ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 25 February 2004
(*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
6th 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:

Helen Eadie (Dunfermline East) (Lab)
Richard Lochhead (North East Scotland) (SNP)
Alex Neil (Central Scotland) (SNP)
Lachlan Stuart (Scottish Executive Environment and Rural Affairs Department)
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

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 25 February 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:01*]

Item in Private

The Convener (Sarah Boyack): I welcome members, witnesses and members of the press and public. We have received no apologies. Richard Lochhead has indicated that he is interested in attending the meeting for item 2. I remind members to switch off their mobile phones, so that there are no irritating noises.

Item 1 on the agenda concerns an issue that we have identified in advance. The committee is asked to consider taking in private item 4, on the arrangements for our inquiry into the implementation of common agricultural policy reform. We will discuss potential witnesses and organisations from which we want to take evidence. Does the committee agree to take item 4 in private?

Members *indicated agreement*.

Irish Presidency of the European Union (Scottish Executive Priorities)

10:02

The Convener: Item 2 concerns the Irish presidency of the European Union, specifically as it relates to the Executive's environment and rural development portfolio—we have received a number of papers from the Executive. I am glad to say that this is the first of a series of major sessions on the issue—it has been agreed that we will have a discussion with the Minister for Environment and Rural Development at the outset of each EU presidency period. I hope that members have found the background paperwork useful—it is certainly extensive. I found it useful to read through the range of issues.

I welcome Allan Wilson, the Deputy Minister for Environment and Rural Development, and invite him to lead off by saying a couple of words. I do not mean literally a couple of words, but I do mean a fairly concise introduction, minister. Do not feel that you must cover absolutely everything, as I suspect that members will want to explore key issues with you. However, it would be good if you could make a brief opening statement.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I am glad that you have found the papers helpful. We are talking about medium to longer-term perspectives and about influencing the outcome of EU deliberations. I was hoping to supplement the paper with a few well-chosen words in relation to headline matters that are under consideration. I think that that would be helpful in setting the scene, although I do not want to impact unnecessarily on the time that is available for questions.

I will say a few words about agriculture, because a session on common agricultural policy reform is scheduled for next week. The agriculture agenda under the Irish presidency is very light. The key interest from the Scottish perspective will be the development of detailed implementing rules for CAP reform. We hope that further discussion will lead to agreement on the welfare of animals during transport, in which there is a particular Scottish interest. I may say more about that today or next week.

Inevitably, fisheries will be a priority for the Executive during the Irish presidency. Last year's December fisheries council brought agreement on a long-term recovery plan for cod stocks. We also secured significant quota increases for the Scottish fleet. However, as members know, various issues still need to be resolved. We are

working closely with the Commission and the industry to ensure the more effective implementation of the agreement.

I am sure that the agreement will remain a high-profile issue, as it is vital that we negotiate the necessary introduction of flexible long-term arrangements for cod recovery and that those arrangements should deliver maximum benefit to Scottish interests. However, a range of other important issues is at the forefront of discussion over the next few months—in the short term, rather than in the medium to longer term.

For example, we can expect the adoption shortly of a Council decision that will enable the establishment of fisheries regional advisory councils. We have been instrumental in driving forward that agenda and strongly support the early establishment of RACs. We will work to ensure that Scottish views are heard as the legislation is finalised and will support the development this year of an RAC for the North sea. The Commission has been tasked with reviewing the various area closures currently in effect in European Community waters, many of which affect Scottish vessels, and we will be contributing to that process.

The interplay between fisheries policy and parallel EU environmental initiatives is also important. For example, we can expect progress under the auspices of the habitats directive towards EU regulations on the monitoring and prevention of the bycatch of dolphins and porpoises. Another example is the protection of the Darwin mounds—we can expect agreement shortly of a regulation setting that protection on a more permanent footing. We will contribute fully to the debate on and the establishment of an EU fisheries control agency.

Three key environmental fronts are developing. We will make a strong contribution to the spring council, taking forward a number of legislative dossiers and a number of international issues, particularly in relation to climate change and biodiversity. The spring council will consider EU progress towards our Lisbon strategy, which is designed to make the EU the most competitive and dynamic knowledge-based economy in the world. Its three main elements are economic, social and environmental. Those reflect the three pillars of sustainable development, to which we subscribe. Obviously, from our perspective, it is important that the presidency ensures that the third pillar—the environment—appears in the conclusions that are adopted.

A number of live issues are on the legislative agenda. We are working on the new European chemicals strategy, which we discussed comparatively recently. We recently launched a consultation document that examines options on that policy. Moreover, the air quality agenda will include a number of measures to protect public health and the environment. I do not think that any specifically Scottish issues are involved in that, but the initiatives will, obviously, have an impact on the Scottish environment.

We have alerted Scottish stakeholders to the thematic strategy on waste prevention and recycling and have contributed to the United Kingdom response to the EU consultation. The climate change agenda will include an amending directive, made under the Kyoto protocol, on the regulation of fluorinated gases and a communication on climate change.

The groundwater directive has the potential to be a useful addition to the controls to achieve good water quality across Europe. Our view, which is shared by the UK Government, is that groundwater provisions should be related to local circumstances rather than being based on Europe-wide standards.

Last, but by no means least, the proposed directive on environmental liability is in the latter stages of negotiation. It will provide a framework for preventive or remedial measures by operators specifically for damage to land, water and protected habitats or species.

There will be two environmental councils during the Irish presidency: one on 2 March and one on 28 and 29 June. Those plenary sessions will bring together the work of many months beforehand for agreement or direction by ministers.

The Convener: Thank you for that comprehensive run-through of the key issues.

Maureen Macmillan (Highlands and Islands) (Lab): Thank you for the paper on the presidency, minister. It is the first user-friendly paper on proposed European developments under a particular presidency that I have seen.

Will you tell us a bit more about the groundwater proposals? When is the directive likely to come into force? At what stage are negotiations? I am well aware that localised decisions rather than Europe-wide regulations will be required in relation to groundwater.

Allan Wilson: The groundwater directive and the water framework directive require that pollution of groundwater should be prevented and that that resource—which is obviously important in Scotland and throughout the United Kingdom—should be managed in a sustainable way. The daughter directive is due to be completed in 2004, but that timetable could slip. The directive is expected to propose criteria for identifying significant and sustained upward trends in pollutant concentrations, as well as measures to prevent or limit the entry of pollutants into

groundwater. A regulatory impact assessment on a UK basis is being carried out. The costs could be considerable, depending on the final version of the directive. The Scottish Environment Protection Agency enforces the groundwater regulations in Scotland, which were agreed in 1998. A revised version of its groundwater protection policy is currently being issued.

In Scotland, groundwater accounts for around 5 per cent of drinking water, which is a much lower percentage than that for England and other European countries. Nonetheless, groundwater is important. Not only is it drawn on by farmers and industry, but it contributes to river flows, which is particularly important in dry weather.

That is where we are. If the member has a more specific point to make, perhaps we could explore it.

Maureen Macmillan: Groundwater is important in rural areas because many isolated houses use groundwater and wells to access drinking water. I would not like to think that a lot of regulation will be imposed in such places. I thank the minister.

Alex Johnstone (North East Scotland) (Con): I would like to discuss fisheries and specifically the regional advisory councils that are to be established. As the minister knows, some members around the table have already lost patience with the common fisheries policy and have decided that policy should be moved on. Part of the reason for their losing patience is that the RACs fall dramatically short of area councils and will have far fewer powers than were originally proposed in the European green paper on fisheries. What benefit does the minister see from RACs in the form that it has been proposed they should take? Does he see an opportunity during the current presidency or in the medium term to increase the powers and the authority of those councils in order to begin to deliver the kind of authority that Scotland needs to defend its fishing interests in Europe?

Allan Wilson: That is a good question. The member knows that I think that his party's policy is not tenable in the short term or in the longer term and that it is not consistent with European law or the treaty of Rome. Leaving that aside, we would probably share the wish for better regional management of our fishing resource in the interests of the industry and of the wider community, as well as in the national interest. RACs give us an important opportunity to develop that process.

My experience has been shaped in the wake of the December fisheries council by fairly detailed and prolonged negotiations on maximising the benefit of the increased haddock quota for the Scottish fleet. We could take that case as an interesting example of how RACs could help to progress the process. We secure bilateral and international agreement between the UK and other nations that border the North sea, such as France and the Netherlands, and with the Norwegian interest outside the EU and the Danish interest in the EU. Despite that, the Commission continues to exert what is, in our view, an unnecessary influence on the outcome of the spatial management agreements that were reached inter alia.

In my view, an RAC that worked proactively on behalf of regional interests would help to better shape and formulate Commission responses to the process. Obviously there will be changes from the Commission, which will coincide with the new developments. We hope and expect that what emerges from those two related issues will be a much better system of regional management than the one that we have experienced hitherto. Lachlan Stuart might want to add something to that.

10:15

Lachlan Stuart (Scottish Executive Environment and Rural Affairs Department): The minister was also asked whether there would be scope under the Irish presidency for increasing the powers of RACs. The direct answer is that there will not be, as the Irish presidency will adopt the regulation in its currently proposed form. However, there will certainly be scope for improving the operation of RACs later, when their efficacy has been demonstrated—we are fairly confident that they will be efficient decision-making authorities. For the moment, however, the proposal is that they should be only advisory councils, not decision-making bodies, so there is no real prospect of their status being enhanced before the end of the Irish presidency.

Richard Lochhead (North East Scotland) (SNP): I thank the convener for giving me the opportunity to ask a question today. For a second or two, I will wear my hat as convener of the European and External Relations Committee and congratulate the convener and members of the Environment and Rural Development Committee on putting this item on the agenda and on questioning the minister and scrutinising European policy that is relevant to the committee. The European and External Relations Committee supports that approach and hopes that other committees will follow suit, so that all committees become involved in the scrutiny of European policy.

However, I am mainly here in my capacity as a member for North East Scotland to ask the minister about fishing policy and specifically about how the discussions with the Irish presidency—if

there are such discussions—are progressing. Will the minister turn his attention to several extremely pressing issues? First, I have just received an e-mail from Wick Harbour Trust about the new permit system for haddock landings, under which Wick boats that choose to apply for a haddock permit will be unable to land their catch at Wick—they will have to land at "designated ports", whereas foreign boats will be able to land at Wick. The new system will have implications for the harbour trust, which writes:

"Since the Trust is already in a parlous financial state, it can be stated, without any exaggeration at all, that the Trust might well become bankrupt."

The system will also have safety implications, as the boats will have to go elsewhere to land haddock stocks, whatever the weather. I hope that the minister will give a commitment today that he will discuss that situation and change it.

Secondly, has there been any progress on the issue of penalising boats in terms of days at sea when they answer distress calls from other vessels or shelter from bad weather? So far, no guarantee has been given by Europe or by the minister that boats will not be penalised in such situations. Will the minister give that guarantee today?

Thirdly, is the minister taking part in negotiations with the Irish presidency to introduce an aid package for the harbours, the fleets and the onshore sectors that have been affected by December's deal? Will he bring forward such an aid package?

Finally, two months have passed since the deal was agreed. What progress has been made on allowing increased access in relation to the increased haddock quota that Scotland's fleet was given?

Allan Wilson: I can advise Richard Lochhead and the committee that the immediate issue that he raises about Wick Harbour Trust—I have some prior knowledge of that and I believe that Whitehills harbour is also affected—is under active departmental consideration by officials and, I hope, will consequently be dealt with to the satisfaction of the individuals concerned.

As for the wider issues, it is not true that the industry has not been told of our willingness to apply EU rules and regulations flexibly in relation to force majeure and vessels in distress. We told the industry of that in a face-to-face meeting that I had with industry representatives comparatively recently. I understand that officials continue to promulgate those views, as I do, in writing to producer associations. I am adamant that no EU regulation will be interpreted or implemented in a way that endangers any vessel or its operatives or crew. I have expressed that view forcefully to the producer associations and to officials at different levels.

That said, the more fundamental point is that the effort control regime—the days-at-sea regulations to which Richard Lochhead referred—gives the industry discretion to manage its permitted activity within management periods of up to 11 months. Provided that overall ceilings are not exceeded, the choice of management period and associated fishing patterns is a matter for the industry.

We continue to negotiate with the Commission to allow a higher proportion of haddock to be taken without a special permit and to secure other important prospective changes to the cod protection area boundaries for the agreed spatial management regime, which is integral to the increased haddock quota that brought about the new regime. We are also discussing the treatment of landings before the haddock permit scheme's launch and the impact of that on the proportion of haddock that can be taken in or outwith the cod protection zone.

Allied to that, we intend to pursue measures and hope to secure agreement on a mid-term review of whatever is agreed and on flexibility over the way in which the proportion of haddock that is caught in January and February is regarded in relation to the final outcome on the proportions of haddock catches in or outside the cod protection zone. We expect the Commission to take a flexible approach to our representations about haddock catches in other fisheries—notably, the prawn fishery. I would have liked the Commission's proposals on that to have been published before now, so that we could discuss the actuality of what can be agreed. We cannot do that today, but I hope that we can do so soon.

Rob Gibson (Highlands and Islands) (SNP): I am interested in the processes that are followed between the making of regulations and their application by producers in the fishing and agriculture sectors. I am receiving an increasing number of representations about the fact that instructions are sent to organisations and then quickly withdrawn and replaced.

Indeed, in relation to the common fisheries policy, applications under the 1 February instructions were being delivered days and weeks after the start of the fishery. In relation to the common agricultural policy, year-to-year changes to the rules on aspects of the policy—which may be simplified by the single farm payment in due course—often leave people in the dark. People are left in the dark about when they can go out fishing, the force of the regulations or how to fill in applications before the details of the schemes are known.

I am concerned about the process between Pentland House and the local offices and the

producer organisations. People are put in difficult situations and do not know whether they are carrying out operations correctly or whether they are applying for the correct subsidies. I would like the minister to respond to that, although I am prepared to write to him on specific issues. The civil service process—because of the way in which we have annual rounds in the fishing business—throws up these issues practically every year. It is of great concern that people are often left in the dark about parts of the process.

Allan Wilson: I share Rob Gibson's general concern that people should not be left in the dark. I assure him that officials in the department work tirelessly to ensure that information is disseminated to the individual producers timeously and in such a manner that it can be easily understood and effectively implemented.

I will separate the fisheries council process from the CAP reform process, because the two are not the same. Specific external pressures properly arise annually in relation to the protection of stocks and the sustainability of fishing management practices, which require complex negotiations and subsequently require to be clarified annually or tidied up—call it what you will—in intergovernmental discussions, in discussions with the Commission and in bilateral negotiations. A classic example is that EU Council decisions on fisheries management, to which Rob Gibson referred, are subsequent to agreement with Norway, which normally is reached before the end of the year. That did not happen this time until later in the new year, which inevitably delayed the fisheries management decisions and complicated the subsequent process.

As a general rule, I agree entirely that we want to ensure that all the relevant information is disseminated speedily, timeously and in a simple manner to every producer and to everybody who is affected by a decision. It is not always possible to do that, but we would be happy to examine individual instances that members wish to bring to our attention to see where the systems could be improved to benefit the recipient of the information.

Rob Gibson: I have a short follow-up question. Once the process has settled down, can we take as an example one of the regulations that was supposed to be applied on 1 February and trace the route from the decision-taking process, through the various stages of refinement, until it is applied, so that we can understand the complexities? It would be of great help to the committee if the minister could give us that information in due course.

Allan Wilson: I would be happy to do that. It might be a useful exercise for members to appreciate the difficult conditions under which our officials sometimes have to operate given the way in which the decision-making process works, or does not work in some instances.

The Convener: That would be a good development and would build on what we tried to do with the budget last year, when we wanted to track through what was happening with future budget lines—one of your answers then was that you were not in a position to tell us exactly what scheme would be approved for funding to deliver objectives. Thank you for that useful suggestion.

10:30

Eleanor Scott (Highlands and Islands) (Green): Will the minister say a few words about the European Commission's document "Towards a Thematic Strategy on the Prevention and Recycling of Waste"? In particular, how has the Executive engaged with the Commission on the strategy's development? What implications will the strategy have for Scotland? Indeed, what does it have to offer Scotland, given that waste prevention and recycling is a bit of a priority?

Allan Wilson: That is a good question. As I pointed out briefly in my preamble to this discussion, we were instrumental in feeding into the UK response to the Commission's paper. That response raised a number of key points. For example, it concluded that strong links are needed with other waste management initiatives such as incineration and organic waste disposal. Furthermore, it is important that waste management policies must be implemented at local and regional levels of government as well as at Scottish parliamentary level. After all, people at those levels spend the money and have a better knowledge than we in Edinburgh have of their communities' needs and requirements. I suspect that that fits in with the member's view of the importance of community recycling. It is important to devolve decision making to local level.

An issue that is as pertinent to Scotland as it is to the rest of the EU is the need for a better, more precise definition of waste. We also need more encouragement for local, regional and national—dare I say it—green procurement policies. We in the Scottish Executive are impressing that issue on our Westminster colleagues and at a wider level.

We must address the question of harmonised EU landfill taxes on which, although it is a reserved matter, we have a view. Similarly, the reduction in VAT for environmentally friendly products raises issues that involve not just the UK Exchequer but EU finance, taxation and regulatory policy regimes in general. The Scottish Executive is feeding its perspective into all those headline issues.

The Convener: It is useful to find out what is happening with those issues, particularly in the light of the committee's report on waste, which, although positive, picked up on some of them. Measures such as green procurement policies are very positive and we would be keen to be kept in touch with any developments.

I will let Alex Johnstone ask a brief question that the minister might not wish to answer this week; indeed, he might wish to come back to it next week.

Alex Johnstone: Is the minister in a position to give a definitive statement on whether the required set-aside area under the arable area payments scheme will be the recommended 10 per cent or whether it will be reduced to 5 per cent?

Allan Wilson: No, I am not in a position to do that today and might well not be able to do so next week. However, I will check on that matter.

The Convener: It sounds as if we will come back to the matter next week regardless.

Allan Wilson: I will try and do it for next week. How about that?

The Convener: That sounds like reasonable notice and a good compromise all round.

I thank the minister for attending the meeting and for carrying out background work on the paper to allow us to get our heads round these issues. I very much take on board Richard Lochhead's comments about this committee's work on European issues. From the start of this parliamentary session, we have been keen to add transparency to the work of the Executive and the EU on issues that affect Scotland and on which we need to be well briefed and to make an early case in Europe. From that perspective, I am pleased with the progress that has been made on the rural development and environment issues that have been raised this morning. Although we have not touched on these matters, the minister's indications of timescales for the registration, evaluation and authorisation of chemicals—or REACH—proposals and climate change work are useful for timetabling purposes. As far as the committee's future work programme is concerned, it is also useful for us to know that environmental liability is quickly rising up the agenda.

Publishing the papers is useful, because it allows not just the committee but other stakeholders in Scotland such as those in farming and fishing communities and environmental lobby groups to see what is on the agenda. I hope that it will also allow people to come along and talk to us about the issues that they want us to push over the next few months.

Thank you very much for answering questions. Do you have any final comments?

Allan Wilson: This committee, the European and External Relations Committee and the Executive appear to be unanimous on this matter—and properly so. After all, the exercise is very valuable. Although the discussion is shaped in the context of the Irish presidency, some of the issues that have been raised will be addressed within that period while others will be addressed during the Dutch presidency and so on. The Executive feels that looking at such matters prospectively rather than retrospectively—which is something that we have had to do too often in the past—is a valuable development.

The Convener: Good. If you wish to enlist our support for any campaign that you are running, please let us know.

Allan Wilson: Precisely.

The Convener: Thank you very much. I now suspend the meeting for a few minutes while we switch the people at the top table.

10:36

Meeting suspended.

10:41

On resuming—

Nature Conservation (Scotland) Bill: Stage 2

The Convener: This is our fourth stage 2 discussion of the Nature Conservation (Scotland) Bill. I invite members to declare relevant interests.

Alex Johnstone: I remind members of my entry in the register of members' interests, which says that I am a landowner and a member of the Scottish Landowners Federation.

Rob Gibson: I am a member of the Scottish Crofting Foundation.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I duplicate Alex Johnstone's interest.

Mr Alasdair Morrison (Western Isles) (Lab): Like Mr Gibson, I am a member of the Scottish Crofting Foundation.

The Convener: I remind members that they should have their papers with them. We have spare sets of everything if they are required. I shall call amendments in strict order from the marshalled list. Today's target is to complete consideration of the bill, which I would dearly love to do. However, having read all the amendments and the many briefings that are, shall we say, going around, I realise that that may not be possible. It is important that we get the scrutiny process right and that we have good debates. However, I shall keep pushing ahead to see whether we can crack through it today.

Section 51—Protection of wildlife

The Convener: Amendment 238, in the name of Sylvia Jackson, is grouped with amendment 244. Is Karen Gillon speaking to the amendment?

Maureen Macmillan: No, I am.

Amendments 238 and 244 are intended to bring the Protection of Badgers Act 1992 into line with the provisions of the Nature Conservation (Scotland) Bill. They would introduce cause or permit offences and attempted offences, and give more protection to badgers by closing loopholes whereby excuses could be made for the killing of badgers, for example as an act of mercy. The amendments would prevent badgers that have been taken into captivity as a result of injury from being kept in captivity, once their wound or disability has healed, to be used as pets or for baiting. There are provisions for corporate bodies to be prosecuted and time limits for prosecutions to be brought into line with the Wildlife and Countryside Act 1981. Although many prosecutions relating to badgers tend to be animal welfare issues, we must realise that badgers are part of our natural heritage and should therefore be protected under the bill.

I move amendment 238.

Alex Johnstone: The amendments are complex and they would amend another act, the Protection of Badgers Act 1992. We have had only limited time to study the amendments, and I would like the benefit of the experience of the minister and his officials, when the minister responds to the debate, in forming an opinion about whether the amendments would achieve what they set out to achieve. I want to know that the amendments would not weaken the protection of badgers by changing the 1992 act, which has been successful.

10:45

Allan Wilson: I will deal with those points. Sylvia Jackson's detailed amendments, one of which was ably moved by Maureen Macmillan, are designed to bring key provisions in the Protection of Badgers Act 1992 into line with the measures that are already part of the bill and part of the Wildlife and Countryside Act 1981. As I have said in relation to other amendments, there are advantages in such consistency; I know that I share that view with the committee. Law enforcement professionals in both the police and the judiciary will also welcome the changes. Many of the changes are technical, but they reflect principles and, in at least some cases, they use wording that we agreed to earlier.

One particular change deserves some specific comment and takes the argument forward; that is the increase in penalties for offences that are associated with the utterly abhorrent activity of badger baiting or badger digging, call it what you will. I am sure that the committee shares my view that such acts are of premeditated and often unmitigated cruelty and that they are therefore in a different league from the majority of wildlife crime that is addressed elsewhere in the bill. Our courts must be tough with people who indulge in such activity and, consequently, they need to have tough sentences at their disposal to deal with those who are caught and convicted of such crime.

For those reasons, it is entirely correct for penalties for such offences to be increased to a maximum of three years in prison and/or an unlimited fine. We will discuss penalties for wildlife crime in general, but I want to see badger baiting eradicated from our society. We want it to be taken seriously by the police and the courts. Significant jail terms, enhanced police powers and

more time for prosecutors to bring cases, all of which are proposed in amendment 244, are all important improvements. I commend the amendments heartily to Alex Johnstone, and to the rest of the committee.

The Convener: That is helpful.

Maureen Macmillan: I am happy to hear what the minister says. The amendments are important; I concur thoroughly with the minister's remarks on badger baiting and I think that the amendments will go a long way towards stopping the practice and dealing by fine or imprisonment with those who indulge in it.

Amendment 238 agreed to.

Section 51, as amended, agreed to.

Schedule 6

PROTECTION OF WILDLIFE

The Convener: Amendment 8, in the name of Nora Radcliffe, is grouped with amendments 193, 209, 12 and 9.

Nora Radcliffe (Gordon) (LD): Amendment 8 seeks to extend the protection of nests and nest sites for certain species of birds to cover the whole year. Because the bill refers to the Wildlife and Countryside Act 1981, it refers to nests when they are in use. Some species return to the same nest or nest site year after year and any disturbance to the nest or nest site, even when it is not in use, discourages breeding. Birds are discouraged from breeding if they return to the site and find that it has been interfered with.

Amendment 12 is consequential on amendment 8. Amendment 9 lists the birds that would be affected by interference with nests or nest sites and limits protection to those birds.

Amendment 193 deals with communal roost disturbances. I support it for the same reason that I support the other amendments in the group. The committee was keen that this issue should be considered, because disturbance of birds roosting communally may affect their breeding.

Amendment 209 is very welcome, as it removes the confinement of protection of lekking birds from the single species capercaillie. That means that if circumstances change in the future, the legislation will be less time barred and will not have to be changed.

I move amendment 8.

Maureen Macmillan: The committee was concerned about all-year-round nesting sites and roosting sites. We are talking about roosting sites for schedule 1 birds, which roost communally. I am particularly aware of this issue as the red kite roosts not far away from where I live. There are about 70 birds in the roost. I am aware that hen harriers also roost communally, as do ravens. RSPB Scotland has given the Executive evidence that roosts are often used as staging posts for migratory flights. Tagged red kites have been found in various communal roosting areas in Scotland, so it is obvious that they move around. That may mean that roosting sites should be protected under EU directives.

There have been instances of roosting sites being disturbed. The birds may not have been shot at directly, but shotguns may have been let off nearby in an effort to discourage them from roosting in a particular place. I ask the Executive to reconsider the issue of roosting sites and to check whether it has examined all the evidence relating to them. There is evidence that roosting sites should be protected.

Such protection would not impinge on rights of access to the countryside, as disturbance to roosting sites would have to be deliberate or reckless to constitute an offence. Inadvertent disturbance would not be an offence. Amendment 193 is supported by organisations such as the Ramblers Association, the Scottish Countryside Rangers Association and the Mountaineering Council of Scotland. I urge the minister to consider it.

Allan Wilson: Amendments 8 and 193 have merit, but I ask the committee to resist them both for reasons that I will outline.

Nora Radcliffe's amendments, which deal with the protection of traditional nest sites, merit serious consideration. There is a useful principle that is worth considering in greater detail. As Nora Radcliffe pointed out, a number of our rarest, most vulnerable species make use of traditional nest sites and return to the same site year after year. In that context, the destruction of a nest can have a significant impact on breeding success—significant being the operative word.

I readily accept the principle behind the amendments, but we must be cautious about the list that the member has attached and which would be included in a new schedule. I recognise that all the species on the list are already specially protected—presumably, that is why they are included on it. However, there are legitimate questions to be asked about the extent to which all the species are genuinely exposed to the kind of persecution or destruction that the amendments are designed to address. Perhaps a more selective list would be more appropriate. I propose to take the amendments away and to examine them in conjunction with members, so that we can focus on the common ground between us and lodge amendments that enjoy everyone's support.

I understand Maureen Macmillan's argument and I recognise the importance of communal

roosts for the ecology of a number of bird species—the migratory habits of certain species have been referred to. However, we remain to be convinced that the level of legal protection that is provided for those species is insufficient for our purposes. The white-tailed eagle, the golden eagle, the hen harrier—to which Maureen Macmillan referred—the marsh harrier and the red kite are all regular breeding species that roost communally in Scotland. They are, by definition, amongst the most protected species anywhere in the world.

In advance of today's meeting, we asked Scottish Natural Heritage whether there were scientific data to suggest that communal roost sites are at particular risk from human disturbance and whether such disturbance is a widespread or common problem for the species—such as the one that Maureen Macmillan referred to—that need the highest level of protection. SNH was unaware of any such evidence.

There is a difficulty with the breadth of amendment 193. Unlike amendment 8 in the name of Nora Radcliffe, Maureen Macmillan's amendment does not focus simply on species that are particularly vulnerable. Consequently, the proposal is too extreme. Even if there were the scientific evidence to support the general principle of special protection for all communal roosts—which there is not—the amendment would go too far.

There is a problem with the definition of "roost communally" and with "disturbs", which is used elsewhere in the 1981 act. Accepting amendment 193 would present its own challenges, notably to land managers and to ramblers and others who take their leisure in the countryside. The disturbance that is envisaged in amendment 193 is rather different to the disturbance of a bird on a nest. There is an issue about how we define the disturbance of a roosting site, given that a lot of activity goes on around and about the site with birds coming and going as a matter of course. Against that background, proving that communally roosting birds had been disturbed would be a challenging task for any prosecutor.

I do not see a sufficiently clear or persuasive case for amendment 193, so I ask Maureen Macmillan not to move it.

The Convener: Do other members wish to participate in the debate? I will bring Nora Radcliffe in at the end.

Nora Radcliffe: May I ask a question of the minister when I wind up?

The Convener: If it is on a point of clarification, you should ask the question now.

Nora Radcliffe: Is the main sticking point for the amendments the extent of the list of birds in the proposed schedule? By and large, is the minister happy with the rest of my amendment?

Allan Wilson: Yes, that is true. Obviously, we hope to consult more widely on the suggestion during the interim period, between now and then, so that we get it right. However, we have no disagreement in principle with the amendment.

The Convener: Is the minister referring to between now and stage 3 of the bill?

Allan Wilson: Yes.

Maureen Macmillan: Is the minister prepared to meet me to talk a bit more about amendment 193? I take on board what he said about the amendment being too broad, but will he enter discussions to see whether we could reach a compromise?

Allan Wilson: As I said, if people provide us with evidence that there is either a specific or general problem, we will certainly look at that. Whether we can do that in advance of stage 3 is a moot point, but we will certainly take whatever steps we can to look at scientific evidence that is presented to us. However, the wider question about the definition of what would constitute a disturbance would also need to be addressed.

Maureen Macmillan: I appreciate that there are wider concerns about the definition and I will endeavour to provide more scientific evidence.

Allan Wilson: The point that was made about species being protected under EU legislation is pertinent, because the relevant directive requires that there should be no significant impact on the conservation of species.

11:00

The Convener: It has been useful to tease out those points. I ask Nora Radcliffe to wind up the debate and to state whether she will press or withdraw amendment 8.

Nora Radcliffe: I am content with the minister's assurances that he will take on board the thrust of amendment 8 and I am happy to look again at proposed schedule A1. In the light of that, I will withdraw amendment 8.

Amendment 8, by agreement, withdrawn.

The Convener: Amendment 201 is grouped with amendments 202 to 208 and 212 to 219.

Allan Wilson: We have not done amendment 209.

The Convener: Amendment 209 was in the second group of amendments.

Allan Wilson: Can I move amendment 209 before we move to group 3?

The Convener: We will come to amendment 209, so you can speak to it then.

Allan Wilson: Amendment 209 is important and it fulfils a commitment that we gave at stage 1—

The Convener: I will come to amendment 209, which was debated with amendment 8 in the previous group.

Allan Wilson: I have not moved it.

The Convener: No, you have not. You will move it later. The first amendment in the group is moved formally and we vote on the other amendments in the group later. I will ask you to move amendment 209 after we have been through two more pages of my script. There is a bit of time yet.

Allan Wilson: I will not argue with you, you will be pleased to learn.

The Convener: Thank you.

We are considering the third group of amendments. You should kick off by moving amendment 201 and speaking to all the amendments in the group.

Allan Wilson: The amendments are technical and will make minor adjustments to the wording of schedule 6.

The Wildlife and Countryside Act 1981 is not effective in dealing with offenders who go abroad to commit their crimes. For example, a person who steals eggs in Spain could legitimately add them to a collection that is kept in Scotland. Eggs that are taken from Scottish birds would be illegal, but not the specimens that are taken overseas. The bill seeks to address that situation, which is unacceptable.

We have identified some minor practical difficulties with the provisions as currently drafted that could prove problematic in a prosecution. The amendments in the group seek to simplify the existing provisions and to use the law of Scotland—rather than the laws of EU member states—as the reference point for determining what is legal or illegal in Scotland. That is basically it. The provisions will be more practical and effective.

I move amendment 201.

Amendment 201 agreed to.

Amendments 202 to 208 moved—[Allan Wilson]—and agreed to.

Amendment 193 not moved.

The Convener: Amendment 209 was debated with amendment 8. Was there something that the minister omitted, in error, to tell us about amendment 209?

Allan Wilson: I will just move the amendment.

The Convener: I do not think that there is any great controversy on this side of the table. We are quite happy with the amendment.

Amendment 209 moved—[Allan Wilson]—and agreed to.

The Convener: The fourth group of amendments is about areas of special protection in relation to authorised persons. Amendment 210 is in a group on its own.

Allan Wilson: Amendment 210 is a minor technical amendment that will remove a redundant term.

I move amendment 210.

Amendment 210 agreed to.

The Convener: Amendment 191, in the name of Alex Neil, is grouped with amendment 192.

Alex Neil (Central Scotland) (SNP): First, I thank the clerks for all the assistance that they have provided in framing the two amendments—they have been first class.

As members know, the Wildlife and Countryside Act 1981 was about restoring the balance in nature, with particular regard to the bird population. Until that time, the decline of raptors had been a major problem, especially as a result of pesticide poisoning. Nature had got out of balance and certain bird species had to be protected. However, in the 23 years since that act was passed, the balance has changed substantially.

The purpose of amendments 191 and 192 is to deal specifically with the threat of sparrow-hawks to the racing-pigeon fraternity. Most committee members will be aware of the problem of raptors attacking racing pigeons, either in the loft or during races. A number of studies have been undertaken—mainly by the Government, or funded by the Government—including the Hawk and Owl Trust's report of three years ago. Over the past year or so, a joint study of the issue has been undertaken by the Scottish Homing Union and Scottish Natural Heritage. A report should be complete by about Easter.

It is clear that sparrow-hawks are a particular problem. The sparrow-hawk population is at its highest for more than 100 years: they are not scarce and there is no threat to their population, but there is undoubtedly a problem of sparrow-hawks attacking pigeons, particularly in their lofts, and causing major problems in the sport. Since the 1981 act, there has been a European directive that spells out that, where relevant, there should be promotion and protection of sport and recreational activity. The racing-pigeon industry is a very popular sporting and recreational activity.

The purpose of the amendments is to protect racing pigeons, to help to restore the balance, and to do so under licence. The amendments' effect on the number of sparrow-hawks would be only marginal, because research has shown that, where sparrow-hawk attacks occur, they are repeated attacks by the same sparrow-hawks. We are not talking about a mass cull of sparrow-hawks, but about a fairly benign measure that will protect the population of racing pigeons.

I believe that members have received a briefing on the intensity of attacks. More than 85 per cent of pigeon lofts are attacked fairly regularly by sparrow-hawks. It is a major problem and if it is not tackled, pigeon racing in Scotland will die within 10 years. I hope that the committee will see fit to support the amendments; by doing so, they will benefit a very important sport and recreation without doing enormous damage to the sparrow-hawk population.

I move amendment 191.

Karen Gillon (Clydesdale) (Lab): There is genuine concern among those who keep pigeons and who fly them in races in that they are asked to stand and watch as sparrow-hawks attack, dismember and eat birds that they have looked after for a number of years. If we asked anyone else to do something similar, members of the committee would find it totally unacceptable. It is not acceptable that people who are involved in pigeon racing are asked to do that.

I am not, however, entirely convinced that amendments 191 and 192, in their present form, are the right way of solving the problem. Perhaps we need to consider the matter in more detail, but a genuine problem exists. If members do not support the amendments at this stage, I ask the minister to reconsider the matter ahead of stage 3.

A sparrow-hawk is unlikely to be able to carry a pigeon very far and if an attack happens at home, the killing—or, indeed, just the maiming or injuring of a bird that could require the person who owns the bird to put it to death humanely—can cause considerable distress. Considerable pressure is being put on the racing-pigeon population in Scotland, which could lead to the demise of the sport if we do not take action now.

Mr Morrison: I have two brief points to make. First, I know absolutely nothing about pigeon racing. Secondly—this is an obvious point—I do not usually agree with Alex Neil. However, to be fair to him, I have listened carefully to him and he has outlined a clear case. I wait with interest to hear what the minister will say in response. The important point that Alex Neil made is that if provisions are put in place to protect those who use and keep racing pigeons, the impact on the sparrow-hawk population in Scotland would be negligible. That is an important consideration for the committee.

Alex Johnstone: When I was convener of the then Rural Development Committee, one of the earliest representations that that committee received was a petition from the Scottish Homing Union on predation of pigeons by birds of prey. We are all aware that the subject is controversial—the Rural Development Committee spent quite a lot of time considering the matter, but it never reached a decision. I think that that continued to be the case when my colleague Alex Fergusson became convener of the committee in the previous session.

We have a responsibility to face up to the matter now and amendments 191 and 192 offer us the opportunity to do so. The issue may be controversial but, as Alex Neil made clear, the proposals are unlikely to affect the overall population of the birds of prey that are responsible. I understand that research shows that individual birds tend to adopt the practice that has been mentioned and that there is no general trend in the sparrow-hawk population to prey on racing pigeons. We have an opportunity to take action to protect those who rely on racing pigeons for a profession or for a hobby. Such people have asked for assistance from Parliament and the committee's predecessor committee for some time.

I support Alex Neil's amendments, although I accept what committee members have said about considerations that may need to be taken into account but which the amendments do not cover. In supporting the amendments, my purpose is to ensure that, if the amendments are not agreed to, the Executive will take the opportunity at stage 3 to propose changes that might be required to provide legislation that covers the issues that Alex Neil's amendments intend to cover.

11:15

Helen Eadie (Dunfermline East) (Lab): I am pleased to have the opportunity to voice my support for amendments 191 and 192. Nora Radcliffe and I were members of the then Transport and the Environment Committee when the issue was first considered as a result of a public petition and I had an intensive period of work with the Scottish Homing Union and with constituents who race pigeons. It is important to recognise their rights and I am pleased to hear that other members agree with that. My amendment, which would have protected pigeons specifically against peregrines, was not accepted, but I would particularly welcome the minister's finding a way of examining that matter in the deliberations for stage 3. The point has been made to me and to other members that the

Scottish Homing Union reports that about 300 birds per peregrine are eaten each year. It is a major problem for pigeon owners, and their sport. Although I am only a visiting member to the committee this morning, I support all the other members who have spoken today.

Nora Radcliffe: I have a lot of sympathy with the situation that Karen Gillon described—a loft of racing pigeons that is used as a feeding station by a bird that one cannot deal with. However, I have difficulty with amendment 191 because it proposes a blanket permission to kill any wild bird other than those that are listed in schedule 1 to the 1981 act if the intention is to protect racing pigeons. That would open up a huge loophole that would mean that one could pretty much shoot anything and then say, "But there was a racing pigeon going past."

Although I have sympathy with the intention behind amendment 191, the practical consequences of accepting it would be much wider than intended. My example might be ridiculous, but it could well happen. That would make it very difficult to challenge anyone who shot a wild bird and said that it was done to protect a racing pigeon.

Maureen Macmillan: Like Karen Gillon, I was involved in the Transport and the Environment Committee's report into the problem. It is a matter of great regret that, two or three years down the line, we do not seem to be any nearer to solving the problem, but it must be solved.

I am not convinced that the problem will be solved by shooting sparrow-hawks. If one shoots one sparrow-hawk beside a pigeon loft, another will appear in a couple of weeks because free meals are on offer. I would like there to be some provision that was not about shooting—I have talked in the past about how one can disrupt such predators and stop them roosting beside pigeon lofts. The problem must be sorted out, but shooting is not likely to be successful. We must do something else, but I do not know what.

Eleanor Scott: I echo many of Nora Radcliffe's concerns. Amendment 191 would allow a blanket permission to kill any wild bird if the person involved could say that their intention was to protect a racing pigeon. That is too much of a blanket provision. There is also concern about whether such a measure would be effective because it would exclude birds that are listed in schedule 1 to the 1981 act and which might be the major predators apart from sparrow-hawks. There is a feeling that the provision would be contrary to the EU birds directive and we do not want to pass legislation that is not in accordance with that. It is unfortunate that the continuing research to which Alex Neil referred has not yet been reported because it would be helpful if it were to inform the forthcoming legislation. Perhaps we could consider that at stage 3 if the research comes out before then.

At present, I cannot support amendment 191. Although I have sympathy with its intention and I realise that racing-pigeon owners have a serious concern, I am not convinced that the provision in the amendment would work or that it would escape potential abuse, which would happen because of the way in which the amendment is drafted. I hope that we can wait until the on-going research is reported and thereafter reconsider the position at stage 3.

Roseanna Cunningham (Perth) (SNP): I have a question for Alex Neil first, and then one for the minister to answer when he responds. I echo some of the concerns that have been expressed about the way in which the amendment is drafted. It suggests that the simple appearance of a wild bird in the vicinity of pigeons would be sufficient to justify somebody shooting it. In those circumstances, the claimed protection would in effect become a licence to shoot any wild bird that came into view without that bird's necessarily having shown a direct and immediate interest in what was fluttering around beneath it.

There is a legal issue involved in showing that pigeons are in immediate actual danger as opposed to hypothetical danger. It might be difficult to make the two situations distinct—that is the problem and I am not sure whether amendment 191 would deal with that. I would like to hear from Alex Neil whether the simple appearance of a wild bird would be sufficient for it to be shot because if that is the case, the amendment would provide a licence to kill wild birds.

My question for Allan Wilson concerns the research that we have discussed and the fact that the raptor working group, which I understand did not suggest legislative changes when it reported in 2000, has directed further research. I am interested in the stage that that further research is at and whether the minister can tell us anything about where it is going. As the bill is going through Parliament, I appreciate that it presents the opportunity to do something, but I wonder whether such a move is premature, in view of the continuing research.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Why does Alex Neil propose a legislative change when the UK raptor working group said that legislative change was unnecessary? Is he aware that pigeon-racing organisations were involved in that group? Even pigeon organisations do not see the need for the legislative change that he proposes.

The Convener: Quite a few questions have been asked of the minister. In relation to the timing

of the raptor study, we expect stage 3 to take place after the Easter recess, but I have just had a quiet discussion with the clerks about where the bank holidays fall and we do not know the date by which stage 3 amendments would have to be lodged. That is a procedural matter that we will think about. If the minister has a sense of when the report will be published, it would be useful for the committee to know that. A couple of members have mentioned it.

Allan Wilson: I, too, will be interested to hear Alex Neil's responses to the fairly pointed questions that committee members have asked him. Like many members in the room, I have a history in the subject. After my election and before I became the Deputy Minister for Environment and Rural Development, I worked with Alex Neil and others to try to resolve the dispute between the parties over this vexed issue. I understand the strength of feeling out there, not least because the Scottish Homing Union has its origins in Ayrshire. As an Ayrshire man, Alex Neil will understand that well. However, that is not to say that a long and honourable tradition of pigeon racing does not exist in Fife, Lanarkshire and elsewhere, because of course it does.

Pigeon racing generates considerable feeling, which I came across in another capacity when arguments were held about whether it is a sport. That question was raised today: I am compelled to say that from sportscotland's perspective, it is not a sport, so some dubiety exists over whether the European directive to which Alex Neil referred extends to the pigeon-racing fraternity.

I understand all that, but a question is raised about our obligations under European law. That is probably best exemplified by the furore that arose when we set out to protect several species of wild bird by culling hedgehogs. One man's pet can be another man's pest. Problems can arise from our approach to the subject. Some of the issues that members have raised—not least our obligations under European law—are pertinent to that. As Alex Neil knows, those obligations are strict. In closely defined circumstances, it is possible to derogate from a directive, but we can do so legally only for defined purposes when no other satisfactory solution exists and only on the basis of hard evidence. On the first proposition—that there is no satisfactory solution—I am minded to take account of the UK raptor working group's report, to which members have referred, which makes the significant statement:

"It is clear that no single technique will solve these problems since they are caused by several species of raptor, and their intensity varies in different places and at different times. A range of measures will be needed to address the separate issues of predation at lofts, during training and on races."

That puts the proposition in context. As others have said, we are talking about—in stark terms—the provision to kill otherwise protected species. Alex Neil mentioned record sparrow-hawk numbers but, in part, that is true because sparrow-hawks have been protected and conserved from a position of virtual extinction, which was the result of predation.

I am interested in a scientific evidence-based solution that will identify and rationalise the problem with the mutual agreement of all the parties involved. To that extent, the pertinent question—which Roseanna Cunningham asked me—is about progress on research. It would be ideal if the research in question, which is not with us now, were to be with us before stage 3. I will try to push that on, but we all know that we do not live in an ideal world and that we might well reach stage 3 before the research is available to us. That scientifically based research will examine the claims of the Scottish Homing Union and others on the exact level of predation on lofts, of which there are varying accounts. Even once the research is published, there will still be arguments in its wake about how to interpret the scientific advice and what to do thereafter.

I appreciate that, for pigeon lovers, one bird lost is one bird too many, but I believe that, given my obligations under European law, we should take a scientific evidence-based approach. That invites me to ask Alex Neil to seek to withdraw amendment 191 and not to move amendment 192 so that the process that is under way can continue. I hope that we will be better advised when stage 3 comes around, but I cannot guarantee that. However, I undertake to push matters on so that, by the time we consider the issue at stage 3, we are better informed about the competing claims.

Alex Neil: I want to answer some of the specific questions that have been asked. A number of people have mentioned the UK raptor working group's report, which is now two or three years old. It should be considered alongside the parallel report by the Hawk and Owl Trust, which took a slightly different line.

The major recommendation from the UK raptor working group on the specific issue that we are considering was that further research was required to examine the most effective method of control. In Scotland, that further research is the study to which I have referred, which is funded jointly by SNH and the Scottish Homing Union. The report's consultants are CSL—the Central Science Laboratory. Although we are talking about a commercial contract, CSL is the central laboratory that advises the Department for Environment, Food and Rural Affairs. Its draft report has been circulated and is a matter of discussion. I believe that the final report should be ready within the next

three weeks or so, which I hope will give the Executive sufficient time to study it and to produce appropriate amendments that will deal with the matter.

The minister is right—if amendment 191 were agreed to, it would not solve the problem of raptor predation on the pigeon population, but it would make a significant dent in it and would be very helpful as part of the overall strategy for dealing with what is a serious problem.

Roseanna Cunningham asked about the breadth of amendment 191. I accept that, if the Executive is bringing its resources to bear on the subject, it might be helpful to give it more time between now and stage 3 to consider better amendments that will tackle the issue. From what the minister said—I know that he is committed to the cause of the racing-pigeon industry—that is a reasonable suggestion.

11:30

However, I hope that we are not going to hide behind EU directives on this matter. The fact is that other countries that are covered by such directives have taken measures in this respect and I should also point out that the EU directive in question refers not only to sport but to "recreational activity". Even if pigeon racing is not defined as a sport by the bureaucracy of sportscotland, it is still very clearly a recreation. The directive also refers to cultural activity. Although some people might not regard pigeon racing as being on the same plane as Scottish Opera, it is nevertheless a cultural activity in the places that Allan Wilson and I represent and is very much a part of working-class culture in Ayrshire, Lanarkshire and many other parts of Scotland.

That said, in the interests of securing workable and fair legislation and in addressing the points that members around the table have raised, I am quite willing to seek the committee's permission to withdraw amendment 191 on the clear understanding that the Scottish Executive will make a serious attempt to lodge appropriate amendments at stage 3.

Amendment 191, by agreement, withdrawn.

The Convener: I call Alex Fergusson to speak to and move amendment 239, which is grouped with amendment 211. [*Interruption.*]

Alex Fergusson: Are you speaking to me, convener?

The Convener: I am sorry—I was looking at the wrong Alex.

Alex Fergusson: Having gone through agonies last year to lose three stone, I am sorry still to be muddled up with my colleague Alex Johnstone. [*Laughter.*]

I will be very brief. In his introduction to amendment 191, Alex Neil alluded to the fact that section 4 of the Wildlife and Countryside Act 1981 specifies exemptions to the general prohibition on the killing of birds that is inherent in the act. Section 4(3)(c) of that act specifically exempts authorised people—it is important to acknowledge the word "authorised"—such as farmers who take action to protect livestock, feeding stuff for livestock and crops from serious damage by birds other than those that are listed in part I of schedule 1.

The sole purpose of amendment 239 is to widen the scope of that exemption to encompass the protection of game birds—which are, after all, the livestock of gamekeepers—by seeking to insert the phrase "game birds" into section 4(3) of the 1981 act. That would ensure that attacks on red grouse and partridges by ravens and common gulls, for example, can be legally controlled. Quite simply, if farmers can have their livelihoods protected in such a way in the 1981 act, it is surely completely justifiable for gamekeepers to have their livelihoods similarly protected.

I move amendment 239.

Allan Wilson: I argue that amendment 239 is not required. After all, section 16 of the 1981 act already provides the power to grant a licence where there is a serious threat to wild birds, which in this instance extends to the game birds that Alex Fergusson seeks to protect. As with amendment 191, evidence needs to be provided to demonstrate the extent of the threat; however, the existence of the power itself removes the need for including the proposed provision.

I am advised that because game birds that are held in rearing pens also come within the definition of livestock, they are covered by the existing licensing provisions of the 1981 act. As a result, I urge Alex Fergusson to seek to withdraw amendment 239.

Amendment 211 is a minor amendment that fulfils a commitment that was given by Ross Finnie at stage 1; it seeks to adjust the bill to ensure that paragraph (c) of section 5(5) of the Wildlife and Countryside Act 1981 will not now be repealed. As a result, it will be possible to continue the practice of catching up certain game birds for breeding purposes at the end of the shooting season without the need for special or complex licensing arrangements. Prevention of catching up for breeding purposes has never been part of the bill's policy intention, so amendment 211 will preserve the status quo.

Rob Gibson: I am seriously concerned that amendment 239 would leave the Scottish

Executive wide open to infraction proceedings. This whole debate—which includes the issue of game birds—has to be revisited. It has been mentioned at stage 1 and at various other times recently that several species of game bird are presently designated as being under threat because of climate change, and that the UK Government has been told by the European Commission that it is going to have a case to answer.

The odd legal position of game birds is an aside, in a sense; nevertheless, the matter will have to be addressed. Pheasants—an introduced Asian species—and species such as grouse, the native grey partridge and the introduced red-legged partridge will be affected, but other quarry species—such as ducks and geese—will not. The throwing up of anomalies by the definition of game birds merely conflicts with the aim of the bill, which is to promote wildlife in Scotland in total. To widen the exemption would indeed be a bad move and I am glad to hear that the minister is opting for the status quo. I support that.

Roseanna Cunningham: Does not the research issue about the raptor group, which was mentioned in relation to amendment 191, apply in the same way to amendment 239? If the updated research is imminent—as it might turn out to be—might we have better advice than we have at the moment? I am not impugning Alex Fergusson's ability to advise on his amendment 239; however, pending more specific research, the amendment might perhaps be in the same position as Alex Neil's amendment 191.

The Convener: As no other member wants to speak, I ask Alex Fergusson to wind up the debate and to respond to any comments.

Alex Fergusson: I shall do so briefly, convener. Heaven forfend that I should lodge an amendment that might allow the Executive to come under infraction procedures—what a terrible suggestion.

I note the comments that have been made by Rob Gibson, Roseanna Cunningham and the minister. I think that the minister is suggesting that most of the concerns in my amendment are covered by existing legislation. As members have said, this is extremely complex legislation and I would want to look carefully into that.

Rob Gibson is happy to admit that there is a need for debate on the issue, which is probably accepted by other members. I welcome that heartily—there is a need for wide-ranging debate on the issue. However, I am slightly concerned that we are putting off that debate because of yet more impending research. If it is impending, so be it. Perhaps when it is published, that will be a better time for the debate to take place.

I want to convince myself that what the minister said is correct. To give myself time to do that, I am happy to seek the committee's permission to withdraw amendment 239 strictly on the understanding that the matter may be revisited at stage 3 should the minister's assurances—which I do not doubt are genuinely meant—be in doubt.

Amendment 239, by agreement, withdrawn.

Amendments 211 to 219 moved—[Allan Wilson]—and agreed to.

The Convener: Group 7, which is on the protection of wildlife and the use of snares, is quite lengthy. If members bear with us, we will ensure that everybody speaks to their amendments in the right order.

Amendment 2, in the name of Eleanor Scott, is grouped with amendments 194, 195, 3, 196, 197, 10, 4, 187, 198, 199, 5, 6 and 11. If amendment 4 is agreed to, amendments 187, 198 and 199 will be pre-empted.

Eleanor Scott: Amendment 2 and the other amendments in my name are designed to effect a complete ban on snaring in Scotland. The time is right for that. The United Kingdom is one of only five European Union countries that still allow snaring. We are probably in contravention of the Bern convention, which states that snares should be used for restraint but not to kill.

At stage 1, we heard evidence from gamekeepers and others that many animals—rabbits in particular—are usually dead when found in snares. We heard powerful evidence from animal welfare bodies about other animals that are found dead in snares. Snares are indiscriminate. They have a significant bycatch, which includes species such as otters and badgers as well as domestic pets. We know that snaring is not the most effective method of vermin control. Research by the British Association for Shooting and Conservation shows that 70 per cent of pest control is done by shooting, with snaring accounting for only a small percentage. Alternatives to snaring exist. As well as shooting, there are humane traps.

Other amendments in the group fall short of banning snaring, but would strengthen the regulations that govern it. For example, they would lead to stops being fitted that would stop snares tightening and thus reduce the chance of killing animals. They would also lead to stricter rules on when people could use snares, and they would require the identification of snares. I will support those amendments if the amendments in my name to abolish snaring in Scotland are not agreed to. However, I feel that it is time to take a stand and to ban snaring in Scotland. Evidence from animal welfare organisations has shown clearly that snaring is cruel and unnecessary. Animals are paying with their suffering for our not having enough people on the ground to carry out proper vermin control.

I move amendment 2.

Maureen Macmillan: The amendments in my name seek to regulate the use of snares, rather than ban them. The committee's report recognised that snares are a tool in pest control and that responsible land managers will use them in as humane a manner as possible. However, to ensure that good practice prevails, the committee felt that it was necessary to regulate the use of snares more strictly than the bill will do as it stands. I believe that the Executive is also thinking along those lines and I look forward to hearing what the minister has to say.

Amendment 194 provides for all snares to be fitted with a crimped stop that is targeted at the particular animal that the setter of the snare wants to catch. If snares have stops that are tailored for the dimensions of the target animal, non-target animals should not be caught and the target animal itself will not be able to wriggle into the snare and perhaps be caught round an inappropriate part of the body, such as the stomach.

The Scottish Gamekeepers Association is happy with the amendment, as is BASC, whose code calls for free-running snares with a permanent stop. I am aware that the Scottish Agricultural Science Agency is examining such issues at present and that the Executive is considering how specific animals can be targeted. I hope that the minister will have some good news on that.

Amendment 195 is about banning drag snares. I appreciate that this is a more controversial amendment and that not all land managers agree with it. However, I ask the minister to consider that some animals—especially heavier animals such as foxes—can move drag snares away from their location to where they will not be found. The animals can suffer agonies before dying. It is important to acknowledge that drag snares are not humane.

Amendment 196 links the snare to the person who set it. Snares would be tagged with an individual code that would be made known to the landowner, agent or factor, if that is a different person from the setter, which would ensure that the legislation could be enforced. Otherwise, illegal snares could be disowned by their setters or owners and there would be no way for their assertions to be disproved without a surveillance scheme.

11:45

The objections to the tagging of snares lay in the fact that it would be expensive or would take up a lot of time. In fact, tags may be obtained for 7p to 10p. They make up a small proportion of the cost of the snare and they are easily fitted. They would identify who set the snare. Any non-tagged snares would be deemed to be illegal and would be removed. Keeping a proper record of where snares are on an estate through tagging would also help with the SGA's recommendation in its code of practice that an up-to-date map of where snares are be kept in the estate office. I note that the SGA is willing to comply with tagging provisions if required, as long as they do not constitute too onerous a burden.

Amendment 197 follows on from previous amendments and deals with record keeping. When the records of where snares are set are passed by the snare setters to the landowner or manager, they should be kept safely for a specified period, so that an authorised person can check against the record on discovery of an illegal snare. That would protect innocent gamekeepers from being accused of setting illegal snares.

Amendment 198 relates to the close physical inspection of snares. The bill as introduced does not provide for such inspection; rather, it provides for daily inspection with a view to dealing quickly with animals that have been snared. It is important that a physical inspection of snares is carried out, so that it can be ascertained whether or not the snares are still free running. It is important to check snares for rusting, which can turn a free-running snare into a self-locking snare, as BASC noted in its response to the consultation.

I ask the minister and the committee to consider my amendments, which I think would help gamekeepers. As we know, most gamekeepers are happy with the amendments. If they were agreed to, they would serve the intentions of both the committee and the Executive.

Karen Gillon: Amendment 187 would make a relatively minor change to the snaring provisions in the bill. Its effect would be simply to clarify that, when a snare is inspected, any animal that is caught in it must be removed, whether it is live or dead. That is important because it would prevent future offenders from making excuses for failing to check their snares effectively. When animals such as foxes are found dead in a snare, that is because regular snare checks have not been made.

Amendment 187 would help to clarify the position and it would not allow people to use the lack of compulsion to remove animals as an excuse. Requiring snare operators to remove all animals whether live or dead is one way of demonstrating that a snare has been checked. Equally, it may provide clear evidence of any failure to check snares in accordance with the law. Amendment 187 would remove any doubt about the obligation to remove all animals when a snare is inspected. That clarification would help to ensure that the bill's other provisions clamp down

effectively on the abuse of snares. I intend to move amendment 187.

I will not support amendments 2, 3, 4, 5, 6, 10 or 11, because the provision of snaring, if properly monitored and controlled, is important in the countryside.

On amendment 180, I would need to be convinced that the increased timescale was necessary, and that an extension from two years to three years would be a positive move and would not simply put more pressure on the families of those who are facing prosecution. In other areas of legislation, we have tried to speed up prosecutions rather than increase the time taken. I hope that, when she sums up, Maureen Macmillan will clarify why she believes that amendment 180 is necessary.

I am happy to support the other amendments, but would welcome clarification of amendment 195 on drag snares. There are areas of Scotland in which it is not possible to attach a snare without using a weight. Perhaps we need to provide guidance on weights and on how to do things. Maureen Macmillan talked about instances in which a very light weight might be used, so that a heavy animal could be caught in the snare and could drag it and so be punished in an unfair and inhumane way. I would welcome clarification from the minister of whether he thinks that Maureen Macmillan's proposals should be in the bill or whether guidance would be a more appropriate place for them.

The Convener: No other member wishes to speak to the group. I am keen to promote best practice. That came out strongly in our stage 1 report, which considered the representations from the animal welfare side and the estate management side. We could do better and there could be much better practice out there. We should look for best practice rather than good practice.

I hope that the right mix of amendments is agreed to. I see where Eleanor Scott is coming from, but from our stage 1 report, a better approach would be to have more effective regulations and clear guidance so that animal welfare standards are raised throughout Scotland and there is best practice in management. I certainly support what is behind Maureen Macmillan's amendments.

Allan Wilson: I agree. Like you, I respect Eleanor Scott's reasons for lodging the amendments, but disagree with the objectives that she is pursuing. Snares should remain available to land managers as a legitimate method of dealing with pests, but they must be used responsibly, professionally and in accordance with the law—the committee supported that approach at stage 1. Ultimately, such an approach has secured wide support because it is the right approach and will give the necessary additional protection to wildlife without unreasonably limiting the work of land managers. A complete ban on snares goes well beyond what is necessary.

Members have heard that misuse and abuse of snares undoubtedly take place, but the answer to the problem is not to penalise and restrict land managers who already act in a reasonable manner. As Karen Gillon said, the objective must be to clamp down hard on those who cause the problem, which is what the bill does. Karen Gillon's amendment 187 assists in closing a potential loophole in the existing proposals and I am happy to support it. The amendment makes it crystal clear that lame excuses for ignoring the law will simply not work in future. When a snare is checked, it must be cleared. If an animal is found in a snare—whether live or dead—and has been there for more than 24 hours, ipso facto, the law will have been broken. That is the end of the story. There will be no more excuses.

I ask Eleanor Scott to seek to withdraw amendment 2 and not to move her other amendments in the group. I have made it clear that we are opposed to a complete ban on snares. Maureen Macmillan's amendments do not seek to ban snares; instead, their objective is further to restrict and regulate the use of snares. We support the general principle of effective regulation and we want to tighten that up, which is the right way to address the issue.

The provisions in the bill already give ministers a power to specify technical definitions and requirements by order. The purpose of that power is to allow issues such as the need for crimped stops on snares, which have been referred to, the use of drag snares and the technical differences between free-running and self-locking snares to be addressed not simply in guidance, but in subordinate legislation in a detailed and technical way that is not feasible in primary legislation. I think that Karen Gillon made that point.

I suggest to Maureen Macmillan that much, if not all, of what she seeks to achieve—in particular, the use of stops or a potential ban on drag snares—is already a clear part of the policy intention that underpins the bill. The capacity exists to address those issues in a technical way, in much more detail than is possible in the bill. Subordinate legislation would also give Parliament the means to approve any such measures.

I am not convinced by the idea of identification tags and obliging people to record the location of snares. Although I understand the proposals' motivation, I am not convinced that they could work in reality. Such an ID system could work only if ID numbers were assigned and monitored

through a national register. The labelling of snares would have to be controlled in a manner that would be entirely disproportionate to the benefits for wildlife and there would be no guarantee that a land manager would not go out and set unlabelled snares in secret or that third parties would not steal labelled snares and misuse them.

The bureaucracy surrounding the proposals means that they would impact on responsible land managers without doing anything to clamp down on those who are willing to commit offences, as Karen Gillon's amendment 187 would do. What would such a system achieve in the long run? Would it be worth all the effort? As I have said, the issues could be addressed in a more technical and detailed way in subordinate legislation.

I must argue against amendment 198, for reasons that I am sure the committee appreciates. Amendment 198 would weaken the bill by giving unnecessary discretion to a person who checked a snare and found that, for whatever reason, it had become a self-locking device. Maureen Macmillan is suggesting that, instead of there being an obligation to cease using the snare, as we propose, there should simply be a requirement to remove the snare "as soon as reasonably practicable". That would weaken the legislation; we want any snare that has been turned into a self-locking device to be put out of use immediately rather than as soon as is practicable. I am sure that that is not what Maureen Macmillan intended.

I ask Maureen Macmillan not to move amendment 194 or her other amendments in the group, because we intend to deal with the relevant issues more effectively and in more detail through subordinate legislation.

Eleanor Scott: It is interesting to think where we will be in 20 years' time and to consider how many of the five countries in Europe that allow snaring will still allow it. I suspect that, in another generation's time, snaring will probably not be seen as an acceptable way of dealing with wildlife pests.

We have heard today's news about illegal practices—including the use of a gin trap—on an estate in the Highlands. When a gin trap is found, it is quite clear that an illegal act has been committed; it is simply a case of finding out who has done it. Even under the bill's provisions, there will be many difficult enforcement issues in relation to snaring. I fully support the intention of making regulations more stringent, whether that is done through Maureen Macmillan's amendments or subordinate legislation. There will be enforcement issues and I think that a complete ban would make matters much clearer.

I sense that there is not a lot of support for amendment 2, but I still intend to press it.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

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

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 2 disagreed to.

Amendments 194, 195, 3, 196, 197 and 10 not moved.

12:00

The Convener: Amendment 4 has been debated with amendment 2. I remind members that, if amendment 4 is agreed to, I will not be able to call amendments 187, 198 and 199.

Amendment 4 not moved.

The Convener: That saves that problem.

Amendment 187 moved—[Karen Gillon]—and agreed to.

Amendments 198, 199, 5 and 6 not moved.

The Convener: Although I want us to crack on, I think that it might be helpful to take a two-minute comfort break. [*Interruption.*] I know that members want to crack on, but I do not for the moment.

12:02

Meeting suspended.

12:10

On resuming—

The Convener: Amendment 220, in the name of the minister, is grouped with amendments 200, 240, 241, 242 and 233.

Allan Wilson: The issue of non-native species is very important. As a result, last August, the Executive carried out a preliminary consultation on the legislative elements that were highlighted in the Great Britain review of non-native species policy. The consultation was designed to allow important measures to be taken up in the bill. That approach, together with our full participation in the

18-month-long GB review of non-native species, demonstrates our serious commitment to tackling the problems posed by invasive non-native plants and animals.

Last August, I also announced that we would consult this year on non-statutory measures such as improved prevention and monitoring methods, better detection and surveillance procedures and a targeted education and awareness programme. That is further evidence not just that we recognise the problem but that we are determined to put equally important and effective solutions in place. Part of that approach will be to ensure that public and trade interests are fully aware of the risks posed by invasive non-native species and that they are informed about what they can do to minimise their spread.

It is also appropriate to point out that non-native issues are not uniquely Scottish. The problem is internationally recognised; indeed, it was highlighted in the 1992 Rio convention, which we will discuss later. It will benefit all three GB Administrations if we undertake the work in close consultation—perhaps even in collaboration—with English and Welsh interests. Amendment 220 is our initial response in that respect and we will consult more fully on the remaining aspects of the GB review.

Amendment 220 seeks to ensure that section 14 of the Wildlife and Countryside Act 1981 prohibits hybrid non-native animals from being released or allowed to escape from captivity and the growing of hybrid non-native plants in the wild. It also modifies the offence of releasing non-native animal species that are listed in schedule 9 to the 1981 act and their hybrids. There are ambiguities about how the offence should be interpreted—for example, in relation to pumas roaming the north Ayrshire countryside—and the new wording will ensure that they are removed.

Amendment 220 also provides ministers with a discretionary power to issue or approve guidance on non-native species. As I have indicated, there are some wider aspects to the GB review on non-native species—on which I will consult in March—on which any further thoughts that stakeholders might have will be helpful. Much of amendment 220 has been influenced by the views of interested parties and I believe that it goes a considerable way towards addressing the concerns that they and others have expressed.

The first part of amendment 242, in the name of Mark Ruskell, would impose on SNH a requirement to take action on discovery of non-native species that in its view pose an actual or potential threat to the conservation of flora and fauna. However, the problem with that very wide-ranging measure is that it relates to any area. As that term is undefined, it could be argued that it includes a very small area of land such as someone's garden. As a result, I believe that the amendment is disproportionate to the problem. If amendment 242 were accepted, there would be a considerable burden on SNH. Much more could be gained through SNH developing an education and awareness strategy, which is already a feature of the GB review findings.

As for the second part of amendment 242, SNH already has the necessary powers to enter into management agreements with the owners or occupiers of sites of special scientific interest in order to control non-natives that pose a threat to features of special interest. I believe that that is the priority in addressing this issue.

As members are aware, the bill seeks to give Scottish ministers the last-resort power to make land management orders. Such orders could be used to deal with non-native species that impact on an SSSI where the management agreement solution has proven to be ineffective.

I agree with the general intention behind amendment 241, in the name of Mark Ruskell, which would prohibit the selling, transporting, advertising for sale or purchase of non-native plant species listed in part II of schedule 9 to the 1981 act. Indeed, I acknowledge that a number of the bodies that we consulted supported elements of the proposal, particularly in relation to schedule 9 species. However, I believe that it must be considered against other proposed measures. Having accepted the principle, I invite Mark Ruskell not to move amendment 241, as that will allow us to consider the matter further with the prospect of an amendment being lodged at stage 3.

12:15

Amendment 240 seeks to prohibit the release or escape into the wild of animals that are not ordinarily resident in, or not regular visitors to, parts of Scotland. I recognise the fact that native species could cause difficulties if moved outwith their natural range; however, the amendment duplicates the existing power in the 1981 act that allows ministers to add species to or remove species from schedule 9. That power allows control of the damage that is caused by certain species in parts of the country where they are not native—notably the hedgehog problem in the Uists. The most effective way of preventing the spread of invasive non-native species is through education and guidance. We consider amendment 240 to be unnecessary, as it would duplicate an existing power. We propose to expand on our current work in education and guidance on the release of non-native species into our environment.

Amendment 200 seeks to create an offence of allowing—that is the operative and problematic term—any schedule 9 plant to grow. Such a provision would be disproportionate. It would create an offence of people having a non-native species on their land through no fault of their own. Any person who was aware of any non-native species growing anywhere would, arguably, be allowing it to grow and therefore be guilty of an offence. I am sure that Maureen Macmillan will agree that that is both excessive and unworkable. On that basis, we also resist amendment 233, although I understand where it is coming from. Everything else that I have mentioned is designed to tackle the problems of non-native species and prevent their growth and future release into our environment, whether they are plants or animals.

I ask Mark Ruskell not to move amendments 242, 241 and 233 on the proviso that we will consider amendment 241 further with the prospect of lodging an amendment at stage 3. I ask Nora Radcliffe not to move amendment 240 on the basis of the assurances that I have given her on that. I ask Maureen Macmillan not to move amendment 200 because of the inclusion of the term "allows".

I move amendment 220.

Maureen Macmillan: Amendment 200 is about a specific plant—a toxic non-native species called giant hogweed. I lodged the amendment to clarify whether there are, or will be through the bill, adequate sanctions against those who negligently harbour the plant on their land. The minister has talked about introducing a species, but what if it is there already and is allowed to spread? How do we get rid of it? Giant hogweed is a noxious plant with irritant sap that can cause chronic skin conditions. It is proliferating on the southern shore of the Moray firth, particularly along watercourses. I am sure that the situation is replicated in other parts of Scotland.

Although it is an offence to introduce giant hogweed into the wild, there is no duty on someone to eradicate it from their land if it finds its way there by colonisation. It seems that local authorities have a duty to control it only to protect the amenity of a public area—they do not have a duty to do anything about it if it is on private land, although that is mostly where it exists. That has implications for rights of access to the countryside. I seek clarification from the minister. Does he agree that the eradication of giant hogweed is not being satisfactorily addressed? Does he agree that a duty should be placed on landowners to eradicate giant hogweed from their land once they have been informed that it is there?

Nora Radcliffe: Amendment 240 intends to capture instances of species that could be described as native causing environmental damage. We are able to deal with non-native species but, with native species, it can be a case of the right thing in the wrong place, where it could cause damage. Something that is native to one part of Britain that is shifted to another area could have adverse consequences on the flora and fauna that are already there.

I would appreciate it if the minister could explain a bit more fully how ministers are currently able to designate any species. I was not entirely clear about what the minister said about how things are dealt with now in that regard. If he can satisfy me on that point, I will not move my amendment, but I think that there is a problem with moving species to a place to which they would not naturally migrate. Convener, is it appropriate to get clarification on that now?

The Convener: We will get a winding-up speech from the minister in a couple of minutes. I was going to put your and Maureen Macmillan's questions to him before asking you whether you wish to press your amendments.

Nora Radcliffe: That is fine—I will get that clarification later on.

The Convener: Is that everything that you wish to say at this point?

Nora Radcliffe: I will add that I am pleased that the Executive will come back with something at stage 3 in relation to some of Mark Ruskell's proposals. I was a bit bothered about amendment 242, which is about how established, invasive non-native species are dealt with. If I correctly heard what the minister said, all that we can do to encourage the eradication of such species would be in or around SSSIs. I would like clarification about that. There may be some cases in which the species in question is located somewhere remote from an SSSI but where it would still be a good idea to get rid of it.

Mr Ruskell: Members might be aware of "Plant Diversity Challenge", the UK's response to the global strategy for plant conservation, which came about as a result of the Rio summit, as the minister said. The Scottish Executive has signed up to the strategy. Target 10 out of 18 is headed "Controlling non-native invasive species". The response document says that one of the on-going actions is

"Responding to the Defra Review of Non-native Species Policy".

The three amendments that I have lodged in this group, amendments 241, 242 and 233, relate directly to the target in the response document, and to the recommendations that stemmed from DEFRA's review. We would really only be implementing what has already been discussed, consulted on and agreed.

Amendment 242 would tackle the existing problem of non-native invasive species and put some important powers in place. Amendments 241 and 233 are essentially preventive measures to stop more problems arising in future. The bill gives us an opportunity to get ahead of other countries in the UK and to put into legislation something positive to tackle the problem of non-native invasive species. As Maureen Macmillan has already spelled out, they are a threat. Giant hogweed, for example, is not just an ecological problem; it is a public health problem, and a costly one at that. In 1999, it cost about £3 million to tackle the invasiveness of the Australian swamp stonecrop species. Such expenditure will rise over time if we fail to tackle this important and costly issue. I remember from my time as a conservation volunteer that many of our activities involved clearing out non-native invasive species that were taking over woodlands, ponds and other important habitats.

There is currently not much provision to encourage or require the eradication of non-native invasive species apart from in SSSIs, as the minister has already outlined. Amendment 242 would allow SNH to notify owners and occupiers of land, wherever that land is, of the problem that exists there, to offer them management agreements and to encourage action to remove and reduce the threat from the species concerned. If such an agreement were refused or breached, the amendment would further allow SNH to seek a land management order to ensure that the necessary actions were taken. Such an order would be like an SSSI-related order. It would be subject to ministerial approval and rights of appeal.

Amendment 242 would retain the general principle of the bill that conservation actions should be carried out by owners or occupiers voluntarily in the first instance, assisted by positive management agreements. However, the amendment would provide the last-resort measure of a land management order, under which action would be absolutely necessary, voluntary measures having been refused or agreements having been breached.

Amendment 241 would prohibit the sale of a limited range of dangerous non-native species. It is a preventive measure, which would apply the precautionary principle. It is about ensuring that we are not building up costly problems for the future. Members might think that gardeners might have a problem with it, because some of the non-native species are garden species. In fact, the amendment is supported by the likes of the Garden Centre Association, the Royal Horticultural Society, the Horticultural Trades Association and the Ornamental Aquatic Trade Association. Many of those organisations already advise their members that they should not be stocking the plants concerned. There is therefore not a problem with the amendment from the point of view of the gardening trade, which is quite happy with it.

Amendment 233 is related. It seeks to extend the list of relevant species. Currently, only four species are listed under the 1981 act, and we need to tackle more of them than that. The list is uncontroversial, and it omits those species whose inclusion would be a problem for the horticultural industry, including rhododendrons and Spanish bluebells.

The Convener: This has been a fairly elevated debate. We now cross to the minister. There have been a number of requests for reassurance and clarification, which I would ask the minister to address.

Allan Wilson: I will deal with the last point first. If amendment 242 actually said what Mark Ruskell was proposing, we would not have had the problem with it that we do. The amendment would impose duties on SNH in relation to any area of land anywhere in Scotland where there is

"an actual or potential threat".

It says that SNH

"must notify any owner or occupier of that area of land."

It adds:

"Where any such notification has been issued, SNH must consider whether to enter into a management agreement with any owners or occupier of the land specified".

In our view, those duties are disproportionate to the problem. Mark Ruskell mentions cost. I must have regard to the proportionality of cost versus benefit, not only as concerns the operation of SNH, but as concerns the other regulators in this area, including SEPA and local authorities. Mark Ruskell has raised one example, and has put a potential price tag of £3 million on efforts undertaken in another part of the world. It is not just about the powers. Indeed, I would argue that the relevant powers already exist, although we are increasing those powers and we are putting a greater focus on education and guidance and on preventing future releases of non-native animals or plants into the environment, so as to prevent future generations from experiencing the problems that we have experienced.

The Executive, the committee and the Parliament must have regard to the prospective cost of addressing problems with non-native species in various parts of the country and to the proportionality of the cost and the benefit of so doing. That is why we cannot support proposals that would impose duties and obligations on local authorities to address various eventualities at an undue and disproportionate cost. That is nothing to do with the powers; it is to do with having the

necessary back-up and financial resources to utilise those powers to greatest effect. Inevitably, that means that SEPA, SNH or the local authority in the area where the problem exists must carry out a prioritisation process.

12:30

It is my understanding that Nora Radcliffe supports my comments. If, like me, she is intent on addressing questions such as the Uist hedgehogs, we have to utilise powers that allow us to take action on non-native species such as those predating hedgehogs that are feeding on the eggs of protected bird species. However, in that light, amendment 240 would present us with difficulties over prosecution and would duplicate an existing power in the 1981 act that allows us to amend the list of species in schedule 9. That power controls the damage that certain species can cause in certain parts of the country. I am not clear about what Nora is arguing. If she agrees with my position, amendment 240 is unnecessary. Is she saying that she does not wish to deal with the proliferation of non-native species in that way? In any event, I am clear about our proposals and feel that amendment 240 would duplicate an existing power.

As for amendment 233, which seeks to amend schedule 9 to the 1981 act, it is appropriate that we consider that list of species in the light of the analysis of the GB-Scottish consultation process to which I referred. As that consideration is under way, I ask Mark Ruskell not to move amendments 242 and 233 and I will come back to him on amendment 241.

The Convener: Nora, are you seeking some final clarification?

Nora Radcliffe: I am trying to sort out where Allan Wilson and I are on this matter. The minister appears to be saying that we can do something about non-native species once they have been released and become a threat. However, I am saying that we should tell people not to release such species in the first place.

Allan Wilson: Absolutely. Indeed, I have said the same thing by pointing out that we are seeking to improve education and will issue guidance and codes by which SNH can implement that guidance. However, we already have powers to deal with non-native species that have been released into the environment and we do not wish those to be duplicated.

The Convener: Does that clarify the point, Nora?

Nora Radcliffe: If I do not move amendment 240 now, can I come back and have a discussion about the issue later if I want to?

The Convener: Yes, at stage 3.

Nora Radcliffe: Right.

Mr Ruskell: I seek some clarification from the minister on amendment 233. Although I welcome his comments, will he provide a timetable for the review of the list of species in schedule 9? I am willing not to move my amendments if he can do so.

Allan Wilson: The review will take place in March.

The Convener: March 2004?

Allan Wilson: Yes.

The Convener: Mark, you can interpret that as a hit if you want to.

Amendment 220 agreed to.

Amendments 200, 240 to 242, 192 and 11 not moved.

The Convener: Amendment 243, in the name of Alex Johnstone, is in a group on its own.

Alex Johnstone: The primary purpose behind amendment 243 is one that I have pursued with previous amendments on previous days. The amendment aims to smooth the path of relationships between landowners and people with conservation interests in the land, and deals specifically with those who have licences to approach nest sites and to engage in specific activities. It aims to ensure that landowners of land on which nests are sited have advance notice that people are likely to approach nest sites.

Two types of people might approach such sites. First, people who are taking advantage of the access legislation that is now in place might accidentally approach nest sites. Secondly, people might wish to approach nest sites to engage in activities that are currently illegal or that will become illegal with enactment of the bill. In such cases, the only person who could police matters would, in many circumstances, be the owner of the land on which the nests are sited. As a result, advance notice of whether an individual intends to approach a nest site for a specific legal purpose would be advantageous to the landowner.

Two specific instances are included in amendment 243, the second of which relates to the ringing of birds. A 48-hour time limit is included, which would give landowners adequate and proper notice that a person intends to approach a nest for the purpose that is mentioned. The first provision does not include that time limit, so that anyone who wished to make what might be described as an unannounced visit to a nest site could still do so as long as they let the landowner know that they were going to make that visit. Consequently, the amendment would help to

smooth relationships and help with policing of the eventual act and other legislation by landowners, most of whom are keen to co-operate as much as they can with such legislation.

I move amendment 243.

Rob Gibson: Amendment 243 seeks to require licensing authorities to make it a condition of any or all licences issued under section 16 of the Wildlife and Countryside Act 1981 that notice of visits be given to an owner or occupier. That might be appropriate in some cases, but it might not be in others. The matter must be for the licensing authority to determine in issuing licences. Circumstances in which requiring such notice would not be appropriate include those in which an activity is lawful within a person's statutory access rights, as specified in the Land Reform (Scotland) Act 2003. In other circumstances, the potential licence holder may have no reason to know, or no power to find out, who the owners or occupiers are, and may engage in an activity without interfering with any legitimate land management activity. Furthermore, there are circumstances in which the timing of a visit cannot be predicted because of, for example, the weather or biological factors or in which a licensing authority or licence holder wishes to ensure the confidentiality of work and/or a site. Amendment 243 is far too broadly drawn in respect of what it might exclude.

Karen Gillon: I understand where Alex Johnstone is coming from, but I have a slight concern that giving people 48 hours' notice would potentially allow people who have committed crimes to get rid of evidence. I know that there are issues relating to personal safety if guns are being used for foxes, that people going unannounced on to land might put themselves in personal danger and that there are issues relating to how people are notified. I would probably be happy with the first part of amendment 243, but I am slightly less happy with the second part of it, which would allow people to have 48 hours' notice of visits, which might allow an unscrupulous landowner to get rid of evidence that could lead to a prosecution.

Allan Wilson: I have sympathy with Alex Johnstone's view, but we should not include such a provision in the primary legislation. That would not be the right way to achieve his objective. If any of our officials intended to go on to land with the proper licence for a purpose such as those that have been described, I would expect them to notify the landowner of their prospective presence—indeed, I would insist on it. Whether it would be appropriate to give 48 hours' notice is a moot point and I share Karen Gillon's concern about that. I would be surprised if SNH did not also share that concern, not least because it is only right—given that we expect co-operation from land managers in relation to protection of protected species, rare birds' eggs and so on—that we should be proactive in preventing criminal elements from exploiting vast open spaces without being detected.

I share Rob Gibson's concern about access for leisure and recreation, which is of course provided for by the Land Reform (Scotland) Act 2003. Amendment 243 would cut across that legislation. Perhaps we should have a chat about the matter between now and stage 3, but I ask Alex Johnstone to seek to withdraw the amendment at this stage. I am sure that we can secure what he seeks by means other than primary legislation.

Alex Johnstone: I am interested in the minister's suggestion that the intention of amendment 243 could be achieved without the provision's inclusion in the primary legislation, so I will take the opportunity to withdraw the amendment with the committee's approval and I will discuss the matter with the minister before stage 3.

Amendment 243, by agreement, withdrawn.

Amendment 7 moved—[Nora Radcliffe]—and agreed to.

Amendments 174 to 176 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 221, in the name of the minister, is grouped with amendments 222 to 225.

Allan Wilson: These are minor amendments, some of which we have discussed already. The most important one is amendment 225, which makes it absolutely clear that a wildlife inspector does not have the power to enter a dwelling except in specific circumstances. The amendment will dispel any doubt about that point.

I move amendment 221.

Amendment 221 agreed to.

Amendments 222 to 225 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 180, in the name of Maureen Macmillan, is grouped with amendments 188, 185, 185A, 189, 190 and 186.

12:45

Maureen Macmillan: Amendment 180 seeks to make a change to section 20 of the Wildlife and Countryside Act 1981 to bring it into line with the provisions in section 47 of the bill. The effect is to standardise the overall time limit within which summary prosecutions must be brought. If the amendment is accepted, the limit will be three years from the date on which the offence was committed. The current discrepancy between the two-year limit for wildlife crime offences and the

three-year limit in cases relating to sites of special scientific interest will be removed. A provision that covers continuous contraventions will also be available in both situations. The change is important because simple consistency between the related provisions in the bill and the 1981 act will help the police and prosecutors in a practical way.

Some of the other amendments in the group are mutually exclusive. Alasdair Morrison's amendment 185, which proposes a ceiling of £40,000 on the statutory maximum fine, is worth supporting. I am not convinced about the open-ended fine, although both arguments have merits. On the amendments that have been lodged by Roseanna Cunningham, I am slightly anxious about the principle of aggravated offences. The way ahead is perhaps to train and educate prosecutors better rather than to attach flags or tags to offences that would make them aggravated offences in particular circumstances.

I move amendment 180.

The Convener: Roseanna Cunningham is not here. Would any member like to speak to amendments 188, 185A, 189 and 190?

Rob Gibson: I will speak to amendments 188 and 185A together. They would not negate amendment 185, for which we have yet to hear the arguments, but add to it. The three amendments seek to amend the proposed penalty regime for offences under part I of the Wildlife and Countryside Act 1981. Amendment 185, in the name of Alasdair Morrison, proposes a significant increase in the fines that are available for summary conviction for an offence under section 14, which is on the introduction of non-native species. Such an offence is a serious matter, which could result in expensive and/or difficult remedial action, as we discussed earlier. It is therefore appropriate to try to measure that.

I note that we took the view that much more severe penalties ought to be applied in relation to the Protection of Badgers Act 1992; we agreed to Sylvia Jackson's amendment 238 earlier. We believe that the circumstances that I mentioned also require such an approach, and amendments 188 and 185A seek to build on that.

The Convener: I call Alasdair Morrison to speak to amendments 185, 186—

Rob Gibson: Sorry—I did not deal with amendments 189 and 190. I beg your pardon.

Amendment 189 is, again, about how SSSI-related offences would be related to protected species. We believe that both offences ought to be treated equally. If there is no financial gain from a crime—for example, obsessive egg collecting—a prosecutor might point out that fines of any size are no deterrent to such offenders. However, egg collectors often spend large sums of money on their hobby. In such cases, a prosecutor may recommend a custodial sentence. In any case, amendment 189 would leave the decision on penalties entirely in the hands of the courts and would strengthen their sentencing power.

On amendment 190, section 21 of the Wildlife and Countryside Act 1981 sets the penalties that a court may impose on a person who is convicted of an offence under part I of the 1981 act, which deals with wildlife crime. The penalties were recently updated to include prison sentences. In parallel to that, section 47(1) of the bill will require courts to determine the penalties for SSSI-related offences with regard to any actual or potential financial gain. That proposal is welcome and I hope that it is supported. Amendment 189 seeks to apply the same principle to the offences that I mentioned previously. However, amendment 190 seeks to widen that consideration to include the concept of conservation impact. That would mean that prosecutors may make submissions about a crime's actual or potential effect on the conservation of species and the courts would have to take that into account.

Mr Morrison: Amendment 185 deals directly with offences involving invasive non-native species. We have had an extensive debate on the issue of non-native species and the damage that they can do to native ecosystems and economic interests. The crucial point that I want to emphasise is that the release of damaging invasive species—animal and plant—should be regarded as a form of environmental pollution. That type of pollution is particularly harmful because it reproduces itself and spreads, causing persisting or expanding damage. The Executive has made clear its firm commitment to tackling significant environmental and pollution offences by providing an exceptional statutory maximum penalty on summary conviction.

That commitment, which I support, was part of the series of green-thread commitments that were outlined in the partnership agreement. The Executive's commitment was reflected by the minister's decision to increase the maximum fine for SSSI-related offences from £20,000 to £40,000. A £40,000 summary penalty for offences involving non-native species is entirely consistent with the Executive's overall approach, which I believe is correct. The release of invasive species is a serious offence and the courts should be able to deal with it by applying a higher than normal penalty.

The second part of amendment 185, which deals with offences relating to wildlife inspectors, is simply a restatement of the existing provision in the bill dealing with offences under proposed new

section 19ZC of the Wildlife and Countryside Act 1981. The restatement seeks to keep such offences separate from offences that are related to non-native species and the new £40,000 penalty. Amendment 185 would significantly enhance the bill; it would provide for an increased penalty for offences related to non-native species while carrying forward an existing Executive proposal on wildlife inspectors, which I am happy to support.

Amendment 186 seeks to correct an omission from the Deer (Scotland) Act 1996. I think that we all recognise that deer numbers need to be properly managed. The killing of deer is a necessary activity, whether for sport, to prevent damage to crops, woodlands and the environment or to provide high quality venison—which should, of course, be part of any balanced diet. However, it is important that deer be killed humanely. For that reason, the only legal method of killing deer is by shooting. The Deer Commission for Scotland provides best practice guidance that helps to ensure that shooting is done as cleanly as possible to minimise suffering.

Unfortunately, although the 1996 act makes it illegal to kill deer by other means, there is currently no penalty if such an offence is committed. At present, it is perfectly possible to be convicted of the offence of killing deer by using, for example, a crossbow or an illegal snare but the sheriff in such cases cannot impose any penalty. That is a particularly odd situation. I am sure that the minister will clarify the matter, but apparently it is the result of a drafting error and an oversight when deer legislation was consolidated eight years ago. Whatever the cause, it is time to put things right. In keeping with the overall spirit of the bill, amendment 186 would contribute to ensuring that the management of Scotland's wild deer is carried out in the most appropriate and humane manner and that appropriate sanctions are applied when that does not happen.

Allan Wilson: We welcome Maureen Macmillan's amendment 180. We all acknowledge the value of consistency in closely related pieces of legislation. Everything that we are doing was recently discussed at the police wildlife officers and procurators fiscal conference at Tulliallan. I was present at the conference for the third year in a row, and I know that what we are doing is welcomed by those law enforcement officers and others who are at the coalface, trying to do the job of protecting wildlife. Amendment 180 is a helpful contribution. Although Karen Gillon raised some doubts about the amendment, I do not believe it to be unfair because it would not subject offenders or courts to any additional costs or stress. The point is to give the police more time to investigate fully and report wildlife offences to the fiscals.

I am also grateful to Alasdair Morrison for lodging amendment 185. It is important that the penalty for an offence should be proportionate to the nature of the crime and £40,000 is the right level of fine for the offence in question, for all the reasons that he has explained. I do not want to go into them again, but it is also important that the amendment distinguishes the new offence of obstructing a wildlife inspector. The amendment is right and I am pleased to support it on both counts.

I move on to the issue of distinguishing between different levels of offence in relation to amendments 185A and 188. The point of the first of those amendments is to increase across the board the penalties that are available for all wildlife offences under the Wildlife and Countryside Act 1981. I can understand the superficial attraction of amendment 185A. We all abhor wildlife crime, not least badger baiting, to which Rob Gibson referred. We have certainly made that clear consistently during the time that I have been in the job. Less than a year ago, we introduced custodial sentences for the first time for wildlife offences through the Criminal Justice (Scotland) Act 2003.

However, we have to keep a sense of proportion. There are significant penalties and they have been increased. Arguably, those tougher sanctions are working and are having an effect on some of our more notorious criminals, including egg collectors. However, I do not believe that there is a credible case for a general increase without hard evidence of real problems with the current penalties. I am not convinced that such evidence exists. In fact, all the evidence shows the contrary: it shows that the current system is working well.

Under the bill, the destruction of an SSSI could be dealt with on indictment, attracting an unlimited fine, and releasing destructive alien species can already be dealt with in the same way. It can also attract a two-year prison term as well as or as an alternative to a fine.

We have to ask whether every offence would have to be treated in that way. I understand where Rob Gibson is coming from—the issue is important to me, too. However, I am sure he would agree that not every wildlife offence is on a par with the destruction of a unique SSSI, setting dogs on badgers or releasing something into the wild that has implications for future generations. We need to keep a sense of proportion.

Roseanna Cunningham's amendments 185A and 188 would also have an unfortunate side effect, in that they would incidentally remove the power that the courts have at present to impose a separate fine for each illegal specimen seized in, for example, an egg-collecting case. Although that side effect is unintentional, we would argue against taking away the power to build up the fine for the different specimens in relation to which prosecution takes place.

13:00

Amendments 189 and 190 are also superficially attractive—penalties should certainly reflect the significance of the offence. However, the fact is that Scotland's Procurator Fiscal Service is capable of setting out effective prosecution cases in a way that will automatically highlight issues such as financial gain and the conservation impact—such information is fundamental to explaining the significance of what the accused is alleged to have done. That will inevitably form part of the picture that the sheriff takes into account in sentencing.

A specific requirement for courts to take into account financial motivation in SSSI offences has been included in the bill in order to highlight the particular scenario in which someone destroys a natural feature to make substantial financial gain—such as when someone bulldozes part of an SSSI to build houses. That is an appropriate and proportionate response in an SSSI context, but we do not see a clear justification for similar provision elsewhere. I could go on, but I will not. It is a question of what is led in evidence by the procurator fiscal, which the judiciary would then take into account in sentencing.

I understand that the measure proposed in the amendments is unlikely to be welcomed by the Scottish Court Service, and it is not something that the law enforcement people are asking us to do. I would be very cautious about applying such a provision across the board to all wildlife offences. We are getting into arguments about aggravated offences that we have got into in other areas of law and order, with which I know the convener is familiar. The best way in which to proceed would be for amendments 189 and 190 not to be moved.

I will say a few words in support of amendment 186, which is Alasdair Morrison's amendment on deer. He is correct in identifying a drafting error as the root of the problem. We welcome the opportunity to restore the missing penalty provision. I think that members would agree that there is little point in having an offence if there is no penalty to impose when the offence is committed. We are pleased to support amendment 186.

Maureen Macmillan: I will press amendment 180, since the minister has given it such a welcome.

In respect of Roseanna Cunningham's amendments 189 and 190, it is important not only for procurators fiscal but for sheriffs to be aware of the issues. I would like there to be training and education for sheriffs, as well as for fiscals. I realise that that is not within the minister's remit, but perhaps it is an issue that another committee can consider.

I support Alasdair Morrison's amendment 185, but not Roseanna Cunningham's amendments.

Amendment 180 agreed to.

Amendment 188 not moved.

Amendment 185 moved—[Mr Alasdair Morrison].

Amendment 185A not moved.

Amendment 185 agreed to.

Amendments 189, 190 and 12 not moved.

The Convener: Amendment 230, in the name of the minister, is grouped with amendments 181, 231, 182 and 232.

Allan Wilson: The important point that is addressed by all these amendments is the need to ensure that changes to the schedules to the 1981 act are informed by solid scientific advice.

Nora Radcliffe's amendments 181 and 182 are clearly driven by a fear of what some future Executive may do. I do not think that that fear is serious. It is important to note that no minister is in a position to make such changes in secret or without regard to the views of interested parties. It is inherent in the system of government that we are establishing in Scotland that all those who are involved must be consulted whenever a change of this nature is proposed. The bill is a prime example of that principle at work and I would argue that, to date, it has been a very successful example.

I am happy for a formal requirement to consult SNH to be written into the legislation. Amendment 231 would restore the role of the Joint Nature Conservation Committee, which had been removed in error from section 22 of the 1981 act. However, it is not sensible or useful to impose additional burdens when those are not justified.

An arrangement that requires formal advice from SNH and gives Parliament the opportunity to annul any order is an efficient means of dealing with changes to schedules. Wider consultation with other interests will inevitably happen. We carried out such consultation when we added the capercaillie to schedule 1. Consultations and consultation responses will continue to be in the public domain, as they are at present. Members of the Parliament can hold me or any other minister to account if they think that we have unreasonably ignored evidence or important arguments. That is the nature of the new Parliament that we have set up. I argue that the system is effective and economical and does not need the unnecessary additions or details that amendments 181 and 182 would impose. I ask Nora Radcliffe not to move those amendments.

I move amendment 230.

Nora Radcliffe: As the minister said, amendment 181 outlines what would be good practice and what we would expect to happen. It may be better to take a belt-and-braces approach and to have that laid down in legislation, given that in future there may be a less committed ministerial team.

Amendment 182 asks that orders varying schedules should be dealt with under the affirmative rather than the negative procedure. The committee thought that the affirmative procedure might be better for doing that, because of the increased scrutiny that it allows.

I welcome amendments 230 and 231.

Allan Wilson: The negative procedure is perfectly adequate in the hypothetical circumstances that have been outlined. I do not think that imposing additional requirements in the bill is useful or necessary. I hope that, following the assurances that I have given, Nora Radcliffe will agree not to move amendments 181 and 182.

Amendment 230 agreed to.

Amendment 181 not moved.

Amendment 231 moved—[Allan Wilson]—and agreed to.

Amendment 182 not moved.

Amendment 232 moved—[Allan Wilson]—and agreed to.

Amendments 9 and 233 not moved.

Amendment 244 moved—[Maureen Macmillan]—and agreed to.

Schedule 6, as amended, agreed to.

The Convener: I know that members are anxious to leave, but we have one more item on our agenda that we must deal with.

Before we move on, we must decide whether to deal with amendments relating to the protection of fossils now or next week. Are members happy to continue consideration of the bill next week?

Members *indicated agreement*.

The Convener: I thank members, the minister and his officials. We are not yet quite finished with the bill, but we will ensure that we scrutinise the rest of it next week.

I do not want us to skip the last item on our agenda, which will be taken in private. I hope fervently that at least four colleagues will stay for the last five minutes of the meeting.

13:11

Meeting continued in private until 13:39.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178