

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 29 October 2003
(Morning)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

9th Meeting 2003, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

Roseanna Cunningham (Perth) (SNP)

*Mr 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, Etrick and Lauderdale) (LD)

Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING GAVE EVIDENCE:

James Fowle (Convention of Scottish Local Authorities)

Councillor Alison Hay (Convention of Scottish Local Authorities)

Jo Lenthall (Scottish Biodiversity Forum)

Professor Jeff Maxwell (Royal Society of Edinburgh)

Malcolm Muir (Convention of Scottish Local Authorities)

Professor Colin T Reid (United Kingdom Environmental Law Association)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone

Roz Wheeler

LOCATION

The Chamber

Scottish Parliament

Environment and Rural Development Committee

Wednesday 29 October 2003

(Morning)

[THE CONVENER opened the meeting at 10:03]

Nature Conservation (Scotland) Bill: Stage 1

The Convener (Sarah Boyack): I welcome committee members, witnesses, press—if any—and members of the public. We have not received any apologies this morning. I remind everyone to switch off their mobile phones, so that they do not interrupt the meeting.

Item 1 is our scrutiny of the Nature Conservation (Scotland) Bill. This is the first of five evidence sessions that are planned for our stage 1 consideration of the bill. Our job is to examine the bill and report to the Parliament on its general principles. We issued an open call for written evidence, and we have tried to get as representative a selection of witnesses as possible in the time available to us for stage 1.

We will be focusing this morning on part 1 of the bill, which provides for the conservation of biodiversity. We have lined up two panels of witnesses, and I am glad to see the first one before us. We have before us Councillor Alison Hay, environmental spokesperson for the Convention of Scottish Local Authorities; Malcolm Muir, countryside services manager at South Lanarkshire Council; and James Fowlie, COSLA's policy manager.

As is our intention for the whole of evidence taking at stage 1, we will not hear opening statements from the witnesses. However, all members will have copies of the written evidence that has been submitted. COSLA has submitted two papers detailing its views on the draft bill. I thank COSLA for providing those to us in advance. I am aware that it was a major effort to get the papers to us in a short time scale, but that has been helpful, as it has allowed members to get to grips with your views.

I invite members to kick off the questioning to the COSLA representatives, starting with Maureen Macmillan. As I do at every meeting, I plead with members and witnesses to keep their questions and answers as concise and focused as possible.

Maureen Macmillan (Highlands and Islands (Lab)): As the convener said, the papers that you submitted were very informative. I wish to pick up on the paragraph that goes from the bottom of page 1 to the top of page 2 of your main submission. I detect in it concerns about the proposed duty to further biodiversity. You state:

“the demands of the duty will require council wide changes in culture and organisation that will require senior officer and elected member support ... Only by convincing senior local authority decision makers that the Bill represents an opportunity to gain substantive benefits ... will local authorities adopt and implement new policies that place the duty at their heart.”

To what extent are you worried about a lack of support for the changes that will have to be made? How ready are local authorities to take on that duty?

Councillor Alison Hay (Convention of Scottish Local Authorities): On the whole, we welcome the bill. Most councils have been working quite hard on the biodiversity action plan. We are ready as far as that is concerned, in that a plan is there. The issue is more one of implementation.

The action plan has not reached the top of the agenda in many councils, and is seen as an add-on, rather than an integral part of the way in which councils draw up their policies. The plan is not in the centre of some councils' programmes, and some members and officers are unaware that it exists. Those who are interested in the plan know about it; those who are not particularly interested in it do not. It needs to gain a higher profile in councils and it requires member support. I welcome the duty of biodiversity, as do councils in general, but we will need to work to give it a more centre-stage profile.

Maureen Macmillan: How do you propose to do that?

Councillor Hay: It is quite difficult to answer that. Malcolm Muir might have some thoughts.

Malcolm Muir (Convention of Scottish Local Authorities): Over the past five years, we have found local biodiversity action planning to have been an extremely powerful and valuable process in engaging the public, local partners, regulatory agencies and non-governmental organisations. I think that local government welcomes the Nature Conservation (Scotland) Bill and will welcome elements of the responsibility that is associated with it. However, a co-ordinating mechanism is required for the Executive, Scottish Natural Heritage, the other regulatory agencies and local government to allow local government to focus attention and to bring in the necessary expertise to enable us to take the measures forward.

Maureen Macmillan: I notice that you say something to that effect further down in your

submission, on the sharing of data among agencies and with councils.

Malcolm Muir: That is an example, yes.

Councillor Hay: We are already some way down the line in that regard. We have benefited from expertise in the context of our waste plan, and we have regular dialogue with the Scottish Environment Protection Agency, SNH and the forestry bodies. The basis is there, but it needs beefed up.

Maureen Macmillan: Is every council at the same state of readiness, or is there a divergence of states of readiness?

Councillor Hay: The honest answer is that I am not entirely sure, but my feeling is that different councils are at different stages. Speaking for my council, I can say that we have our action plan and it has been publicised. I do not know about other authorities.

Malcolm Muir: One of the strengths of the biodiversity process over the past few years has been its evolutionary nature. A lot of bottom-up work has been going on across Scotland, some of it extremely successful and hard-hitting and some of it a bit more diffuse. Another reason why we want national co-ordination is because we need to pick up on best practice, highlight where it has been successful and help all councils to come on board.

Maureen Macmillan: The Executive could take a lead in that regard.

Malcolm Muir: Yes.

Mr Alasdair Morrison (Western Isles) (Lab): Can you cite examples of councils that are placing great emphasis on the plan and ones that are not?

Councillor Hay: It is a bit difficult to do so. We have been working hard to produce a physical document but we do not have a strategy, as it were. The approach will hinge on that strategy, which is still being worked on. As we know, the devil is in the detail, and we must be careful about how we compose the strategy. We would like to work closely with the Environment and Rural Development Committee, the biodiversity forum and others to develop the strategy.

Nora Radcliffe (Gordon) (LD): Do you think that the biodiversity strategy, when it is agreed, will supply the degree of national co-ordination that you mentioned is required? If not, what specific mechanisms do you have in mind?

Malcolm Muir: Our view is that the strategy needs to focus, initially at least, on tranches of clear and achievable actions on which local government and the other main partners will be able to agree and which they will be able to deliver in the first three years.

As I said, there is a lot of good practice. Where there is great success, it is due to fundamental and effective partnerships among the regulatory agencies, local government and other representative bodies such as NFU Scotland, the Scottish Landowners Federation and fisheries interests. In our area, our approach to nature conservation has been transformed by the biodiversity plan. It has influenced the development of our woodlands strategies, for example. We can draw on expertise from SNH whenever we want to. With the Forestry Commission and SNH as partners, we are bringing in substantial amounts of European money to support forest habitat networks. Further, the plan is beginning to impinge on important areas such as the protection of Glasgow from flooding, as that issue links to wider catchment issues relating to the Clyde.

Increasingly, the biodiversity plan is becoming an important tool. We need to focus on that.

Councillor Hay: We have a huge opportunity to integrate various areas of work a lot more. In relation to the proposed planning bill, for example, we need to ensure that sustainability, best value, biodiversity, conservation and planning are linked. However, there is a huge amount of work to be done.

Mr Rob Gibson (Highlands and Islands) (SNP): I am sure that you will agree that, because many of the biodiversity ideas came from the bottom up, it will be essential to involve community councils as your work progresses. Will you expand on that?

Councillor Hay: Recently, a marine conservation area was designated in my council area. That designation required us to have local discussions with fishermen and others who use the marine environment. Those in-depth discussions included community councils and other organisations. The process, which was led by SNH, worked well. It was an example of excellent local consultation and partnership working by everyone involved. If we are to be successful, we must get people on board and, to do that, we must talk to them. I advocate local and rigorous consultation.

Mr Gibson: Your paper mentions the fact that the process will require more finance. It is obvious that a continual flow of information will require more money. Have you quantified that or are you still in the early stages?

10:15

Malcolm Muir: A lot will depend on the strategy. One of the core points about the biodiversity process is that it is not about orthodox nature conservation, but about fundamental resource

protection; it is about protecting the life-support systems within which human economies and quality of life have developed. Much of what we need to deliver can be delivered through existing local government structures and functions. Local government is important because it already has an influence on biodiversity through the planning system and its land-management remit. We must deliver through small changes in the big players. At its broadest, the bill's impact will be largely cost neutral, but pump-priming money will be needed to get the system up and running. Local government badly needs access to expertise in the issues involved.

My council has run a number of pilots linked to biodiversity in the past few years in which consultation has been one of the fundamental issues. In the urban part of my council area, we have run a project to look after an important piece of woodland next to Larkhall that has been designated as a special area of conservation. The community council, tenants associations and local interest groups have been involved from the beginning and representatives of those bodies now form the management committee that runs the site. We are also considering a pilot catchment-management project for one of the main tributaries of the Clyde. We are engaging not only with the regulatory agencies, but with fishermen's associations, the local farming community and other people who are involved. Our forest habitat network includes representatives of the farming community—they sit on steering groups and are involved in the process. We also provide newsletters for all the farmers and other people who are engaged in the process. We find that our approach to those pilot schemes pays off effectively.

Eleanor Scott (Highlands and Islands) (Green): My question is a sort of follow-on one, but not quite. Your submission raises concerns about section 14 consents. Section 14 will place a duty on public bodies not to carry out without consent operations on sites of special scientific interest. Your concern is that that will result in increased administrative work for local authorities. Are there other measures that you think will result in an increased administrative work load? How great will that work load be?

Councillor Hay: Do you mean in relation to SSSIs?

Eleanor Scott: Yes.

Councillor Hay: Perhaps I misunderstood the submission, but I think that the feeling about SSSIs is that there will be less paperwork, not more. That is welcome, because I know that land managers hate filling in forms, so the less paperwork there is, the better. If we have a concern about the proposals, which are generally

welcome, it is about the balance between protecting the environment in the wider sense and the promotion of economic well-being, which local authorities are encouraged to do. I highlight the fact that we welcome the reduction in paperwork, but point out that we need to get the balance right.

Malcolm Muir: Much of the interest from local government in the bill's measures on SSSIs relates to our position as major landowners. Like most landowners, we welcome anything that reduces bureaucracy and makes it easier to engage with the regulatory agencies. Other opportunities are hidden behind the bill. Local government has existing abilities, such as that of designating sites of importance for nature conservation, which could be used far more effectively and could become a buffer layer that sits underneath the SSSI system. Again, to achieve that, local government would need access to expertise and guidance and some sort of national lead, because the existing SINC system is a bit all over the place.

The Convener: One of your points was about requiring SNH to move away from

"an orthodox nature conservation role, to provide ecological advice".

Tapping into that advice would allow local authorities to play the conservation role more effectively. Do you see that happening through local offices and partnership work?

Councillor Hay: Yes, I would see that happening through local partnership work. To a degree, it happens already; however, it could be enhanced through the opportunity that the bill presents. As Malcolm Muir has said, local authorities have a remit in the buffer-zone side of things. It is just a question of establishing an equal partnership: we give of our expertise to SNH and it gives of its expertise, in partnership. I see that happening at a local level.

The Convener: You see the biodiversity strategy as, potentially, the place to pull together some of the issues, to establish best practice and to set out some kind of leadership to which you and all the key agencies can sign up to take all this forward.

Councillor Hay: Yes, to take it forward together, as a partnership, with no individual agency leading the field, although we recognise that SSSIs are specifically SNH's responsibility. We see the whole thing working as an equal partnership.

Malcolm Muir: The biodiversity process is grounded in good science. It gives an effective analysis of what we are trying to protect, which is the value attribute of natural diversity, whether genetic species or habitats. The process is far easier to fit in with wider interests, such as

community planning and economic development, than is orthodox nature conservation and the single-species statutory issues with which SNH is very much tied up at ground level. We need to work on developing the biodiversity framework as something that crosses all the agencies and provides the guidelines for key priorities both locally and nationally. I am not saying that we should drop all the casework that SNH undertakes on a day-to-day basis with bats, badgers and so on, but there needs to be a steer towards the wider and more consolidated issues.

Councillor Hay: That is mentioned in the bill. As far as SSSIs are concerned, we need to look to that, not to the United Kingdom and European legislation.

The Convener: I am sure that SNH will read the *Official Report* of our discussions this morning. When it comes to meet us, we will fire those questions off.

Alex Johnstone (North East Scotland) (Con): The question that I was going to ask has almost been answered. Let us take a step back, to first principles. What do you understand the Executive to mean by biodiversity? Do you believe that the single-species strategies that have often been employed by SNH are diametrically opposed to the pursuit of biodiversity?

Malcolm Muir: There is value in focusing on single species, mainly where they are key indicators of habitat quality or in areas where they can be used as flagship species to bring the public on board. However, even the latter approach can be quite dangerous. Our fundamental focus has to be on habitats. We are talking about life-support systems such as ancient woodlands that are potentially associated with 7,000 or 8,000 species, which are difficult to sell to people, because those species are mostly things such as mycorrhizal fungal associations that live in the soil—not very sexy, but fundamentally important to our economy and to the future.

That is where the interests of farmers and other users need to come in. All our soils were created under ancient woodlands. Those vital remaining woodlands are the only existing reservoirs of that species diversity, according to which future generations might need to recondition soils in order to expand into all sorts of things. There are big economic issues involved, and that is how the approach needs to be led.

Alex Johnstone: Do you believe that the proposals in the bill give us the opportunity to come away from a situation in which the success of the programme to protect one species puts other species under threat, as we have seen in parts of Scotland? Will the bill provide for a more structured approach to the whole business of preserving biodiversity?

Malcolm Muir: Given national co-ordination and support and the sharing of expertise and data among all bodies—be they regulatory bodies, quangos, local government, or whatever—that is exactly the direction that we will and must go in.

The Convener: I will follow that up with a couple of points that we have not talked about and which are not mentioned in your submission, concerning the scope of the bill. Do you have views on whether the marine environment should be included? I know that some local authorities will have a direct interest in that, and you have already talked about local partnership work to protect marine areas. That has been suggested in other organisations' submissions. I give you the chance to say whether you are happy with the scope of the bill. I also ask you about the nature of the statutory duty that is to be placed on all public bodies.

Those are two quite big issues on which other organisations have suggested that the bill needs to be amended to reflect their views. Is there a COSLA view? In your submission you responded to what is in the bill, rather than to what might be in any amendments that are lodged at stage 2. Do you have a view on the marine issue?

Councillor Hay: I would have to give you a personal view, because I do not know what local authorities generally have said about the marine aspect. Given that we are talking about biodiversity and conservation, it would seem to be nonsensical not to include the marine environment. Everything is interlinked. Small organisms, from plankton through to the fungus underneath the ground that Malcolm Muir mentioned, are all interlinked. It is not possible to separate off different areas. It is my personal view—not COSLA's—that the marine environment should be linked in. I have forgotten what the second question was.

The Convener: I think that Shetland Islands Council, Dundee City Council, Glasgow City Council and Fife Council mentioned the marine environment in their submissions, because of their geographical interests.

Councillor Hay: I suppose that my interest is geographical, too.

The Convener: We will have to consider the issue when we get on to other witnesses.

James Fowlie (Convention of Scottish Local Authorities): Your question was a good one, which we would like to take away. We will consult our member councils and come to a view, which we might submit later in the consultation process.

Malcolm Muir: At this stage, we can agree that the marine environment is obviously a key component of the Scottish biodiversity strategy

that is being drawn up. We would welcome consideration of the marine environment. To ignore the marine side of biodiversity would be ridiculous, because it is the most productive and, in many ways, the most economically important aspect of our national biodiversity.

We have taken a sectoral approach and have analysed issues from a management point of view. For example, we approach rural issues through agricultural subsidy and by considering how we can work with the farming community. With urban issues, we use tools such as open-space assessment and community planning. The same approach needs to be taken with marine habitats.

The Convener: That was helpful.

Councillor Hay: I have just been reminded about the second question. I am not sure whether you meant that you want a statutory duty to be imposed on other public bodies.

The Convener: I will clarify that. In other submissions, the point has been made that, although the bill seeks to create a duty to further biodiversity and to let ministers designate a strategy to steer that duty, it does not seek to put a responsibility on ministers or on public bodies or officials to implement any such strategy. I was raising the issue of how prescriptive the bill should be on the implementation of a duty.

Councillor Hay: It should put a duty on people to implement the strategy to further biodiversity. There is no point in having the bill if people will not be constrained to do something about biodiversity.

The Convener: We might come back to that issue in future discussions. Given your role, I thought that you should be given the chance to say whether you had any views at this point.

I have a final question about the bill's scope. The definition of the term "natural heritage" that is provided in the Natural Heritage (Scotland) Act 1991 included reference to "natural beauty and amenity", but the Nature Conservation (Scotland) Bill's definition does not include such a reference. Does COSLA have a view on the definition? You do not have to answer that question, but you did not mention the issue in your submission and I just wondered whether you had a view on it. The definition in the bill is different from the one that is provided in the previous legislation.

Councillor Hay: We do not have a COSLA view as such, but we can take the issue away and obtain a view.

The Convener: I am flagging up matters that will come up with other witnesses, which might be dealt with in amendments at stage 2. I just want to give people the chance to debate such matters at this stage.

Alex Johnstone: I have an afterthought. When the witnesses discussed the overall structure that operates at the moment—which they hope will operate more effectively to deliver the bill's aims and objectives—they described a structure of partnership between organisations. We know that such a structure can work and I have every faith that it will do so in future. My concern, which reflects things that we have been told in the past 24 hours, is that that structure is sometimes not very dynamic. It can be slow and cumbersome and can take a long time to deliver decisions and, ultimately, change. Does COSLA have any additional views about how that structure might be made more dynamic and might deliver the bill's aims and objectives in a shorter time scale than it has done so in the past?

Councillor Hay: I think that I have understood you correctly. The only way in which we will make the bill dynamic is by engaging the public in the process. If we cannot convince people out there that the bill is the way forward, nothing will happen. It is only through dialogue with organisations that matters will be progressed with any great speed. The bill needs to have a much higher profile; even knowledge that it is being considered would help, as would engagement and more publicity. People need to be on board. If they are not, nothing will happen.

10:30

Malcolm Muir: The fundamental approach to biodiversity has to be to link it clearly to wider sustainability and economic and social issues. That is a strong approach that will deliver.

Although the present structure is working well at local level—we have biodiversity officers in most councils—one of the problems with it is that officers operate at quite a low level and are not in a position to influence policy or to make great progress. We need national co-ordination to support the network of biodiversity officers and we need to help senior planners and land managers, through education and other key resources, to see how biodiversity can be fitted into their normal delivery mechanisms.

Councillor Hay: The public must see the bill as a bonus, not as a threat.

James Fowlie: In our submission, we suggest that we should work with partners, such as SNH and the Executive, to develop practical advice. We feel that, like those bodies, we can bring our expertise to the table. We can discuss how we can make things work and how we can speed up the process in the longer term.

The Convener: I think that we can stop there. I thank the witnesses for being prepared to answer additional questions on which they had not offered

views in their submission. Thank you for coming along. If you wish, you are more than welcome to stay for the rest of the meeting.

We will have a two-minute suspension to enable us to swap over witnesses.

10:31

Meeting suspended.

10:33

On resuming—

The Convener: I welcome our second panel of witnesses and thank them for coming. Jo Lenthall is the Scotland local biodiversity action plan project officer for the Scottish biodiversity forum, Professor Jeff Maxwell is from the Royal Society of Edinburgh and Professor Colin Reid is from the United Kingdom Environmental Law Association.

As I said to the first panel, our aim today is mostly to explore the first part of the bill, its purpose and the definitions that it contains, but members may ask questions on other areas as well. I thank the witnesses for submitting written evidence. Members should note that the Royal Society of Edinburgh submitted additional evidence yesterday afternoon. Members should have received electronic copies, and hard copies were also sent out this morning. Does everyone have those?

Members indicated agreement.

The Convener: For clarification, the Scottish biodiversity forum's submission represents the views of those who are involved in the local biodiversity action plan element of the forum rather than the views of the forum as a whole. It is worth making that point clear at the start.

As we have received written evidence from everyone, we will move straight to members' questions. As I do with every panel, I ask members and witnesses to keep their points as focused and as brief as possible.

Nora Radcliffe: A general point was raised by the United Kingdom Environmental Law Association, which obviously believes that an opportunity to do much more consolidation work has been missed. Is it more important to do that consolidation or to get an improvement in statute first? How do you weight those two objectives?

Professor Colin T Reid (United Kingdom Environmental Law Association): To some extent, that is a matter of legislative tactics and the business of the Parliament and the Executive. The danger is that if constant amendments are made, we have a law that is very good for a few experts who spend years tracing all the amendments, but

a law that for the general user is meaningless and impossible to follow and make sense of.

Nora Radcliffe: Can you see the strength of the argument that if we want to get the improvements sought by the bill, we should concentrate on that and then go back and do the consolidation in a more coherent way?

Professor Reid: I would be happy for that to happen, as long as the consolidation comes quickly. Sadly, experience shows that in many areas, reform and change always come first and it is never the right time to consolidate—consolidation never happens. Many areas of law are almost impossible to teach because students have to spend a week trying to find the up-to-date law and do not have time to think about it.

Nora Radcliffe: That point is well made. Thank you.

Mr Morrison: What are the panel's views on what is being proposed in relation to sites of special scientific interest and the powers that relate to them?

Professor Jeff Maxwell (Royal Society of Edinburgh): I am happy to kick off our answers on that one. As our paper states, we welcome the purposes and the strengthening of the legislation as it relates to the way in which SSSIs are now notified. We also welcome the fact that SNH, which will have major responsibility for that work, will be able to discuss some of the socioeconomic implications of the notification of an SSSI. To that extent, SNH will be able to provide the financial support that is necessary to ensure that those sites are managed appropriately. We welcome the proposed way in which the legislation on SSSIs will be set up.

However, we have comments about the fact that the spatial unit that is used for selection of the sites is, as yet, not clearly defined. When I was on SNH's science committee, the area of search was usually one that had administrative significance. Most of our colleagues feel that the area of search should have greater biological significance. It has been suggested that the SNH futures programmes should provide the basis on which the area of search might be decided.

We have drawn to the committee's attention the question of also having clear scientific guidance for the way in which SSSIs are set up. The UK's Joint Nature Conservation Committee has been instrumental in providing guidance on the setting up of SSSIs; we believe that that is a good approach and should be built on. As we indicate, that guidance deals with such aspects as rarity, uniqueness, threats to and vulnerability of species. It is important that there is some consistency of approach where SSSI notification is being given.

Nora Radcliffe: Would you elaborate on the meaning of the term “area of search”, which has a particular significance in this context.

Professor Maxwell: When one is searching an area for significance, if you like, in terms of the site that one is tackling, one has to do so in a way that relates to the explanation in the policy document. The site has to have significance for Scotland and the biological entities that represent the natural heritage of Scotland, which will be different if one is considering a mountain area as distinct from a lowland area. One must also view that in terms of how the site relates to the UK and, ultimately, to Europe and the international community.

Maureen Macmillan: I have examined what the Scottish biodiversity forum’s submission says about a legal requirement to carry out actions to further the conservation of biodiversity. In your submission, you state that you helped to create the final draft, so are you happy with what is in the bill now? Are you happy that it is strong enough, or would you like something more to be added to make it compulsory for local authorities to further biodiversity? I do not know whether you heard the evidence from COSLA earlier.

Jo Lenthall (Scottish Biodiversity Forum): We are looking for a guarantee in the bill that people will use the biodiversity strategy and the actions that it will contain when it comes to delivering biodiversity on the ground. We want to strengthen the requirement to use the biodiversity strategy. At the moment, the bill just states:

“Scottish Ministers may designate ... the Scottish Biodiversity Strategy”,

but it should say “must”. We have spent quite a long time producing this piece of work—we have not finished it yet—and it would be good if we could get people to use it. Actions will be carried through what is written in the implementation plans.

Maureen Macmillan: So you may want an amendment to be lodged at stage 2.

Jo Lenthall: Yes, to make the wording stronger by changing “may” to “must”.

Maureen Macmillan: I was also interested to learn that you thought that only a limited number of the Scottish population would know what biodiversity meant.

Jo Lenthall: If you were to speak to members of the public in the street, I do not imagine that many of them would know what the term “biodiversity” actually means, but when we talk about wildlife protection, we know that about 75 per cent of the Scottish population are concerned about the wildlife that we are losing at the moment. The point was about not necessarily educating people

further about biodiversity, but making clear in law exactly what we are talking about.

Maureen Macmillan: You have no objection to the term “biodiversity” being used in the bill.

Jo Lenthall: Absolutely none at all.

Maureen Macmillan: You just want an explanation of what it is.

Jo Lenthall: Yes. We just want it to be clarified.

Maureen Macmillan: I notice that the definition that you give is probably less understandable than the term “biodiversity” itself.

Jo Lenthall: That definition links back to the international convention on biodiversity in Rio in 1992, so it links what is happening in Scotland to the wider international remit to which we have all signed up.

Maureen Macmillan: Do you think that people in Scotland generally know what is meant by nature conservation?

Jo Lenthall: Yes—nature conservation per se.

Maureen Macmillan: I am just not sure that the problem is all that great.

Mr Gibson: I have a follow-up question. Various bodies complain about different definitions of natural heritage and biodiversity. We have to clarify and consolidate the definitions. The United Nations’ definitions are probably best of all. Do you disagree with that?

Professor Maxwell: We support the definition that is given in the United Nations Environment Programme Convention on Biological Diversity as the working definition that should be applied. We need to determine how we communicate that to the general public and, perhaps more important, to the people who have protected sites on their land. It is important that those people understand what biodiversity is about.

The inclusion of the working definition is one way in which the bill represents a leap forward from the Wildlife and Countryside Act 1981. It embeds the concept of nature conservation in the concept of biodiversity—maximising the genetic variation that exists. The term natural heritage gives no specific meaning to the range of species of plants and animals that exist, but the concept of biodiversity and its interpretation in the action plans reflect precisely what we want to achieve.

The Convener: My reading of the submission by the United Kingdom Environmental Law Association suggests that it may disagree slightly with you. It talks about “overlapping duties” and different definitions of nature conservation. Is there a way of solving that problem in the bill, so that everyone can sign up to the same definition and

be clear about both what is meant and the duty that the bill places on people?

10:45

Professor Reid: As far as the term natural heritage is concerned, there is a difference between the inclusion or exclusion of natural beauty and amenity. That issue was raised earlier this morning. It is important to realise that if the term is used differently there has been a conscious decision to do that. In years to come, people should not be left to fit together slightly different definitions.

There are difficulties in defining terms such as biodiversity in statutory language. Perhaps the technique that is used in the bill of combining the term "biodiversity" with a clear reference to strategies that provide a fuller definition and explanation is a useful way forward. That may be better than having a debate that is ultimately rather pointless about the precise definition of complex terms that we may view slightly differently in five, 10, 15 or 30 years.

The Convener: That is very helpful.

Eleanor Scott: I want to make a point about timing. The finalised biodiversity strategy is supposed to be issued in May next year. Would it have been better for it to have been issued before we considered the bill, so that it could inform our scrutiny, or is that not a problem?

Professor Maxwell: It would have been better to have had the biodiversity strategy in place before embedding biodiversity in the bill, because it is crucial to the way in which the bill is interpreted and implemented. There is substance to the point that Eleanor Scott makes. The policy memorandum states categorically the connection between biodiversity and sustainability. Having biodiversity up front in the bill connects it to other policies that are being rolled out. However, if the biodiversity strategy had been in place the committee would have been able to be much more specific when considering the bill. I agree that there should be a duty not just to have regard to the biodiversity strategy, but to pay specific attention to it and to operate the bill within the context of it.

Karen Gillon (Clydesdale) (Lab): In your submission on the draft bill, you say that you do not regard the penalties set out in section 35 as sufficient. What kind of penalties does the Royal Society of Edinburgh think are necessary to make the bill work?

Professor Maxwell: The submission that we made during the consultation on the draft bill related to a proposed fine of £20,000. In the submission that we made yesterday, we recognise

that the figure has been increased to £40,000, which we believe is a much more realistic level of penalty than that specified by the draft bill.

The Convener: That is useful clarification.

Professor Reid: If there is a clear power for SNH or another body to take remedial action and recover the costs, that may be a significant addition to the impact of measures for dealing with people who have gone wrong.

The Convener: We will now consider the issue of the Scottish Land Court and the submission by the United Kingdom Environmental Law Association. One or two of us are interested in this matter. The Land Court would have a new role in hearing appeals in connection with the management of SSSIs. The UKELA has expressed concerns about the expertise that the Land Court will need to evaluate such cases effectively. Would you like to add to or clarify your submission?

Professor Reid: I have nothing specific to add. I am not particularly expert in this area. However, when reading material about the Scottish Land Court I was struck by the fact that some of the literature refers to the legally qualified chairman of the court and to others as the agricultural members. Clearly, that reflects a perception of the Land Court's role and the background and expertise of its members.

If the Land Court is asked to do something quite different, its composition and the expertise and use of specialist advisers will have to be considered. I add on a purely personal basis that if members are going to look at widening the role of the Land Court, there may be opportunities to widen its role even further. Research has recently been done in England on an environmental tribunal, to bring together the fragmented appellate structures on a wide range of land management and environmental issues. Perhaps it would be possible to use the Land Court in such situations.

The Convener: A system of environmental courts could develop from that.

Professor Reid: The idea of an environmental court raises difficult issues through its connection with the criminal justice system, the Court of Session and so on. It might be possible to have an appellate body to deal with various pollution licensing issues as well as the nature conservation stuff.

The Convener: I raised that point because it relates to one of the commitments made in the Government's partnership agreement. I want to tease out whether such a court could be an incidental development or whether it needs some clear thought while the bill goes through. We could slide into establishing an environmental court; if

we do not do so through the bill, it could come through another route. What are your views on that?

Professor Reid: The setting up of a full-blown environmental court with comprehensive jurisdiction to do a wide range of things raises big and complex issues, and it is probably not beneficial to wait to solve those issues. The interim stage of setting up a court or tribunal that would act solely as an appeal body to hear appeals against particular licensing and management decisions, such as the ones covered in the bill, is a much more feasible and achievable option.

The Land Court already exists and has flexible procedures. We are talking about extending its role in one way. Further extensions to the Land Court's role in the near future might be a way of moving towards the ideal rather than spending years debating the matter. The issues surrounding an environmental court have been discussed during the past 10 to 15 years but the discussion seems to keep going off in different directions because people want to have an all-singing, all-dancing court that will do absolutely everything. That might not be feasible. I add that those views are personal; they are not necessarily those of the association.

Professor Maxwell: As a practical means of getting the bill on the road as well as a means of providing an appeals procedure, we take the view that widening the role of the Land Court is a good solution. However, we agree that the membership of the Land Court, particularly when it deals with matters in the bill, will require to be reviewed because it is important that it has expertise that relates to ecology, the environment and so on, and that expertise might not be in the present membership. The proposal is a good and straightforward way of getting the bill under way and into operation.

The Convener: Should the points that you both made about membership be dealt with through primary legislation or should they take the form of further guidance to follow the bill?

Professor Maxwell: It would be appropriate to deal with those matters in further guidance. The Scottish Land Court is referred to specifically in the bill and I used the term reviewed because it seems to me that that is a procedure that can be undertaken as matters proceed.

Professor Reid: I cannot remember offhand, but I do not think that the legislation on the Scottish Land Court specifies qualifications for its members, other than the chairman, in a way that would be restrictive and constraining. I am just not sure about that. If the legislation stated that the Land Court's membership had to have specific

agricultural expertise, there might be a need to change it to ensure that the body reflects the range of expertise that is needed.

Mr Gibson: One of the members has to be a Gaelic speaker, so there are distinctions around what the members' skills ought to be. It might be useful to draw that point into the bill. I do not know about the legal position; I am just making a comment.

The Convener: I asked that question only because the UKELA's submission makes a point about the tribunal needing to be impartial and about the different skills and expertise that are required. In passing, I note that we might get that right by introducing a suitable provision in the bill. I want to clarify the different options.

Professor Reid: My recollection is that, other than the requirement for a Gaelic speaker, the existing provisions on the Land Court are open ended enough for that not to be a problem. If you wanted to signal that there should be a change, adding something might be useful.

The Convener: That is helpful.

Maureen Macmillan: The Land Court's remit was extended as a result of the Title Conditions (Scotland) Act 2003 so that it could hear appeals on the transfer from feudal tenure to the new kind of tenure. Presumably, that has led to people with a different kind of expertise being appointed, so that provides a model. If the Land Court is used for the bill, the same thing would be done. We should flag that up.

Professor Reid: I do not know about that in enough detail to answer, I am afraid.

Maureen Macmillan: I have just realised that I do not know anything about how many people are members of the Land Court or what pool they are drawn from. We ought to find out about that.

I have a question on a totally unrelated topic: poisoned bait. I noticed that the Royal Society of Edinburgh said in its submission that it was sorry that poisoned bait would not be banned by the bill. Where I live, poisoned bait is an issue—red kites are found poisoned. Will you expand on your views on that matter?

Professor Maxwell: I explained in our additional submission how the Royal Society of Edinburgh put the submission together. Various fellows contributed to it. One of our fellows raised the issue of poisoned bait in the context of wanting a prohibition on self-locking snares, which was in our original submission. The bill has picked that up, but it does not include what might be termed the unauthorised possession of poisoned bait. As you rightly point out, there is still concern about the degree of use of poisoned bait to control what are termed vermin. People have different concepts

of what vermin are. We felt that it was appropriate to draw that to your attention. One of the means by which such controls can be brought about is to have rights of inspection of premises. Under those rights, if the holding of unauthorised bait were prohibited, premises could simply be entered and inspected and offenders brought to court. Poisoned bait is of great concern in parts of Scotland. The control of a practice that is, to say the least, unsavoury should have been thought through in the bill.

The Convener: We can pick up that issue when we speak to further witnesses. Yesterday, we made a site visit during which the issue arose. We have discussed it and can come back to it.

Eleanor Scott: I have a quick question on paragraph 29 of the Royal Society of Edinburgh's additional submission. Will it be possible to enforce the proposed tightening up of the conditions in which snares can be used?

Professor Maxwell: My knowledge in that area is rather sparse, but what is proposed is better than what exists at present. However, the policing of that area is a huge responsibility. One must acknowledge that it puts a huge onus on an organisation that is already stretched.

The Convener: I have a question about marine conservation, about which we asked the previous witnesses. The UKELA's submission mentions the need to clarify whether section 23 covers marine conservation and comments on how to deliver such conservation. Will you expand slightly on those comments?

11:00

Professor Reid: The main issue is the fact that there is a pressing need for the whole area of marine conservation to be dealt with. Consultation is being undertaken at a UK level on marine stewardship and its development, so it may not be appropriate for those matters to be included in the bill. However, there are two specific issues to address.

There is perhaps the need to do something in the marine environment as a stop-gap measure. One possible measure might be to try to use some of the techniques in the bill, such as nature conservation orders, as a way of taking immediate action against pressing threats in the marine environment. That may require quite a reworking of the idea, but it would at least be something that could be done on a short-term basis.

The other issue—which is not mentioned in our submission, but which I would like to raise personally—is the problem of conservation at the coast itself. There are uncertainties about exactly how far down towards low water SSSIs and so on

can be designated. In any event, any boundary at whatever stage of the tide will be completely artificial, as the natural process—the feature that makes the area one of special interest—extends into the water.

The issue of coastal conservation and the wider issue of marine conservation are both important. It may be appropriate to address some of the issues in the bill, but others may require wider policy consideration.

The Convener: That is very useful. Thank you.

Jo Lenthall: That links in with the Scottish biodiversity strategy. There are three elements to the strategy: the rural element, the marine element and the urban element. Although a lot of the issues are not mentioned directly in the bill, they should be picked up through the strategy.

The Convener: The issue is the extent to which we need something in the bill to let that flow.

Jo Lenthall: Yes, to ensure that the issues are picked up.

The Convener: We will have to think about that.

Nora Radcliffe: Will Professor Reid expand a little on the concerns about licences, licensing schemes and so on? Can you give us a better handle on your concerns and what we should do about them?

Professor Reid: At present, in relation to the control of pest species and the killing of various other species, there is often a fairly total prohibition but licences are issued to exempt people. Some of those licences are specific to a person and a place, to deal with a specific problem. However, a large number of general licences are issued annually, to allow the owners and occupiers of land to take action against certain species for certain purposes. For example, they might allow someone to clean out a nest box without breaking the law that says that they should not interfere with nests or be in possession of eggs.

The structural difficulty that we recognise is the fact that, at present, those licences are not published in any form. To do any research on them, it is necessary to write to the Scottish Executive for individual copies of the licences. Additionally, they operate on an annual basis; therefore, technically, one would have to check every year what the exact terms and conditions are. I suspect that those are simply not known. I wonder how many people with bird boxes know that there are only three months in the year during which they are allowed to clean them out. If they do that at any other time, technically they are committing a criminal offence. For such provisions to be stuck in a system of annual licences that are not publicly available seems unsatisfactory.

The Convener: The issue is also about how people can monitor local biodiversity and the impact of different licensing provisions. I am very persuaded by your suggestion that we need to educate the public and that there should be a more transparent and open system, so that local landowners, members of the public and conservation agencies can get a handle on what is happening. That is an issue that came up during our site visit yesterday, and all members were struck by it.

Nora, do you want to add anything to that?

Nora Radcliffe: No. You have raised a pertinent question. We should go away and try to come up with a sensible answer.

The Convener: As members have no further questions, I thank our witnesses for sending us their written evidence in advance—which was extremely useful—and for giving us some good answers to our questions. That concludes our consideration of the bill for this week. We will continue with it next week.

Alex Johnstone: I have a point relating specifically to the bill. I was interested in an answer that Professor Maxwell gave in relation to the use of poison bait. I will read the *Official Report* with interest, as I think that it was a good answer and that we may be able to work on something relating to that. While he was talking, it occurred to me that previously, in relation to fisheries, we have dealt extensively with issues relating to powers of entry and inspection. I wondered whether it might be possible for the clerks to find out when that was. Perhaps I could re-read the *Official Report* of that meeting in the context of the remarks that Professor Maxwell made.

The Convener: I am sure that it is in the corporate memory of the system somewhere. Somebody will be able to find it on a computer. That is a useful point. We also asked for one or two things following our site visit yesterday, which the clerks and the Scottish Parliament information centre will work on to give us some more information.

We now move into private session to consider our two draft reports. I invite the official report, the broadcast media, the public and any visiting members to leave the room.

11:05

Meeting continued in private until 12:39.

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