

# **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

Wednesday 4 February 2004  
*(Morning)*

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2004.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

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

Her Majesty's Stationery Office is independent of and separate from the company now  
trading as The Stationery Office Ltd, which is responsible for printing and publishing  
Scottish Parliamentary Corporate Body publications.

---

# CONTENTS

Wednesday 4 February 2004

	<b>Col.</b>
<b>SUBORDINATE LEGISLATION</b> .....	675
Shetland Islands Regulated Fishery (Scotland) Variation Order 2004 (SSI 2004/1) .....	675
Ura Firth, Shetland Scallops Several Fishery Order 2004 (SSI 2004/5) .....	675
<b>NATURE CONSERVATION (SCOTLAND) BILL: STAGE 2</b> .....	676
<b>ITEM IN PRIVATE</b> .....	705

---

## **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE** **4<sup>th</sup> 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:**

Allan Wilson (Deputy Minister for Environment and Rural Development)

### **CLERK TO THE COMMITTEE**

Tracey Hawe

### **SENIOR ASSISTANT CLERK**

Mark Brough

### **ASSISTANT CLERK**

Catherine Johnstone

Roz Wheeler

### **LOCATION**

Committee Room 1



**Scottish Parliament**  
**Environment and Rural  
 Development Committee**

*Wednesday 4 February 2004*

*(Morning)*

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

**Subordinate Legislation**

**Shetland Islands Regulated Fishery  
 (Scotland) Variation Order 2004  
 (SSI 2004/1)**

**Ura Firth, Shetland Scallops Several  
 Fishery Order 2004 (SSI 2004/5)**

**The Convener (Sarah Boyack):** I welcome committee members, witnesses, the press and members of the public. There are no apologies to report. I remind everyone to switch off their mobile phones.

Item 1 is subordinate legislation. We have two instruments to consider under the negative procedure—the Shetland Islands Regulated Fishery (Scotland) Variation Order 2004 (SSI 2004/1) and the Ura Firth, Shetland Scallops Several Fishery Order 2004 (SSI 2004/5). Members may wish to note that the Subordinate Legislation Committee wrote to the Executive noting that neither of the orders includes a reference in the explanatory notes to where the regulatory impact assessment relating to each order can be obtained. The Executive acknowledges that error and has undertaken to issue a correction slip.

Do members have any comments on either of the instruments? If there are none, are members content with the instruments and happy to make no recommendation to the Parliament?

**Members** *indicated agreement.*

**Nature Conservation (Scotland)  
 Bill: Stage 2**

11:03

**The Convener:** Our main item of business today concerns the Nature Conservation (Scotland) Bill. This is our second day of consideration of the bill at stage 2. I invite members to declare any interests that they think are relevant to our discussions today.

**Alex Johnstone (North East Scotland) (Con):** I draw members' attention to my entry in the register of members' interests, where they will see that I am a landowner and a member of the Scottish Landowners Federation.

**The Convener:** I take it that nobody else has any interests to declare.

I welcome Allan Wilson, Deputy Minister for Environment and Rural Development, and his officials. Members should have before them a copy of the bill, the second marshalled list of amendments and the groupings of the amendments, which were published yesterday. We have spare copies. I ask everyone to check that they have the right papers before we get started, because once we start it will be difficult to catch up.

As before, amendments will be called in strict order from the marshalled list. Today's target is to get from section 4 to section 28, also covering schedules 1 and 2. We kick off with a lot of amendments that we debated last week. Members who are moving one of those amendments may say a couple of words to remind us what the amendment is about, but I do not want to get back into debates that we have already completed. The clerks have asked me to remind members that, when we are voting, they should stick up their hands and keep them up long enough for their names to be recorded.

**After section 3**

**The Convener:** Amendment 115, in the name of Alex Johnstone, is in a group on its own.

**Alex Johnstone:** I lodged amendment 115, and one or two other amendments, because I want to explore some fundamental principles that we tend to overlook when legislation is passed. On amendment 115, my concern is that, under the notifications procedure, if the placing of a site of special scientific interest appears to have little impact on a landowner, consultation is considered unnecessary. I argue that matters relating to property are at all times the concern of the owner of that property and, regardless of the

consequences of the proposal, the owner should be consulted in advance.

Amendment 115 would serve the interest of furthering openness and consultation, which is important at all times to the relationship into which Scottish Natural Heritage enters with landowners. Consequently, I hope to find some support for the principle that consultation should be extended as far back in the process as possible, to the benefit of the landowners or land managers involved.

I move amendment 115.

**The Deputy Minister for Environment and Rural Development (Allan Wilson):** Amendment 115 confuses the role of the Advisory Committee on Sites of Special Scientific Interest and the role of the Scottish Land Court. It also overlooks the fact that there are already sophisticated systems in the bill to allow objections and representations to be made whenever an SSSI is created. The existing arrangements on enlargement and denotification have been added to and improved on in the bill.

The principal point is that the case for notification of an SSSI is a scientific one. It requires an objective scientific assessment of whether an area of land is of special interest. As Alex Johnstone knows, that scientific evaluation can be challenged and, where it is challenged, there is a requirement for SNH to expose its reasoning for designation and to take account of the expert opinion of ACSSSI—indeed, SNH is specifically prohibited from designating unless it has taken account of that opinion. If SNH failed to abide by those requirements, there would be the opportunity to seek judicial review, which is accepted in the European Union as a whole as providing sufficient recourse for potential appellants against the decision.

I argue that the Land Court, which has significant expertise in general land management, is not the appropriate vehicle for proper scientific assessment of the case for or against designation. The role of the Land Court in these matters is misunderstood. It could not properly be asked to perform the role of inquiring into matters that are entirely and exclusively scientific in character. That is basically what ACSSSI is for and that is why it was created in 1991. I do not believe that amendment 115 is necessary, so I ask Alex Johnstone to withdraw it.

**Alex Johnstone:** I accept much of what the minister has said, but I still believe that there is a basic principle at stake and it is one that I am prepared to put to the test in a vote.

**The Convener:** The question is, that amendment 115 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Johnstone, Alex (North East Scotland) (Con)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)  
Gibson, Rob (Highlands and Islands) (SNP)  
Gillon, Karen (Clydesdale) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Radcliffe, Nora (Gordon) (LD)  
Scott, Eleanor (Highlands and Islands) (Green)

**The Convener:** The result of the division is: For 1, Against 7, Abstentions 0.

*Amendment 115 disagreed to.*

#### **Section 4—Site management statements**

*Amendment 23 moved—[Allan Wilson]—and agreed to.*

*Section 4, as amended, agreed to.*

#### **Section 5—Enlargement of sites of special scientific interest**

**The Convener:** Amendment 24, in the name of Allan Wilson, is grouped with amendments 26 and 118.

**Allan Wilson:** Amendments 24 and 26 propose minor drafting changes. The purpose of section 5 is to provide a simple mechanism whereby new land that is of SSSI quality—or land that is adjacent to or contiguous with such land and essential to safeguarding the features of an existing SSSI—can be incorporated within an existing site. It provides for a proportionate and flexible system to avoid the proliferation of small sites where a larger site would be more sensible. SNH already has a clear duty to give notification of land that is of special interest and it would be undesirable to force SNH to give notification of that land as an entirely new site if it would make more sense in scientific and management terms to combine it with existing sites. Amendment 118, in the name of Alex Johnstone, would prevent that process, so I ask him not to move it.

I move amendment 24.

**Alex Johnstone:** I am concerned that land that is contiguous to a site of special scientific interest may be treated in the same way as the SSSI, without necessarily having gone through the same process that the site went through. I feel that it is important to ensure that, if that land is to be taken into the site, it should be subject to the same process, so I shall move amendment 118 when the time comes.

**Rob Gibson (Highlands and Islands) (SNP):** I understand that the expert working group on SSSI reform, which included representatives of the

Scottish Landowners Federation, the Royal Institution of Chartered Surveyors in Scotland, the NFU Scotland and the Scottish Crofting Foundation, agreed with the approach that the bill has taken. I, too, support that approach, which I believe to be sensible.

**The Convener:** My view is that, if we removed section 5, as amendment 118 suggests, we would scupper a bit of the bill, but that is a matter for us to debate.

**Allan Wilson:** Alex Johnstone is worried about proofing designations, so to speak, but I think that his fears are misplaced, because new designations have to go through the new designation process. Deleting section 5 would remove the flexibility that I have spoken about, which has wide support.

*Amendment 24 agreed to.*

*Amendment 25 moved—[Allan Wilson]—and agreed to.*

**The Convener:** Amendment 117, in the name of Eleanor Scott, was debated with amendment 111.

11:15

**Eleanor Scott (Highlands and Islands) (Green):** My understanding—and I am now confused between this week's meeting and last week's—was that amendment 117 was consequential on amendment 111 being accepted. Amendment 111 was voted down, so I shall not move amendment 117.

*Amendment 117 not moved.*

*Amendment 26 moved—[Allan Wilson]—and agreed to.*

*Amendment 118 moved—[Alex Johnstone].*

**The Convener:** The question is, that amendment 118 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Johnstone, Alex (North East Scotland) (Con)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)  
Gibson, Rob (Highlands and Islands) (SNP)  
Gillon, Karen (Clydesdale) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Radcliffe, Nora (Gordon) (LD)  
Scott, Eleanor (Highlands and Islands) (Green)

**The Convener:** The result of the division is: For 1, Against 7, Abstentions 0.

*Amendment 118 disagreed to.*

*Section 5, as amended, agreed to.*

## **Section 6—Review of operations requiring consent**

**The Convener:** Amendment 119, in the name of Alex Johnstone, is grouped with amendment 153.

**Alex Johnstone:** My reason for lodging amendment 119 is that I believe that the criterion of the absence of an objection within the 28-day period should not be adequate and that there should be a requirement for consent to be actively pursued. I know that that could provide an opportunity for delaying tactics to be employed and I am fully aware of the concerns that the minister may have about that. However, I believe that the period of 28 days, after which consent will be assumed, is too tight and that some kind of positive consent should be sought.

I move amendment 119.

**Nora Radcliffe (Gordon) (LD):** It is reasonable to have a timeframe within which objections can be raised. My only concern is about whether SNH is required to ensure that the notice reaches the people whom it is intended to reach and whether SNH should be required to demonstrate that it has made reasonable attempts to reach everyone—if someone does not receive the notice, they obviously cannot respond to it.

**Allan Wilson:** Section 6(3) was introduced specifically to avoid a situation in which a review of operations requiring consent could be prevented by a single unreasonable objection, which is the point that Alex Johnstone has made. The problem with amendment 119—well motivated though it is—is that it would remove flexibility from the system and leave the whole process a hostage to apathy, or, for that matter, open to petty objections generated by inter-neighbour feuds or antipathy to SNH. That would not be in the interests of anybody concerned, so I ask Alex Johnstone to withdraw amendment 119 and not to move amendment 153.

**Alex Johnstone:** The amendments raise a reasonable issue, so I will press amendment 119. Amendment 153 deals with an equivalent situation later in the bill, so I will not move it if amendment 119 is not agreed to.

**The Convener:** Thank you for that notice. The question is, that amendment 119 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Johnstone, Alex (North East Scotland) (Con)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)  
Gibson, Rob (Highlands and Islands) (SNP)  
Gillon, Karen (Clydesdale) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Scott, Eleanor (Highlands and Islands) (Green)

**The Convener:** The result of the division is: For 1, Against 7, Abstentions 0.

*Amendment 119 disagreed to.*

*Section 6 agreed to.*

### **Section 7—Addition or modification of operations requiring consent: urgent situations**

*Amendment 27 moved—[Allan Wilson]—and agreed to.*

*Section 7, as amended, agreed to.*

*Section 8 agreed to.*

### **Section 9—Denotification of sites of special scientific interest**

*Amendment 28 moved—[Allan Wilson]—and agreed to.*

**The Convener:** Amendment 120, in the name of Eleanor Scott, was debated with amendment 111. I remind members that amendment 120 pre-empts amendments 29 to 32, 108 and 121—if amendment 120 is agreed to, those amendments cannot be called. Amendments 29, 108 and 121 were also debated with amendment 111. Amendments 30, 31 and 32 were debated with amendment 16.

**Eleanor Scott:** Amendment 120 is consequent on amendment 111, which was not agreed to. Members will be relieved to hear that I will not move amendment 120.

*Amendment 120 not moved.*

*Amendments 29 to 32 moved—[Allan Wilson]—and agreed to.*

*Amendments 108 and 121 not moved.*

*Amendment 33 moved—[Allan Wilson]—and agreed to.*

*Amendment 109 not moved.*

*Section 9, as amended, agreed to.*

### **Section 10—SSSI notifications and related notifications: procedure**

**The Convener:** Amendment 34, in the name of Allan Wilson, is grouped with amendments 35 to 37, 139 to 142, 38, 143 and 144.

**Allan Wilson:** The amendments are all minor technical drafting adjustments. The intention is to remove any ambiguity in relation to the use of the word “notification” and to ensure that SNH is required to give notice of all notifications relating to

SSSIs by publication in the press and in such other ways as it sees fit. We are also clarifying that any notice that is published in the press must contain details of the notification, where it can be found and the period during which representations can be made.

I move amendment 34.

*Amendment 34 agreed to.*

*Amendment 35 moved—[Allan Wilson]—and agreed to.*

*Section 10, as amended, agreed to.*

### **Schedule 1**

#### **NOTIFICATIONS RELATING TO SITES OF SPECIAL SCIENTIFIC INTEREST: PROCEDURE**

*Amendments 36, 37, 139 to 142, 38 and 143 moved—[Allan Wilson]—and agreed to.*

**The Convener:** Amendment 39, in the name of Allan Wilson, is grouped with amendments 122, 40, 132, 57, 58, 133 and 59 to 61. If amendment 39 is agreed to, amendment 122 will be pre-empted.

**Allan Wilson:** Amendments 39, 40 and 57 to 61 are concerned with the clarification and tidying up of the provisions in the bill that deal with objections to SSSI notifications, as well as with the independent advisory role of the Advisory Committee on SSSIs, which we have recently discussed. The advisory committee’s role under the Natural Heritage (Scotland) Act 1991 is to advise Scottish Natural Heritage on unresolved scientific objections to SSSIs—it provides independent scientific advice to SNH in relation to objections. The process of ensuring that objections are fully evaluated is obviously important. The bill’s policy intention is that the role of the advisory committee should remain unaltered. In section 21, we have sought to transfer the relevant provisions from the 1991 act into the bill. We have done that at the suggestion—dare I say it—of stakeholders.

Since September, we have had a chance to consider whether we might further improve the wording or structure of those provisions—and other provisions in the bill. The amendments are the result of that process. They are designed simply to ensure that the role and function of the advisory committee and the referral system remain as they were previously provided for.

I am sympathetic to the policy intention that underlies Alex Johnstone’s amendments 122 and 133. Amendment 122 will, I hope, be pre-empted by the committee’s support for Executive amendment 39. I am happy to accept amendment 133, for which Alex Johnstone can make his own case.

However, as I have conceded Alex Johnstone's point in relation to amendment 133, I ask him to take on board my arguments against amendment 132, the effect of which would be to delete section 21(5), which gives ministers the power to give directions to the advisory committee. That power of direction is a standard provision that enables us to direct non-departmental public bodies, and can be used when ministers need to ensure that the advisory committee adopts the appropriate procedures. It is obviously a power of last resort, which reflects the existing powers of direction in the 1991 act. Those powers have—as ever—never been used, but it is important that they exist.

We believe that a power of direction provides a last-resort mechanism to achieve ministerial direction. That would ensure that the interests of everyone involved in the process are ultimately protected by the democratic process. Having conceded amendment 133, I ask Alex Johnstone not to move amendment 132 or amendment 122.

I move amendment 39.

11:30

**Alex Johnstone:** I thank the minister for lodging amendment 39. Amendment 122 essentially takes a belt-and-braces approach in that respect. I will support amendment 39, which I believe will succeed and that consequently it will pre-empt amendment 122. I also thank him for accepting the principle behind amendment 133, which is essentially the same principle. I thank the clerks for pointing out the fact that the situation was similar.

As far as amendment 132 is concerned, it is always a concern when ministers find themselves with overbearing powers and when structures are not in a position to do the job that they were put in place to achieve. However, I believe in the principle that the power of last resort should lie with the minister and with no other person, because only the minister is accountable to Parliament. Consequently, I accept the argument that he has put forward on amendment 132 and I will not move it.

*Amendment 39 agreed to.*

*Amendments 144 and 40 moved—[Allan Wilson]—and agreed to.*

*Schedule 1, as amended, agreed to.*

*Section 11 agreed to.*

### **Section 12—Exercise of functions by public bodies etc**

**The Convener:** Amendment 41, in the name of Roseanna Cunningham, is grouped with amendment 110. If amendment 41 is agreed to,

amendment 42, which was debated with amendment 16, will be pre-empted.

**Roseanna Cunningham (Perth) (SNP):** Section 12(1) states:

“This section applies to the exercise by a public body or office-holder of any function on, or so far as affecting, any land which is a site of special scientific interest.”

That is the current position in the bill.

The following two sections—sections 13 and 14—address the issue of operations by public bodies. It is felt that amendment 41 is appropriate because it would focus section 12 more on the effect that the functions of public bodies will have on SSSIs. That is what amendment 41 is designed to achieve.

Obviously, SSSIs are not just sites that are individually important; they are effectively a network of sites, and a series of sites might be important. Together, they might be—as is often the case—greater than the sum of their parts. As other sections refer to “a series of sites”, the duty on public bodies should apply not only to a single SSSI, which is what section 12 currently states, but to individual sites and to the series as a whole.

Amendment 41 would redraft section 12 to apply the duty as a double responsibility. I appreciate that Nora Radcliffe's amendment 110 would probably achieve a similar effect, and I would support her amendment as I hope that she would support mine.

The responsibility to consult SNH in the new subsection (2) that would be introduced by amendment 41 does not remove the obligation to consult SNH over specific operations on individual sites, which is provided for in sections 13 and 15. The amendment is intended to make section 12 function more as it was intended to function rather than as it is currently drafted. I appreciate that that might be recognised by the Executive.

I move amendment 41.

**Nora Radcliffe:** As Roseanna Cunningham said, both amendment 41 and amendment 110 try to do the same thing, which is to recognise that SSSIs have value in being part of a series as well as in being individual sites. Possibly, the whole is greater than the sum of the parts.

**The Convener:** I have a couple of questions, partly for the minister and partly for Roseanna Cunningham. I very much support what she and Nora Radcliffe are trying to do. It is important to take a slightly wider view on SSSIs.

Amendment 41 talks about

“exercising functions of the type mentioned in subsection (1)”.

What exactly is meant by saying that a body or office holder should

“from time to time, consult with SNH”?

That seems a rather vague requirement. I am not a legal person, and Roseanna Cunningham might have a better handle on what that means. Could she explain it to me?

On the face of it, amendment 41 is more prescriptive and has slightly more in it about how the process might work out, whereas amendment 110 is much shorter. Minister, can you offer the committee an analysis of the different impacts of the two amendments? Are you in favour of the intention behind them, which I think is a good one?

**Allan Wilson:** I favour Roseanna Cunningham’s amendment 41. Contrary to what some people may think, we are always open to good ideas from whatever source. Amendment 41 suggests a good idea that fits better with the objectives of the bill than do our own provisions. That said, some of the wording in the amendment would provide us with technical difficulties, not least of which is its reference to “sites” as opposed to “features”. The bill contains specific references to “features”.

It is incorrect to refer to the “conservation and enhancement” of a site. Our preference would be for a reference to the “conservation and enhancement” of the natural feature that is specified in the SSSI notification. I understand that that has potential legal significance as well as being more consistent with the terminology that is used elsewhere in the bill.

However, those are relatively minor matters. The central point is that we should consider the series of SSSIs as important, giving coherence and purpose to the process.

The original wording in the bill is that

“the body or office-holder must—

(a) consult”,

which is better than saying that they should consult “from time to time”. That is one reason why we favour Roseanna Cunningham’s amendment over Nora Radcliffe’s, as we can tidy up amendment 41 to be more consistent with what we want the bill to do.

All in all, we invite Roseanna Cunningham to withdraw her amendment on the basis that we will undertake to incorporate her point on the integrity of the SSSI series at stage 3. Consequently, we invite Nora Radcliffe not to move amendment 110.

**The Convener:** Roseanna?

**Roseanna Cunningham:** I do not know whether you still want me to address the point or accept the minister’s remarks. In effect, there is already an obligation to consult SNH over specific operations. The amendment proposes a different level of consultation that does not pre-empt the specific consultation.

The argument is that the proposal would lead to our having a dispute about how frequent the consultations should be—whether there should be one a year or whatever—when what we are seeking is at least a recognition that there should be consultation at that level. From my point of view, the issue of how frequent the consultation should be is not hugely helpful at this stage.

I have listened to what the minister has said and, given what he has told us, I will not press amendment 41. I seek leave to withdraw the amendment. How should I phrase that?

**The Convener:** You seek leave to withdraw the amendment on the basis of the commitments made by the minister on the record.

**Roseanna Cunningham:** Yes.

*Amendment 41, by agreement, withdrawn.*

*Amendment 42 moved—[Allan Wilson]—and agreed to.*

*Amendment 110 not moved.*

*Section 12, as amended, agreed to.*

### **Section 13—Operations by public bodies etc**

*Amendment 43 moved—[Allan Wilson]—and agreed to.*

*Section 13, as amended, agreed to.*

### **Section 14—Operations by public bodies etc: authorised operations**

**The Convener:** Amendment 44, in the name of Allan Wilson, is in a group on its own.

**Allan Wilson:** The discussion about this amendment is, in a way, an extension of the discussion that we have just had. We are trying to get public bodies to think about the impact that their actions could have on sites of special scientific interest. The bill already obliges public bodies to obtain written consent from SNH when they intend to carry out operations that are likely to damage an SSSI. The relevant provision is in section 13.

A number of exceptions are already provided for in the bill. For example, written consent is not required if the operation has already been agreed to by another regulator or if the operation is an emergency one. The new subsections added by amendment 44 provide two additional exceptions.

The first additional exception relates to a situation in which an operation is in accordance with a management agreement between SNH and the public body. That arrangement already applies to private owners and occupiers and can be seen in section 17(1)(d). The second additional exception relates to a situation in which an

operation is in accordance with a formal plan for the management of the land that has been agreed in writing by SNH. The best example of that situation is a forestry plan, where the conservation interests of the site can be built into future strategic planning.

In both cases, the objective is further to streamline arrangements to avoid unnecessary bureaucracy without in any way weakening the protection that is given to SSSIs. I hope that members will support amendment 44.

I move amendment 44.

*Amendment 44 agreed to.*

*Amendments 45 to 47 moved—[Allan Wilson]—and agreed to.*

*Section 14, as amended, agreed to.*

### **Section 15—Consent by certain regulatory authorities**

*Amendments 48 and 49 moved—[Allan Wilson]—and agreed to.*

*Section 15, as amended, agreed to.*

### **Section 16—Operations by owners or occupiers of sites of special scientific interest**

*Amendment 50 moved—[Allan Wilson]—and agreed to.*

*Section 16, as amended, agreed to.*

### **Section 17—Operations by owners or occupiers of sites of special scientific interest: authorised operations**

*Amendments 51 and 52 moved—[Allan Wilson]—and agreed to.*

*Section 17, as amended, agreed to.*

*Section 18 agreed to.*

### **Section 19—Offences in relation to sites of special scientific interest**

*Amendment 53 moved—[Allan Wilson]—and agreed to.*

**The Convener:** Amendment 145, in the name of Nora Radcliffe, is grouped with amendments 146, 147, 54, 55 and 148.

11:45

**Nora Radcliffe:** Amendment 145 seeks to make disturbance an offence. Damaging a feature of an SSSI is an offence, but disturbance, for example of ground-nesting birds, can be damaging. Mild or transient disturbance is not necessarily a problem, but major, persistent or continuing disturbance can result in birds or animals being displaced, in birds

abandoning nests or in birds or animals not breeding: such disturbance is damaging. Amendment 146 is consequential on amendment 145 and amendment 147 would qualify amendment 145 to ensure that minor disturbance that is not significantly damaging would not be treated as an offence.

The amendments seek to introduce the concept of disturbance as an offence under section 19. Members might think it more appropriate to amend section 56(2), in which it is made clear that damage includes causing a site to deteriorate. It could also be made clear in that section that damage includes significant or damaging disturbance. Amendment 148 is consequential.

There is an argument about whether we have to be explicit about disturbance. There is a precedent in that the Wildlife and Countryside Act 1981 refers to disturbance. Section 3 of that act allows the relevant secretary of state to designate areas of special protection and even to prohibit disturbance or restrict access. Section 9 of the act states that animals must not be intentionally disturbed.

Schedule 9 to the Countryside and Rights of Way Act 2000 inserted into the 1981 act section 28P, subsection (6) of which states:

“A person ... who without reasonable excuse ... intentionally or recklessly destroys or damages any of the flora, fauna ... or intentionally or recklessly disturbs any of those fauna ... is guilty of an offence.”

In both acts, therefore, disturbance of fauna is recognised as an offence. It is incumbent on us to introduce to the bill a similar provision that will ensure that disturbance that creates damage is recognised as an offence.

I move amendment 145.

**Allan Wilson:** I understand the motivation that Nora Radcliffe has outlined. We all agree on the importance of protecting SSSIs, which is arguably what the bill is all about. That is why the bill already contains fairly detailed provisions that make it an offence to damage the natural feature for which the SSSI was designated. Section 19 makes it an offence intentionally or recklessly to damage any natural feature that has been specified in an SSSI notification.

Clearly, the concept of causing damage to a natural feature includes activities that threaten the longer-term viability of the fauna for which a site is considered special. For example, if a site is important because of its bird populations, activities that drive away those birds will clearly damage the special interest of the site. We are talking here not about a one-off disturbance, but about consistent repeated disturbances over a period of time. For example, if that kind of constant pressure on the bird populations caused the numbers to decline or

caused birds not to revisit the site, the special feature of the site would consequently deteriorate.

Reference was made to the Wildlife and Countryside Act 1981, which was also referred to last week. However, the Nature Conservation (Scotland) Bill is framed in rather different terms from that act. It is not accurate to caricature one as having stronger or weaker wildlife provisions than the other. The Wildlife and Countryside Act 1981 recognises specific offences for notified SSSIs, but contains no such general provision about disturbance.

We are concerned that Nora Radcliffe's amendments would not comply with the European convention on human rights, because they would have the effect of requiring people to prove their innocence. We believe that it is undesirable to create the wide-ranging offence of disturbing any fauna on an SSSI and then to place the burden on the accused to prove that the disturbance was not significant. On that basis, I ask the committee not to agree to Nora Radcliffe's amendments.

However, that is a fairly minor technical difficulty with the current drafting of the amendments that might easily be overcome. I am, therefore, happy to consider the issue further in the light of the provisions that already exist in the Countryside and Rights of Way Act 2000. I hope that Nora Radcliffe will be satisfied if we take the issue away and reconsider it. We could perhaps come back with an amendment to section 56, which might be the preferred option. We will certainly consider whether that would be a more appropriate way of fitting the provision into the bill.

Amendments 54 and 55 will make minor alterations to section 19. Sections 14 and 17 already contain provisions that require SSSIs to be restored when damage has occurred. Failure to restore a site—in so far as such restoration is possible—is an offence. A person who undertakes the restoration of a site must first consult SNH. As drafted, the effect of section 19(3) is not only to make it an offence to fail to restore the site in accordance with SNH advice but to make failure to consult SNH an offence that is punishable in the same way. The offence of failing to consult SNH is rather overstated and, I believe, unnecessary. Failure to carry out restoration work in accordance with advice from SNH will remain an offence, but amendments 54 and 55 will remove the additional and unnecessary offence of omitting to consult SNH. Amendments 54 and 55 will not affect the policy objective in any way, but they will provide a better fit.

Given my assurances, I ask Nora Radcliffe to withdraw amendment 145 and not to move amendments 146 to 148.

**Karen Gillon (Clydesdale) (Lab):** I listened carefully to what the minister and Nora Radcliffe

said. I am concerned about how amendments 145 to 148 would interact with the Land Reform (Scotland) Act 2003. If disturbance causes damage, that should be a crime and it would be a crime under the bill as drafted. However, it is unrealistic to be more specific than that. The amendments would run contrary to the Land Reform (Scotland) Act 2003 because anyone who walks in an area in which there are birds or other fauna might disturb them, intentionally or otherwise. My genuine concern is that the amendments might allow landowners to prohibit access to sites of special scientific interest, which would run contrary to measures that the Parliament has introduced in the past.

The minister highlighted the issue of the burden of proof. Whose word would be accepted? Would it be the person who saw somebody disturbing animals or the person who was accused? In the absence of corroboration, that is a difficult issue. Where disturbance leads to damage, I am comfortable with its being an offence, but the disturbance in itself should not be an offence under the bill.

**The Convener:** As I understand it, the problem is not necessarily about one-off disturbances, but about repeated disturbances that might, for example, put birds off returning to their natural habitats. To pick up on Karen Gillon's point, I wonder whether the new access code should acknowledge whatever we end up with in the bill as being the new legal framework for the countryside. The right of access to the countryside is a right of responsible access. To what extent is there scope for providing information that would give people a much better handle on what kind of SSSI they are in, the features that the SSSI exists to protect and what responsible members of the public must look out for when they access such sites?

We would not want to specify all of that in the bill, but if the minister is thinking about introducing reworked amendments at stage 3, thought must be given to the advice that people should be given so that they can avoid damaging features of SSSIs, which would in the first place avoid the suggested provisions kicking in. Provision of advice will not remove the problem of people who deliberately try to damage SSSIs, but it might rule out some of the grey areas to which Karen Gillon alluded.

**Nora Radcliffe:** I am pleased that the minister is happy to accept the concept that disturbance should be recognised as damaging. The argument is not about the principle, but about the practical way of achieving the aim. I am happy to withdraw amendment 145 and not to move amendments 146 to 148, on the basis that it will be considered whether to introduce later in stage 2 an

amendment to section 56(2) or to come back with revised amendments at stage 3. I seek leave to withdraw amendment 145.

*Amendment 145, by agreement, withdrawn.*

*Amendments 146 and 147 not moved.*

*Amendments 54 and 55 moved—[Allan Wilson]—and agreed to.*

*Amendment 148 not moved.*

*Amendment 56 moved—[Allan Wilson]—and agreed to.*

*Section 19, as amended, agreed to.*

### After section 19

**The Convener:** Amendment 149 is in the name of Nora Radcliffe.

12:00

**Nora Radcliffe:** Amendment 149 is intended to deal with a situation in which a landowner who is being paid public money to manage land that incorporates an SSSI is convicted of a related wildlife crime. At that point, it is obvious that some sort of action should be taken, so the amendment would ensure that SNH would have to review the management agreement and would be able to use the sanctions of termination of, or amendment to, the management agreement, if that was thought to be appropriate. The amendment also specifies a reporting mechanism for any review or subsequent action.

It might be better to make provision for that situation in management agreements rather than in the bill. If so, I would be pleased if the minister could give some assurance that the matter will be addressed, perhaps through guidance. I would like to be assured that SNH or some other appropriate body will be given responsibility for initiating action should the sort of situation that I described occur.

I move amendment 149.

**The Convener:** I suppose that that begs a question: if the amendment were passed, and someone broke the agreement, who would the agreement be with?

**Nora Radcliffe:** I think that the difficulty is—

**The Convener:** I am sorry; I will let you come back on that point later. That was just a thought off the top of my head, having read the amendments.

**Allan Wilson:** There are a couple of problems with amendment 149. On conviction, under section 19 of the bill or part 1 of the Wildlife and Countryside Act 1981, SNH would be obliged to review, terminate or renegotiate the terms of a management agreement. As the purpose of such management agreements is to preserve features,

it would be counterproductive to impose an additional penalty entirely at SNH's discretion.

Furthermore, amendment 149 raises ECHR issues, because no specific right of appeal could be provided for and SNH could terminate or amend a management agreement without penalty. The amendment seeks to impose an additional layer of punishment over and above existing penalties in section 19, which can include unlimited fines for specific offences.

I argue that the proposal is unwarranted. It would impose penalties that we would not necessarily wish to be imposed; it would give complete discretion for so doing to SNH; and it would not provide for a right of appeal, which might be contrary to ECHR provisions. Consequently, I do not think that amendment 149 has much to commend it, so I ask Nora Radcliffe not to press it.

**The Convener:** Nora, would you like to respond to the debate and wind up?

**Nora Radcliffe:** I would like to seek clarification from the minister rather than to wind up.

**The Convener:** That would help.

**Nora Radcliffe:** Amendment 149 is, in essence, a probing amendment. It deals with a situation that would need to be dealt with if it arose. Does the minister agree that, given that such a situation could arise, it would be useful to think about what we would do if it did?

**Allan Wilson:** If there was an offence, there would be a prosecution, a judicial decision and a penalty. In that case, SNH would have to review its site management in accordance with whatever decision was reached. To take that argument and then say that the site should be punished for the actions of the land manager would be perverse. Unlimited fines are available in certain circumstances and substantial cash fines are available in other circumstances. The process is subject to the law of the land. Amendment 149 is an unnecessary and unwarranted additional provision that would not meet ECHR requirements. I cannot say more than that.

**Nora Radcliffe:** Are you satisfied that existing mechanisms would prevent a situation in which we would be giving someone public money as part of a land management agreement while they were doing things that were damaging or deleterious to the site that we were paying them to manage?

**Allan Wilson:** Such an individual would not be getting public money if they were not complying with the terms of the management agreement. If they were involved in causing damage that might constitute an offence, it would be up to the courts to deal with that. I am satisfied that existing provisions are sufficient in that regard.

**The Convener:** Does that help?

**Nora Radcliffe:** Yes. Thank you for your indulgence in allowing that discussion to go to and fro, because it has been helpful.

I thought that there might be a problem, but it sounds as though there will not be, as long as there are tightly drawn management agreements. On that basis, I seek leave to withdraw amendment 149.

**Allan Wilson:** We also have land management orders that we could use to exercise—

**The Convener:** The fact that we have had this exchange at stage 2 means that the issue has been flagged up as something to keep an eye out for when the agreements are being set up.

*Amendment 149, by agreement, withdrawn.*

*Section 20 agreed to.*

### **Section 21—Advisory Committee on sites of special scientific interest**

*Amendment 132 not moved.*

*Amendments 57 and 58 moved—[Allan Wilson]—and agreed to.*

*Amendment 133 moved—[Alex Johnstone]—and agreed to.*

*Amendments 59 to 61 moved—[Allan Wilson]—and agreed to.*

*Section 21, as amended, agreed to.*

### **Section 22—SSSI register**

**The Convener:** Amendment 123, in the name of the minister, is grouped with amendments 124 to 127.

**Allan Wilson:** I will try to be brief. A register of SSSIs already exists as it is provided for in section 12 of the Wildlife and Countryside Act 1981. The existing register is paper based. It has proved to be useful over the years, but technology and related expectations have moved on. We now have the opportunity to create a new and authoritative national register of SSSIs, which takes full advantage of advances in information technology and of the strengths of new digital mapping systems.

The new register will ensure wider availability of key information about SSSI notifications. It is being developed with the specific objective of ensuring that information about SSSIs can, in due course, be used in conjunction with data from the land register and other electronic sources. I hope that members endorse the need for such a register, and acknowledge the value in keeping the legislation wide enough to enable the register's successful development by SNH and the

Registers of Scotland. I invite members to support the proposed changes that will take account of developments in IT and digitisation.

I move amendment 123.

**The Convener:** No members wish to speak to the amendments; I think that they have been generally welcomed.

*Amendment 123 agreed to.*

*Amendments 124 to 127 moved—[Allan Wilson]—and agreed to.*

*Section 22, as amended, agreed to.*

### **After section 22**

**The Convener:** Amendment 62, in the name of Roseanna Cunningham, is in a group on its own.

**Roseanna Cunningham:** Amendment 62 seeks to introduce an entirely new section into the bill, so it is an addition rather than an amendment. It would require SNH to carry out a monitoring programme on the series of SSSIs and to report the results openly. Although the amendment states that the report must be annual and that some monitoring should take place every year, I am advised that the wording does not require full monitoring of every SSSI every year. In case that is an issue, I have taken advice and been told that the drafting of the amendment is not prescriptive; the monitoring requirement that the amendment proposes is no greater than the requirement currently placed on SNH.

The real change is that the results of the monitoring programme would be openly reported. There would be an indication of the cause of any damage and the steps that had been taken to remedy the problem. The amendment therefore seeks to improve transparency and accountability. It would not create any more work on the ground for SNH. It does not ask SNH to do anything more; it just asks SNH to tell us a bit more than it currently tells us. Because amendment 62 is about transparency and accountability, it should be welcomed. I look forward to hearing the minister's response.

I move amendment 62.

**Rob Gibson:** It is generally recognised that if SNH communicated more openly with local communities, the value that those communities place on the land and the features in their area would increase. It is important that the new section should be included, as there is often some misunderstanding about SNH's activities because people have no opportunity to know exactly what the organisation is doing. At stage 1, in relation to an SSSI, we mentioned deer damage to rare trees on Arran, which is in the minister's constituency. It would be useful for the community in that area to

know what is going on. That is one small example of how amendment 62 could be of benefit to the bill as a whole and to the work of SNH in particular.

12:15

**Maureen Macmillan (Highlands and Islands) (Lab):** I just wonder whether, given that SNH is a public body and that the intention of the amendment is information sharing and transparency, Roseanna Cunningham's proposal is not covered by provisions under the Freedom of Information (Scotland) Act 2002 and the convention, the name of which I cannot remember.

**The Convener:** The Aarhus convention.

**Allan Wilson:** Needless to say, we have no problem with the intention of amendment 62. The monitoring and reporting of the condition of SSSIs is by definition important. In fact, it is already fundamental to what SNH does, both in reporting cases of direct damage and in carrying out longer-term site condition monitoring. There is no dispute between us on the idea behind the amendment.

One of the issues is whether the committee considers it necessary to specify in the bill what I would argue is a rather narrow provision. The kind of reporting that amendment 62 refers to is already part of SNH's programme of work and has been carried out for years without the need for a specific statutory provision of the kind that is proposed.

Monitoring and reporting work already takes place annually on damaged SSSIs. The answer to the point that was raised about Arran can be found in "SNH Facts and Figures 2002/2003", which is part and parcel of the annual work of SNH. "SNH Facts and Figures" lists the causes of damage and details the action that is taken in response to an incident and the steps that are taken to restore the damaged site. SNH reports on the significance of the damage, whether the site is likely to recover and how long the recovery might take. Damage is being reported at the moment, along with a lot more information that relates to the incident. SNH makes such reports on an annual basis.

The process of monitoring needs to be looked at more generally. Amendment 62 refers to "an annual monitoring programme", which is where problems might arise. We think that it is more appropriate to leave the operational detail to SNH. There is a need to provide information on SSSIs, but that happens at the moment. Whether we wish to micromanage SNH in the way that the amendment suggests is open to wider argument.

SNH's site condition monitoring work is done on the basis of a six-year cycle. A full programme is in place to monitor the conditions of all SSSIs. The programme has the capacity to pick up larger-

scale threats across Scotland as a whole. The problem that amendment 62 raises is whether to redirect SNH to concentrate on annual reports rather than on addressing and prioritising features that are most likely to be the subject of damage. We believe that such features should be addressed as a priority; that would be preferable to SNH having to redirect its efforts to annual reports. It would be difficult to legislate for the kind of monitoring and review that the amendment proposes, which, generally speaking, is an operational matter for SNH to undertake.

The link between monitoring and review of management is the reason why the review cycle of operations requiring consent, outlined in section 6, is based on a six-year cycle. Management agreements are reviewed every six years. That ensures the longer-term preservation and condition of sites and allows action to be taken where problems are identified.

All those things are being done to a greater or lesser extent, so amendment 62 is unnecessary. I do not think that we need further provision in the bill to make annual monitoring happen, because it should happen and it is happening. If it is not happening in any instance, that is a matter of operational concern for SNH. That is our position.

**The Convener:** I want to clarify Maureen Macmillan's point on freedom of information. Roseanna Cunningham's amendment does not seem to require more monitoring; it is about the reporting of the monitoring.

**Allan Wilson:** I referred to the report "SNH Facts and Figures 2002/2003". Chapter 17 is entitled "SSSI/Natura Site damage: cases reported during year to 31 March 2003". As a public body, SNH, like the Executive, is required to comply with the provisions of the Freedom of Information (Scotland) Act 2002. All I am saying is that I do not think that making statutory provision in the way that amendment 62 suggests is necessary, as all the things that it seeks to provide for are already being done.

**The Convener:** The question that members are quietly asking is where we access information on individual sites, given that information is published annually. Is there reporting on individual sites, which is what amendment 62 seeks? Has the work been done and we have just not been able to access it? Where do we find it?

**Allan Wilson:** You would find it in the annual "SNH Facts and Figures" publication or by making a direct request for it. I am reliably informed that the requirement to make the information available is statutorily underpinned in the Natural Heritage (Scotland) Act 1991.

**Roseanna Cunningham:** Does that apply to site-by-site information?

**Allan Wilson:** A general requirement is imposed on SNH to report on these matters.

**The Convener:** Right. I ask Roseanna Cunningham to reflect on what she has heard and to wind up the debate.

**Roseanna Cunningham:** The discussion has been interesting in that we have heard the minister refer to information that many people might not realise is available to them. That says it all, because the minister said that SNH is making the information public "to a greater or lesser extent". The public perception is that the latter aspect of his phrase is the more accurate position. The truth of the matter is that most people do not even know where to begin to access the information.

The minister is holding up the report to which he referred. Does it provide information on the sites in question or does it provide general information? Can we get site-specific information? I suppose that the key factor, which the bill in part is trying to change, is the appalling state of so many of our SSSIs and whether that is reflected in the kind of reporting that SNH is doing.

On the Freedom of Information (Scotland) Act 2002, is it not the case that specific applications would have to be made consistently in order to tease out information that ought to be available far more widely? I do not think that people should have to make applications under the act, which, as I recall, provides that people will be charged to find out the information. However, I do not believe that the act is necessarily germane to the issue that I am raising. What is important is how transparent SNH appears to be to members of the public.

I hear what the minister has said about the information that is available. If he can tell me that the information is site specific, which is important, I might reconsider pressing amendment 62. However, I do not think that members of the public feel that SNH is giving them the information that they are seeking.

**The Convener:** It would be helpful if you could deal with Roseanna Cunningham's direct question, minister.

**Allan Wilson:** Obviously, it is not just members of the public but members of the Parliament who are not wholly up to speed with the information that is available and is published on the web. I can reassure Roseanna Cunningham that the information in the report is specific to the SSSI or Natura site in question.

The report that I mentioned contains a table providing information on 13 cases recorded during the year to 31 March 2003 where the damage exceeded the threshold of being over half a hectare in area, 100m in length or 10 per cent of the interest feature overall, or where SNH is aware

of an incident being reported to the procurator fiscal. It tells us that the Doomy and Whitemaw hill area in Orkney covers 249 hectares, that the area of damaged land therein is 1.3 hectares, that 0.5 per cent of the site was damaged by agricultural activity, that the likely recovery period is long term, that the cause of the damage was slurry deposition and that meetings have been held with the responsible landowners. That is a good example of the level of information that SNH is required to go into. I could go on. There are other references—

**The Convener:** You do not need to read them all; the question was on a specific point.

**Allan Wilson:** I hope that Roseanna Cunningham will agree that the level of detail includes areas of special protection, possible special areas of conservation and so on. Her point about why that information might not be as well disseminated locally as it could be is a good one. That is something that we would want to pursue with SNH with regard to its operational practices. I suggest that the issue is probably better raised in that way than through the provision that is proposed.

**The Convener:** I know that that clarification was lengthy, but I think that it was pretty much to the point of Roseanna Cunningham's question. Would you like to finish your winding-up statement, Roseanna?

**Roseanna Cunningham:** Yes. One point that I will make is that, in a number of areas, it is assumed that simply publishing a document on the web is sufficient. Quite clearly, that is not the case and, at the minimum, a greater attempt must be made to make the availability and existence of such documents much more widely known, particularly in those areas around which controversy arises, such as SSSIs. I am prepared to accept that that might be an operational issue, however, and so will seek leave to withdraw the amendment. Nonetheless, I hope that the minister will be able to reassure me that the situation will change.

**Allan Wilson:** I am happy to do so. As you can see, the tome is quite weighty. It is probably compulsive reading in the offices of environmental non-departmental public bodies and nowhere else—

**The Convener:** I will stop you before you talk Roseanna Cunningham into pressing her amendment. I sense that we are pretty close to getting agreement on the matter. I think that members have expressed the view that a bit of care must be shown with regard to the issue once the bill has been agreed by the Parliament. I thank everyone for that detailed exchange, which has illuminated one aspect of the bill.

*Amendment 62, by agreement, withdrawn.*

### **Section 23—Nature conservation orders**

**The Convener:** Amendment 134, in the name of Alex Johnstone, is grouped with amendments 135, 136, 150 and 154. If we agree to amendment 136, amendment 64 will be pre-empted.

12:30

**Alex Johnstone:** The other amendments in the group largely follow on from amendment 134. I have lodged the amendment because section 23(3)(a) states quite clearly that the land that is referred to in section 23(1) is

“land which is, or forms part of, a site of special scientific interest”

while section 23(1)(b) might as well say that it is also land which does not.

The effect of the two provisions together will be to make the provision in section 23 universal throughout Scotland. I would like the minister to argue the case for the universal provision of nature conservation orders, as would be the case under section 23. Amendment 134 would limit nature conservation orders to sites of special scientific interest.

Amendments 135, 136, 150 and 154 are largely consequential on amendment 134. Amendment 154 would extend the measure to land management orders. I am keen to hear the minister's reaction.

I move amendment 134.

**Allan Wilson:** Amendment 136 is the key amendment in the group. I will not go into the detail into which Alex Johnstone went, but the amendment seeks to restrict the land to which an NCO can apply. As the bill is drafted, Scottish ministers may make a nature conservation order in a variety of circumstances, which Alex Johnstone outlined.

The reason for giving Scottish ministers powers to make NCOs on non-SSSI land is simply to ensure that an SSSI can be protected from activities that take place on land outwith the boundaries of the site, but which could damage the feature that is being protected within the site. Obviously, serious damage could be caused to features within an SSSI by activity on land that is outwith the designated area. There is no question of the power's being used indiscriminately and it does not constitute a new power, but it is important that the power to make NCOs can be used if unforeseen threats arise. NCOs will be of relevance primarily in cases in which damage is caused by third parties. It is unlikely that the owner or occupier would be a threat to the conservation of a site.

Alex Johnstone's amendment 136 would restrict the ability of Scottish ministers to make NCOs to protect sites, and to take action on land outwith a site but on which an activity was taking place that could cause damage within the site. The bill provides a proportionate response where threats arise. The powers that we will exercise to protect sites are proportionate to the threat; there are checks and balances in the system.

Amendments 134, 135 and 150 are consequential amendments to amendment 136. On threats from owners' or occupiers' activities arising, there are other provisions in the bill to address that problem—primarily, land management orders—and we spoke about them earlier.

Amendment 154 would apply the same restrictions to land management orders as would apply to NCOs under amendment 136.

We are talking about powers of last resort. The issue is our ability to take action to protect land within a specially protected area in circumstances in which land that is not so designated impacts or affects the land within the designated area. That is an appropriate and proportionate ministerial power, which will be necessary to secure the protection of designated land.

**Alex Johnstone:** I have a question for the minister, the answer to which depends to some extent on interpretation. The minister's reply has given me a great deal of heart, because he restricted what we are talking about to impacts on sites of special scientific interest. Is the minister sure that the power that section 23 will confer upon him will not give a free hand to designate nature conservation orders in areas that do not directly impact on sites of special scientific interest?

**Allan Wilson:** Yes.

**The Convener:** Thank you for that clarification. Alex—the answer was yes.

**Alex Johnstone:** I will be interested to read the detail of the minister's answer and to consider it at greater length. On the basis of his answer, however, I am content to seek to withdraw amendment 134 and not to move the subsequent amendments in the group. If, on reflection, I am dissatisfied with the detail of the minister's answer, I will be happy to lodge similar amendments at stage 3.

**The Convener:** Thank you. That is a clear indication.

*Amendment 134, by agreement, withdrawn.*

*Amendment 63 moved—[Allan Wilson]—and agreed to.*

*Amendments 135 and 136 not moved.*

*Amendment 64 moved—[Allan Wilson]—and agreed to.*

*Section 23, as amended, agreed to.*

### **Section 24—Amendment or revocation of nature conservation orders**

*Amendment 150 not moved.*

*Section 24 agreed to.*

*Section 25 agreed to.*

### **Schedule 2**

NATURE CONSERVATION ORDERS AND RELATED ORDERS:  
PROCEDURE

**The Convener:** Amendment 151, in the name of Alex Johnstone, is grouped with amendment 152.

**Alex Johnstone:** I lodged amendments 151 and 152 in the form that I have used in order to solicit a response from the minister on the specific matter of consultation on the designation of major conservation orders. As I said when speaking to an earlier amendment, it is important that wherever possible landowners or land managers are party to the process leading to designation.

I understand that it is difficult to include consultation in a process that might have to be entered into on an emergency basis. As a consequence, I have been through the theory of introducing some sort of negative procedure to give a right to consultation after designation has taken place. However, that would be an extremely complicated amendment to introduce at this stage. I have therefore lodged amendments 151 and 152, which simply add the landowner or land manager to the list of consultees, which at the moment consists of Scottish Natural Heritage. That would give owners and managers some involvement in the consultation process.

I would be the first to admit that the amendments would be a heavy-handed method of achieving the aims that I set out to achieve. However, I hope that the amendments will allow the minister to explain the opportunities for consultation of landowners or land managers in the designation process and also to explain whether it would be possible to encourage greater openness in the consultation process.

I move amendment 151.

**Allan Wilson:** I am just getting some of my lines of response clear. We are talking about a measure that has been in being since 1981: indeed, it was introduced by a previous Government of Alex Johnstone's party. As I understand it, there is provision post imposition of an order for the reasoning behind it to be debated. Currently, about 25 orders are in operation. Consultation is laudable and I do not disagree with what Alex

Johnstone said, but the impact of what he proposes would be less than laudable. That is partly because the order could be made against the very land manager, owner or occupier who is the cause of the problem.

A requirement to consult every owner or occupier of a site in advance of making a nature conservation order would render it virtually impossible to make the order quickly and with immediate effect, as I think Alex Johnstone acknowledges. An emergency order might be required to address a specific activity that had to be stopped. If there was a delay in imposing the order, which was occasioned by the requirement to consult, all the potential benefits of the provision could be lost.

Although I understand what is being said, the definitive requirement is for provisions to be in place that will enable action to be taken in emergency circumstances. Those provisions would be impeded by consultation. Consultation will take place after the event, so to speak.

**Alex Johnstone:** I lodged amendments 151 and 152 because of concerns that were raised by a number of landowners and land managers who have been involved in the process as it stands and as it previously existed. I am aware that relationships between landowners and land managers and SNH have quite often been damaged by a failure to consult, or perhaps I should more appropriately say by a perceived failure to consult. I do not believe that the situation is always as black and white as some landowners and managers have suggested.

I think that it is reasonable to ask that every effort be made in the future to ensure that consultation is conducted as openly and freely as possible. However, as I said to the minister in my opening remarks, I am aware that it is important to retain the power to designate in emergency circumstances. Consequently, I seek leave to withdraw amendment 151.

*Amendment 151, by agreement, withdrawn.*

*Amendments 152 and 153 not moved.*

*Schedule 2 agreed to.*

### **Section 26—Review of nature conservation orders**

**The Convener:** Amendment 137, in the name of Alex Johnstone, is grouped with amendments 138, 155 and 156.

**Alex Johnstone:** The other amendments in the group largely derive from the principle that is set out in amendment 137, which is that the land owner or occupier ought to be entitled to a review of a nature conservation order where one exists. I believe that there is no provision in the bill for such

a person to request such a review. Amendment 137 would introduce a requirement that a review take place within three months of such a request's being made.

I move amendment 137.

**Allan Wilson:** A requirement is imposed on ministers in the bill to review decisions on NCOs. There is no need for amendment 137. Under the provisions of the bill, owners and occupiers can ask ministers to review NCOs at any time. Indeed, it could be argued that the three-month stipulation in amendment 137 would be less advantageous than the provision that is included in the bill.

I want to reassure Alex Johnstone that, because of the nature of the beast, NCOs are a measure of last resort. To treat them otherwise would not be in the interest of ministers and we do not intend to have NCOs in being for unnecessary lengths of time.

That is why the bill contains new provisions for the review of NCOs and a simplified mechanism to remove NCOs that are no longer needed. Where an owner or occupier wants to make the case that an NCO has outlived its useful life, that case can be made directly to us and we will consider it on its merits. Where appropriate, we will vary or revoke the NCO in question. I give the clear commitment that we wish NCOs to remain only when they are relevant to the practice in question. Exactly the same applies to land management orders.

With the assurances that the powers already exist and that ministers have no wish for NCOs or land management orders to exist for one minute longer than is necessary, I ask Alex Johnstone to withdraw amendment 137 and not to move amendments 138, 155 and 156.

12:45

**Alex Johnstone:** I thank the minister for his reassurances. I will consider in greater detail the time limits given for responses to requests to revoke NCOs, but at this stage, I am content to seek leave to withdraw amendment 137.

*Amendment 137, by agreement, withdrawn.*

*Amendment 138 not moved.*

*Section 26 agreed to.*

#### **Section 27—Offences in relation to nature conservation orders**

*Amendment 65 moved—[Allan Wilson]—and agreed to.*

*Section 27, as amended, agreed to.*

*Section 28 agreed to.*

**The Convener:** If members look at the marshalled list, they will see that a number of

amendments remain, but they are all beyond the point at which we agreed to stop today. We will come back to them.

That concludes day 2 of our stage 2 consideration of the bill. The target for day 3 is that we reach the end of section 50, which is up to the end of part 2 and includes schedules 3 to 5. An announcement to that effect will appear in tomorrow's business bulletin. If we do not reach the end of part 2 on day 3, we will kick off day 4 at the point at which we left off. Any amendments to sections up to section 50 must be lodged by 2 pm on Monday 9 February if they are to be included for consideration.

I thank the minister and his officials for coming.

**Item in Private***Meeting closed at 12:48.*

12:47

**The Convener:** The final agenda item, which should be relatively brief, is to determine whether the committee should consider arrangements for its consideration of the 2005-06 budget process in private at a future meeting. We will have a paper that gives names and details of possible advisers and we will also consider the possibility of taking oral evidence from certain witnesses. Do members agree to consider those arrangements in private?

**Members** *indicated agreement.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the *Official Report*, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Friday 13 February 2004**

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the *Official Report*.

#### PRICES AND SUBSCRIPTION RATES

##### DAILY EDITIONS

*Single copies: £5*

*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

*Single copies: £3.75*

*Special issue price: £5*

*Annual subscriptions: £150.00*

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

**The Stationery Office Bookshop**  
71 Lothian Road  
Edinburgh EH3 9AZ  
0870 606 5566 Fax 0870 606 5588

**The Stationery Office Bookshops at:**  
123 Kingsway, London WC2B 6PQ  
Tel 020 7242 6393 Fax 020 7242 6394  
68-69 Bull Street, Birmingham B4 6AD  
Tel 0121 236 9696 Fax 0121 236 9699  
33 Wine Street, Bristol BS1 2BQ  
Tel 01179 264306 Fax 01179 294515  
9-21 Princess Street, Manchester M60 8AS  
Tel 0161 834 7201 Fax 0161 833 0634  
16 Arthur Street, Belfast BT1 4GD  
Tel 028 9023 8451 Fax 028 9023 5401  
The Stationery Office Oriel Bookshop,  
18-19 High Street, Cardiff CF1 2BZ  
Tel 029 2039 5548 Fax 029 2038 4347

**The Stationery Office Scottish Parliament Documentation**  
Helpline may be able to assist with additional information  
on publications of or about the Scottish Parliament,  
their availability and cost:

**Telephone orders and inquiries**  
0870 606 5566

**Fax orders**  
0870 606 5588

**The Scottish Parliament Shop**  
George IV Bridge  
EH99 1SP  
Telephone orders 0131 348 5412

**RNID Typetalk calls welcome on**  
18001 0131 348 5412  
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers