ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 11 February 2004
(*Morning*)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
5th Meeting 2004, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone
Roz Wheeler

LOCATION

The Chamber

Scottish Parliament

Environment and Rural Development Committee

Wednesday 11 February 2004

(*Morning*)

[THE CONVENER *opened the meeting at 11:02*]

Subordinate Legislation

Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2004 (SSI 2004/13)

The Convener (Sarah Boyack): I welcome committee members, witnesses, and members of the press and public. We have received no apologies. I remind everybody to switch off their mobile phones.

Item 1 is on subordinate legislation. We have one instrument to consider under the negative procedure. The Subordinate Legislation Committee has considered the regulations and drawn to our attention additional information that it has received from the Executive; we have an extract from the Subordinate Legislation Committee's comments. As no member wishes to comment on the regulations, is the committee content with them and happy to make no recommendation to the Parliament?

Members *indicated agreement*.

Nature Conservation (Scotland) Bill: Stage 2

11:03

The Convener: Our second and main item of business today is consideration of the Nature Conservation (Scotland) Bill at stage 2. There are no interests to declare this morning.

I welcome Allan Wilson, the Deputy Minister for Environment and Rural Development, and his officials. I hope that everybody has the right paperwork in front of them. Members should have a copy of the bill, the third marshalled list of amendments, which was published yesterday, and the groupings. We have spare copies of the papers on the top table if members do not have them. As before, I shall call every amendment in strict order from the marshalled list. The target that we have set for today is to complete consideration of part 2 of the bill, which would take us through sections 29 to 50, including two amendments—amendments 177 and 178—to insert text after section 50, and schedules 3, 4 and 5. We shall see whether we manage to work our way through all that. I remind members that we debated last week some of the amendments on which we will be voting today, so I ask members simply to state whether they are moving those amendments and why and to make only the briefest of statements to remind the committee what they were about.

Section 29—Proposals for land management orders

Amendment 154 not moved.

Amendments 66 to 68 moved—[Allan Wilson]—and agreed to.

Section 29, as amended, agreed to.

Section 30 agreed to.

Section 31—Content of land management orders

Amendments 69 and 70 moved—[Allan Wilson]—and agreed to.

Section 31, as amended, agreed to.

Section 32—Review of land management orders

Amendments 155 and 156 not moved.

Section 32 agreed to.

Section 33 agreed to.

Schedule 3 agreed to.

Sections 34 and 35 agreed to

Section 36—Offences in relation to land management orders

The Convener: Our first group of amendments for the day is on land management order offences. Amendment 71, in the name of the minister, is grouped with amendment 72.

The Deputy Minister for Environment and Rural Development (Allan Wilson): Amendments 71 and 72 are minor amendments that respond to concerns that were expressed by the Scottish Crofting Foundation in its evidence at stage 1. It had argued that there might be circumstances such as illness or family bereavement whereby a land manager might have a genuine excuse for not complying immediately with a land management order. As the bill stands, that person could be exposed to prosecution and a significant fine. The reasonable excuse defence, which is provided for in amendment 71, would rectify that situation, so I commend it to the committee.

I move amendment 71.

Amendment 71 agreed to.

Amendment 72 moved—[Allan Wilson]—and agreed to.

Section 36, as amended, agreed to.

Section 37 agreed to.

Section 38—Acquisition of land by SNH

Amendment 73 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 74, in the name of the minister, is in a group on its own.

Allan Wilson: Amendment 74 makes minor changes to section 38 in order to clarify aspects of the existing provisions on acquisition of land by Scottish Natural Heritage.

Section 38 provides powers to acquire specific types of land, either by agreement or by compulsory purchase. The land that can be acquired under section 38 is limited to land designated as a site of special scientific interest, land that is the subject of a nature conservation order or a land management order, or land that is contiguous to or associated with such land. Such land, including contiguous and associated land, can be acquired by compulsory purchase only when it is necessary to do so in order to achieve established conservation objectives.

Section 38 does not provide Scottish Natural Heritage with a blank cheque or the right to compel the sale of land for other purposes. It is right, therefore, that SNH's subsequent ability to dispose of such land should be similarly constrained. SNH already has powers under the Natural Heritage (Scotland) Act 1991 to dispose of land that it has acquired. The purpose of amendment 74 is to ensure that any disposal of land acquired under the compulsory purchase arrangements in section 38 must be done in such a way as to ensure the achievement of the conservation goals that motivated the original purchase. SNH cannot, as a result of amendment 74, acquire land under compulsory purchase powers for one reason and then dispose of it in a way that would ignore the original purpose—for simple profit, for example. That restriction is entirely right and proper, as I am sure members agree. I hope that members of the committee will be able to support that objective.

I move amendment 74.

Amendment 74 agreed to.

Section 38, as amended, agreed to.

Section 39—Restoration orders

Amendments 75 and 76 moved—[Allan Wilson]—and agreed to.

Section 39, as amended, agreed to.

Section 40 agreed to.

Section 41—Change of owner or occupier

The Convener: Amendment 77, in the name of the minister, is grouped with amendments 78 to 81.

Allan Wilson: The amendments in this group are all about transfer of information and notice of a change of owner or occupier. One of the effects of section 41 is to oblige an existing owner or occupier to inform a purchaser or a new tenant of the existence of an SSSI, NCO or LMO. That is desirable in order to ensure that the land is not inadvertently damaged because, for example, the new owner or tenant is unaware of the pre-existence of those orders or of the important natural features that have to be protected.

However, the current terms of section 41(3) are unrealistic and inappropriate, because they require a person disposing of land to "explain the effect" of any notification, NCO or LMO. I would argue that explaining the detailed implications of a notification or order is a role that properly belongs to SNH. It is not something that it is reasonable or sensible to ask the seller of land, or a person letting a tenancy, to do.

The amendments in this group revise section 41 to ensure that the purchaser or new tenant is still alerted to the existence of the SSSI, NCO or LMO, but the obligation to "explain the effect" of that is removed from the land manager and placed instead on SNH. That change ensures that the existing policy objective is achieved, but does not

put a disproportionate burden on a person disposing of or letting the property.

I move amendment 77.

Amendment 77 agreed to.

Amendments 78 to 81 moved—[Allan Wilson]—and agreed to.

Section 41, as amended, agreed to.

Section 42—Guidance

The Convener: Amendment 157 is grouped with amendments 158 to 160.

11:15

Allan Wilson: As you will recall, convener, amendments 157 to 160 address what I undertook to do in response to Nora Radcliffe's amendment 98, which was to bring forward a provision allowing for the production of formal guidance to public bodies and office holders to assist them in complying with their new duty to further the conservation of biodiversity. Amendments 157 to 160 fulfil the commitment that I gave to the committee some weeks ago.

The guidance provisions in section 42 currently deal only with guidance relating to the SSSI system. Amendment 157 seeks to extend section 42 by adding a new provision that covers the new biodiversity duty. Amendments 158 to 160 make a number of consequential changes to section 42 and relocate it from part 2, which covers the SSSI system, placing it in a more appropriate position alongside the general provisions in part 4.

I move amendment 157, and invite members to support the subsequent amendments 158 to 160.

Nora Radcliffe (Gordon) (LD): I thank the minister for lodging amendments 157 to 160, which I welcome and am delighted to support.

The Convener: I am sure that every committee member shares that view.

Amendment 157 agreed to.

Amendments 158 and 159 moved—[Allan Wilson]—and agreed to.

Section 42, as amended, agreed to.

Amendment 160 moved—[Allan Wilson]—and agreed to.

Section 43—Power to search for evidence etc

The Convener: Amendment 1, in the name of Eleanor Scott, is grouped with amendments 161 to 169, 7 and 174 to 176.

Eleanor Scott (Highlands and Islands) (Green): Amendment 1 seeks to add a bit that is missing. It seeks to replace "search" with "search for", which would clarify and strengthen the provision. I note from the marshalled list that amendment 1 has Executive support, which I welcome. I do not wish to speak to any of the other amendments in the group, because I cannot remember what they all are.

I move amendment 1.

Allan Wilson: I am grateful to Eleanor Scott and Nora Radcliffe for lodging amendments 1 and 7 which, in my opinion, help to improve the bill. They clarify the wording of two important enforcement provisions and respond to concerns that were expressed by the Association of Chief Police Officers in Scotland. I am pleased to support the amendments; I always am in relation to the police.

The wider package of changes that I propose with amendments 161 to 169 and 174 to 176 are intended to achieve not dissimilar objectives. The first is to differentiate clearly between the powers that the police can exercise and those that can be used by civilians such as SNH staff. The overall legal effect of the provisions is not altered but, in light of a number of comments made at stage 1, it is important that we are all absolutely clear about the rather different powers that are enjoyed by the police and those that are available to SNH. For example, it will now be very clear to anyone reading the bill that SNH cannot obtain a warrant to enter and search a dwelling. The existing text of the bill already limits that power to the police, but I think that the revised text will make the distinction much clearer within the bill.

I am also taking the opportunity to propose a range of additional clarifications and safeguards. Specific provision is made to require police officers to show evidence of their authority when requested to do so and a clear obligation is placed on the police to leave unoccupied land or land from which the owner is temporarily absent, or to secure it against unauthorised entry as it was when they accessed it. The duration of a warrant's validity is also clarified, as is the ability of police officers to remove evidence when investigating an alleged offence.

I stress at this juncture, because I know that concern has been expressed about the matter, that any person accompanying a police officer under those provisions is permitted to do so only for the purpose of assisting the police in the exercise of their duties—for example, to identify stolen birds' eggs. The provisions do not in any sense confer police powers on those assisting the police. More or less the same changes will be made to the existing terms of section 19 of the Wildlife and Countryside Act 1981. One of the key objectives of the amendments is to ensure consistency between enforcement provisions in the bill and in the 1981 act.

I welcome amendments 1 and 7, which clarify the situation that I have just described and which would improve the bill. I commend those amendments and my amendments to the committee.

Nora Radcliffe: We accept the amendments in this group because their joint effect, as the minister said, is to clarify the police's search and entry powers. I think that such clarification will be widely welcomed and I am glad to support all the amendments.

Eleanor Scott: I welcome the Executive's response to the concerns that were raised at stage 1. I commend the package of amendments to the committee.

Amendment 1 agreed to.

Amendments 161 and 162 moved—[Allan Wilson]—and agreed to.

Section 43, as amended, agreed to.

Section 44—Powers of entry: authorised persons

Amendments 82 and 163 moved—[Allan Wilson]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Powers of entry: further provision

Amendment 164 moved—[Allan Wilson]—and agreed to.

Schedule 4

POWERS OF ENTRY: FURTHER PROVISION

Amendments 165 to 169 moved—[Allan Wilson]—and agreed to.

Schedule 4, as amended, agreed to.

Section 46—SNH: power to enforce

Amendments 83 and 84 moved—[Allan Wilson]—and agreed to.

Section 46, as amended, agreed to.

Section 47 agreed to.

Section 48—Offences by bodies corporate etc

The Convener: Amendment 170, in the name of the minister, is in a group on its own.

Allan Wilson: Amendment 170 is a technical amendment that will clarify that penalties imposed on bodies corporate, Scottish partnerships and unincorporated associations that are convicted of an offence under part 2 of the bill can be recovered by civil diligence, such as arrestment of funds or company shares. The amendment provides a useful last-resort power that will ensure that it is possible to recover money when a body fails to pay a financial penalty that has been imposed on it. The power is needed in relation to bodies such as those that I mentioned because we cannot—clearly—incarcerate a body corporate that fails to pay a fine. To cut a long story short, that is the purpose of the amendment.

I move amendment 170.

The Convener: A nice image cropped up there.

Nora Radcliffe: It is important that there should be sanctions when people cause environmental damage. It can be extremely difficult to bring people to book, so amendment 170 is welcome.

Amendment 170 agreed to.

Section 48, as amended, agreed to.

Section 49—Notices etc

The Convener: Amendment 85, in the name of the minister, is grouped with amendments 171, 172, 86 and 173.

Allan Wilson: The amendments will make technical amendments to section 49 to ensure clarity in relation to the validity of notices and notifications by providing, for example, that such notices must be in writing. The validity of a notice will also not be affected when SNH or ministers have made a genuine honest mistake and have inadvertently failed to notify an owner or occupier of land. That situation could arise, for instance, if a large number of notifications are given but somebody is inadvertently missed out. The obligation to provide information to anyone who has been missed in such a way is preserved, however, and SNH and ministers are obliged to take appropriate action in response to any representations that they might receive. Because ministers and SNH are required to act reasonably, they would consider any such representations on their merits and would take action in an appropriate and proportionate manner.

I move amendment 85.

Amendment 85 agreed to.

Amendments 171, 172, 86 and 173 moved—[Allan Wilson]—and agreed to.

Section 49, as amended, agreed to.

Section 50 agreed to.

Schedule 5 agreed to.

After section 50

The Convener: Amendment 177, in the name of Mark Ruskell, on Ramsar sites in Scotland, is in a group on its own.

11:30

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Ramsar sites are wetlands of international importance, especially water fowl habitats, and are designated under the 1971 Ramsar convention. I will not preach to members about the importance of wetlands, because they are all very much aware of it, especially members who worked on the Water Environment and Water Services (Scotland) Act 2003 in the previous session, into which significant measures to protect wetlands were introduced through amendments.

The Ramsar convention is an international convention and an international commitment to which the United Kingdom has signed up, but there is no requirement in the convention to recognise Ramsar sites in law. However, Labour members will remember that there was no requirement to introduce the European convention on human rights into law either; it was an international commitment to which the UK signed up, but the Labour Party and Government introduced it into UK law because it felt that it was important to implement international commitments in legislation. That is what we are trying to do with this amendment on Ramsar sites, and it is exactly what has already been done in England and Wales under the Countryside and Rights of Way Act 2000, which has put in place a statutory underpinning for Ramsar sites. The provision that I propose in amendment 177 would establish an identical provision to the one in that act.

Members might ask whether there is a big problem with our wetlands and Ramsar sites and whether that is why I have lodged the amendment. There is not. The designated Ramsar sites are currently notified to interested parties under the SSSI system, and I hope and believe that Scottish Natural Heritage and the Scottish Land Court make decisions that are compatible with the Ramsar convention. However, the problem is that that is all just administrative good practice—there is no requirement for any of it to happen, and the good practice that has been established in the Wilson-Finnie era of Government might not last. We want to ensure that that good practice has statutory underpinning and that it continues in future.

The other concern that members might have is that the amendment would once again add far too much egg to the legislative cake and that we will somehow bind ministers, civil servants and public bodies into thinking about Ramsar sites every time they try to implement a strategy. I advise members to read the amendment carefully, because the only circumstances in which ministers and public bodies would have to take consideration of the Ramsar convention would be when SSSIs were being notified or decisions about the management of SSSIs were being taken.

Amendment 177 would be quite a light addition to the bill. We should be proud of our international commitments, in particular the Ramsar convention, and those commitments should be open to public scrutiny, which is why it is important to have them in legislation. We need to ensure that the good practice that has been established is recognised and continues in future.

I move amendment 177.

Rob Gibson (Highlands and Islands) (SNP): I support amendment 177, because to embed Ramsar sites in the bill would be a useful signal to the future that we value those sites.

Mr Alasdair Morrison (Western Isles) (Lab): I will have to hear what the minister says on the amendment. I am not trying to diminish the importance of Ramsar sites, but, in a roundabout way, Mark Ruskell helped to undermine the argument that he presented when he said that there is currently no problem and that the amendment is "light". Anything that we put on the statute book should be meaningful: it should not be there as window dressing but for specific and valid reasons.

I will make a passing comment on comparing the Ramsar convention to the European convention on human rights. It is a great leap to compare the argument for incorporating Ramsar sites into the bill with the proper position that was adopted in relation to human rights. Mark Ruskell mentioned eggs: he is over-egging that pudding.

The Convener: I have a couple of comments to make before I bring in the minister. I will steer well away from the eggs analogies because I think that they were getting a bit overheated.

I am interested in Mark Ruskell's comments about the Water Environment and Water Services (Scotland) Act 2003. I remember following the debate on the bill, during which the minister had to go away and think about the issue. I believe that the 2003 act is strong because of the lengthy discussions on it during its passage. I suspect that we will not debate amendment 177 endlessly today, but I have a couple of words on it for the minister.

Mark Ruskell referred to the position in England and Wales under the Countryside and Rights of Way Act 2000. The Ramsar convention is an international obligation on the United Kingdom, so it would seem sensible to have a common approach throughout the UK to ensure that we take on board fully our international obligations. Therefore, I support the intention behind amendment 177. However, I have done as Mark Ruskell suggested and read the amendment; it

seems to have incredibly detailed descriptions and I wonder whether amendments need to be so detailed. I see the logic of ensuring that we treat Ramsar sites properly and if the bill must have provisions to ensure that we have a strong approach on Ramsar sites, that is fine by me. However, is amendment 177's wording the best way to deliver that objective?

I note Mark Ruskell's comments about the Wilson-Finnie regime. The approach that has been taken repeatedly during discussion on environmental bills is that people say that the current set of ministers is good and is doing all the right things, but that future ministers could be horrendous. The key points are whether the policy in amendment 177 is the right one and whether the policy needs to be in the bill. If it needs to be in the bill—there is support for that—does amendment 177 word it correctly?

Allan Wilson: Those are important points, as are Mark Ruskell's earlier points. I will respond first by outlining where the Ramsar sites are currently protected and how they are protected. I will also draw a distinction that will perhaps introduce the first note of dissent into the debate in relation to how we should approach the matter in future.

With specific reference to the convener's point about the CROW act down south, we would all agree that protecting wetland sites is important, which is why we are delivering the protection that Scotland's most important wetland areas deserve. I think that it has been acknowledged that Ramsar sites in Scotland are well protected. That is the case under existing legislation and the bill's measures will ensure that that continues. As the convener said, the UK is at the forefront of implementation of the Ramsar convention. The UK's classified Ramsar sites make up 10 per cent of such sites worldwide, which is more than double what any other signatory to the convention has done. More than a third of the UK Ramsar sites are in Scotland, so on that basis I challenge anyone to argue that the UK Government or the Scottish Executive is not committed to the Ramsar convention in safeguarding our wetlands.

The 51 designated Ramsar sites in Scotland already receive highly effective legal protection. Fifty of the 51 sites are protected under the Natura 2000 network, which means that they are either special protection areas or special areas of conservation; the remaining site is an SSSI. Therefore, it does not matter whether we have the Wilson-Finnie regime—I was pleased that Mark Ruskell put the names in that order—or another set of ministers, because the sites would be protected by virtue of their designation. That is what the legislative framework is all about. Admittedly, others might want to alter that in the future, but that would not change the existing level of protection one iota.

As the convener said, I was one of the MSPs who debated the Water Environment and Water Services Act 2003, which was a watershed, dare I say it, in terms of wetland protection because the act clearly recognises the importance of conserving wetlands in Scotland and explicitly includes wetlands in its definition of the water environment. Members who recall the debate on the 2003 act will remember that that definition went beyond the specific requirements of the water framework directive. I believe that all those provisions taken together demonstrate that there is significant legal protection of our wetland sites.

Amendment 177 would put in place a new requirement to notify Ramsar sites to SNH. In fact, ministers designate Ramsar sites on the basis of SNH's advice, so it is unnecessary for ministers to be obliged in statute to notify SNH. Similarly, the legal obligations that apply to Ramsar sites and that protect wetlands are created by other systems and designations, which I have mentioned.

There are serious faults with amendment 177. I am happy to consider equity of approach north and south of the border and with the CROW act if the committee is concerned about that. However, I do not know whether doing so would be wholly in tune with what devolution was meant to be about.

Amendment 177 should not be agreed to, as it proposes new obligations on public bodies and office holders to exercise functions to secure compliance with the Ramsar convention, so it is essentially misconceived. As I said, clear obligations exist as a result of legislation that covers the Natura 2000 network and as a result of the SSSI system, which the bill will significantly improve. There is no coherent case for imposing a general duty on public bodies and office holders to comply with the Ramsar convention. In any event, achieving compliance with the convention is an onerous task and a responsibility of the contracting parties—that is, of the United Kingdom Government—but not of individual Scottish public bodies and office holders. I suspect that that is probably why there is no parallel provision in the corresponding English legislation.

With respect to Rob Gibson, I do not think that legislation exists to send out signals. You, I and others can send out whatever signals we want to send out, but the purpose of legislation is to create legal obligations rather than to send out signals. Section 77 of the CROW act is concerned simply with notification. For the reasons that I have given, that is unnecessary in Scotland. The CROW act provision does not give additional duties to public bodies and office holders in relation to Ramsar sites. Consequently, amendment 177 would add nothing to the existing and entirely satisfactory

arrangements for protecting Ramsar sites in Scotland. Legislation exists to have an effect and not to send out signals. It must make a real difference and the amendment that we are discussing does not pass that fundamental test. I ask Mark Ruskell to seek to withdraw amendment 177.

The Convener: I would like clarification. The minister has given us quite a big list of the respects in which the proposals would and would not be exactly the same as what is in the Countryside and Rights of Way Act 2000. I do not know whether this would be helpful to other members, but I would like to see what you have said in writing. It is up to Mark Ruskell to decide what he wants to do with amendment 177, but would it be possible to get a note of what you have said in writing before stage 3 so that we can make a judgment on the matter?

Allan Wilson: I would be happy to provide that if the committee thinks that an amendment should be lodged at stage 3 to equalise the provisions in the bill and the CROW act.

The Convener: I am certainly persuaded by the policy arguments that Mark Ruskell made, but I am also persuaded by the technical arguments. Rather than our getting lost, I would like to see the minister's position in writing, if possible. I do not know whether that would be helpful to other members.

Mr Ruskell: I am prepared to withdraw the amendment if the minister will go away and consider where the existing provisions in the CROW act could sensibly be introduced under the bill in Scotland, and consider drafting something for stage 3. On that basis, I will be happy to withdraw the amendment.

The Convener: That was my suggestion. If you are happy to withdraw the amendment, the committee has to approve that. Is that agreed?

Amendment 177, by agreement, withdrawn.

11:45

The Convener: Amendment 178, in the name of Nora Radcliffe, is in a group on its own.

Nora Radcliffe: Amendment 178 would change the Agricultural Holdings (Scotland) Act 2003. It attempts to resolve a conflict between two legislative requirements. Conservation bodies that own and manage land have a legal and moral duty to manage that land for conservation purposes. That means that if they wish to work in partnership with local farmers and crofters who are tenants of the land that they own, they must make tenancy arrangements that do not permit damage to the land's conservation interest.

The 2003 act gives tenants full farming rights and protects them against any limitation on their rights to adopt normal farming practices. The difficulty is that the conservation body cannot impose limitations on the way in which a tenant under the 2003 act farms. That means that the tenant of a water meadow or of an ancient meadow for grazing is perfectly within their rights to plough that land. Under an agricultural tenancy, someone who tenanted wetlands for grazing purposes would be at liberty to drain and crop that land.

The difficulty is that a conservation body that lets land has no legal guarantees that the land will be farmed in a way that preserves conservation. Such a guarantee used to be possible under a limited partnership, but the point of the 2003 act was to protect tenants from having limitations placed on the way in which they farm. I argue that a special case should be made for conservation bodies in relation to agricultural tenancies, because such bodies have the other obligation that land that they let must be farmed in a way that delivers conservation objectives.

As the amendment would mean a significant encroachment on tenants' rights under the 2003 act, it contains two safeguards. One is that the right to limit agricultural tenants' rights to farm in any way that they choose is open only to conservation bodies that are designated under the Title Conditions (Scotland) Act 2003. The other safeguard is that any body so designated must apply to the Scottish Land Court for permission to impose conditions on its tenants. The Land Court would be at liberty to examine whether the proposition was reasonable before it went ahead.

The counter-argument is that conservation bodies can achieve the same aim through short-term lets—successive 364-day lets. However, that has two disadvantages: it involves the administrative hassle of having to keep renewing lets; and it does not provide continuity or security for the landlord or the tenant.

I plead a special case for conservation bodies, which I think is justified. The amendment contains safeguards to prevent an unreasonable encroachment on tenants' rights.

I move amendment 178.

Alex Johnstone (North East Scotland) (Con): I will correct my mistake of not declaring my interests when asked earlier. Members will see from my entry in the register of members' interests that I am a landowner, a member of the Scottish Landowners Federation and a member of NFU Scotland.

The irony in what I have to say is that Nora Radcliffe and I are arguing from diametrically opposite sides to those that we took when we

spoke about the Agricultural Holdings (Scotland) Act 2003. I believe that that act is an important and significant piece of legislation. As the minister is aware, I also believe that it was damaged by certain changes that were made late in the process of scrutinising the bill. It is extremely important that we do not lose sight of the aims at the outset of the passage of that bill: to create a structure that offers protection, both for landowners who seek to let land and for those who seek to become the tenants of that land for agricultural purposes.

I accept in principle the view that is contained within the Agricultural Holdings (Scotland) Act 2003 that tenants on land that is let through the tenancies that the act creates should be protected from any imposition of additional requirements. It is important that, when bodies such as those that are described in amendment 178 seek to let land under such tenancies, the full protection of the tenancies be given to the tenants of the land.

With amendment 178, Nora Radcliffe raises a significant and important point, but the protections that are necessary for sites of special scientific interest and sites that have been designated by some other order contained in the bill are offered under the terms of the bill. On balance, it is important that we do not change the terms of the Agricultural Holdings (Scotland) Act 2003 in the way that the amendment describes.

Maureen Macmillan (Highlands and Islands) (Lab): When I saw Nora Radcliffe's amendment 178, my first reaction was that, because, under the Title Conditions (Scotland) Act 2003, conservation burdens can be put in place when land is sold, the fact that conditions may not be placed on land that is let was an anomaly. I know that the matter was debated in the course of the Rural Development Committee's consideration of the Agricultural Holdings (Scotland) Bill—it is not as if it has not been debated before—and I would be reluctant to support something that overturns the wishes of the previous committee such a short time after the bill was passed.

I would like the minister to tell us how conservation in farming can be achieved by other methods. I would like his assurance that the Agricultural Holdings (Scotland) Act 2003 will be looked at again, perhaps in two or three years' time, to find out whether there has been any damage to conservation interests because of conservation purposes not being covered in the tenancies concerned. We do not yet know whether the lack of the provision in amendment 178 is causing any damage, or whether there are other ways in which wetlands and other types of landscape can be protected.

I was in two minds about the amendment but, on balance, I feel that the provisions of the Agricultural Holdings (Scotland) Act 2003 should not be overturned such a short time after the legislation was passed. We must allow at least some time for reflection and for an examination of how the 2003 act works before we interfere with it.

Karen Gillon (Clydesdale) (Lab): I would have serious difficulty with supporting amendment 178. There are real issues for tenant farmers and it is a bit perverse to suggest that they should be subject to arrangements to which other people are not necessarily subject. There are already enough safeguards in the bill to enable sites to be protected and I urge the minister and committee members not to support the amendment.

Allan Wilson: The last three speakers were entirely correct to draw the committee's attention to discussions that we had almost exactly a year ago with the Rural Development Committee about similar amendments to the Agricultural Holdings (Scotland) Bill, which has since been enacted. As Alex Johnstone said, those discussions were sometimes passionate, but everybody wanted to build on the industry consensus that had been secured among landowners, the NFUS and tenant farmers. The purpose was to find ways of extending protections for tenant farmers. It was our contention that the balance had swung in favour of the landowner and against the tenant farmer and we wanted to protect tenant farmers against the abuses of certain landlords. At the same time, we wanted to respect the legitimate interests of the majority of reasonable landowners.

I will not rehearse all the arguments about how we achieved that, but the consensus on the subject then and now was essential to the act. As I understand it, neither the NFUS nor the SLF, which are two of the major players, nor the Scottish Tenant Farmers Association—if anybody has asked it—support the proposals that are contained in amendment 178.

The amendment attempts to play around with a carefully constructed act of Parliament and the letting vehicles it introduced—the limited duration tenancy and the short limited duration tenancy. Those tenancies were designed for use on agricultural land so as they could also be used on land that is owned or principally let for non-agricultural purposes. Of course, not all of the land belonging to the conservation bodies that is mentioned in amendment 178 is let solely for conservation purposes. I, for one, cannot support a measure that does not have industry support or agreement or in which there is insufficient public interest to justify the proposed change. I am not sure whether Nora Radcliffe can tell the committee that the measure has the clear support of the industry, but my information is that it does not. The views of all of the bodies are critical, not least the view of the Scottish Tenant Farmers Association.

As Alex Johnstone mentioned and Karen Gillon emphasised, notwithstanding industry support, our efforts and the efforts of all parties to make improvements to the tenant farming sector could be severely hampered at what is a delicate time for the sector, in the wake of the introduction of the Agricultural Holdings (Scotland) Act 2003, by making what I consider to be an ill-considered amendment to that act.

I ask Nora Radcliffe to tell the committee how it can be in the public interest for a tenant farmer's freedom to manage land to be restricted to managing it for conservation purposes. As many have said, conservation purposes are protected where land is SSSI designated. I remain to be convinced that conservation bodies could manage the land that they own effectively for their particular goals only if amendment 178 were agreed to.

Again, the amendment seeks to increase the range of bodies that the legislation covers. I am not under any pressure from the Forestry Commission Scotland, Forest Enterprise, local authorities or any other body that might own such land to introduce the measure. Surely they could manage the land themselves or contract out work to third parties to ensure that they preserve their conservation duties, such as they are.

It seems to me that amendment 178 might be designed—dare I say it—more for the administrative convenience of the bodies concerned than for the promotion of the environment. The amendment rides roughshod over the tenants' rights that we secured in the Agricultural Holdings (Scotland) Act 2003.

I am conscious of the order-making power to which Maureen Macmillan referred. It was created for a specific purpose, which was to allow specified bodies to enforce real burdens on land for conservation purposes. However, Nora Radcliffe is asking the committee to agree that that power should be used for additional purposes for which section 38 of the Title Conditions (Scotland) Act 2003 was never intended to be used, which could have an unintended impact on how such order-making powers are used in future.

I think that all of us rightly pride ourselves on the fact that the legislation that we pass in the Scottish Parliament is subject to full consultation and consideration. To the best of my knowledge, next to no attempt has been made to consult the key stakeholders to the Agricultural Holdings (Scotland) Act 2003 about their views on amendment 178. Little thought has been given to the possible side effects of the provisions in amendment 178 on the industry and, in particular, on the embryonic regime that we are trying to establish by developing the tenanted farming sector.

I do not believe that the industry supports amendment 178. I also do not believe that the public-interest case has been made. I ask Nora Radcliffe to withdraw the amendment.

12:00

Nora Radcliffe: I recognise that amendment 178 seeks to amend significantly the Agricultural Holdings (Scotland) Act 2003, which, as members have said, was widely debated and was quite an achievement. Indeed, that is why I suggest that we should make an exception for conservation bodies and build in some limitations.

The strong argument for such an approach is that not all the land that people have bought with charitable money for conservation purposes is of a standard to be designated as an SSSI or in another way. We could be talking about wetlands for extensive grazing and other areas that might not be protected in certain respects but which could be farmed in a way that promotes conservation objectives.

I acknowledge that the issue is sensitive. It might be argued that we are still too close to the act's enactment to start amending it and that it needs to bed down so that people can be confident about how it operates. I felt that my amendment proposed a possible legislative vehicle to address the anomaly that I highlighted; however, as I sense that I am not getting any support from either the minister or the committee, I would like to withdraw it.

Amendment 178, by agreement, withdrawn.

The Convener: There are no other questions to put today.

We have covered a lot of ground and I thank committee members and the minister for keeping track of what was at certain points a pretty swift romp through the bill. Because everyone did their homework, things went smoothly, although we did have a couple of important debates.

I have decided that, on day 4 of stage 2 on 25 February, we will try to make our way through the rest of the bill. That will take us through parts 3 and 4 to schedules 6 and 7 and the long title. After considering the debates that might arise, I think that achieving that target is possible, but we will see how things go. An announcement to that effect will be made in tomorrow's business bulletin to alert all MSPs. If we do not manage to get through the bill at our next meeting, we will have to start day 5 on 3 March at the point at which we leave off.

Amendments to the rest of the bill must be lodged by 2 pm on Monday 23 February if they are to be sure of being included for consideration by

the committee. Again, I thank the minister and his officials for attending.

As agreed at the previous meeting, we will now move into private session to consider our arrangements for the budget process. I invite staff of the official report and broadcasting, members of the public and any visiting members to leave the chamber.

12:03

Meeting continued in private until 12:13.

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