proceed on the principle of dialogue and consultation; however, the bill does not put you in a position where you would have to enter into such dialogue. Would you still, with the minister's approval, retain the power to act unilaterally where necessary?

Ian Jardine: I think that the bill puts us in that position. In any case, with regard to your comment about acting "unilaterally" with the minister's approval, I would argue that that would be acting with the agreement of the democratically elected Government. I am therefore not sure whether that is acting unilaterally in a strict sense.

One cannot legislate for good relationships. Indeed, it would be quite difficult for the bill to seek to do so. All I can do is repeat that I am quite clear that SNH is determined to work in a more co-operative and partnership-based way—indeed, we could present a good argument about the ways in which we have taken such an approach. I am clear in policy rather than legislative terms that we are going that way and that the Executive is encouraging us to do so. I do not see any real difficulty with that, because I have no doubt that we will continue to work in such a way.

At the end of the day, the Government has certain commitments in relation to natural heritage and the bill seeks to give it the power to meet those commitments. If the Government has to insist that something must happen to meet them, it can do so under the bill. However, I think that that would be a last resort.

The Convener: I will take the other three members who want to ask questions, but I ask them to keep the questions brief.

Nora Radcliffe: My two questions arise from the submissions that we have received. An organisation that made one submission says that it

"would like to see a designation process that makes available to land managers on notification of the SSSI, the full scientific case for designation.

This is not made available currently until an objection to the designation is lodged with SNH."

Is that the case and, if so, why?

Another submission states that the proposed terms of the notification document and site management statement are "inadequate" and suggests that they need to include

"a statement of long-term management objectives of the SSSI".

When I had a quick look at the documents that we received, it seemed to me that they included such a statement. However, I wonder whether you feel that its inclusion should be a statutory requirement.

Jeff Watson: In so far as we comply with legislation—which we clearly do—the scientific case is made available through the citation and various attached documents such as a map and a description of the land. As one would expect, a further set of information sits behind that citation and is available to people whenever they wish to see it. In my judgment—although I stand to be corrected on the point—that information is not held back and is not revealed only during an appeal. The question is whether the information is fit for purpose. Many people do not want to see such a big volume of information and it would be extremely daunting to include it automatically in the package. However, it is certainly available.

The site management statements will certainly address Nora Radcliffe's second point. We have approached the matter in a pre-emptive way by saying that such statements are not required prior to this point and are not formally part of the notification package. Keeping the site management statement at one remove from the formal notification is helpful, because these documents are—and need to be—very dynamic. That is part of their value.

The Convener: I presume that we can also think about such documents in the context of their accessibility on the internet. We do not need to download 100 pages, but if we want to get to the guts of something we can easily do that by accessing the top two pages.

Rob Gibson: At the Scottish Civic Forum debate yesterday evening, deep concern was expressed about the number of Government consultations in general and about the fact that many suggestions are not taken up in the subsequent process—in this case, in the bill. There were obviously many responses to "The Nature of Scotland" and the process of getting to the current position has thrown up some changes. Can you give an example of a suggestion that came from the public during the consultation that has changed the approach in the bill?

11:45

Ian Jardine: I am going to do what I had hoped not to do, which is to duck the question and say that only the Executive can answer that, as it was the Executive's consultation. However, I was involved in the expert working group and I point to that as an example of good practice in the development of legislation. The expert working group used the information from the consultation process, but it also heard representations from non-governmental organisations, land management interests and Government interests. That process helped to tailor the bill—in particular in relation to how the appeals process will work in practice—and strongly contributed to the

development of the financial guidelines. Land managers, the Scottish Landowners Federation and the NFUS were involved in determining not just what would be desirable but what would be practical. That was how the appeals process was worked out and it was certainly how the financial guidelines were thrashed out—and that has made a difference. You might want to ask the Executive to confirm that.

Rob Gibson: I will certainly ask the minister about that.

The Convener: The minister has been given notice.

Maureen Macmillan: I have a couple of questions about part 3, which is about wildlife crime and related matters. First, the committee has heard that there has been a lack of transparency in relation to the granting of licences to kill birds and animals. Why were people unable to get information about, for example, the reasons for refusing licences or the number of licences that have been granted in Scotland?

Secondly, the extension of wildlife offences to include recklessness has generally been welcomed, but there are concerns that the provision might give landowners an excuse to try to prevent people from gaining access to land. Will that provision be cross-referenced to the access code, so that there will be guidance on the matter?

Jeff Watson: I will ask Alan Hampson to deal with your second question.

The Executive and SNH are the bodies that are involved in licensing, depending on the issues that arise. We sent the committee some information about that, so I will not go over the detail. About 700 licence applications per year are determined by SNH, of which a very small number—five or so—are refused. We would commit to making publicly available any explanation that we gave for turning an application down.

SNH also provides advice to the Executive on about 100 licence applications a year in cases where the Executive determines the outcome and—as a matter of interest—we recommend refusal in fewer than 10 cases a year, usually because we are not convinced that the requirement to pursue alternative approaches first has been adequately met. Beyond that, it is not appropriate for me to say what any other body's grounds for refusal might be. SNH will be happy to put into the public domain any information that relates to its decision-making process.

Maureen Macmillan: How long does it take from making an application for a licence to receiving a decision on whether one has been granted?

Jeff Watson: Again, I refer to the cases in which SNH makes the decision. We operate within national standards, but I cannot remember the exact time scale for making a decision—I am being told that it is 20 days. It is one of the standards that we are consistently able to meet. There is not a history of our constantly exceeding the time scale. There are occasions when that happens, but in this area they are rare. The information is published in our annual report and so on.

Alan Hampson: You asked whether we would address the issue of recklessness in the code. Recklessness is a new issue and is difficult to define in this context. Ultimately, it will be for the courts to decide what constitutes reckless behaviour.

Maureen Macmillan: I meant that landowners may use recklessness as a reason for preventing people from accessing land. They will say that they do not want walkers on their land because walkers may recklessly disturb an SSSI. People want there to be recognition that recklessness may be used as a wheeze to keep them off land. Are you considering that issue in the access code?

Alan Hampson: In the code, we can spell out what constitutes responsible behaviour. For individuals, that is of primary concern when they are taking access. Jeff Watson may have further thoughts on the issue of what happens when a landowner tries intentionally to limit access on grounds of recklessness.

Jeff Watson: In my judgment, if someone is trying to prevent access by using the term "reckless" in a frightening way, they must be coming close to breaching those aspects of the code that relate to the provision of responsible access, as opposed to the taking of responsible access. There are two sides to the issue. If the recklessness provision is used frequently and regularly in a way that appears not to be consistent with the legislation, it is reasonable for local access fora to consider the issue. As Alan Hampson said, it is for the courts to decide whether an offence has been committed.

Nora Radcliffe: In its written evidence, the NFUS says that section 18 of the bill provides

"an unreasonably long period (4 months) during which SNH may take no action and be deemed, respectively, to have refused consent for an operation and to have refused to offer a management agreement."

Why is the period stipulated as four months? Could that be seen as unreasonable?

Jeff Watson: The original arrangements were that the period should be three months, but that has been extended by one further month. A small extension has been made to the current

arrangements. The provision is born out of the experience—both of the expert working group and more generally—that more time is needed to conduct negotiations prior to deciding whether it is appropriate to conclude a management agreement. It was felt to be reasonable to add a little more time to the original period. The concern to which Nora Radcliffe referred has not been commonly or widely expressed to me.

Nora Radcliffe: However, the issue was discussed by the expert working group, on which the NFUS was represented.

Jeff Watson: Yes.

The Convener: That is useful clarification.

As members have no more questions, I thank you all for being prepared to be grilled in detail this morning, which has been very useful. I invite you to stand down, although you are welcome to stay for the rest of the meeting. I suspend the meeting while witnesses are swapped round.

11:53

Meeting suspended.

11:58

On resuming—

The Convener: We are reaching the conclusion of our stage 1 consideration of the Nature Conservation (Scotland) Bill, for which I welcome Ross Finnie MSP, who is the Minister for Environment and Rural Development. I invite the minister to introduce his officials and to make opening remarks.

The Minister for Environment and Rural Development (Ross Finnie): I am accompanied by Jane Dalgleish, who is the expert on natural heritage to whom I will refer when I need to; Duncan Isles, who is a leading member of the bill team; and Alison Crowe, who will deal with complicated legal matters. That relieves me of almost any responsibility, which is the way of things.

The Convener: All that is left is introducing the bill.

Ross Finnie: Absolutely.

I welcome the opportunity to give evidence. The committee has had several evidence-taking sessions, which we have followed with considerable interest. The bill has ambitious objectives and carries forward a vision that values the natural world—our natural heritage—for its own sake and because it matters to individuals. That vision matters to the people of Scotland and has wider resonance throughout the United Kingdom and in Europe.

12:00

We have worked for a time to create a better, responsible and sustainable relationship between human society and the wider natural environment. That is a key element that we must secure. Laying the foundations of that balanced relationship has been at the heart of much international effort and resonated at the Rio summit and more recently in Johannesburg. That has generated a new emphasis on the linked concepts of sustainable development and biodiversity conservation.

Those are some of the key overarching principles that have driven our effort in Scotland. The philosophies that drive the bill helped to inform the Water Environment and Water Services (Scotland) Act 2003 and are part of the rationale behind the plans that we have announced on strategic environmental assessment.

The Nature Conservation (Scotland) Bill will make its own contribution to achieving our vision of sustainability and responsible stewardship of the natural environment. It will do so by taking action to safeguard and secure the future of Scotland's exceptional natural heritage through new wildlife protection measures and through overhauling the SSSI system. The bill asks Scottish society, through our public institutions, to lead the way in accounting for and addressing the consequences for biodiversity of our collective actions.

That vision challenges all of us to secure the well-being of our natural environment and its biodiversity. The vision seeks to engage us all by balancing the competing demands of people and nature. From reading the evidence that the committee has taken, I know that the principles of that view resonate with committee members. One clear message that we have taken from reading the evidence and attending committee meetings is that overwhelming support exists for the principles that underpin the bill. That goes well beyond mere agreement on general themes and ideals. Those who are most closely interested in the matter genuinely support the bill.

Securing that support has been a conscious policy. The wide consultation on the bill has been reflected in much of the evidence that has been put to the committee. The bill's evolution was improved immensely by the active engagement and involvement in the consultation process. The bill evolved and benefited from the efforts of those who shaped the original vision, which was set way back in 2001 when we published "The Nature of Scotland". Without that input and without generating new ideas and tempering other ideas with a healthy dose of practicality, we would not have produced a bill that has received such wide support.

The clarity of the vision about what we are trying to achieve has provided us with a bill that has all the essential legislative components to deliver a more integrated system of nature conservation. I make that point as the minister who introduced the bill. I commend the bill to the committee.

The Convener: I thank the minister for his opening remarks. We have a huge number of questions to ask. I would like to take a logical approach by going through the bill's provisions in order.

Ross Finnie: I am obliged.

The Convener: We do not always do that. We will start with the bill's scope, then move on to part 1, part 2 and part 3, on wildlife crime. After that, we will pick up issues that occur to members later. That approach will ensure that everybody asks their questions and that we cover all the points. Nora Radcliffe will kick off on the bill's scope.

Nora Radcliffe: I am sorry if I am tossing a nasty pebble into the pool. We have had a certain amount of evidence from people saying that we should take the opportunity to consolidate all the legislation—it stretches back years and there are cross-references and so on—in a consolidation bill. It has been suggested that this might be an opportunity to do that. Does the minister think that that is a good idea? If he does not, is it desirable and possible that after passing this bill we move to a consolidation to make the plethora of conservation and environmental legislation clearer?

Ross Finnie: I am aware that you have had a number of representations on the issue. You are right that elements of the legislation that governs nature conservation go back a considerable number of years. As a matter of practical parliamentary procedure, if one is going to keep the matter reasonably manageable it is better to dispose of policy issues in the context of a new bill. The bill raises new policy issues and makes substantial amendments to previous practice. My view is that we should pass the bill and the one small element of the conservation regulations that is close to fruition.

Once we have decided the policy framework, we can then proceed to a consolidation in which there are no contentious issues of policy development, but in which we try to ensure that the basis of legislation is brought into line and, where need be, is updated. However, that is not appropriate where there is any contentious matter on which consultation is essential. A consolidation bill means that legislation is updated where necessary, duplications and overlaps are removed and you end up with a single body of legislation. It may be slightly overstating the case to call such a consolidation process mechanistic, but it is a slightly mechanistic process. It requires a different kind of application and a different kind of committee procedure and consideration. It is hugely technical. I draw that distinction.

I acknowledge that once the bill has been enacted and once we have tidied up the conservation regulations, we then have to actively consider—to consider actively; I will not split my infinitive—how we proceed to deal with the consolidation process. I would not, as a matter of course, encourage a committee to go down the road of changing policy and at the same time trying to consolidate legislation.

Nora Radcliffe: That is a sensible way forward.

People have also been concerned about how the bill applies to the marine environment. It is seen as sensible to tackle that matter holistically, by a separate measure, but in the meantime would it be sensible to make it clear that the measures in the bill would apply out to the 12-mile limit, to protect species such as dolphins and basking sharks?

Ross Finnie: There are two issues. We said when we introduced the bill that we were anxious that we should not deal in detail with the marine environment. The evidence that the committee has received indicates a general consensus among most of the environmental NGOs and other stakeholders that that is the correct approach. However, the bill does provide increased protection for cetaceans and basking sharks. We acknowledge that dealing with the marine environment is a huge issue. After having a preliminary look at the matter, we decided that it would have become unmanageable to have tried to incorporate it in the bill. As my deputy, Allan Wilson, said recently, that is something that we must now move on to.

The Convener: One of the issues that people have raised is the time scale for legislation on the marine environment. Do you have a view about when that might be possible? Or should we just put that to the wall in the report?

Ross Finnie: Madam convener, I appreciate the highly productive rate of work of the committee. If you can dispense with this bill quickly, deal with the water environment legislation relatively quickly and dispose of the proposed strategic environmental assessment bill in a trice, we will have time to consider much wider ranges of legislation. I do not wish to be facetious; the matter is important, but I have introduced a heavy programme that will take up much parliamentary time. I am conscious of the burden that we have already placed on your committee and you have other things to do. We will continue to work up what is required in terms of consultation and the scope we are looking at, but we have already

proposed to the committee a hefty programme of legislation that will make a lot of work for you and me.

The Convener: We have a timetable.

Karen Gillon (Clydesdale) (Lab): I anticipate with excitement the marine environment bill.

How does this bill link to other legislation that is currently on the statute book—for example, the Deer (Scotland) Act 1996 and the new access code under the Land Reform (Scotland) Act 2003? Following on from that, why do you define natural heritage differently in this bill from the Natural Heritage (Scotland) Act 1991? Do you consider the more recent definition to be appropriate or are you prepared to consider amending it to bring it into line with the 1991 act?

Ross Finnie: I will deal with the last part first. Natural heritage has been carefully defined in the Nature Conservation (Scotland) Bill because the bill does not deal with exactly the same types of natural heritage as the 1991 act. The bill relates only to physical features, unlike the 1991 act, which deals with natural beauty and amenity. However, on mature reflection, as they say in these matters, not using the same form of words might cause some confusion to the ordinary citizen. We have to be careful; we have defined the term carefully and we put some considerable thought and work into it. Although we are dealing only with the principles of the bill at this stage, we will want to have another look at whether we are causing unnecessary confusion. The definition will only be challenged on a statutory basis and it might be highly defensible, but if it then causes public confusion in how the bill is used, we will reflect on that.

Your first question was about how the bill links with other legislation. The access legislation gave us an overall strategy. It gives us a right of responsible access, but in that context "responsible" means that one does not have an unfettered right to ignore wilfully other legislation that seeks to protect. In those provisions of the bill that explicitly give protection and in other legislation that gives protection, the right of access is a responsible right and not an unfettered right.

I am sorry, Karen, I have forgotten your other question.

Karen Gillon: The Deer (Scotland) Act 1996.

Ross Finnie: That is an older piece of legislation. Looked at in the round, the interface between the Deer (Scotland) Act 1996 and the bill is perfectly sound. We have not had any serious representations on that. There are issues in the 1996 act, but they are not so much about protection as about the need for us to control some of the habitats that are affected by an over-population of deer. The Deer (Scotland) Act 1996 gives powers that enable the Deer Commission for Scotland to promote programmes for dealing with the problem.

Karen Gillon: There has been some concern that the recklessness provision in the access code would allow landowners to prevent access. Can you reassure the committee that, as you said, the issue is about responsible access and that the bill should not be seen by anyone as a provision to stop the important steps forward of the Land Reform (Scotland) Act 2003?

Ross Finnie: I am absolutely clear about that. I would be concerned if parties sought to put a construction on the proposals in the bill in a way that undermined the right of responsible access. Given that the provisions in the bill are relatively specific, if people sought to use them as a way of constraining the right of responsible access, that would be disappointing and we would condemn it.

Karen Gillon: That is a useful clarification.

12:15

Rob Gibson: Yesterday evening, the Scottish Civic Forum had a debate in the chamber, during which considerable concern was expressed about the fact that, although in the process of creating new law the consultative phase before the presentation of a bill attracts a lot of comments, few of those comments are incorporated in the bill. Will you give one or two examples of how consultation with the public has altered the Nature Conservation (Scotland) Bill? I have one follow-up question.

Ross Finnie: Gosh. The bill was widely consulted on. I cannot cite specific instances, but I happen to know that substantial parts of the bill as presented are radically different from the proposals in some of the papers that we published. Someone could go back and track the changes—perhaps Jane Dalgleish will give a specific example. Our discussions with the various groups involved huge debates about how certain provisions should emerge in the final shape of the bill and we were influenced by that. I am disappointed about the feeling in the Scottish Civic Forum, although I am not sure whether that was a general criticism, or a specific criticism of the Nature Conservation (Scotland) Bill. The bill involved one of the widest consultations that there has been on a bill; it has had huge input from a wide range of people who have interests in the sector. Perhaps Jane Dalgleish wants to quote a specific example.

Jane Dalgleish (Scottish Executive Environment and Rural Affairs Department): The example that I will quote is on page 1 of the bill. The draft bill did not introduce a requirement

for a report on the Scottish biodiversity strategy to be presented to the Parliament, but section 2(4) of the bill as presented will require a three-yearly report to the Parliament on the strategy. That provision was introduced as a result of the consultation. On a number of other provisions, we have taken account of consultation, not only generally, but with the expert working group on SSSI reform, the partnership for action against wildlife crime and the Scottish biodiversity forum.

Rob Gibson: I realise that the question was broadly drawn and that it was not specifically about the bill, but nevertheless, we must ask questions about the process of government as seen by the public, who want it to be as transparent as possible. It is clear that expert witnesses help the Executive to formulate better bills, but a number of groups have asked about the specific issue of non-native species and wonder whether the Executive will lodge amendments on that matter at stage 2. Will you expand on that issue?

Ross Finnie: I do not want to get into an argument with people who are not here, but ministers consulted during the summer on whether legislative changes were needed on non-native species. The primary changes that consultees proposed involve adjustments to the schedules to the Wildlife and Countryside Act 1981, which list the species of birds, animals and plants that must not be released into the wild. The amendments that have already been made to the bill will give ministers the necessary powers and flexibility to adjust those schedules.

I have yet to make any formal decision on what further legislation is required, but there are provisions in the bill that allow us to fine tune the lists. There is always a danger in having specific lists, because the requirements and demands shift over time. One problem is dealt with, then more people want to add to lists. That is one of the reasons why some of the evidence has asked for further specification of a number of elements in the bill. However, that matter was consulted on over the summer, so I am disappointed if people feel that it has been ignored. There are provisions to give us powers and the flexibility to adjust the schedules to the Wildlife and Countryside Act 1981.

Nora Radcliffe: I have a question related to the lists. The discussion triggered a memory of something that I saw in the submissions about pure-bred species and hybrids. Are you considering dealing with hybrid species in the lists?

Ross Finnie: The bill gives us the power to adjust the lists. In our consultation, we will have to be more specific about how we will adjust the list. There are two related questions. The first is whether we have enough powers to do something about non-native species. You will have to reflect on that, but I believe that there are powers to allow ministers to adjust the lists. The second question is, if we are going to use those new powers, which species and which hybrids would we wish to direct attention towards? Clearly, we would have to come to a view on that and consult on what we proposed to do if we were proposing to amend the list.

Jim Mather: We live in a commercial world. What commercial advantage will the implementation of the bill deliver to the people of Scotland?

Ross Finnie: It will deliver hugely. Almost every aspect of Scottish life benefits from the perception that we are a nation with a high-quality environment. However, we should not delude ourselves into thinking that that will continue forever, and that it is not adversely affected, if not by deliberate, then by unthinking acts of members of the public. We have constantly to refresh our legislation to ensure that the key elements of a high-quality environment are protected. The tourism industry is the most obvious example. If we do not take care to provide a statutory framework to protect our natural habitat and our species, we will adversely affect that industry. Over time, Scotland's ranking in world circles would fall away, which would have an adverse economic impact on our tourism industry, and consequently on Scotland as a whole.

Jim Mather: Looking forward, what practical new steps do you want SEERAD and SNH to take to ensure that the implementation of the bill will have a material, positive impact on local rural economies?

Ross Finnie: As with all bills, it is important that all the various players abide by and take account of its provisions—whether those players are local authorities, Scottish Natural Heritage, SEERAD or the general population. I would not be introducing this bill if I did not think that its cumulative effect in the broader legislative framework—earlier questions asked how this bill will fit with access and other legislation as a whole—would be to have a positive impact on our natural environment. The bill will be good for us in terms of protecting our water environment, our habitats and our natural heritage. Our raw materials, agricultural produce and whisky industry are dependant on the perception of either clean water or high-quality produce. That is fundamental, and is supported by legislation such as this.

Maureen Macmillan: The committee received a submission from Professor John McManus, a geologist who is concerned that Scotland's fossil heritage will not be protected by the bill. I had hoped to see that protection in the bill. In the

previous parliamentary session, I tried to have such protection put into the Criminal Justice (Scotland) Bill but was told that it should instead go into the Nature Conservation (Scotland) Bill.

In their evidence a little while ago, the SNH representatives said that they thought that there was protection for rare fossils through the measures on third-party damage that are in the bill, but the issue was not clear. Does the bill provide protection for our fossil heritage? If it does not, could we please have that?

Ross Finnie: I am absolutely clear that fossils that are located within SSSIs are protected. I cannot remember whether the particular place that Maureen Macmillan is concerned about is part of an SSSI.

Maureen Macmillan: It is not.

Ross Finnie: Well, two issues are involved and I will try to deal with them both. First, fossils that are in SSSIs are protected. Fossils that are not in SSSIs come into the category of things that SNH ought to be concerned about, if the fossils meet the criteria of being particularly special—I cannot remember the right words, but Jane Dalgleish will remind me what they are.

If that is the case, Scottish Natural Heritage should use both the existing provisions and the provisions that will emerge from the bill to take steps to protect the fossils. After all, there is a duty on SNH to have regard and this is a developing situation. If the fossils that Maureen Macmillan is concerned about would fall within those criteria, there is nothing to stop an SSSI being made.

Perhaps Jane Dalgleish will deal with the valid point that Maureen Macmillan has raised.

Jane Dalgleish: As the minister said, if the fossils meet the criteria of being of national interest in geological terms, it would be perfectly possible for SNH to designate the area as an SSSI and give them protection under the bill.

Maureen Macmillan: As far as I am aware, the site has actually been downgraded by SNH, but nobody seems to know why. Therefore, I think that it is unlikely that SNH will upgrade the site to an SSSI. Given that the fossils in question are obviously important, where do we go from here? Is there nothing that could be put into the bill to give protection to internationally recognised fossil beds without making them an SSSI?

Ross Finnie: There are two specific points to be dealt with. From my perspective, if the fossil beds are internationally recognised as important, that begs the question as to why they are not recognised as such by Scottish Natural Heritage and why they have been downgraded. I do not know the answer to that question and I will have to pursue it. There seems to be an inherent conflict there.

As far as I am concerned, the broad legislative provisions allow for fossils that are not in SSSIs to be afforded protection by virtue of their meeting the criteria. Maureen Macmillan has highlighted an issue where, on the face of it, there appears to be a dispute precisely as to whether the fossils fall within the criteria. I would have to deal with that separately.

The Convener: It would be useful if the minister could follow up that issue.

Maureen Macmillan: Yes, it would.

The Convener: Okay. There are no further questions on the scope of the bill, so we will move to examine part 1.

Eleanor Scott: There was consensus among our witnesses that having a biodiversity strategy in place was extremely desirable. Indeed, it was thought that it would have been helpful to have had the strategy fully developed and in place before the bill was introduced. Some witnesses also suggested that ministers and public bodies should be obliged to implement the strategy, not just to have regard to it. It was also suggested that the strategy should be detailed, with action plans, targets and monitoring. I wondered what the minister would like to say about that.

12:30

Ross Finnie: As you rightly say, trying to get all the ducks in a row is one of the tricks. There is a distinction here. The bill will help to safeguard biodiversity by placing a duty on public bodies to have regard to it, by enhancing their ability to do so, and by improving the protection of biodiverse sites. The bill has that overarching aim.

There is a real danger in seeking to define biodiversity and to enshrine parts of the Scottish biodiversity strategy in the bill. What is set out in the biodiversity strategy has come from parties that were privy to it. If you try to narrow down what is to be implemented—whether it is a strategy or not—you run the risk of starting to take things out of the strategy because you cannot think that you have the absolute power to deliver. If you were to make ministers responsible for delivering the strategy, in a situation where they are dependent on four, five, six or seven other bodies, you would make them more reluctant to press people into that if you made specific statutory provision. Ministers are after all accountable to the Parliament and I do not think that you will be slow to tell me whether you think I am pursuing the biodiversity strategy. I think that you would complicate the process if you wanted me to take responsibility for the strategy, because I would then have to seek powers to control others down the chain. That makes it unnecessarily complicated.

Nora Radcliffe: The bill focuses on biodiversity. Would there be merit in expanding its scope to link it more closely to sustainable development? We seem to have taken out the socioeconomic issues. Is there merit in having a link to those aspects of sustainable development in the bill?

Ross Finnie: We have to take a view of sustainable development. We are all aware—the committee is particularly aware—that sustainable development has various component parts. If we try to turn every bill into a sustainable development strategy, we will have missed the point. The bill is about nature conservation and it will play an important part in our overall sustainable development strategy. However, it does not pretend that it is the sustainable development strategy. It plays a key part in that and it brings other bodies, such as local authorities, into the sustainable development net. We have to examine our strategy for sustainable development and we have to be aware that it is going to be composed of statutory and non-statutory parts. We should recognise that the bill is essentially about nature conservation, notwithstanding the fact that it will play an important part in an overarching sustainable development strategy.

Nora Radcliffe: That seems to be quite sensible.

You did not answer fully the question about whether there should be a definition of biodiversity in the bill, and whether that definition should include geodiversity.

Ross Finnie: Biodiversity has a common usage. If we tried to define such a term in the bill, we could end up with a long definition that would exclude several broad concepts and that would cause difficulties for people who are engaged with our natural habitat. We would begin to generate a list rather than a definition. The term has a common and accepted usage and unless we are going to use it for a different purpose, we would not seek to give it a different connotation when drafting the bill.

The Convener: I have a follow-up question. What would you miss if you used the definition in the United Nations Environmental Programme Convention on Biological Diversity?

Ross Finnie: We do not accept that we are not using that definition. The bill makes an explicit reference to the United Nations convention within which the definition is contained.

The Convener: Some of the witnesses disputed that. Perhaps we should look into the issue, as it was raised a few times in different submissions.

Duncan Isles (Scottish Executive Environment and Rural Affairs Department: Members will see that part 1 contains an explicit reference to the United Nations convention, which provides the definition of biodiversity. When we put the bill together, we followed drafting practice that assumes that a word has the normal everyday meaning unless there is a specific intention to give it another meaning.

Given that the definition derives from the convention and that an explicit reference is made to the convention in the bill, our understanding is that, unless we specified something different, biodiversity has the meaning that it is given in the convention. We do not wish to specify something different. I hope that that resolves the issue. Given that it is a complex point, some of the witnesses may not have picked it up entirely. That is our understanding of the situation.

The Convener: That was a very helpful explanation. We can think further on the subject, but that is a useful technical description of how we are meant to read the bill.

We move to the next question on part 1. Which member would like to lead off?

Nora Radcliffe: We received a submission from the Association of Chief Police Officers in Scotland, which asked a lot of quite technical questions about what should be in the bill and what should not. Rather than go through all the questions now to try to get oral answers, would it be helpful if we were to ask the minister to give us a written response to the submission?

The Convener: We can certainly consider that at stage 2. However, over the next two to three weeks, we will finalise our response to the general principles of the bill and produce our stage 1 report.

Nora Radcliffe: Right. As the questions are all quite detailed, they are probably better dealt with at stage 2.

The Convener: It is up to members to decide how much detail they want to get into at this point. In respect of our stage 1 report to the Parliament, our job is to satisfy ourselves that we have scrutinised the bill.

If no other member has a question on part 1, we will move on to part 2.

Rob Gibson: The point that I want to make carries over from our discussion on part 1. Some witnesses suggested that local authorities' work loads will increase if there is a duty to develop local sites in addition to SSSIs. There is a perception that buffer zones should be created around designated sites. That would increase the amount of work that local authorities might be expected to undertake. The point is linked to the

need for a biogeographical definition of SSSIs, which is something that we need to tease out a bit.

A lot is being expected of local authorities. The bill could cost them money and require them to employ new expertise. The style of SSSI that we are to have in future needs to be clarified. We also need to be clear about whether the biogeographical definition is to be brought into use. How much extra work will be involved for local authorities? Should local authorities create buffer zones? Will you equip local authorities with the definitions that will make their work easier?

Ross Finnie: Notwithstanding the fact that part 1 places a duty on public bodies and on the local authorities in particular, I would be extraordinarily disappointed if, in exercising those duties, local authorities sought to do so entirely on their own. That would be both disappointing and unfortunate. If they got into territory where they recognised their legal duty—

Rob Gibson: I am not suggesting that they would.

Ross Finnie: I am talking about expertise. It would be hugely disappointing to us all if the expertise that currently exists within SNH was not called upon when a local authority believed that that was something that it should have regard to in order to discharge its functions properly. I certainly do not anticipate local authorities taking on people whose expertise can be found elsewhere. Although I take your point about resource implications and about how local authorities approach and deal with such matters, I feel that a closer relationship between local authorities and SNH would be healthy, with regard to how local authorities execute their duties and whether they have at their disposal sufficient expertise to discharge their functions.

I do not feel that definitions of buffer zones are necessarily needed. We have to be careful about what we are seeking to do. In defining operations that would be detrimental to the condition of the land defined in an SSSI, the real trick is to define the SSSI properly. That is the point that I think Rob Gibson was alluding to, and a question arises over what we do about that definition. There must also be consistency in our approach, so that we do not get into a situation in which, having designated the SSSI, people then think, "Gosh, there is a zone here which ought to be protected." If we get into that position, we have made a mistake in the original designation. For us to have degrees of activity that must be managed would become very awkward administratively. The real trick is to get the definition right in the first place and then to apply the provisions in the bill on how to operate SSSIs in a uniform way across Scotland.

Rob Gibson: Do you therefore agree that spatial units will have to be more specifically defined? The evidence that we heard suggested that SSSIs may have been drawn up at a time when a different definition was used, so the biogeographical definition that we are seeking would, in fact, be better. Would that be possible or would it create an awful lot of work to achieve that?

Ross Finnie: I do not think so. After all, the selection criteria for SSSI sites are based on the Joint Nature Conservation Committee guidelines, which remain in use and in force. The areas of search are simply an administrative mechanism and have been a convenient method of dividing up the country when identifying SSSIs. As you rightly point out, the bill has given wider recognition to the biogeographic frames of reference, which adds to, but does not overly complicate, how we enter into the selection process.

Rob Gibson: Thank you.

The Convener: Does anyone else have questions on part 2?

Nora Radcliffe: I would like to return to one of the representations made by the Natural Environment Research Council and to a point that I put to the SNH witnesses. NERC said that the bill represented an opportunity to produce a comprehensive strategy and introduce an accredited local sites system with site-selection criteria and legislative support. Do you have any comment on that?

Ross Finnie: We tend to deal with each site on its merits and on a scientific basis. Objective criteria and a scientific analysis are applied. It is inherent in the very title—sites of special scientific interest—that that is the basis of selection and the reason why we have notification and designation.

It would be difficult to produce an overarching or global plan because we have to treat each site on its merits. Given that real administrative arrangements will have to be imposed, a definition will be required, but a loose geographic definition would give rise to many of the problems to which Rob Gibson alluded. We must be specific and we must justify the choice of sites on the basis of the selection criteria and on the objective scientific advice that is available.

12:45

Nora Radcliffe: So you do not see the bill as including sites that are not SSSIs but which are described as near misses.

Ross Finnie: Under the existing statutory provisions, if representations are made to SNH about an area that comes within the ambit of the scientific criteria, SNH is obliged to consider

whether it ought to begin the selection process. Once that process is in train, the site ought to be designated if it meets the criteria. The provisions exist, although Maureen Macmillan's example was surprising and has raised a slight query.

Eleanor Scott: The bill will place a duty on public bodies to consult SNH if, in carrying out their functions, they may affect an SSSI. It is clear that public bodies are supposed to further the conservation of the site involved. However, it is not clear whether the provision includes public bodies that might affect all SSSIs in carrying out their functions. I am thinking, for example, of SEERAD designing agri-environment schemes or bodies devising forestry grant schemes. Is the bill meant to cover such cases?

Ross Finnie: If the policy applies to an individual landowner, tenant farmer or land manager who seeks to take up a forestry or agricultural scheme, that will not get them out of being caught by the mischief of the management arrangements for an SSSI. If a person is caught by the mischief of the bill and is signed up to its provisions on how to manage a piece of land, they cannot use a more general instrument that conflicts with the obligation that has been placed upon them—they are not at liberty to claim that they are simply using another Government instrument. That person will still have to comply with the management agreement for the administration of the designated land.

Eleanor Scott: I accept that, but I wonder whether the bodies that devise general schemes will be obliged, in drawing up such schemes, to consult with SNH on the possible implications for SSSIs.

Ross Finnie: We would consider carefully such a scheme if we thought that it would deliberately run contrary to the requirements for SSSIs. However, when one tries to produce a general instrument with a wide application, one does not want to redefine it and find out that it has been narrowed unnecessarily. I take the point that you are driving at, but if an individual who has entered into an arrangement about the management of a piece of land and the activities that will be permitted applies to use another instrument, they cannot do so in the knowledge that they will be in breach of the obligations that the bill will place on them.

Eleanor Scott: The bill states that public bodies

"must take reasonable steps … to further the conservation and enhancement"

of an SSSI. However, environmental groups have suggested that public bodies should have the wider duty of developing policies and strategies that contribute to good conservation management. Would it be appropriate to strengthen the measure in that way?

Ross Finnie: I think that that is what the bill says. The bill places upon public bodies a duty in relation to biodiversity. I think that people are being a bit narrow if they think that a local authority will be able to meet its biodiversity duty if it does not have regard to the requirements of the biodiversity strategy. A frequent problem with bills is that everyone wants everything to be absolutely specified at every line of the bill. I understand that, because people get nervous, but one must consider both the duty that is placed on local authorities and the things that they will have to take into account in discharging that duty. Clearly, if they are being asked to conserve biodiversity they cannot simply say, "We will just think about it." They have duties under the biodiversity strategy to which they will have to have regard. Frequent examples of such circumstances arise with every piece of legislation.

The Convener: We would like to pick up on that issue in particular. Some land management groups have expressed concerns about what they see as restrictions on their ability to manage the land. It was suggested that the difficulty in changing land management practices could prevent them from reacting or adapting to improve their land, which could remove the asset value of the land. That was certainly the view of land management groups on the restrictions that are placed on them. Do you have any views on that?

Ross Finnie: I can understand that people are trying to protect the status quo. The whole thrust of our approach is that what they do is perfectly legitimate and should continue. Under the previous system, there was a long list of operations for which consent was required. As a minister, I have received many letters that say, "This is absolutely outrageous. We've just seen this list and we're not able to do all these things. We'll have to close down." However, we write back to them and say, "No, these are the activities for which you require consent, because potentially they may damage the particular habitats and biodiversity that have been identified within that SSSI." If you go round the country and get people to engage with you, you find that they are somewhat surprised by that explanation, and that they have been very put off by the list.

However, as you know, we are going to simplify the situation. We will have operations that require consent, and we will convert the list of potentially damaging operations—which is the long list—into something that I hope will be much more manageable. SNH is already planning a well-structured conversion programme. In the interests of openness and transparency, we are committed to much wider consultation on how we bring that into being.

People have to recognise their public duty when they have the privilege of operating on a piece of ground that has been identified as an SSSI. They have to recognise that there will be operations that could potentially damage that site, and that they require consent. We are not imposing a blanket prohibition on commercial activity, but we have a job to do to get that message across to a wider rural community.

The Convener: I want to ask one final question on this part of the bill, on the new statutory purpose of SSSIs. That provision has been extensively welcomed, but there are some questions about the scope of the statutory purpose. One particular issue was the rarity, conservation value and irreplaceability of some sites, as well as the representativeness of diversity. That issue was raised by quite a few witnesses and we put it to SNH earlier this morning. Would you like to comment on it?

Ross Finnie: The concept of rarity is enshrined and addressed in large measure in the existing selection criteria. That will not change. The new emphasis on representativeness encompasses uniqueness. If there is only one example of a certain type of site in Scotland, a national series will not represent properly the natural heritage of Scotland if that site is not included. Irreplaceability is a much less well-defined concept. Many sites might be irreplaceable but not all need to be protected. The concept of rarity has raised a lot of questions in the written submissions. Rarity remains not only a concept, but part of the criteria in the JNCC list. That is enhanced by placing an emphasis on representativeness, which encompasses the question of potential unique status. We will not get a designation unless issues of rarity are taken into account as part of the selection criteria, which the bill does not alter.

The Convener: I will take questions on part 3, which is on wildlife crime.

Maureen Macmillan: I have a couple of questions on the provision to ban possession of pesticides, which has been welcomed generally. I live in the Black Isle and I know about depredations of red kites through the use of bait poisoned with pesticides. How are you going to enforce the provision? It has been argued that a power of entry and inspection is needed. Is there a possibility of an amnesty so that people can hand in a pesticide rather than dump it in the nearest burn?

Ross Finnie: The way that the provisions are fashioned in the bill means that we will have to make an order specifying which pesticides we seek to ban. There will have to be consultation on that. We might need to have regard to how we encourage safe, proper and orderly disposal of such pesticides. Within any consultation process there is an opportunity of proceeding by way of statutory instrument, which will allow us to do that. We will then introduce an order specifying which pesticides we seek to prohibit under the bill.

Maureen Macmillan: What about enforcement?

Duncan Isles: Enforcement is covered by section 19 of the Wildlife and Countryside Act 1981, which part 3 amends. Powers of entry for the police are specified already.

Maureen Macmillan: Do those powers allow the police to look for pesticide?

Duncan Isles: The powers relate to any offence under part 1 of the 1981 act.

Maureen Macmillan: Would that include keeping pesticide?

Duncan Isles: Yes.

Rob Gibson: In some of the evidence that we have taken from various sources there is a suggestion that SEERAD is opaque in relation to both general and specific licences to kill birds and animals under the 1981 act. We are interested in how widely the information was spread about licences that were granted. Are they advertised as being widely available? How quickly are they made available? The Scottish Gamekeepers Association is concerned about its work in relation to specific birds that are pests and which would otherwise be protected. Let us try to get some answers about that from you because it is of concern to me that, although SEERAD seems to be working away quietly, it is difficult to access a licence.

Ross Finnie: You cannot expect me to accept that criticism fully, but we accept that we could improve the wider dissemination of information on the licensing procedures and who qualifies for licences. One can always improve such things and therefore details of our licences, what they can be used for, who can apply for them and how they can be obtained will be published on the environment group page of our website from December 2003. The information is available now, but I accept that people still need to know where to go to get it. In the interests of modern communication, we will place the existing written material on the website, which might make information that already exists more accessible.

13:00

Rob Gibson: Is there any room for appeal if applications for licences are turned down?

Jane Dalgleish: There is no formal appeal, but anyone who is aggrieved by a ministerial decision can always challenge that decision in the courts as being unreasonable.

Rob Gibson: The matter has to be dealt with quickly if the problem is to be solved. It seems that the process is not as transparent or as speedy as it ought to be. Can you give us some assurance not only that notification of such matters will be transparent, but that a review of how the licences work will commence?

Ross Finnie: I preface my remarks by saying that I appreciate that persons who have given you evidence are seeking swift access to licences. However, I do not accept that speed is always the key element; there has to be a proper procedure. I do not wish to commit myself further, because there are conflicting views—there are people who believe that they ought to have received a licence and there are people who have not received a licence for, we believe, good reasons. I do not wish to enter into individual cases, but I will reflect on the evidence that has been put to you and on Rob Gibson's question.

The Convener: That would be useful, because we raised the issue with SNH this morning. The length of time that it takes to get a decision on a licence, for or against, is an issue that we are keen to pursue, particularly given the reasons why people put in an application in the first place. As a result of our visits, the committee is keen to see more transparency in the operation of the process—and a sense of buy-in at a local level—in relation to how judgments are made on the balance between different species types, what information is widely available in a local community and how often that kind of information is considered. Members were interested in the biodiversity element.

Nora Radcliffe: A related issue was access to information about who held licences. Apparently, that information was not available, which seemed strange given the freedom of information legislation.

My other question is about extending protection to other species that lek and to nesting sites. Some species return to the same nesting sites every year, so it is important that in some cases the sites be protected throughout the year. It might be important to protect roosts in order to protect the species. Does the bill cover those matters?

Ross Finnie: We are aware of that point being made about the designated areas and are making attempts to control the matter. The common protection of broods or roost grounds is difficult, because there is no overwhelming evidence to suggest that all species always return. I know that there are examples of species doing so—where that happens, steps are taken by the respective organisations. However, it is difficult to have that kind of blanket provision for all species. I would be happy to look into the matter, but I am not sure that the bill could provide such protection. Duncan Isles may want to say something about that.

Duncan Isles: On the issue of roost sites, we are well aware that that suggestion has been made by the RSPB among others. However, we are not aware of any hard evidence to support the assertion that it is a good idea. It may be a good idea, but we are not in the business of making legislation just because something appears, superficially, to be a good idea. We would want to get some hard data to back that up.

The protection of nest sites all year round is clearly part and parcel of the wider issue of meeting European obligations. We believe that the European obligations have been met satisfactorily. However, if there is hard evidence to suggest that there is a problem, people should bring that evidence forward. We would caution against creating a situation in which, for example, all nest sites for every species were protected all year round. That would lead to all sorts of significant difficulties. However, we would welcome any further information on those points if people have such information to offer.

Nora Radcliffe: Another point was raised about what is and is not included in the bill. Apparently, the bill's definition of a wild plant includes fungi, but it is not clear whether it includes algae such as seaweed, because algae are excluded in some modern taxonomic systems. Assurance has been sought that we intend to include algae under the definition of a wild plant.

Duncan Isles: We would look carefully at that issue. Clearly, the bill addresses the position of fungi and we are satisfied that the definition of a wild plant under the bill—it is obviously not a scientific definition, but a legal definition—includes all types of plants and plant-like organisms. It certainly includes fungi and seaweed. Given that those organisms already appear in schedules to the 1981 act and are regarded as plants for legal purposes, the definition is satisfactory as far as we are concerned.

Nora Radcliffe: On a completely different matter, we have taken a lot of evidence about the pros and cons of snaring. It has been suggested that training and compulsory accreditation should be required for people who set snares. Would you care to comment on whether that is desirable, necessary or practicable?

Ross Finnie: I do not think that we should make such training compulsory. I cannot, off the top of my head, recall the gamekeepers' evidence to you on that point. By definition, gamekeepers are supposed to be professionals who deal with such matters, so one would hope that they would wish to avail themselves of training, formally or informally, in using snares. I will have to check the evidence. I would be reluctant to introduce a general provision when certain people are recognised as being highly competent in that field.

I would be interested if you could point out to me where, in the evidence, there has been a suggestion that the gamekeepers do not have the competence to deal with a matter that is very much within their purview.

Nora Radcliffe: It was never suggested that gamekeepers were not competent, but one body made it clear that it had such training schemes and that it was desirable for people to have slightly more formal training. I merely ask the question.

Ross Finnie: I am reluctant to impose on any professional group or body without prior consultation a training requirement that may be on its list but may not be the only matter that comes within its remit.

Eleanor Scott: We received powerful representations about snaring from animal welfare groups, which are seeking a complete ban on the practice. What is your view on that? In the absence of a ban, how enforceable are the provisions in the bill, given the nature of the terrain in which people set snares?

Ross Finnie: I appreciate that there is a body of opinion that holds the view that you set out. We are satisfied that the provisions of the bill are wholly compatible with the Bern convention. Legal snares set correctly are a form of restraint that the convention permits. The provisions have been carefully drafted to ensure that they are legal under the convention.

I agree that it is difficult to enforce the provisions, given the terrain in which snares are set. There is a distinction to be drawn between people such as gamekeepers, who are clearly seeking to operate within the law, and those who are seeking to operate outwith the law. It is always difficult to draw that distinction. We are not seeking to extend an unfettered right to use snares. We are specific about the conditions under which snares should be set and about the intention of the 1981 act, which provides for checking and supervision procedures. The provision is not a wide, open-ended one: people must satisfy the conditions that we have established. Enforcement is always difficult in these matters, but it is perfectly possible.

Duncan Isles: One of the significant provisions of the bill that gamekeepers, among others, have welcomed is the one that limits the right to set snares on land to people who are the owners or occupiers of that land—the land managers—or individuals whom they authorise to do so. That places snaring policy for a piece of land in the hands of the people who know that land best. We are seeking a situation in which there will be a significant degree of self-enforcement and enforcement by people on the ground.

Snaring controls are enforceable in the same way as other controls under the Wildlife and Countryside Act 1981. Having a policeman hidden behind every bush is not necessarily the way in which to improve practice. Education, raising awareness and training are better ways of improving practice. Another important way is to give individuals on the ground the power to manage policy for their area. In large measure, the problem is not caused by the professionals who set snares in a particular area. The problem may well be caused by third parties who come on to the land to set snares—allegedly, perhaps, for foxes—and cause all kinds of damage. Their activity needs to be tackled. We would rather have individuals such as gamekeepers who are responsible for estates engaged in that process than suggest that they are necessarily part of the problem.

Eleanor Scott: Would a ban on snaring be more enforceable than trying to police bad snaring practice?

Ross Finnie: That is to advance the argument that snaring is not a necessary part of habitat control. There are two separate arguments. If we accept the argument that snaring is not a necessary control—I am not sure whether you are arguing that—obviously we should move to a complete ban. In that situation, we would not necessarily find out who was setting snares and breaking the law. I am not sure that what is proposed will change the balance because, as I said, the vast majority of snares are set within the provisions of the law. Unfortunately, on a minority of occasions, they are not; in those cases, they give rise to welfare issues that are highly undesirable.

The Convener: I see two members who both want in on this issue.

13:15

Karen Gillon: Minister, I accept the points you make about snares—they are part of the management procedures that we need in our countryside—but concern has been expressed about enforceability in relation to checking snares every 24 hours. Would you consider extending that period, perhaps to 26 or 28 hours, to allow slightly greater flexibility and to enable efficient management of the new system?

Ross Finnie: As I hinted in my earlier answer, the provisions of the 1981 act are intended to ensure that snares are checked at least once a day, which is once every 24 hours in normal speak. We know that the guidance from the British Association for Shooting and Conservation recommends that checking should be done twice a day. The original intent is there and it is in the

1981 act. Clearly, if other evidence were adduced, I would reflect on it, but we believe that the current provisions are adequate. The issue is more about people not observing the existing legislation than about the need for new provisions.

Alex Johnstone: Traditionally at this stage in the consideration of a bill, the minister's appearance before a committee gives members an opportunity to have a go at his bill. However, I have to say that the provisions in the bill on snaring are extremely good.

Ross Finnie: We are doomed, convener, doomed.

Alex Johnstone: The bill sets out the provisions in such a way that it is easy to tell whether a snare is likely to be illegal. However, the gamekeepers were concerned about the policing of the legislation. Where a gamekeeper or any other individual who has the right of responsible access to the countryside comes across a snare that, under the bill, is clearly illegal and they decide to take action by removing that snare, is there a danger that they will be guilty of an offence if they are in possession of that snare?

Ross Finnie: The provision in the legislation is so directed that the offence is the setting of the snare; simple possession is not specified as the offence. That makes it less likely that anyone will bring an action for simple possession, because the definition in the legislation of the offence involves the setting of a snare.

Alex Johnstone: However, does that, in effect, make it more difficult to pursue someone who has set a snare illegally?

Ross Finnie: It might, but if we explicitly made possession an offence, that would render impossible the public duty position that you outlined. That is the balance. That is why the legislation relates to the setting of a snare. Current thinking is that that enables a gamekeeper who comes across something illegal on his land to remove it, for the benefit both of other persons enjoying that land and of the wildlife on that land. If we were to do anything else, that could have the reverse effect and prevent the removal of illegal snares.

Alex Johnstone: When we took evidence, we asked about alternatives to snaring, especially where snares are used to deal with rabbit populations. It was suggested that there are alternative methods such as shooting and, in particular, gassing of rabbits. In your view, is it desirable that further chemicals should be licensed for disposing of rabbits in that way, or do you believe that we should not take the artillery and poison gas route as an alternative to snaring?

Ross Finnie: As a general principle, I would be very reluctant to take such a route. When there is an endemic outbreak of a disease such as myxomatosis, we must have regard to specific provisions under different legislation to deal with it. I do not contemplate taking the route that Alex Johnstone describes when protecting wildlife generally in the context of the bill, as opposed to dealing with a disease outbreak.

The Convener: Your evidence has been very useful. I will read the bill again, because it is not clear to me how all the different subsections relate to one other or are meant to do so. Members need to explore that issue and to get it clear in their minds what the bill means. People on the ground will not cart copies of the bill around with them.

I have listened to all the evidence that we have received, including that from the animal protection interest groups, which sent us some fairly explicit pictures. We have considered what types of snares are acceptable, the condition of snares on the ground and the resources that land managers have to enable them to inspect snares regularly. We received a great deal of conflicting evidence about whether there are enough gamekeepers who have the ability to manage estates.

I was interested to hear that it is the responsibility of landowners to be involved explicitly in approving the management of their estates, so that it cannot be said that there is simply a rogue gamekeeper here and there. The bill places much greater responsibility on landowners. From last week's evidence, I gathered that people are not very enthusiastic about the existing legislation. There is also an issue with the resources that will be required for implementation of the new bill. To what extent do you think that estate managers and landowners will require new resources to implement the bill, given the new provisions that it contains?

Ross Finnie: The bill calls on land managers, landowners and agricultural users to refocus on what they ought to do, rather than necessarily calling on them to put in place a range of measures and actions that will result in vast increases in expenditure. Apart from introducing a number of new concepts that will enable us to tackle the issues that we are addressing, the three main parts of the bill are about refocusing people's attention and raising awareness. We need to consider how to achieve a higher level of awareness in those who work on the land and have ownership of it.

I take the convener's point that all elements need to be involved. However, a huge financial cost need not be attached to that. Responsible land managers should recognise that the bill brings into sharp focus what is required. Much of the evidence that the committee has received suggests that many people would regard its provisions as good practice. Sadly, that good

practice has not necessarily been adopted uniformly or consistently across the countryside.

The Convener: After scrutinising the financial memorandum, the Finance Committee asked us to seek an assurance from you that existing budgets will be able to nurture and sustain satisfactorily any culture change in relation to nature conservation. In particular, the committee highlighted the issue of wildlife protection officers.

Ross Finnie: We certainly believe that to be the case. As we contributed to the consultation on the financial memorandum, we said that we did not believe that the current budgetary provisions would give rise to a huge bill. I am not suggesting for a minute that there will be no changes in expenditure heads. However, when people refocus on what they are trying to do and redirect their efforts, they also have to consider existing practices that are not required. One of my officials has passed me a figure. In relation to criminal activity, although we could achieve much higher levels of potential prosecutions, the suggestion that in the great scheme of things there will be an enormous burden on authorities is misplaced.

The Convener: The second issue that the Finance Committee wanted us to raise with you was the cost of the biodiversity strategy, particularly the relative cost of public authorities signing up to the activities that might be contained in the guidance. We have been exploring with other witnesses whether there should be a requirement in the bill for people to implement the biodiversity strategy. Will you comment on that?

Ross Finnie: There is no question but that safeguarding biodiversity will require all those on whom the bill will place a duty to think seriously about how they conduct their operations. The major advances for most of those public bodies are about refocusing their attentions and recognising that they have such duties. We are talking, particularly in relation to public bodies, about fundamental changes in working practices and culture change. I am not wholly persuaded that a major cost will be attached to that. The bodies in question must recognise that the bill will place different duties on them, but if they think through what they have to do, they will realise that it is about changing their practices, culture and attitude towards the requirement to safeguard biodiversity.

Alex Johnstone: I want to flag up a concern that I might raise at stage 2. In the report from the Finance Committee, there is reference to questions about funding, particularly in relation to SSSIs and measures for preserving flora and fauna. SNH suggested in an answer that a degree of additional funding might be available to landowners through the rural stewardship scheme and the Scottish forestry grant scheme. I am prepared to accept that that is the case. However, given that it is hoped that the bill will be revenue neutral, are we talking about the use of funds for a purpose that is common to the purpose of the rural development regulation but not entirely representative of it? As a consequence, funds could be used for that purpose, which is an approved purpose, or they could be used for other purposes relating to the rural development regulation that do not relate specifically to preserving natural heritage. Is that solution to the funding problem not strictly revenue neutral if it undermines other potential programmes that do not fall within the category?

Ross Finnie: No.

The Convener: We will leave that exchange.

13:30

Ross Finnie: I am sorry; I do not wish to be facetious. I hear what Alex Johnstone is saying, but we must understand that rules apply to the schemes to which Eleanor Scott referred earlier.

If someone is a landowner and is in an SSSI, they do not fail to qualify. Such landowners would still be eligible to qualify for the schemes. Of course, issues arise, including the one that was raised earlier about whether schemes might be used for a purpose for which the land, as part of an SSSI, did not qualify. In other words, the use would be prohibited because the land was part of an SSSI. That is a separate matter. Landowners, along with the other cohort of persons who might apply for such assistance, are not precluded from either applying for the schemes or using the funding for the perfectly legitimate purpose for which it was intended, within an SSSI. SNH is quite right: other people in those areas are just as qualified to apply for the schemes.

I think that the only point that was being made earlier was that people will have to be careful not to think that, because the schemes exist, they can get out of the obligations that the bill might place on them. People cannot use that as a defence if they are using land for a purpose that would be contrary to any undertakings that they might have given in relation to an SSSI designation.

Alex Johnstone: I may wish to return to the subject in the stage 1 debate.

The Convener: Alex Johnstone can read the *Official Report* of today's exchange.

Ross Finnie: I can sense a thrill going around the room.

Maureen Macmillan: Highland Council pointed out in its evidence that it is in a catch-22 situation with regard to finance. It needs to employ specialist ecological staff, but current funding for

those staff runs out in 2004. The posts are funded by all sorts of little streams of money that are quite difficult to juggle. Highland Council is looking for a commitment from the Executive that funding for biodiversity officer posts would come through grant-aided expenditure. That would mean that councils would not have to draw down funding from all sorts of different sources that cannot be relied upon in the medium to long term.

Ross Finnie: I am not in a position to give any such undertaking—unless I want to leave my life open to being terminated by the Minister for Finance and Public Services. I can say, however, that we would be happy to have Highland Council's evidence. We need to know about the funding streams. We also need to establish what current conservation moneys are allocated under GAE. As I said, we would be happy to have that conversation. At this stage, however, I cannot give an undertaking.

Maureen Macmillan: I would appreciate it if the minister would have that conversation with Highland Council.

Nora Radcliffe: I want to raise some issues that have been put to us by the organisation Scottish Badgers, which would like to see

"the Nature Conservation (Scotland) Bill used to extend a power of arrest for offences under the PBA 1992"—

which is the Protection of Badgers Act 1992. I gather that there is no power of arrest at the moment unless a person refuses to give his or her name or address.

Scottish Badgers also raises the issue of badger baiting. If a badger is used for that purpose, the organisation says that the offence is more than just the killing of a wild or protected animal and that it should therefore be treated as an aggravated offence that attracts much higher penalties. Could that issue be brought into the scope of the bill?

Duncan Isles: I am not aware whether that falls within the scope of the bill. We would need to seek further information on the issue. I am aware that there is no power of arrest. Before we make an indication either way, however, we would want to hear more evidence on whether that would present a significant difficulty in terms of the enforcement of the bill.

Nora Radcliffe: Would the Executive be prepared to look at whether there is scope to extend the bill to pick up those points?

Ross Finnie: As always, two issues arise with a question like that. The first is to establish precisely, on the basis of the evidence that has been submitted to the committee, what is the impact and what is our view on that. The second is that we always have to be careful that bills—including their long titles—are well constructed to ensure consistency and competence throughout. Although the issue may need to be addressed, it does not necessarily follow that it is capable of being addressed in the bill. We will have to look into the questions that have been raised.

The Convener: I am looking round the room, but no member is indicating that they have an instant question. I thank the minister and his officials for coming to the committee this morning and for answering our questions. That concludes our oral evidence at stage 1 of the bill.

We will consider a draft stage 1 report at our next meeting. As we will have to sweep up a huge number of issues, I invite the committee to agree that the report should be considered in private at our next meeting and at subsequent meetings until we agree it. Are members happy with that approach?

Members *indicated agreement*.

The Convener: Right. We know exactly where we stand on our stage 1 report. I thank members for that. Our next meeting will be held on 3 December in committee room 3 at 10am.

Meeting closed at 13:35.

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ISBN 0 338 000003 ISSN 1467-0178