

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 28 January 2004
(Morning)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

3rd 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, Etrick and Lauderdale) (LD)

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

*attended

THE FOLLOWING ALSO ATTENDED:

Dr Sylvia Jackson (Stirling) (Lab)

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 2

Scottish Parliament

Environment and Rural Development Committee

Wednesday 28 January 2004

(Morning)

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

Subordinate Legislation

Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment (No 3) Order 2003 (SSI 2003/623)

The Convener (Sarah Boyack): I welcome committee members, witnesses, the press and members of the public. We have received no apologies. I remind everyone to turn off their mobile phones in case they ring out merrily at the wrong moment.

Under item 1, we have to consider one instrument that is subject to the negative procedure. The Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment (No 3) Order 2003 has been considered by the Subordinate Legislation Committee, which had nothing to report to us. Do members have any comments?

Alex Johnstone (North East Scotland) (Con): I spoke to several representative organisations about the instrument. Their view is that there is no point in taking any action because the order will expire in less than four days. However, I noticed that many organisations expressed concern because they are not sure what will replace the order next Monday morning. I wonder whether we have any information that would help to allay their fears.

The Convener: No. We have only the papers that members have before them this morning.

Rob Gibson (Highlands and Islands) (SNP): It is obviously very near to the end of the order's life and, of course, we support it. Given the chaos in the negotiations on the future of the common fisheries policy, we do not expect to see another order like this one for quite a while, at least until the negotiations are sorted out.

Nora Radcliffe (Gordon) (LD): The order is fairly straightforward—it just extends for another month the arrangements that were in place until the end of December. That month has been a useful breathing space in which to negotiate in Brussels the details of the regulations that will

apply to our fishermen. I hope that it will enable good work to be done, that it will pay dividends and that we will be pleased that the month was available.

The Convener: Members have made their points. As there are no other comments, are members happy to make no recommendation on the instrument to Parliament?

Members indicated agreement.

Energy Bill (UK Legislation)

10:03

The Convener: At our previous meeting, we appointed Rob Gibson to act as reporter at the Enterprise and Culture Committee's consideration of the Sewel motion on the United Kingdom Energy Bill. Members have the Scottish Executive memorandum and a briefing from the Scottish Parliament information centre. I ask Rob Gibson to report back to us.

Rob Gibson: Members should be aware that ministers Allan Wilson and Lewis Macdonald appeared before the Enterprise and Culture Committee. The Energy Bill is really three bills in one and is therefore highly complicated. The memorandum that the Scottish Executive prepared related only to devolved issues, so there was no room to discuss in any detail, for example, the arrangements for the British electricity trading and transmission arrangements to be shared—or not shared—across the UK.

The Enterprise and Culture Committee questioned the ministers for an hour and considered that that was not enough time, given the size of the bill and its implications for Scotland. I believe that that committee intends to write to the ministers about that and about the procedures for dealing in Parliament with matters of such complexity.

The committee supplied me with four questions to put to ministers. Sarah Boyack asked whether there had been an examination of the impact on Scottish consumers and Scottish electricity generators of the costs of expanding the grid. I can give members the notes from the meeting and they will see the *Official Report* in due course, but ministers said basically that the Scottish Executive is involved in the Department of Trade and Industry's transmissions issues working group, where it is voicing the interests of Scottish producers and consumers, so there was something positive in the answer to Sarah Boyack's question.

I asked other questions, which related to the Scottish Environment Protection Agency's powers and to site licensee companies. The Deputy Minister for Environment and Rural Development responded that the bill would lead to improvement on the current arrangements and that SEPA was being included in discussions about site licensee companies so that it could effect a smooth transfer if a site licensee company went into liquidation.

The Environment and Rural Development Committee's final question was dealt with implicitly by the ministers when they talked about what would happen in relation to safety areas around

offshore developments. In the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill, a large element was not included because it was stated that the Westminster Government would introduce a maritime or marine bill that would deal with maritime passage and safety. Those matters have, however, ended up in the Energy Bill, a large component of which deals with arrangements for the designation of offshore renewable energy zones.

My remarks have been brief because we are short of time, but I emphasise that the bill raises many complex issues that we need more time to discuss. I endorse the Enterprise and Culture Committee's view that it did not have nearly enough time to question ministers. Indeed, my contribution to the hour during which ministers were questioned lasted only about three and a half minutes. I am sorry that we did not have more time, but I have passed on to the committee what was said.

The Convener: Thank you. It is important that we have your feedback from the meeting. Although our timetable does not give us much opportunity to do more, it is useful to know that we had input to the Enterprise and Culture Committee's discussions. Members have no questions for Rob Gibson, so I thank him for doing that work for us and for his feedback.

Renewable Energy

10:08

The Convener: We move to item 3 on the agenda. Members will remember that we asked at our last meeting for information about the Enterprise and Culture Committee's inquiry on renewable energy, as it raises a number of issues that cross over into our environmental remit. Members have a useful paper from the clerk that outlines the remit of the inquiry and summarises the progress that that committee has made so far. The paper mentions the issues that the committee is raising and gives information about the oral evidence that it is taking and the visits that it has made. We also have a briefing note from the Scottish Parliament information centre, so we have some useful background information about the inquiry. The key thing now is to decide how to proceed to ensure that our environmental perspectives are fed into the process.

Karen Gillon (Clydesdale) (Lab): It is important that our environmental perspectives are fed into the process. It would be useful for us to appoint a reporter who would be responsible for working with the Enterprise and Culture Committee to keep an eye on what is happening. Given your previous experience and interests, convener, I suggest that you would be an appropriate person to fulfil that role.

The Convener: I would be interested in doing that, because I am involved in the cross-party renewable energy group. I am keen to ensure that our top environmental and rural priorities are not missed by the Enterprise and Culture Committee. That committee, quite rightly, has a very strong economic development focus.

Roseanna Cunningham (Perth) (SNP): The Enterprise and Culture Committee's inquiry has been going on for about three weeks, if not longer. We have already been missing opportunities to question witnesses and give input. That may, for whatever reasons, have been unavoidable until now, but I wonder whether we could in future have better advance warning of matters that might come up in committees that are likely from time to time to hold inquiries on issues that cross over into some of our issues. I agree that we could have a reporter, but we are in the process of appointing one when the Enterprise and Culture Committee is, I suspect, about to draw its inquiry to an end.

The Convener: As I understand it, Tuesday 30 March is the end date for that committee's inquiry—so the inquiry is longer than the inquiry into waste. I want to get a briefing for committee members now, so that we can focus on the matter and offer reasonable input.

Mr Alasdair Morrison (Western Isles) (Lab): You mentioned Tuesday. Is that the day that the Enterprise and Culture Committee sits?

The Convener: Yes.

Alex Johnstone: So you do not want to do it, Alasdair.

The Convener: Yes, that rules you out.

Mr Morrison: Yes—include me out.

The Convener: I have thought about this. Obviously, I have a pretty heavy work load as convener but—to pick up on Roseanna Cunningham's point—I would hate us to miss out on offering environmental input to a major report that will shape renewables policy in Scotland. We need to keep up to speed with the inquiry as it develops. I need members to identify key issues, just as we did for Rob Gibson. At short notice, we gave him about six questions to take to the Enterprise and Culture Committee.

Mr Morrison: Convener, you are the only Edinburgh-based MSP on this committee.

The Convener: And your point is?

Mr Morrison: My point is that I am happy to think of ways of filling your time on a Tuesday afternoon.

The Convener: That was not my intention in volunteering to do some work.

Maureen Macmillan (Highlands and Islands) (Lab): There are some non-Edinburgh based MSPs who also work on Tuesday afternoons. However, they do not have the same credentials as Sarah Boyack has for this reporter's job.

The Convener: Thank you, Maureen. You have given me both faint praise and strong praise.

I will look into the matter and, through correspondence, keep people up to date on timescales. I know that you all have strong constituency interests in the inquiry, as well as policy interests. I will talk to the clerks and work out a set of proposals. Members will be kept informed and will be able to ask questions.

Nora Radcliffe: We are the Environment and Rural Development Committee so we have two reasons to take an interest.

Rob Gibson: I echo the convener's point: we all have a considerable general interest in the inquiry, as well as our constituency interest. As with all such problems, attending every cross-party group that interests one is not always possible—often, three are on at the same time. I have a strong interest in the issue because I want the policy to be balanced, from this committee's point of view. I hope that we can get an early idea of the framework of the renewable energy inquiry, so that

we can have an input. We may have views that are of value to the Enterprise and Culture Committee.

The Convener: The whole point of putting the item on today's agenda was so that we could have an input. Looking round the room, I can see that every member has a strong interest, from a variety of standpoints.

We could talk about this for ages, but I think that we have come to a conclusion on how to proceed.

Nature Conservation (Scotland) Bill: Stage 2

10:14

The Convener: I have had some useful advice from the clerks about our next item, which is stage 2 consideration of the Nature Conservation (Scotland) Bill. As the minister will not be here until half past 10, I could usefully take us through the key procedures for how we handle things so that those are on the record.

I am conscious that some members have not dealt with a bill at stage 2 in committee before, so I just want to check that everyone has their paperwork in front of them. Members should have a copy of the bill as introduced, the first marshalled list of amendments—which was published yesterday—and the groupings of amendments. If anyone is missing one of those papers, spare copies are on the front table.

I have tried to group the amendments together to allow us to have a sensible set of debates. However, the running order will be set by the rules of precedence that govern the marshalled list, so members will need to move between the two papers. All amendments will be called in strict order from the marshalled list. We may not move backwards on the marshalled list so, once we have dealt with an amendment, we must progress.

For today, I have set a target that we should complete consideration of part 1 of the bill and sections 3 to 12, together with schedule 1. I hope that we will make progress, but we shall not go beyond that. Targets for future meetings will be set after today's meeting and will be announced so that groups that have an interest in our proceedings will know where we are in consideration of the bill.

10:15

I want to mention a couple of housekeeping points. We will have one debate on each group of amendments. The lucky member whose amendment is first in a group will kick off by speaking to and moving their amendment. That member may also comment on all the other amendments in the group. I will then call in sequence everybody else who has an amendment in the group, followed by other members, including the minister if he has not already been called. If members do not have an amendment in a group, but wish to speak to the amendments, they should indicate that in the usual manner. I will give the minister a chance to comment before I ask the lodger of the first amendment in the group to wind up the debate.

The minister may debate all amendments, if he so chooses. Other visiting members—I see that Mark Ruskell is now present—are entitled to participate in respect of their own amendments only, but I will try to let people participate in the debate as things progress. Only committee members may vote, but I suspect that everyone knows that. The minister and visiting members do not have voting rights.

Unless you are moving the first amendment in the group, you should not move any amendment during the debate on a group. Your time will come—so I am told in the extensive briefing that the clerks have prepared for me. As long as I read this out, we should be okay.

Alex Johnstone: It is not a briefing, but a script.

Karen Gillon: Do not deviate from it, convener.

The Convener: I shall try to be disciplined.

If any member does not want to move their amendment, they should simply say, “Not moved”, when the amendment is called. However, any other MSP may move the amendment. If no one moves an amendment, I will immediately call the next amendment on the marshalled list.

Following the debate on each group, I will check whether the member who moved the first amendment wishes to press it to a decision or to withdraw it. If the member wants to press the amendment, I will put the question on the amendment. If any member disagrees, we will have a division by show of hands. Anyone who wants to withdraw their amendment after it has been moved needs the permission of the committee to do so. If any committee member objects to the withdrawal of the amendment, the amendment is voted on immediately. There is no vote on whether to withdraw an amendment.

If I may make a plea from the clerks, members should keep their hands clearly raised during a vote, as the clerks need to record, for the benefit of future reference and for the sake of transparency, not only the outcome of the vote but who voted what way.

Once we have debated the amendments in each section of the bill, we must decide whether to agree to the section as a whole, even if no amendments have been made to it. Old hands in the committee will already know that and understand it; for the rest of us, it is just interesting. We may have a short debate on a section even if nobody has moved amendments to it, but we will see how we are doing for time when we get to those points.

Finally, I make members aware that I have two votes: a casting vote and a deliberative vote. People can watch out for my casting those. I will tend to use my casting vote to favour the status quo.

I am looking at the time, but the minister is not here yet. Before I suspend the meeting, I think that Roseanna Cunningham has a question, or perhaps a comment.

Roseanna Cunningham: I just want to remind members that they are not obliged to speak to every amendment. I say that in the interests of sanity.

The Convener: That is perhaps the most helpful comment that Roseanna Cunningham has ever made in the committee. That is not to downplay her remark: there is absolutely no point in repeating what everybody else said.

Alex Johnstone: Further to that, even if members feel that it is necessary to comment, they may keep their comments very short.

Rob Gibson: Can we also—

The Convener: We have already reached cross-party agreement, which I think Rob Gibson wants to strengthen further, but we know broadly where we are going. Those are useful comments.

I suspend the meeting for 10 minutes.

10:20

Meeting suspended.

10:31

On resuming—

The Convener: I open our stage 2 consideration of the Nature Conservation (Scotland) Bill. If members have no interests to declare, I will move on and welcome the Deputy Minister for Environment and Rural Development—who will be steering us through the Executive’s perspective on the bill at stage 2—and the officials whom he has brought along today.

Section 1: Duty to further the conservation of biodiversity

The Convener: The first group of amendments concerns the functions and duties of public bodies and office holders with respect to biodiversity. Amendment 13 is grouped with amendments 99, 95, 103 and 98.

Roseanna Cunningham: Amendment 13 arises out of comments that the committee made in its report after hearing evidence on part 1 of the bill. In the report, we mentioned that we found it difficult to make very firm recommendations without having sight of the strategy and that, as a result, it was difficult to make any final decisions about how people should operate within that strategy. Nevertheless, I thought it important to attempt to explain some of the issues by lodging amendments.

Amendment 13 seeks to make it clear that the bill covers all public bodies and individual holders of any public office that might have an impact on biodiversity, and to set out explicitly that the duty applies to all of a body's functions. For example, if the amendment were agreed to, department heads could not decide simply to designate some functions but not others, in terms of biodiversity. The amendment seeks to cut out any potential ability for bodies to pick and choose functions, and to point out that the duty applies to a particular body's functions and not to the functions of some other body. That might seem to be obvious, but I think that it is preferable to include it in the bill.

Amendment 13 also raises questions about how it is expected that the duty will be operated in connection with public bodies. In particular, I ask the minister to comment on the cross-border public bodies, many of which have a direct impact on biodiversity, not least the Forestry Commission. There are other such bodies, including the Crown Estate, so it is important to make it explicit in the bill who will be affected and how.

I do not think that the other amendments in the group contradict amendment 13 in any way. I support amendment 99, in the name of Eleanor Scott, and amendment 95, in the name of Nora Radcliffe, who is prompting me. Amendment 95 is quite similar to my amendment—if Nora Radcliffe thinks otherwise, perhaps she will say so at some point. In its totality—that might not be the right word to use just now—I do not think that it is widely off the mark. Amendment 98, on guidance, is useful and it would be of value to include its provision explicitly in the bill. The likelihood is that I will support the other amendments in the group.

I move amendment 13.

Eleanor Scott (Highlands and Islands) (Green): Amendment 99 states:

"Every public body and office-holder must, so far as practicable, adopt an integrated approach by co-operating with each other with a view to co-ordinating the exercise of their respective functions."

That would mean co-ordination between departments and agencies so that the actions of one would not counteract or undermine the actions of another. That might be considered common sense or something that would be done as a matter of course, but we all know that in many cases it does not happen automatically. For example, although many species and habitat action plans have called for funding from agri-environment schemes, that funding has not been forthcoming.

There are precedents for amendments, such as this one, that enshrine common sense and cross-agency working. In the previous session of Parliament, Robin Harper proposed one such

amendment to the Transport and the Environment Committee for inclusion in the Water Environment and Water Services (Scotland) Bill, and it was accepted.

Nora Radcliffe: The intention behind amendment 95 is to place a duty on ministers and public bodies to encourage everyone who is involved in the biodiversity strategy to carry out any actions that are specified in it. The strategy will work only with the co-operation of a wide range of bodies, not all of which are statutory bodies or bodies on which statutory obligations can be placed. The indirect encouragement of other people who are involved in the biodiversity strategy by those who have a statutory duty would be a useful extension in making the strategy work.

Amendment 98 is also an encouraging amendment, if I may describe it as such, that would give ministers a useful power. They may have the power to issue guidance anyway, but I think that it would be useful to focus on that power in the strategy. It would enable ministers to give leadership without being too heavy-handed or over-prescriptive, as that would run counter to the voluntary and co-operative nature of the biodiversity strategy. We want to encourage people to work together. The Convention of Scottish Local Authorities said in the commentary on the bill that it has circulated that it would appreciate guidance so that good practice could be shared and things could be kept consistent.

Amendment 13, in the name of Roseanna Cunningham, seems sensible. It would make section 1(1) read more easily—it would make the intention clearer. Amendment 103, in the name of Mark Ruskell, is very similar to my amendment 95. It seeks to do the same thing, so I think that it will be either/or with those two amendments. On amendment 99, which is in the name of Eleanor Scott, it seems sensible for people to work together in an integrated way but I wonder whether that idea is already implicit in section 1(1).

I recommend my own amendments 95 and 98 and offer those comments on the others.

The Convener: I invite Mark Ruskell to speak to amendment 103 and any other amendments in the group.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I welcome this opportunity to speak to amendment 103. It is one of four that I will be suggesting today. If they become part of the bill, they will, when enacted, provide a complete framework for the development of biodiversity strategies. I start by putting amendment 103 into context—I will speak to the other amendments later.

As drafted, the bill could, in theory, result in a blank piece of paper being presented as a

biodiversity strategy. Clearly, that would not be within the spirit of the bill, but it would meet its requirements. I have every faith in the current team of civil servants and ministers and I am sure that such blank pieces of paper will not be presented. However, we have to bear it in mind that the bill will supersede the Wildlife and Countryside Act 1981, so it is entirely likely that the bill, once enacted, will still be on the statute books in 30 years' time, when we will be into the 10th session of the Scottish Parliament. In the intervening period, we will have had eight separate Scottish Executives in control. It is therefore important that the bill can stand the test of time and that it offers security so that key themes do not disappear in future years. To fail to include that security would be to undermine the work of the Executive and this committee in forming a well-defined piece of legislation.

The flipside of the argument—I am sure that the minister will mention it—is that we do not want, by creating a framework for the strategy, to tie ourselves to specific actions 20 or 30 years in the future. I actually agree with that argument. That is why I am not proposing that we include a requirement for specific actions in the bill; I am proposing that we put a complete framework into the bill. That framework will set out a process for how strategies are to be developed.

I do not think that I am offering a prescriptive approach. Although, in my four amendments, I have attempted to include a requirement for a species list, we have not named the actual species, which can be determined later on. Also, there is a requirement for actions to be taken, but we do not say what those actions are. The purpose of the amendments is to provide a framework, not to specify the actions in the bill.

I do not think that such an approach is unusual. It was adopted in the Water Environment and Water Services (Scotland) Act 2003, with the requirement for river basin management plans to be put in place. That is now a statutory requirement. I think that there are other statutory requirements for frameworks—in local planning, for example. The Water Environment and Water Services (Scotland) Act 2003 is a good example because it specified that there should be a plan, that certain things should be in that plan, that public bodies should have regard to that plan, and that that plan should be monitored. That is all that I am calling for in the bill.

The argument against such an approach—which members will hear—is that it would somehow undermine the participative approach that the bill seeks to develop. However, I do not think that the river basin management plans, which were developed in a participatory way, have been undermined by the process of putting them into statute.

10:45

The other argument against the approach that I recommend is that by placing duties on public bodies we would somehow say, “You must do this,” and would impose a course of action on those bodies. However, amendment 103 represents the first in a series of amendments that I have lodged that proposes a framework that would, in effect, place a duty on public bodies to carry out actions that they had suggested and agreed to undertake. In other words, it is about saying to public bodies, “If you agree to do something, you should keep your word.”

I agree that it is virtually impossible to legislate for the actions of non-statutory organisations, but public bodies can encourage non-statutory bodies to take action by providing, for example, grants programmes or advice. We must remember that the non-statutory sector is already fully engaged in the process. Non-statutory bodies are raring to go and want to engage with public bodies to get them to do their bit.

It will be difficult to deal with the matter if we take a piecemeal approach. Many of the amendments that have been lodged would improve the bill greatly, but we have an opportunity to adopt a full framework in the bill that would enable strategies to be developed in the future. I do not see the point in identifying, for example, the individuals or public bodies who should take action, if we might later agree that there should be no requirement to monitor that action. The four linked amendments that I have lodged present a framework for developing strategies. The first of those amendments is amendment 103, which would place a duty on public bodies to take action.

The Convener: I ask members to raise their hands if they want to participate in the debate.

Roseanna Cunningham: Can we wait until the minister has responded?

The Convener: You have spoken already and will have an opportunity to speak again at the end of the debate. I was asking whether any other members wanted to raise issues before I called the minister.

What is the minister's view on amendment 13, in Roseanna Cunningham's name? The amendment would make section 1(1) easier to understand. Does he regard amendment 13 as a policy amendment or as a textual amendment?

The Deputy Minister for Environment and Rural Development (Allan Wilson): I will take the convener's first point first. I share Roseanna Cunningham's desire to ensure that the wording in the bill is as clear and precise as possible. I presume that the convener also shares that

desire—I do not think that there is anything between us on that.

However, our view is that amendment 13 does not help to achieve that objective, although I will be happy to reconsider the matter if the committee thinks otherwise. If anything, the suggested change might confuse matters. Section 1(1) clearly specifies that the duty in relation to biodiversity must apply wherever a public body or office holder is exercising functions. I am happy to put on the record our understanding of section 1(1), which is that the only possible reading of the subsection is that the duty applies when a public body is exercising any of or all its functions. The advice that I have received is that “any or all” is implicit in the wording that is used, which is the proper legal terminology. The subsection means precisely what it says on the tin, as they say. There is no hidden agenda or attempt to be obscure.

I am sure that amendment 99, which Eleanor Scott has outlined, is very worthy, but I argue that it is completely unnecessary and—as a cursory examination demonstrates—framed in extremely general terms. In the context, it is framed far too widely. It is hard to find fault with the sentiments expressed in the amendment and I do not do so, but it does not add meaningfully to the existing provisions. Biodiversity is, by its very nature, a process that demands an awareness of the big picture—it is the big picture, in that sense. That demands integration, co-ordination across the public sector and willingness to work co-operatively across sectors—Mark Ruskell mentioned the private sector. None of that is in dispute; such co-operation and constructive engagement is on-going. Making reference to such co-operation is unnecessary and does not add anything to the bill.

I was interested in the comparison that Eleanor Scott and Mark Ruskell drew with the water framework directive. Some members of the committee were involved in the process when I took the Water Environment and Water Services (Scotland) Bill through the committee and chamber procedures. I do not see the parallel that they draw.

Let me take local biodiversity plans as an example. Every local authority is developing or, interestingly, is developing in conjunction with others on a non-statutory basis, local biodiversity action plans. That is symptomatic of the approach that we have taken, which is one of consensus and co-operation as opposed to compulsion. I will come back to that point in relation to Mark Ruskell's amendment 103, as it gets to the heart of the political—with a small p, if such exists—disagreement between us. I do not think that amendment 99 would add anything to the bill. The

approach that is outlined is under way and will continue, irrespective of the reference to it that Eleanor Scott wants to insert.

Nora Radcliffe's amendment 95 and Mark Ruskell's amendment 103 get to the very heart of the debate. Let us not beat about the bush: the amendments would require public bodies to take actions that are specified in the biodiversity strategy.

I know that the subject will come up again and I appreciate, from the number of amendments that has been lodged on the issue, that members feel strongly about the need to ensure that the biodiversity strategy is robust and effective. I assure the committee that I share that opinion and that I have looked long and hard at the issue; I am familiar with the arguments and with the source of the amendments. However, to require public bodies to take actions that are specified in the biodiversity strategy is to misunderstand the nature of the strategy process and what it was set up to achieve.

The strategy will provide a broad framework for the promotion and furtherance of biodiversity and will produce a vision and a direction for everyone involved. Mark Ruskell is right that that will be a long-term vision that we hope will benefit Scotland's natural heritage over the ensuing 25 years. It will be supported by detailed implementation plans, which are currently in preparation, but, importantly, there is not—as he proposes—a list of tasks or actions.

I fundamentally believe that we have taken the right approach. It is correct that the strategy is adopted in that manner. It is vital that we look at biodiversity in the round and that we engage with many others. We should certainly engage with others across the public sector and between sectors in order to promote what we seek to achieve. It would be completely contrary to that consensual approach if we were to seek to tie the hands of public authorities or to impose prescriptive conditions on how they choose to do that work. We must encourage the existing and growing consensus and partnership. I fundamentally believe that we cannot prescribe conservation. We cannot tell people to conserve; we have to take them with us. It is necessary to convince them of the merits of our case and bring them along. There can be and should be no prescriptive approach. I had thought that, *inter alia*, the committee and the Executive had agreed that it would be incorrect to adopt a prescriptive approach.

I strongly believe that any attempt to prescribe detailed actions to stakeholders would be counterproductive. Its consequence would be to restrict what people would be prepared to sign up to. My fundamental argument is that stakeholders

are best placed to know how to address the biodiversity duty in their locality. They will do that within the national policy framework, which we will want to set jointly under the strategy.

If the committee votes to make the strategy compulsory, that wider perspective will be lost. Such a move may also lose us friends. That has already been made clear by, for example, COSLA, which is a prospective key partner in the process. COSLA's evidence was that a flexible, non-prescriptive and non-compulsory biodiversity strategy is essential. I argue that the committee should take that advice seriously. I have no intention of departing from an inclusive process, which I believe to be fundamental to what we are trying to achieve. As a consequence, I will not support amendments 95 and 103.

The Scottish biodiversity forum has delivered an excellent draft strategy. In our response to the committee's stage 1 report, Ross Finnie indicated clearly that the Executive recognises the importance of guidance and other public information initiatives that can help to make the law more accessible.

On Nora Radcliffe's amendment 98—which would not impose the prescriptive agenda that I oppose—I agree that there is value in having provision within the bill for future guidance and future codes of practice. That is certainly true in relation to biodiversity conservation, which is at the very heart of the bill. The principle that is embodied in amendment 98 is not in dispute. As Ross Finnie previously indicated, the Executive will lodge an amendment at stage 2 to provide additional powers to issue statutory codes and guidance. The powers that are currently provided for in the bill—in section 42, which we will come to—are confined to purposes relating to sites of special scientific interest. I can give an assurance that an Executive amendment to part 4 will address that issue.

With those few words, I invite Roseanna Cunningham to withdraw amendment 13, Eleanor Scott not to move amendment 99, Nora Radcliffe not to move amendments 95 and 98, and Mark Ruskell not to move amendment 103. I will lodge an amendment to replace amendment 98.

The Convener: Before I call Roseanna Cunningham to wind up the debate on this group of amendments, Karen Gillon wants to raise a point of clarification.

For all subsequent groupings, let me be clear that once all members who have an amendment in the grouping have spoken to their amendment, I will move to an open period, during which members will have the chance to make speeches and comments and raise points of clarification. I will then call the minister to respond, if he is not

the person who led off the debate on the amendments.

I will let Karen Gillon raise a brief point of clarification now, but so that I treat all members fairly, I want to be clear that I will not take anyone else at this point when we come to the next grouping.

Karen Gillon: There is some sympathy around the table for amendment 13, for which the minister offered some hope in his speech. Is it possible that the Executive might lodge an amendment at stage 3 to provide the reassurance that the committee seeks?

The Convener: I will allow the minister to respond briefly before Roseanna Cunningham winds up, given that she may or may not accept the minister's response.

Allan Wilson: I will be surprised if she does not accept what I am about to say. At stage 3, we will lodge an amendment to include the word "any".

The Convener: Can you repeat that last sentence? We did not hear it.

Allan Wilson: We will lodge an amendment to include the word "any".

Roseanna Cunningham: I tried to follow the minister through the various comments that he made, but it was not always easy to track what was being said.

I appreciate what the minister said at the beginning about the exercise of functions, when he used the phrase "any or all". My problem with that phrase is that it raises a question mark in my mind. To me, it implies that we could still get into a position in which some functions are designated as functions in relation to biodiversity and others are not. We have a particular concern about that. If the minister is prepared to put it on the record that that is not the intention and that public bodies cannot say that they have unilaterally decided that some areas of what they do have nothing to do with biodiversity, I might be a little bit more content. I also note that he did not say anything about cross-border public bodies and how they will be affected. I am still a little dubious about where we are. If an amendment is lodged to insert the phrase "any function", that might be acceptable, but I still want to press the minister on the issue.

11:00

The Convener: As that is all that members want to say on the grouping, we move to—

Allan Wilson: Should I provide some information on the cross-border bodies?

The Convener: That would be helpful, as it is clearly an issue for Roseanna Cunningham.

Allan Wilson: The bill covers the Forestry Commission, the Crown Estate and any other cross-border public sector organisation. For clarification, and lest there be any doubt, for these purposes “any” includes “all”. If amendment 13 is pressed, I will oppose it, but I am happy to come back at stage 3 with an amendment to include “any”.

Nora Radcliffe: On a point of clarification, will the minister explain the difference between “any” and “any of their”? I find it hard to get my head around why “any” is acceptable and “any of their” is not.

Roseanna Cunningham: It is so that the Executive does not have to accept an SNP amendment, is it not?

Allan Wilson: “Any of their” would not be grammatical.

The Convener: Members will have to take a view on the matter. The question is, that amendment 13 be agreed to.

Roseanna Cunningham: I know that I moved amendment 13, but the minister has come back with a further clarification that is more explicit than the one that he gave earlier. In those circumstances, can I withdraw the amendment? I think that there would have to be a vote on that.

The Convener: I am advised that you are allowed to do that if the committee agrees to it. The mover of amendment 13 would like to withdraw it on the basis of assurances that she has received on the record.

Roseanna Cunningham: On the basis of what happens at stage 3.

Amendment 13, by agreement, withdrawn.

The Convener: We are off to an excellent start. Does Eleanor Scott want to move amendment 99?

Eleanor Scott: I appreciate what the minister said, but I would still like to move amendment 99.

Amendment 99 moved—[Eleanor Scott].

The Convener: The question is, that amendment 99 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)

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)

ABSTENTIONS

Gibson, Mr Rob (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Amendment 99 disagreed to.

Section 1 agreed to.

Section 2—Scottish Biodiversity Strategy

The Convener: Group 2 concerns preparation of the Scottish biodiversity strategy. Amendment 14 is grouped with amendment 94.

Allan Wilson: The committee’s stage 1 report expressed the view that the bill should require a biodiversity strategy to be designated by ministers, “require” being the operative word.

Section 2(1), which says that ministers “may” designate a strategy, has apparently been misunderstood by some people, who suggest that—somehow or other—the Executive lacks commitment to the development or designation of the strategy. That is self-evidently not the case; the Executive is at the forefront of work, in partnership with a range of interested bodies through the biodiversity forum, to develop a robust and effective draft strategy, which I hope that ministers will be in a position formally to designate as the Scottish biodiversity strategy later in the year.

Let me be entirely clear. During the stage 1 debate, Ross Finnie made it plain that there is no lack of commitment on the part of the Executive; the biodiversity strategy is central to the implementation of the new duties for which the bill provides and to our vision of effective action in biodiversity conservation. We are happy to accept that the bill should require ministers to designate a strategy. Ross Finnie committed us to bringing forward an appropriate amendment, and amendment 14 delivers on that commitment.

Amendment 94, in the name of Nora Radcliffe, would require the Scottish biodiversity strategy to

“have regard to the aims and actions specified in the UK Biodiversity Action Plan and in Scottish Local Biodiversity Action Plans.”

I fully support the need to link the activity to conserve biodiversity that is taking place at UK, Scottish and local levels. The consensus-based approach to the development of the biodiversity strategy through the biodiversity forum, to which I have referred at length, has aimed to do just that, by drawing on material from the UK and local biodiversity action plans and elsewhere, as appropriate. There has been extensive local involvement in that process and local interests have been represented by COSLA, which has led the group that developed thinking on local

implementation. The strategy has been developed firmly within the context of the UK biodiversity action plan.

I am committed to continuing that process and, as we finalise the strategy, I will ensure that all relevant matters—not just those from the UK plan, or, for that matter, Scottish plans, but from any source—are considered.

Amendment 94 is unnecessarily restrictive and could be counterproductive to the strategy and, in particular, to local interests. There is also a legal complication, as I am advised that there is no legal competence to cross-reference the UK biodiversity action plan and the Scottish local biodiversity action plans in the way that the amendment would do, as there is no formal, legally recognised designation process for those plans. Therefore, although there is a reasonable understanding of what is generally meant by the terms “UK biodiversity action plan” or “Scottish local biodiversity action plans”, there is a risk that the amendment could be misconstrued.

I am confident that the Scottish biodiversity strategy will have regard to all the necessary factors, including the local plans—and any other proposals that exist out there. On that basis, I invite Nora Radcliffe not to move amendment 94.

I move amendment 14.

The Convener: I call Nora Radcliffe to speak to amendment 94 and to the other amendment in the group, which is amendment 14.

Nora Radcliffe: I will do that the other way round, as I think that everyone is delighted to welcome amendment 14. I do not think that anyone doubts the commitment of the current Executive to the strategy, but we hope that the legislation will have a long life. The change from “may” to “must” in section 2(1) is fundamental and welcome.

Amendment 94 was intended to be a practical measure that would tie in the biodiversity strategy and make it consistent with UK and local biodiversity action plans. I listened to what the minister said and I am persuaded that the amendment might have unforeseen consequences and might have a limiting effect. I will not move the amendment when we come to it.

Karen Gillon: I welcome amendment 14, which makes a helpful change to the bill—although I do not foresee any major change in the make-up of the Executive in the timescale that Mark Ruskell talked about.

Allan Wilson: I am grateful to Nora Radcliffe. Part of the problem was that anybody can develop a local biodiversity action plan—a person can develop one for their back garden—but whether they would wish it to be incorporated in the national strategy is an interesting question.

I want briefly to mention the UK action plan, because the issue will come up again. If we want to develop a modern and relevant contemporary plan, we should not tie ourselves unnecessarily to something that was produced almost 10 years ago in 1994 and which has had several reincarnations.

Amendment 14 agreed to.

Amendment 94 not moved.

The Convener: Group 3 concerns the content of the Scottish biodiversity strategy or a list published subsequently. Amendment 15 is grouped with amendments 100, 96, 101 and 102.

Roseanna Cunningham: Amendment 15 is part of a group of amendments about the Scottish biodiversity strategy, which arise from the committee’s questions and concerns about having to consider the bill in the absence of anything to guide us on how the strategy will work. I know that the minister has read the committee’s comments in our stage 1 report and understands our concerns. It is understandable that we have so many amendments.

Amendment 15 is, arguably, a stand-alone amendment, but the amendments in the group together aim to provide a framework for the strategy. I feel that the bill ought to give at least an indication of what the framework will be. That is not the same as saying that the bill should have the whole strategy incorporated in it, but it should contain aspects of the framework. A series of questions about the framework need to be answered. We need to ask about how activities will be prioritised; what actions might be needed; who the appropriate people or bodies are to carry out those actions; how the actions will be taken and monitored; and how the results will be reported. All those issues are part of the same argument. Taken together, the amendments in the group might be considered to provide a framework.

Amendment 15 deals with one aspect of that framework. It is about, if you like, the who—the specification of the appropriate people or bodies to take any actions that might be taken within the framework. I would like the minister to talk about amendment 15, either as a stand-alone amendment or in the context of the other amendments on the framework.

If I may say so, convener, we have a difficulty with the group of amendments because it comprises a mixture of stand-alone amendments and amendments that take into account a totality. The fact that one of the stand-alone amendments is the lead amendment creates a slight awkwardness in the discussion. I will support any or all of the amendments that would lead to there being a greater specification in the bill of the framework in which the strategy should be

developed. The situation is slightly awkward because of the way in which the amendments have been grouped. Nora Radcliffe's amendment 96 also falls into the stand-alone category. I support both the stand-alone amendments and the ones that take into account the bigger issue.

The amendments in the group pick up on some of the issues that the committee raised in its stage 1 report. The committee felt that without a framework in the bill it was difficult to work our way through how the strategy would work in practice. The amendments try to provide a framework in the bill.

I move amendment 15.

11:15

Mr Ruskell: I will reiterate some of Roseanna Cunningham's comments. There is a fundamental misunderstanding: the minister says that to put a framework for the development of strategies into the bill would be prescriptive, but it would not be prescriptive at all. It would say that stakeholders who put forward actions to which they agree, that they say are achievable, that are within their remits and on which they take the decisions should be held to account and should stand by their word, and that those actions should be monitored.

There are five key areas in which we need to have a framework for the development of strategies in the bill. The first such area is the prioritisation of activities. The minister might ask, "If we prioritise some activities, species or habitats, what will happen to the others? Will they be forgotten about?" but I do not think that they will be. I have more faith in the bill than that, and with a few other tweaks and amendments later on, the bill's other provisions will be more than adequate to deal with wider biodiversity. We need to make a distinction between the priority species and habitats that need urgent attention and the general issue of the protection of wider biodiversity, which is more than adequately covered by the bill.

We need to specify the types of actions that need to be taken and to be included in any strategy that comes out of the framework in the bill. It is also necessary to include in those strategies the people and bodies that are concerned with carrying out the actions, the actual taking of the actions or the promotion of actions with regard to the non-statutory sector, and the monitoring. Under amendments 100 and 101, none of those would be included in the bill, but the bill would contain a requirement for the strategies to address those aspects. I do not consider that to be prescriptive, so there is a misunderstanding.

Nora Radcliffe: The amendments in the group all relate to what we knew would be a difficult task:

to create a strategy-shaped hole in the bill without putting the strategy into the bill.

I will start with my amendment 96. Strategies should have a mechanism that focuses action where it is most needed—on those species and habitats that are of greatest conservation concern—instead of saying that everything is important and must be looked after, which would be far too unfocused. In other biodiversity action plans at United Kingdom and local level, that focus is achieved by establishing a list of those species and habitats that are considered to be most in need of conservation and to which priority should be given. The strategy would be unworkable without such a focus to ensure that we do not distribute our attention and energies far too widely and that we focus on the crux of the matter.

Amendment 101, which is similar to mine, seeks to do the same thing—to prioritise what the strategy encourages people to deal with. I have a lot of sympathy with amendment 15, which also tries to say what sort of strategy we think the strategy should be without writing it down. A strategy should specify actions and identify who should take those actions; I do not feel that that is over-prescriptive. Eleanor Scott's amendment 102 concerns local sites, which are a useful mechanism for protecting biodiversity at the local level. Many local authorities already have them, and pulling them into the strategy might give consistency, guidance and encouragement that would benefit local sites.

Eleanor Scott: I will not repeat what Mark Ruskell said about the other amendments in the group. I will just speak to amendment 102, which requires that

"A strategy so designated must include measures to establish and promote systems for the management of local sites to further the conservation of biodiversity at a local level."

Most local authorities in Scotland, as Nora Radcliffe said, operate a system of local sites, although they call them by different names, the criteria that are applied are disparate, and they do not all work to the same system. Compared with SSSIs, which are a representative sample of the best sites in Scotland, local sites aim to identify all sites of special importance at regional and local level. They are an important resource and they are where most people see important biodiversity. Some local sites are valuable, and may at some stage become SSSIs, depending on what happens to other components of the SSSI series.

To ensure that biodiversity management is not confined to SSSIs, the expert working group on SSSI reform agreed that local sites are important and it required Scottish Natural Heritage to lead on developing a consistent approach to local sites and guidance to local authorities. As yet, SNH has

not done that. However, Ross Finnie indicated in the stage 1 debate that he expected SNH to take action on local sites and he repeated that assurance in a letter to the committee.

If amendment 102 is agreed to, it will ensure that local sites are used as a key tool in the Scottish biodiversity strategy and throughout the biodiversity process in Scotland, now and under successive Administrations. In addition, it will give weight to the need to take a partnership approach to promoting local site systems throughout Scotland, beginning with a review, led by SNH, of local site systems and the development of common standards. I appreciate that the minister is not keen to be prescriptive, but there has to be a bottom line of minimum standards, and guidance, at least, is often required.

If amendment 102 is not agreed to, I would like the minister to reassure me that SNH will be required to engage urgently in a review of local site systems and to develop common standards for local sites and partnerships of relevant organisations, and that when those common standards are available, the Executive and SNH will issue guidance to local authorities on their application. That is the fallback position if amendment 102 is not agreed to, but amendment 102 would be a worthwhile addition.

Karen Gillon: I support Nora Radcliffe's amendment 96, as opposed to the other amendments that seek to put lists in place. Amendment 96 includes a clear timescale, which is important if people are to know what we are talking about. I am sympathetic to Roseanna Cunningham's amendment 15, although I am swayed by the fact that, instead of being in the bill, its measures could be included in guidance or accompanying notes. I am interested in the minister's comments on that, because I guess that persons could change relatively quickly over a short period of time.

I am not convinced by Eleanor Scott's amendment 102, because I am not convinced that the measures on local sites need to be included in the bill. In addition, I am not yet aware of the financial implications of the amendment on bodies such as SNH and local authorities, and I would need to be convinced that the measures in the amendment could be implemented within the resources that accompany the bill. I seek the minister's comments on that.

Allan Wilson: I will take the last point first. Amendment 15 from Roseanna Cunningham and amendment 101 from Mark Ruskell would require the inclusion of either lists of species and habitats or compulsory actions within the Scottish biodiversity strategy. I am not sure whether Mark Ruskell is aware of the inherent contradiction in his argument. He said that amendment 15 is not

prescriptive but went on to say that other local stakeholders must be held to account for what they do. I share Roseanna Cunningham's concern about the groupings, because amendment 15 should be read in conjunction with amendment 103, which seeks to impose a statutory duty on stakeholders. To argue that that is not being prescriptive is somewhat contradictory.

I agree that, in safeguarding and conserving our biodiversity, we must devote particular attention to the parts of our natural heritage that are under greatest threat. Prioritising is absolutely the right way to go. However, I do not think that the inclusion of lists of species and habitats within the Scottish biodiversity strategy is the right way to go, and neither is subsequently imposing a duty to do so, which would be worse.

As members are aware, a comprehensive programme of action is under consideration, which will set out our overall obligations within the UK's wider strategy. In Scotland, work to implement the UK strategy has been under way for a number of years. That work, which we all agree is vital, will protect our most vulnerable and most important species and habitats.

As I said, I cannot support the inclusion of compulsory actions within the strategy, but amendments 15, 100 and 101 would have that effect. Their effect would lose us friends and take us in the wrong direction. We must integrate action for biodiversity preservation within the ordinary functions of public bodies, but they must be allowed flexibility for decisions, with particular regard to their own circumstances. Those circumstances may be local in relation to local authorities, or they may be other functions in relation to other public bodies. If the strategy were overly prescriptive, it would be counterproductive.

Eleanor Scott's amendment 102 seeks to ensure that the strategy includes measures to promote the establishment of a system of management of local sites to further biodiversity at the local level. Again, we are being asked to endorse an amendment that runs counter to the consensual approach that has driven the strategy's development and to specify measures. My brief states that

"I will reiterate my arguments",

but members will be pleased to learn that I will not, because I have made the position clear.

I assure Eleanor Scott that I, too, welcome the committee's suggestion that local authorities and SNH should work together to improve existing arrangements for local sites. Not only SNH, but local authorities have a role to play in that. However, SNH should take the lead. The crux is what is meant by "urgently", and I suspect that Eleanor Scott's definition and SNH's definition

may not coincide. We will certainly develop the committee's suggestion. However, amendment 102 is unnecessary and restrictive.

Turning last to Nora Radcliffe's amendment 96, I agree that the elements of our natural heritage that are under the greatest threat deserve our particular attention. Therefore, I welcome amendment 96 because it will allow us to recognise that sensibly and flexibly. It has always been our intention to ensure that the first implementation plans for the strategy will require preparation of a list of the most important species for biodiversity conservation in Scotland. That is the right way of ensuring that the most vulnerable elements of our biodiversity are protected, and that we maintain the wider, inclusive and well-supported perspective of the strategy and freedom of choice for the public bodies who will take the lead in the strategy's delivery.

Amendment 96 will require us to prepare a list within the first 12 months following designation of the strategy. The implementation plans will be produced on a three-year cycle, but I am prepared to commit to the challenge of a 12-month horizon for this aspect of the implementation. Achieving that will require the support of stakeholders—which will not happen by itself—particularly the non-governmental organisations. As I said, I am happy to work with the committee on that and happy to support amendment 96.

I should say—if I did not make it clear before—that I ask Roseanna Cunningham to withdraw amendment 15 and Mark Ruskell and Eleanor Scott not to move their amendments.

11:30

Roseanna Cunningham: Having listened to the debate, I still have some concerns that the bill as drafted basically requires a strategy to be designated and requires some reporting, yet does not actually require any actions to be taken. There is a danger that, if we go on like this, the legislation will cover only the broad intentions of the current draft strategy, which itself does not include any specific actions. I have concerns that what is being done is a direct reflection of a senior civil service desire to have as little imposed on the civil service as possible and to keep out of things as much as possible. I am concerned that that is what is driving the Executive and the minister.

Given the grouping of amendments and the difficulty of dealing with them, I will not press amendment 15, but that is only because I will support the broader amendments in the group.

Amendment 15, by agreement, withdrawn.

Amendment 100 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 100 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Radcliffe, Nora (Gordon) (LD)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 100 disagreed to.

Amendment 95 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 95 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Radcliffe, Nora (Gordon) (LD)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 95 disagreed to.

Amendment 96 moved—[Nora Radcliffe]—and agreed to.

Mr Ruskell: I will not move amendment 101, because I think that amendment 96 pretty much does what I was trying to achieve.

Amendment 101 not moved.

Amendment 102 moved—[Eleanor Scott].

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)

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 3, Against 6, Abstentions 0.

Amendment 102 disagreed to.

Amendment 103 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 103 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
 Gibson, Mr Rob (Highlands and Islands) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 103 disagreed to.

The Convener: Group 4 is entitled "Scottish Biodiversity Strategy: reports to the Parliament". Amendment 97 is grouped with amendment 104.

Nora Radcliffe: Amendment 97 tries to shape the processes around the strategy without writing the strategy into the bill. Any report on the strategy should indicate where the strategy is successful and where it is not. The obvious measure of that is how the status of the priority habitats and species is being maintained, lost or improved. That is the absolute minimum that should be expected. It is important to specify measures that make the report meaningful.

I do not believe for a moment that the people who are currently in post would bring a report to Parliament that said, "We have a wonderful biodiversity strategy and we think that you should all applaud us for having it," without demonstrating that the strategy was working. The minimum indication of whether a strategy is effective, which could be included in the report, is whether the status of the priority species is better, worse or the same. That would also show whether the statute was working or not working.

Amendment 104, which was lodged by Mark Ruskell, is similar; it would do the same thing as amendment 97. The question is which amendment members want to include in the bill.

I move amendment 97.

Mr Ruskell: As Nora Radcliffe said, amendment 104 is broadly similar to amendment 97, so I will not reiterate all her comments.

Monitoring is essential. As amendment 96 has been agreed to, it is important that the bill should stipulate at least several elements of a key framework for the biodiversity strategy. We cannot renege on the issue. We must have some sort of monitoring, otherwise we will not be able to tell whether the biodiversity strategy is effective—politically, the Parliament will not be able to monitor the strategy effectively.

The Convener: No other member of the committee has asked to speak on the amendments. Minister, what do you envisage will be in the report? We have agreed to amendment 96, which specifies lists. The current debate is, essentially, about the level of analysis, the nature of the monitoring that you intend to bring to Parliament and whether that monitoring is required under the bill. What would you expect to be required?

Allan Wilson: I shall try to answer that without prejudicing the work on the development of the strategy or alienating the input of our important partners and stakeholders in the process.

I return to Roseanna Cunningham's point. We are talking about a process that we have, thankfully, rejected in the most recent votes. Amendment 97 seeks to build in a requirement in an entirely unhelpful and non-constructive way. The suggestion that, somehow or other, there is a senior civil service conspiracy in the Scottish Executive to avoid responsibility is so wide of the mark as to be laughable.

The concerns that I have expressed and that the committee has supported have been aired extensively with RSPB Scotland and others in connection with the work that is on-going. There seems to be a lack of trust on the part of the environmental movement, founded on the belief that the Executive cannot be trusted to pursue or implement its own policies and that excessive legal requirements or constraints are necessary to force ministers and public bodies to deliver on their biodiversity commitments. Nothing could be further from the truth.

Going down the compulsory, prescriptive road risks alienating the stakeholders with whom we have made progress, particularly COSLA, which has written to the committee on that subject. The Executive is keeping on board local authorities and those that are engaged in the local planning process; we are keeping their support and winning ourselves friends. I assure the committee that adopting the approach that some members seem to be suggesting of being more prescriptive and making things compulsory would be completely counterproductive.

As for augmenting the reporting requirements, the United Kingdom biodiversity action plan will be delivered in Scotland by our strategy. We have already agreed that there will be regular reports and that habitats and species that are particularly under threat will be prioritised—a concern that the committee and I share. There will also be reports to the Convention on Biological Diversity. Those reports will necessarily cover the status of all species and habitats. In the past, we have further distilled the UK reports to draw out essentially Scottish elements. Work is under way to do that for the current reporting round. Given that the Scottish biodiversity strategy is the delivery mechanism for the UK action plan in Scotland, it follows that any report on the Scottish biodiversity strategy will necessarily take account of the current UK reporting processes. To require further reporting over and above what is already proposed in the bill, as suggested in amendment 97, would be costly and wasteful.

I much prefer the strategy that the committee has just approved in relation to the detailed lists of species and habitats. Members might argue that part of what we have agreed renders most if not all of amendment 104 redundant, but there is still merit in pointing out that adopting amendment 97 would be completely counterproductive to the positive action on Scottish biodiversity that the Executive is leading.

Nora Radcliffe: I lodged amendment 97 because it seemed to me that there was an irreducible minimum level of reporting back to the Parliament. For reports to be meaningful, they have to demonstrate whether the strategy is working. It seemed to me that the obvious mechanism for determining that was to examine the list of priority species and habitats, which sits alongside the strategy, and to consider whether the strategy is working in relation to it. The minister seemed to say—if I picked it up correctly—that reports to the convention essentially do that anyway. I would like clarification on that. Whether what I am proposing is happening anyway in another context and can therefore be taken as read will determine whether I am persuaded to press amendment 97.

Allan Wilson: I made it as clear as possible that we have not yet got the list, but the equivalent of what the member suggests will happen.

The Convener: Is that a yes?

Allan Wilson: There is a large element of trust in what I have said. There seems to be some questioning of the motivation or, dare I say it, the commitment to deliver on—

The Convener: All that Nora Radcliffe has requested is clarification of whether you already have to do what she asks as part of the report to

the Convention on Biological Diversity. She was looking for a yes or a no.

Allan Wilson: I said that that is work in progress and so is not yet to hand. Therefore, I cannot say, “Yes, here it is.” I have said that that work is being done and that such a list will be produced.

The Convener: Does the assurance that the work is in progress satisfy you, Nora?

Nora Radcliffe: I think that that is a yes in that what I am proposing will happen. I did not lodge amendment 97 in an untrusting way; I was not implying that such things would not happen. I was simply trying to ensure that the bill includes provisions on what we think the strategy should look like and do, without actually prescribing the strategy. What I have proposed is a minimum requirement to make the report meaningful.

I wish to press amendment 97.

The Convener: The question is, that amendment 97 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Radcliffe, Nora (Gordon) (LD)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 97 disagreed to.

11:45

Mr Ruskell: I intend to keep members' arms busy.

The Convener: You may make only a very short comment.

Mr Ruskell: I fail to understand how a statutory requirement for reporting would alienate stakeholders.

Amendment 104 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 104 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)

Gibson, Mr Rob (Highlands and Islands) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 104 disagreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: Amendment 98 has already been debated.

Nora Radcliffe: I think that I got assurances that the Executive will lodge an amendment later in our consideration of the bill to deal with the issue that amendment 98 raises.

Amendment 98 not moved.

Before section 3

The Convener: Group 5 contains amendments on the identification and denotification of sites of special scientific interest. Amendment 111 is grouped with amendments 112, 105, 106, 117, 120, 29, 108, 121, 109 and 128. If amendment 112 is agreed to, I will not be able to call amendments 105 and 106 in this group or amendments 18, 19 and 20 in group 6, because of pre-emption. If amendment 120 is agreed to, I will not be able to call amendments 29, 108 and 121 in this group or amendments 30, 31 and 32 in group 6, because of pre-emption. I hope that that is helpful to members.

Eleanor Scott: I will speak to amendments 111 and 112 and, while I am doing that, I will try to find where I have put my notes on amendments 117 and 120. Amendments 111 and 112 are related in that amendment 111 suggests a new section before section 3 to replace the subsection that would be deleted if amendment 112 were agreed to. The proposed new section is on the statutory purpose of SSSIs.

The concept of a statutory purpose is welcome. The expert working group on SSSI reform agreed on the principle of placing such a purpose in legislation. However, during the evidence taking at stage 1 and in the committee's stage 1 report, one or two problems were raised. Amendment 111 seeks to resolve those problems.

The questions that arose were about why we have such a series of sites of special scientific interest and what the series is for. The

amendment expresses the view that the answers to those questions should include the following points. It should be stated that SSSIs are a series of important wildlife sites, selected by Scottish Natural Heritage with, where appropriate, advice on scientific criteria from the Advisory Committee on Sites of Special Scientific Interest. The series should be sufficient in terms of the number, size and distribution of sites and the range of wildlife requiring such protection.

The range of wildlife requiring protection should include not only that which is representative of Scotland but that which is unusual or special, so it must include rare species and habitats and sites of great naturalness that are especially vulnerable or irreplaceable. It should also be stated that the SSSI series is greater than the sum of its parts, so that, as well as being considered individually, sites should be considered as a network or series. Moreover, once selected, the sites should be cared for and managed to conserve and enhance their interests.

Section 3(2), which amendment 112 would delete and amendment 111 would replace, lacks a requirement that selection should be carried out solely on scientific criteria. Section 3(2)(b) would allow ministers to issue non-scientific guidance. Amendment 111 includes a provision for guidance, but limits some guidance to scientific guidance issued by the Joint Nature Conservation Committee, thus ensuring a common approach to SSSIs throughout the UK and fulfilling a pledge that was made when SNH was formed.

As well as being selected, SSSIs have to be looked after. By limiting the application of section 3(2) to SNH's functions under section 3(1), the bill addresses only the selection and omits the role of the advisory committee. Amendment 111 would apply the purpose to all functions—or at least all functions that relate to SSSIs—carried out by the different bodies under the bill. SSSIs are selected not only to be representative of the diversity and geographic range of Scotland's natural heritage, but to protect rarity and naturalness. That issue was raised by, among others, the chief executive of SNH, and amendment 111 is designed to address that concern.

If the committee does not agree to amendment 111, I will support some of the amendments in Nora Radcliffe's name, which do some of the same things as my amendment, although not all in the one big leap.

I now crave everybody's indulgence while I take a look at what I have said in amendment 117. As usual, I have misplaced my notes, but amendment 117 is a small, consequential amendment.

I move amendment 111.

Nora Radcliffe: If the committee chooses not to replace section 3(2), on the statutory purpose of SSSIs, it might be useful to add “rarity” to the reasons for identifying a site, as amendment 105 proposes. If there is only one of something, it could be argued that it is not necessarily representative, and SSSIs are supposed to maintain a representative sample. However, we would still want to protect something even if there was only one of it. We are talking about preserving biodiversity and it may be that rarity is implicitly understood to be a feature of biodiversity, but amendment 105 gives us the opportunity to make it absolutely clear that we are including rarity as well as representativeness and that biodiversity covers the whole spectrum.

Amendment 106 is slightly more important, as it ties the identification of SSSIs to scientific criteria; it would maintain the quality and consistency of the criteria used to identify sites. The amendment would mean that section 3(2)(b) referred to any guidance issued by the JNCC, which was established under section 128 of the Environmental Protection Act 1990. That would tie the identification of sites to the objective scientific criteria as far as possible.

Amendment 108 deals with the issue of whether an SSSI in which there has been deterioration or damage should be denotified. Amendment 108 would ensure that, if a site had been damaged or had deteriorated, before we denotified it we would have to establish whether it was possible to restore it, within reason, and to maintain it as a site of special scientific interest. That might not be done only for the reason why the site was notified in the first place. The site might have other valuable features that could merit its retention as an SSSI. Before we abandon an SSSI, we should consider whether it can reasonably be restored so that it is still an effective part of the representative series and whether it has other features that we could use to renotify it and to maintain it as a site of special scientific interest.

Amendment 121 is consequential to amendment 106 and would tie notification to scientific criteria. Amendment 109 is consequential to amendment 108. If SNH were denotifying a site, amendment 109 would require it to say that it had considered restoring the site, if that could be done reasonably, or renotifying the site for a different valuable feature.

Allan Wilson: Amendment 111 proposes new obligations on public bodies. The first is—dare I say it again—a duty on every public body that undertakes functions under part 2. In effect, that is a duty on all regulators, all statutory undertakers, the Advisory Committee on Sites of Special Scientific Interest, the Scottish Land Court, the Court of Session and the sheriff courts, the Keeper

of the Registers of Scotland and perhaps SNH itself.

The new duty would require each of those assorted public bodies and office holders to identify an SSSI series that represents the diversity of Scotland’s natural features. I do not know whether Eleanor Scott and Mark Ruskell regard that as an appropriate task for our courts, regulatory authorities or the Keeper of the Registers. If so, I do not share their view and I trust that the committee does not. The amendment would be entirely out of place in the bill. It is Scottish Natural Heritage’s role to identify SSSIs and to develop an SSSI series. It would be utterly wrong for a provision in the bill to undermine that role.

That is not all that is wrong with the proposal. The intentions that underlie the amendment are already met by the arrangements that will be put in place by section 12, which places a general duty on public bodies. Subsection (3) of the amendment would oblige public bodies in the most sweeping terms to

“protect, conserve and enhance”

the new SSSI series

“in accordance with any guidance, decision or ... judgment” issued by SNH.

The amendment fundamentally misunderstands the role that the advisory committee performs and the SSSI process. The ACSSSI provides independent and objective advice to SNH when scientific objections have been made to an SSSI. The ACSSSI is not a tribunal and it has no remit to issue binding judgments. Overall, that system has worked well since 1991 and is well understood by stakeholders. The amendment does not indicate any understanding of that system.

The reference to the Scottish Land Court is also mistaken. Veterans of the Land Reform (Scotland) Act 2003 will know that the Land Court is a court of law that dispenses justice. It has no remit to supplant SNH in conserving or enhancing SSSIs. It would be wrong if such an obligation compromised the court’s impartial judicial objectivity.

Amendment 111 is fundamentally at odds with the key principles and systems at the heart of the bill. In the nicest possible way, I invite Eleanor Scott to withdraw amendment 111 and not to move amendment 128, which is consequential to amendment 111.

Amendment 105 would include the concept of rarity in the bill as one criterion for identifying an SSSI. That is entirely unnecessary. After all, criteria such as rarity are already fundamental to the JNCC’s extremely detailed selection

guidelines, which are included in the reference to “any guidance” in section 3(2)(b). Given that the concept of rarity is already inherent in the selection criteria for the SSSI series, the proposed change would add nothing to the bill’s existing provisions and would, I argue, simply confuse matters. As a result, I ask Nora Radcliffe not to move amendment 105.

12:00

Amendments 106 and 121 are also unnecessary and—dare I say it—unhelpful. As the committee is aware, SNH already uses the JNCC’s guidelines for the selection of SSSIs as a matter of course. The existing SSSI system has been created on that basis. Although the Executive intends to continue with those existing British guidelines for the foreseeable future, it might interest the nationalists among us to know that the bill has been intentionally drafted to allow for the possibility—unlikely as it might be—of developing specifically Scottish selection criteria, if appropriate. Call me old fashioned, but I think that that is part of what devolution—and the work of this Parliament—is supposed to be about.

I believe that it would be a clear mistake to impose such an unnecessary and restrictive provision in the bill. Indeed, doing so would be tantamount to arguing that Scotland cannot be trusted to look after its natural heritage. That argument is simply not tenable. I hope that Nora Radcliffe agrees with me and respectfully invite her not to move amendments 106 and 121.

Amendment 29 is a minor drafting amendment in my name. I take it that the committee picked up that the word “the” is missing from line 16 in section 9. The reference, which is clear from the context, should be to “the SSSI notification”, rather than to “SSSI notification” in any general or theoretical sense. I will move amendment 29 at the appropriate time.

As for amendments 108 and 109, although they are well meaning, they do not recognise the fact that the SSSI provisions in the bill have been very specifically designed to prevent damage to SSSIs occurring in the first place. After all, that is what the whole SSSI process is about. Any denotification of an SSSI would happen only when all reasonable efforts to safeguard the site, including the application of criminal sanctions where necessary or the provision of positive management payments, have demonstrably failed.

As a result, both amendments are clearly unnecessary. It is inconceivable that SNH would seek to denotify a site or part of a site without first having to make the case very robustly and, additionally, to justify the case publicly. Moreover, any denotification would have to be referred to the

ACSSSI, which would provide independent advice on SNH’s scientific case for denotification. Any student of these matters over the past decade or so would see that the scenario envisaged by the amendments is clearly inconceivable. I ask Nora Radcliffe not to move amendments 108 and 109.

The Convener: I seek some clarification on amendment 105, because I am persuaded by Nora Radcliffe’s arguments. Did you say that rarity is definitely one of the criteria in the JNCC guidelines and is therefore automatically taken into account? After all, Nora Radcliffe is absolutely right to say that one would expect rarity to be one of the issues under consideration.

Allan Wilson: Yes. That was the whole point of the exercise.

The Convener: I just wanted to clarify that, as it is an important point.

Nora Radcliffe: I seek clarification on what you said on amendments 108 and 109, minister. I fully accept what you say about the denotification of a site for the reason for which it was originally notified, but you did not address the other strand of the argument, which is that there may be valuable features on a site that are not the reason for its being notified in the first place. If a site is to be denotified, is there merit in looking to see how it might be retained as an SSSI for a different reason or for a different feature?

Allan Wilson: In a hypothetical scenario, if there were such features, they would be the subject of an SSSI designation, either new or existing, would they not?

Nora Radcliffe: So it would be safer to take the long way round and redesignate a site for a new reason if that was appropriate.

Karen Gillon: On the same point, I assume that, given that we are insistent that SNH should follow the correct procedures and legislation in relation to classification, we should not be looking for a way in which to circumvent that system when there have been clearly identified problems in the past. I would want a redesignation to go through the proper procedures, not be dealt with in the way that is set out in amendment 108.

Allan Wilson: The proposal would clearly be not to denotify.

The Convener: As members have no further points to raise, I call Eleanor Scott to wind up and to press or withdraw amendment 111.

Eleanor Scott: I take on board the concerns that the minister has expressed about the lack of clarity in our amendments, although I would say that the purpose is clear: we want nobody whose actions might impinge on SSSIs to escape the net of responsibility. However, I sense a lack of

support for our proposals among my committee colleagues, so I will not press amendment 111 or move the other amendments in my name. Nonetheless, I urge support for the amendments in the name of Nora Radcliffe, if she chooses to press them. The minister may be satisfied that the issues that they raise are embedded in practice, but there is still value in having them stated in the bill.

Amendment 111, by agreement, withdrawn.

Section 3—Duty to give notification of sites of special scientific interest

The Convener: Group 6 is entitled “Natural features and protected natural features”. Amendment 16 is grouped with amendments 17 to 23, 25, 27, 28, 30 to 33, 42, 43, 45 to 53, 56, 63 to 70, 73, 75, 76, 82 to 84, and 88 to 93. I hope that that is clear.

Allan Wilson: This is my attempt to restore a degree of consensus to the committee’s deliberations. In its stage 1 evidence sessions and in drafting its stage 1 report, the committee was rightly critical of the way in which the phrase “natural heritage” was defined and used in the bill. Those criticisms were acknowledged at the evidence-taking session that we had on 26 November, and we undertook to look again at them. As Mr Finnie indicated subsequently in the stage 1 debate, we were happy to take on board the constructive and helpful comments that were made and we have lodged appropriate amendments that will, I hope, resolve the issue.

The committee will be pleased to know that I will not speak to each amendment individually. The changes that are proposed in this series of 47 amendments are essentially technical and self-explanatory. I will map out the principles, then give a couple of examples of changes that the amendments will make and describe their impact.

The overall objective of the amendments is to replace all occurrences of the term “natural heritage” in the bill with an equivalent formulation based on the new term “natural feature”. The term “natural feature” will be defined, by virtue of amendment 17, in a new section 3(1A) at the start of part 2. The definition is:

“flora or fauna or geological or geomorphological features.”

I am sure that that is a very familiar term to all members. The same definition can already be found in section 56. In a very similar form, the definition underlies the existing Scottish statutory instrument provisions in the Wildlife and Countryside Act 1981. The new term “natural feature”, and the clear explanation, at the outset of part 2, of what constitutes a natural feature will, I hope, be welcomed by members. I hope that we

have found an improvement on the previous wording. I hope, too, that we have provided a helpful presentational emphasis on the SSSI system. We have covered not only “flora and fauna” but features of “geological or geomorphological” importance. We will go into that importance in later deliberations. I am looking at Maureen Macmillan because I know that these issues are close to her heart.

The overall bill will not be altered by these changes. I hope that the improved prominence of geological matters will be seen as a positive and constructive development that emphasises the degree to which protecting geological as well as biological diversity is a fundamental objective of the bill.

Amendment 17 will define “natural feature” in section 3. The remaining amendments in the group will carry out a series of more or less standard replacements—for example, by removing the term

“aspect of its natural heritage”

and replacing it with

“of its natural features”.

We will leave out the term

“aspect of natural heritage by reason of which the SSSI notification has effect”

and insert

“natural feature specified in the SSSI notification.”

That resonates with what we have just said on denotification. It would be inconceivable for denotification to happen where natural features remained within an area for which there had previously been notification. In any event, there would be a 12-month period during which any objections relating to natural features could be heard.

We will also remove the term

“aspect of the natural heritage of the land”

and use

“natural feature”

in its place.

A new shorthand term—“protected natural feature”—will be created by amendment 90. That will simplify references in the bill to natural features that are protected by an SSSI notification or by a nature conservation order.

Taken as a whole, the changes that will be made by the amendments in the group will deliver what the committee has asked for. They will make for a tighter and more readable statute that will avoid confusion arising from the existence of alternative meanings of the term “natural heritage”. The committee was concerned about that.

The amendments will do all that, I must emphasise, without altering the policies that are being pursued in the bill, or the legal impact of the amended provisions, which is obviously very important. Members can therefore be reassured that the result of the amendments will be clarification of the text and not alteration of the underlying intent of the bill. I commend all 47 amendments in the group to the committee.

I move amendment 16.

Maureen Macmillan: I thank the minister for the amendments. I am aware that geodiversity and geomorphological issues were implicit in the bill, but it helps to have that made absolutely clear because of the concerns that have been raised. I hope that, in subsequent stage 2 debates on the bill, we may be able to develop our strategy and thinking on how to protect such features. I look forward to those debates with the minister.

Allan Wilson: In the context of our future deliberations, I am pleased to give the reassurance that officials will be working along the lines mentioned by Maureen Macmillan. I did not mention natural beauty and amenity in my earlier remarks, but I believe them to be important.

Amendment 16 agreed to.

Amendment 17 moved—[Allan Wilson]—and agreed to.

Amendment 112 not moved.

Nora Radcliffe: As we have been given the assurance that rarity will be included, I will not move amendment 105.

Amendment 105 not moved.

Amendments 18 to 20 moved—[Allan Wilson]—and agreed to.

12:15

Nora Radcliffe: I had concerns that notification was not tied to scientific criteria and that that had been left open. Having received an explanation of why it was left open, I am happy not to move amendment 106.

Amendment 106 not moved.

Amendment 21 moved—[Allan Wilson]—and agreed to.

The Convener: Group 7 concerns the contents of SSSI notifications. Amendment 113 is grouped with amendments 107, 114 and 116.

Dr Sylvia Jackson (Stirling) (Lab): I want to speak in particular to amendments 113, 114 and 116. I know that Mr Mark Ruskell will speak to amendment 107. I worked quite closely with RSPB Scotland on the three amendments and I know that Scottish Environment LINK is also very

supportive of them. The amendments would require Scottish Natural Heritage to specify conservation objectives for SSSIs. The amendments are important and would prove to be helpful to SNH, conservation bodies and others who are involved in the biodiversity process, as well as owners and occupiers of sites.

Benefits will accrue because agreement to the amendments would mean that it would be clearer what the long-term objectives of site protection and management were. SNH would therefore be able to specify whether sites should be maintained in their current condition, which is conservation, or managed to improve their quality, which is enhancement.

In that respect, it is worth noting that section 4 of the bill rightly indicates that the SSSIs

“should be conserved or enhanced”.

However, there is no obligation on SNH to specify which sites should be enhanced or by how much they should be enhanced. Amendment 114 would fill that loophole.

I have examples in which the powers would be useful. In the case of a herb-rich meadow, SNH would be able to indicate whether it hoped to maintain the number of orchids at existing levels or encourage management to increase their population. In the case of a woodland, SNH would be able to indicate whether the woodland was in good condition or could be enhanced by encouragement of more diverse ground flora, greater regeneration of young trees and so forth.

SNH and others would, through the amendments, become aware of the contributions that the SSSI series is intended to make to the conservation of a particular species or habitat. SNH would then be able to decide whether further SSSIs were necessary and whether other measures were needed in the wider countryside; for example, the agri-environmental schemes that were mentioned previously.

Equally, each owner and occupier would be in a position to know SNH's long-term plans for a site. That would prevent an oft-heard complaint about consents and management agreements—that owners and occupiers are unclear what SNH is trying to achieve on a site—by enabling SNH to link the decisions to the objectives. I realise that amendments 113, 114 and 116 are fairly onerous in what they seek SNH to do. Amendment 114 is really a probing amendment, which I will consider after I have heard what the minister has to say.

I move amendment 113.

Eleanor Scott: I support the amendments to which Sylvia Jackson spoke. Amendment 107 relates to those amendments and has the support of Scottish Environment LINK. The purpose of

amendment 107 is to require SSSI notifications to specify, where appropriate, the species and habitats on the site that are listed as priority species and habitats in the UK biodiversity action plan and—eventually—in the Scottish biodiversity strategy.

There are two reasons why that would be a valuable change. First, knowing how much of each species and habitat was included in the SSSI series would enable managers of the biodiversity process to focus action accordingly. It would be a good set of information that would enable us to consider what we are doing on biodiversity. Amendment 107 recognises that land managers are key stakeholders in the implementation of the biodiversity strategy. If a link were made to the wider conservation agenda, that would make clear the role of SSSIs in helping to secure biodiversity objectives and it would counter the negative image of SSSIs as being restrictive. It would also show what they were for. Amendment 107, in conjunction with Sylvia Jackson's amendments, would be helpful.

Allan Wilson: Amendments 113 and 107 seek to ensure that every notification under section 3(1) contains specified conservation objectives for the site to which it relates. Amendment 107 seeks to ensure that every SSSI notification contains a statement that would identify whether the features of interest for which the site had been notified were of principal importance in complying with the Rio convention.

The rationale for notification of an SSSI and its inclusion thereafter in the developing series would be that the land was of special interest by reason of its natural features—we have just had the debate on that and members will vote on it. Whether the feature per se happens to be listed elsewhere is really a distraction from the fundamental question of what the features of the site are that justify the creation of an SSSI. I am happy to accept in principle Sylvia Jackson's argument, but it is the core information that is contained in the notification process—the detail of the site and the features thereof, the list, the map and all the other core elements—that make up the SSSI notification.

We have to consider how we manage that process and preserve and conserve the natural features, which is where I depart from Sylvia Jackson's analysis. The management statement is where we would detail which inherent features we require to preserve and conserve and the process by which we would do that.

My main concern is largely technical rather than being about the principle of amendments 113 and 107. The amendments could have the practical effect of requiring SNH to engage in wholesale renotification of the existing SSSI series, which

amounts to just under 1,500 sites, each of which would have to be renotified to every interested party. Anybody who is familiar with the process—for example, land managers—knows how intensive the process is. SNH has neither the time nor the resources to undertake such renotification and we should not impose additional duties and obligations on it.

I thought that consensus had developed—it certainly developed among stakeholders—over the three years in which we have been putting the bill together that the bill would not lead to unnecessary and unproductive additional work for SNH in relation to SSSI site notification, which is my real fear about what amendments 113 and 107 would do. We do not object to the amendments in principle, but the management statement in the existing process provides what Sylvia Jackson seeks. To add to the notification process would be unproductive.

Amendment 114 seeks to specify the detailed content of the conservation objectives to be included in the SSSI notification. I oppose that for the same reasons why I opposed amendment 113. SSSI notifications are not management statements that set goals on the extent, number or nature of the SSSI natural feature that SNH thinks would be desirable. There is, in amendment 114, an element of seeking to set local targets, for example that there should be 50 harriers here or 1,000 orchids there—let one thousand orchids bloom, to misquote Mao. However, the objective is to ensure that, through the management statement, the methodology for preserving and conserving is well laid out, easy to follow and not target-driven. The same arguments apply to amendment 116.

Therefore, with the assurance that the principles that Sylvia Jackson outlined will be taken up and promoted elsewhere in the bill, I ask her—in order that we do not impose an undue renotification process on SNH—to withdraw amendment 113 and not to move amendments 114 and 116. I ask Eleanor Scott not to move amendment 107.

Dr Jackson: I am reassured by what the minister said, so I see no point in pressing and moving my amendments. I am certainly not looking for something onerous—as the minister described it—in terms of renotification and I accept his reassurance about the management statements. However, I wonder whether he can reassure me that we would perhaps work towards SNH's considering how the objectives could be stated more clearly either within annual reports or through informal advice to owners and occupiers. I also ask the minister for reassurance that the biodiversity strategy will assess how much of each species and habitat will be protected by the SSSI series and where that may be improved by enhancement work.

Allan Wilson: I am happy to raise those issues with SNH. As members will know, the bill's thrust is to make the management process simpler, easier to understand and more specific to the sites concerned. If we can do that better through further discussions with SNH, I will do so. On the biodiversity strategy, we could do what Sylvia Jackson suggested. However, she would have to discuss that with the people involved in the strategy, who are developing their own priorities.

Amendment 113, by agreement, withdrawn.

Amendment 22 moved—[Allan Wilson]—and agreed to.

Amendment 107 moved—[Eleanor Scott].

12:30

The Convener: The question is, that amendment 107 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
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 3, Against 6, Abstentions 0.

Amendment 107 disagreed to.

Amendment 114 not moved.

Section 3, as amended, agreed to.

The Convener: That closes day 1 of our consideration of the bill at stage 2.

Alex Johnstone: We have only just got to my amendments.

The Convener: Well, it is half past 12.

Alex Johnstone: I apologise.

The Convener: That is fine. We have moved pretty slowly, but there were lots of points of clarification that it was appropriate to tease out. I have decided that the target for day 2 would be that we should not go beyond section 28—that is, the section entitled “Reports”—and schedule 2. An announcement of that will go in the business bulletin tomorrow, so that everyone externally can pick that up and be prepared. Any amendments to sections up to section 28 must be lodged by 2pm on Monday 2 February.

I thank the minister and his officials. I remind members that we are about to have an informal briefing on common agricultural policy reform and agricultural incomes. I thank everybody for their attendance and a lot of hard work on our first day of stage 2. We will see how we go on our next day.

Meeting closed at 12:32.

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