



Scottish Executive Environment Group

**Legislating for the Nature of Scotland
Proposals to conserve and enhance Scotland's
natural heritage**

Part 1

NATURE CONSERVATION (SCOTLAND) BILL

A draft for consultation

March 2003
Paper 2003/10

FOREWORD



I am determined to protect and enhance Scotland's exceptional natural environment.

Our natural heritage is important for its own sake and as one of our nation's most valuable assets. It matters to the people of Scotland - to the family out for a picnic, the hill walker relaxing in the great outdoors, the child on a school trip. It is the natural resource for our tourism industry, for our farmers, fishermen and forestry industry - and it underpins the quality of our life in Scotland.

In an important sense the nature of Scotland also defines our national identity. Would Scotland be the same without its mountains and lochs, its forests, its rivers, its coasts and islands? What price Scotland without heather moorland, without the Caledonian pine forest, without golden eagles, otters or red squirrels?

Our proposed Nature Conservation (Scotland) Bill delivers the means to safeguard and care for this remarkable natural wealth. The final decision on these proposals will rest with a future administration, after the elections in May 2003. But the draft bill presented here provides a clear blueprint for action.

The draft bill has three key themes. It will improve protection for Sites of Special Scientific Interest, whilst widening the involvement of local communities and other stakeholders. It will further enhance our ability in Scotland to tackle wildlife crime, effectively and robustly. And it will give formal recognition to Scotland's place in delivering a global imperative - the conservation of biodiversity.

That commitment to biodiversity is important. It is part of the Executive's commitment to sustainable development. The health of our natural environment is one of the best measures of sustainability and a factor in delivering environmental justice. We underlined that commitment when the First Minister participated in the World Summit on Sustainable Development in Johannesburg last year. We have already taken important steps to deliver on our Johannesburg commitments. We intend to consult widely on the draft biodiversity strategy for Scotland, prepared by the Scottish Biodiversity Forum.

Why does biodiversity matter in the context of the draft bill? We have already made provision - via the Criminal Justice (Scotland) Bill - for a tougher approach to wildlife crime. And we intend to do more via the proposed new legislation. The proposals mapped out in the new bill will build significantly on the existing SSSI system to provide better protection for Scotland's most important natural heritage sites.

But if we are to be truly successful in delivering our vision of a future Scotland which remains environmentally-healthy and wildlife-rich, we cannot rely solely upon maintaining a selection of special sites as reserves in an otherwise depleted natural environment. Nor can we focus simply on tackling the threats posed, for example, by wildlife crime. It is the combination of different methods within the framework of a broader vision - specific protection for special sites, wide-ranging protection everywhere else and an overall focus on biodiversity - which is our best guarantee of success.

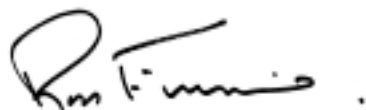
The draft bill is not in final form. That is intentional. Our biodiversity and SSSI proposals are presented as a detailed piece of draft legislation, but one which will undoubtedly benefit from scrutiny by those who will use it. For wildlife crime, we have presented a renewed policy statement which reflects the extent to which the Executive has already taken action on sentencing and police powers, and our continuing commitment to improving protection in this area.

The draft bill does not deal in detail with the marine environment. That too is deliberate. Last October I announced a major research project to look closely at the special value of Scotland's marine environment and to suggest how it can be managed sustainably. Publication of the consultants' reports will give us a solid foundation on which to base future work.

The proposals presented in this consultation have benefited tremendously from contributions from a wide range of interested bodies, groups and individuals and from the input of an Expert Working Group. It is great testimony to devolution and the democratic process that so many have been able to participate in this important work. This is what devolution is about - working together with the people, the professionalism and the passion we have in Scotland to make a real difference to how we in this country run our affairs.

This is a bill about nature. But it is also a bill about people. Our clear intention, subject to the outcome of the election and to decisions by a future administration, is to legislate for the nature of Scotland. We are determined to protect and conserve Scotland's natural heritage, by ensuring that those who can best look after our exceptional natural environment - the people of Scotland themselves - are able to play their full part in assuring its future.

Before any decision is taken to introduce the bill to the Scottish Parliament, I want the people of Scotland to have the opportunity to scrutinise these provisions. Getting them right matters to us all.

A handwritten signature in black ink, appearing to read 'Ross Finnie', with a small dot at the end.

ROSS FINNIE, MSP
Minister for the Environment and Rural Development

CONTENTS

Part 1

Foreword

by Ross Finnie MSP, Minister for the Environment and Rural Development

How to Register your Views

A Introduction and Overall Vision

B Key Features of the Draft Bill

- Biodiversity
- Sites of Special Scientific Interest (“SSSIs”)
- Species Protection and Wildlife Crime

C Draft Nature Conservation (Scotland) Bill

- Contents
- Biodiversity (Part 1)
- Conservation and Enhancement of Natural Heritage (Part 2)
- General (Part 3)

D Policy Statement on Wildlife Crime

Part 2 The following sections appear in Part 2 of this consultation paper:

E Draft Financial Guidelines

F Regulatory Impact Assessment

HOW TO REGISTER YOUR VIEWS

We want to hear what you think. If you would like to register your views, please respond (in writing) to the following address (by post, e-mail or fax) no later than **Friday 6 June 2003**:

Jim Welsh
Scottish Executive
Wildlife and Habitats Unit
Area 1-H
Victoria Quay
EDINBURGH
EH6 6QQ

Fax: 0131 244 4071
E-mail: DraftNCBill@scotland.gov.uk

Confidentiality

Copies of all responses received will be placed in the Scottish Executive library and will be available to the general public. The views expressed by respondents may also be quoted or referred to in any future review of responses. If you do not wish your response to be made public, please ensure that you indicate clearly that all or part of your response is to be treated as confidential. Confidentiality will be strictly respected. We will still count confidential responses in any statistical analysis and your views will of course be taken into account in the same way as for non-confidential responses.

Helping us to take full account of your views

Consultations generate hundreds, and sometimes thousands, of responses. The following helpful tips suggest some ways in which you can assist us in dealing effectively with your response:

- Early responses are welcome. You do not have to wait until the deadline to submit your views.
- Please let us know if you are responding as an individual, or if your views are those of the organisation you represent.
- If you wish your response to remain confidential, remember to make this clear.
- When commenting on specific proposals, it can be especially helpful to use phrases such as: *Strongly support, support, support but with reservations, support subject to changes being made, oppose unless changes are made, oppose, strongly oppose.*
- Try to structure your response along the same lines as the consultation paper itself.
- In particular it is helpful to deal with issues in the same order in which they appear in the consultation and to refer to sections and paragraph numbers when commenting on a particular statement or proposal. (eg you might say “I strongly support the statement in A4 that ...” or “I oppose the proposal in D87 unless ...” or “Section 32(5)(a) of the bill is ... because ...”)
- Please give reasons for your views wherever appropriate. Examples of real-life situations in which proposals will work well, or where they may be flawed, can often be very helpful.
- You need only comment on proposals on which you have a clear opinion. There is no need to comment on everything contained in the consultation paper.

Electronic publication and additional copies

This publication is available via the internet at: <http://www.scotland.gov.uk/views/views.asp>
Additional copies of this consultation paper are available from the address above, or by contacting Jim Welsh by e-mail, fax, or phone (0131 244 6549).

SECTION A

INTRODUCTION AND OVERALL VISION

Introduction

A1 In our programme for government, *Working together for Scotland*, the Scottish Executive undertook to “improve the system of nature conservation” and “to work with local communities to achieve effective protection” for Scotland’s natural heritage.

A2 This consultation paper is the penultimate stage in the fulfilment of that commitment. It also represents what is arguably one of the most ambitious and wide-ranging packages of nature conservation proposals to be presented by any administration since the Wildlife and Countryside Act came into force in 1981.

A3 The principles which lie at the heart of our proposed Nature Conservation (Scotland) Bill were clearly established in the March 2001 policy statement *The Nature of Scotland*¹. That statement of intent was widely welcomed. Support was forthcoming from a large and diverse range of consultees. Since then, the detail of those proposals has been worked over in further close consultation with experienced land managers, conservation experts, law enforcement professionals and representatives of key stakeholder groups. The resulting package of measures is not only coherent and equitable, but realistic, practical and effective.

A4 Those familiar with nature conservation law in Britain will perhaps have expected that our bill would simply mirror the Countryside and Rights of Way Act (“CRoW”), which came into force in England and Wales in 2000.

A5 Similarities do exist. But the draft Nature Conservation (Scotland) Bill offers a specifically Scottish approach to safeguarding our natural heritage. Post-devolution, there remains a very clear sense in which nature conservation policy throughout Britain continues to operate on the basis of a common ethos and a shared commitment to conserving and enhancing the natural environment. That continuing shared purpose, combined with an independence of method, is a healthy sign that devolution is indeed working well. It demonstrates that a common vision can genuinely be taken forward by means of solutions which are fine-tuned to the particular needs and circumstances of the UK’s partner nations.

A6 This consultation paper presents a Scottish vision for nature conservation. It is a robust and radical vision, and one which draws upon the need to find Scottish solutions to Scottish challenges. But it is also a vision which sets the protection of Scotland’s natural environment firmly within a UK, European and, ultimately, a global context.

Consultation

A7 Considerable work has been invested in developing this draft bill and the associated policy statement on wildlife crime which are presented together in this paper. What we are proposing represents the fruit of many hours of effort, not only on the part of Executive

¹ *The Nature of Scotland: A Policy Statement* (Scottish Executive, March 2001) ISBN 0-75590-005-7

Ministers and officials, but also on the part of a wide cross-section of the conservation and land-management communities in Scotland.

A8 The proposals which are reflected in this paper have benefited significantly from the commentary and criticism which practical professionals and the respondents to our earlier policy paper, *The Nature of Scotland* have been kind enough to contribute throughout the development process. But for all that invested effort, our intention in this consultation paper remains to stimulate discussion, encourage close analysis and generate informed comment.

A9 The new system for nature conservation in Scotland is intended to acknowledge the needs of both people and nature. It is intended to be a system which achieves the right balance between sometimes-competing interests - between interests which must ultimately, whatever their apparent incompatibility, be reconciled in pursuit of the wider public good.

A10 In order to do so, the new system must be practicable and realistic. In setting out our proposals, we recognise in particular that there is likely to be scope for constructive comment on how issues of process and procedure might sensibly be streamlined or simplified. One of the key aims of the new bill is to clarify the rights and obligations of both land-managers and public authorities. The bill seeks to provide certainty and fairness where previously there were grey areas and, sometimes, serious public concern. Such legal clarity can sometimes shade into legal complexity. But the principle of practicality and transparency remains valid and it is one to which we are committed.

A11 It is important in introducing the draft bill to draw particular attention also to the draft Financial Guidelines which accompany it and which are presented in Part 2 of this consultation paper. The Guidelines are every bit as important as the bill and it is in the Guidelines that land-managers will find a detailed explanation of the basis on which future payments will be made by Scottish Natural Heritage (SNH) in order to support the favourable management of protected sites.

A12 Finally, we do recognise that, as with much legislation, there will in due course be a need to make a certain amount of transitional provisions. We have avoided the temptation to specify such consequential detail in advance of the consultation so as not to complicate the process of responding to the core provisions in the new bill.

Fundamental Principles and Overall Vision

A13 The draft Nature Conservation (Scotland) Bill centres around three distinct - but closely interwoven - themes. Two of these, the protection of designated sites and the protection of species, already lie at the heart of the Wildlife and Countryside Act 1981 (“the 1981 Act”)².

- Part I of the 1981 Act is already devoted to a range of species protection and wildlife crime measures - measures which aim to safeguard wild birds, animals and plants wherever they occur.
- Part II of the 1981 Act makes detailed provision for the establishment of Sites of Special Scientific Interest (“SSSIs”) and their subsequent protection by means of a variety of measures ranging from financial payments to criminal sanctions.

² 1981 c.69.

A14 Both of those approaches to nature conservation have proven their worth in the two decades since the 1981 Act came into force. Both have their particular strengths, and both have their areas of weakness. Where they work best is where they complement each other. In short, neither a site-based approach nor a species protection strategy is sufficient in itself.

A15 What has been less clearly recognised is that the designation of SSSIs, and law enforcement efforts to tackle wildlife crime, are necessary components of a broader, overarching vision. That “bigger picture” can be summed up in one word - biodiversity.

A16 The Executive is committed to the protection and enhancement of Scotland’s nature across the whole of our country. Nature is not just important in the places where it is specifically protected by nature conservation designations. Scotland’s natural environment and its biodiversity are important throughout the countryside, as well as in our towns and cities. That is why our policies value and protect our natural inheritance.

A17 We want to see a countryside in which biodiversity thrives alongside the economic and recreational activities which sustain our rural communities. We also want to see biodiversity promoted in towns and cities. And we most certainly do not want designated nature conservation areas to become nature’s “refuge” in an otherwise hostile environment. That is why the protection of Scotland’s nature is too important to be left simply to the traditional policies of site protection and wildlife crime initiatives.

A18 The ultimate benchmark for any nature conservation and natural heritage policy is the implementation of effective and holistic measures to conserve biodiversity and to secure the long-term health of our natural environment - both for its own sake and for the benefit of future generations.

A19 The importance of biodiversity has always been implicit in the goals which have informed the Wildlife and Countryside Act and other conservation legislation. But rarely has the significance of that overarching objective been recognised explicitly in a major piece of environmental legislation. It is our intention that the Nature Conservation (Scotland) Bill should do precisely that.

A20 The proposed bill will therefore deliver important legislative enhancements in three key areas. It will contain provisions which are designed to deliver:

- the conservation of biodiversity,
- a more rounded and effective system of protection for SSSIs, and
- improved measures to secure species protection and tackle wildlife crime.

A21 In doing so, the draft bill recognises that nature conservation objectives cannot be achieved in a vacuum. It will never be possible to protect and preserve our natural heritage effectively if the legitimate concerns of individuals, and the economic needs of local communities, are not also acknowledged. The importance of reconciling environmental priorities and legitimate socio-economic expectations is something which needs to be at the heart of natural heritage policy-making. That is a recognition which is fundamental not only to this new bill but also to our wider commitment to genuinely sustainable development.

A22 For that reason, much effort has gone into revising the SSSI system - so as to retain the strengths of an approach based on objective scientific criteria, whilst at the same time, ensuring that local stakeholders can input effectively into decisions about the selection, notification and subsequent management of SSSIs.

A23 The result is a set of initiatives which will enhance the capacity of the system to protect and preserve important sites. It will also provide greater transparency and a clearer balance between the rights and obligations of land managers on the one hand and the wider public interest on the other.

A24 The proposed bill will, as a consequence, significantly enlarge the list of stakeholders who must be consulted when a new SSSI is identified or an existing one extended. The bill will create a statutory requirement for every new notification of an SSSI to be supported by a site management statement, thereby allowing socio-economic concerns to be addressed at an early stage. And the bill will also establish a new mechanism for appeal by engaging the expertise and specialist skills of the Scottish Land Court. The Land Court is widely-recognised as a body which is uniquely placed to deal credibly and effectively with issues of land management practice and questions of payment and compensation.

A25 These are all hugely important developments. They are developments which we believe will lead to the establishment of a coherent and integrated policy for nature conservation in Scotland. We believe that the proposals set out in this draft bill will provide the foundation for an approach to the safeguarding and enhancement of natural heritage which will win widespread recognition for its effectiveness, fairness and forward-thinking, not only within Scotland, but internationally.

SECTION B

KEY FEATURES OF THE DRAFT BILL

Biodiversity

B1 Biodiversity - the variety of all living things, including the habitats that support them and genetic variation within species - is both an essential resource for sustainable development and a measure of success in delivering sustainability.

B2 The UN Convention on Biological Diversity, signed in 1992 following the Rio Earth Summit, commits Scotland to using the earth's biological diversity in ways which do not lead to its decline. European law - in particular the EC Birds and Habitats Directives - requires us to take effective action to protect biodiversity.

B3 The Scottish Executive is committed to biodiversity conservation. Scottish Ministers have been leading the way in placing the closely related concepts of sustainability and environmental justice at the heart of public policy making. The draft Nature Conservation (Scotland) Bill acknowledges the fundamental importance of biodiversity conservation in the most explicit fashion. Biodiversity is being placed at the very heart of this hugely important new piece of natural heritage legislation.

Biodiversity – The policy behind the draft provisions

B4 Sections 1 and 2 of the draft bill introduce a general biodiversity duty which will apply to all Scottish public bodies and office holders.

B5 That duty will be one which obliges all public authorities to “further the conservation of biodiversity” in the course of exercising their functions. In doing so each public body will require to have regard to the Rio Convention and to act with reference to the aims and objectives of the new Scottish Biodiversity Strategy, which was presented in draft on 25 February 2003 and which is currently also the subject of consultation.³

B6 We believe that the result is a robust and practical duty. It is a duty which builds upon the wide-ranging initiatives and efforts of people and organisations across the public sector in Scotland. Indeed, it will provide an exhortation to action which we hope will also find resonance beyond the public sector. Much is already being done by private and charitable organisations on a “good corporate citizenship” basis. Although it will not apply directly to such non-public bodies, the new duty will we hope provide a benchmark against which many outside the public sector can also measure their efforts – and feel justifiably proud of their contribution to what is ultimately both a national and an international priority.

³ The draft strategy can be found on the Executive website at <http://www.scotland.gov.uk/biodiversity>
Copies can also be obtained from the Scottish Executive, Wildlife and Habitats Unit, at the address given in the front of this paper.

Enhanced Protection for SSSIs and Related Reforms

B7 The SSSI components of the Wildlife and Countryside Act have served Scotland's natural heritage well – providing protection to sites which are important not only for their flora and fauna, but also for their geological and geomorphological features. As a network of sites of national significance, the SSSI series provides both a baseline for wider conservation efforts within Scotland and a general underpinning framework for the network of sites of European importance which have been designated under the Natura 2000 initiative.

B8 But for all its existing strengths, a significant modernisation and enhancement of the SSSI system is overdue. That recognition is one which is widely-shared. There is, for example, a clear need for greater transparency, wider consultation and access to new dispute-resolution processes. The degree of protection which SSSIs enjoy needs to be improved, whilst the day-to-day burdens on land managers need to be kept to a minimum. There is a need to ensure that public money is used as effectively as possible. And public concern about excessive compensation payments to buy-off large speculative developments on SSSIs has to be acknowledged.

B9 The draft legislative provisions set out in *Section C* of this paper will therefore revise and replace Part II of the existing Wildlife and Countryside Act in line with the policy undertakings already aired in *The Nature of Scotland*.

SSSI Reforms – Key Features

Statutory Purpose

B10 SSSIs are notified because they contain natural heritage features which are of special interest. We believe, however, that SSSIs should also be viewed in a wider context, as part of a network of nationally important sites. The bill therefore provides an overall statutory purpose which makes clear that each SSSI performs a role not only as an individual site, but also as part of a wider, national network of sites which are representative of Scotland's natural heritage as a whole.

Wider Consultation

B11 The draft bill recognises that there are a wide range of parties with a genuine and legitimate interest in conservation designations and land use. Whilst the primary focus will always remain with those who have the most direct legal interest in SSSI land, we are now providing for the involvement of a much broader group of stakeholders - including local communities and statutory undertakers - in decisions affecting SSSIs.

Site Management Statements

B12 Although SNH already, on its own initiative, produces management statements for SSSIs, it is currently under no statutory obligation to do so. Our view is that it is right that a site management statement should be required by statute when an SSSI is notified. In addition to providing practical guidance to the owner/occupier of the site in relation to its management, the statement will also provide the opportunity for SNH to address socio-economic issues (which cannot be dealt with in the context of the purely scientific case for designation of the site).

Improved Protection

B13 Under the existing 1981 Act, operations which would damage or destroy an SSSI can be delayed but cannot be prohibited if a landowner insists on going ahead. Such situations are rare, but are nonetheless at odds with the wider public interest in maintaining our national natural heritage. The draft bill therefore allows damaging activities to be blocked where this is genuinely necessary.

B14 There may also be circumstances in which operations on land outwith the boundaries of an SSSI need to be controlled in order to ensure the proper protection of the SSSI interest. In such cases it will be possible for Ministers to use an extended version of the current power to make a Nature Conservation Order. We are also ensuring in the draft bill that the actions of third parties can be adequately controlled. One of the current frustrations for managers of SSSIs is that the 1981 Act only protects SSSIs against the actions of their owner or occupier - and that genuine threats from other quarters can only be tackled with difficulty, if at all. As part of this package of improved protection, we are also providing for SNH to make byelaws for SSSIs in order to deal with actions such as the setting of fires or fly-tipping.

Reduced Regulation

B15 The concomitant of improved protection is the ability for SNH to lighten the regulatory load on land managers. Since it will in future be possible to prevent all genuinely damaging activity, there will no longer be the same necessity for SNH to specify an unwieldy list of potentially damaging operations covering everything and anything that a land manager could ever conceivably do on the site. Limitations on management of the site will be much more specific and closely targeted. This (in combination with the site management statement) will give land managers far greater certainty in their business and operational planning.

Fair Compensation

B16 Individual land managers should not be expected to shoulder a disproportionate share of the cost of delivering a national policy for Scotland's special places. We believe it is right and proper that the public purse should contribute to supporting the favourable management of SSSIs. Existing legislation already provides for positive management payments to be made by SNH, and others, under initiatives such as *Natural Care*. These assist site managers in implementing management regimes which are beneficial to the site. We expect such voluntary management agreements to be the normal mechanism through which land managers obtain financial support.

B17 But there will be occasions when a voluntary arrangement does not prove possible and it becomes necessary to refuse consent for an operation on an SSSI. Where this means that it is no longer possible to continue with the established management of the land, we are clear that the land manager should receive compensation for actual losses experienced as a direct result of the enforced change of management practice. In such circumstances, SNH will be obliged to offer a compensatory management agreement. The need for such compensatory agreements is already rare (averaging only around 4 per year since 1998). We do not anticipate any significant change to this state of affairs.

B18 Compensation will not be payable where the development is speculative and does not form part of the established use of the land. Nor will land managers receive payments where they require to comply with other regulatory regimes or standards of good farming practice. Policies in relation to both positive and compensatory management agreements are covered in more detail in the draft Financial Guidelines included in *Section E* of this paper.

Better Dispute Resolution and the Scottish Land Court

B19 Whilst there is provision in the 1981 Act for arbitration (and the Lands Tribunal for Scotland has been involved as an arbiter in past cases) there is at present no formal right of appeal available to land managers where their management of the land is restricted. We are therefore providing a right of recourse to the Scottish Land Court in appropriate instances, including where consent is refused or the amount offered by way of compensation is felt to be inadequate. The specialist expertise of a body as experienced as the Land Court will be of immense value in dealing with such cases. It will, of course, remain desirable, in the interests of all parties, for disputes to be dealt with by administrative means or by mediation where this is a realistic option. But it is important that land managers do have a clear statutory provision to fall back upon when such mechanisms are unable to resolve a dispute.

Land Management Orders

B20 The availability of payments for positive management under schemes such as *Natural Care* means that in future, land managers will have access to well-designed and properly-costed support packages to help them implement favourable management regimes for SSSIs under their stewardship. Very rarely, however, there may be occasions when it becomes essential that a particular operation or form of management is carried out on a protected site, whether or not such an agreement is in place. This is likely to be especially important where an SSSI has also been designated as a Natura 2000 site. Natura sites (Special Areas of Conservation or SACs and Special Protection Areas or SPAs) are sites which have been identified as being of significance on a Europe-wide scale. The UK Government and the Scottish Executive are legally obliged to ensure the conservation of such sites.

B21 Where such action is necessary, SNH will first seek to conclude a suitable agreement with the land manager. Should this be impossible, the proposed bill will allow SNH to apply for an order from the Scottish Ministers to oblige the land manager to carry out the necessary operation. The use of such an order will be extremely rare and a full right of appeal to the Scottish Land Court is provided in the bill.

Statutory Undertakers and Regulatory Authorities

B22 For the first time, statutory undertakers and regulators will be brought explicitly within the ambit of the SSSI system. Both statutory undertakers and regulators will be obliged to act responsibly in relation to protected sites and a simplified consent mechanism for operations on an SSSI will also be put in place. Where a regulator such as the Scottish Environment Protection Agency (“SEPA”) or the Forestry Commission consents to an operation affecting an SSSI, it will first be required to consult SNH. Any consent required from SNH will be contained within the regulator’s consent and it will no longer be necessary for the applicant to make a separate application to SNH.

Better Enforcement and More Realistic Penalties

B23 To support the other improvements we are making to the SSSI system, the draft bill updates the penalties available to the courts in dealing with offences involving protected sites. Given that damage will in many cases be motivated by commercial considerations, the courts will in future have the option of imposing a fine of up to £20,000 on summary conviction. Higher fines will be an option if the offence is serious enough to lead to conviction on indictment. We do not believe, however, that it would be appropriate to provide for custodial sentences in the majority of SSSI cases - although we do acknowledge there may be a case for such provision in relation to third party offences.

Improved Measures to Tackle Wildlife Crime

B24 In developing this consultation paper we recognised that, in the area of wildlife crime, matters had moved on in some important respects since *The Nature of Scotland*. In particular, a number of major proposals from that earlier consultation had subsequently been incorporated within the Criminal Justice (Scotland) Bill and were now no longer part of the immediate agenda for change. We have, therefore, chosen to present our proposals afresh, as a full and consistent package of species protection and wildlife crime measures, in a format which can be easily read and digested.

B25 Our commitment to further action on wildlife crime is clear. The proposed Nature Conservation (Scotland) Bill, as introduced to Parliament, will be a full and comprehensive bill. It will be a bill which is built around all three core components of our strategic vision for the future of Scotland’s natural heritage. It will be a bill which secures, conserves and enhances special places and biodiversity. But it will also be a bill which delivers the level of additional protection to Scotland’s wildlife which we believe is not only desirable, but essential. Above all it will be a fully-rounded and wide-ranging bill. It will be a bill which provides us with all of the mechanisms needed to deliver our ultimate vision - of a future Scotland which accommodates both people and nature; of a Scotland which is biodiverse, habitat-rich and abundant in wild birds, wild plants and wild animals.

Developments since *The Nature of Scotland*

B26 We have already taken priority action to implement the most important proposals on wildlife crime from *The Nature of Scotland*. The Criminal Justice (Scotland) Bill, which completed its passage through the Scottish Parliament on 20 February 2003, puts into effect a package of top-priority measures covering:

- custodial sentences,
- increased financial penalties,
- a specific power of arrest,
- wider availability of search warrants, and
- reform of the existing time bar on bringing prosecutions more than 6 months after the commission of an offence.

Wildlife Crime and Species Protection – The proposals

B27 Both Part I of the 1981 Act and Part III of the Conservation (Natural Heritage &c.) Regulations 1994 (“the 1994 Regulations”)⁴ offer a broadly effective framework for delivering protection to wild birds, animals and plants. That protection applies universally, and not simply where specimens happen to be present on a protected site. The 1981 Act also controls the release of damaging non-native species and regulates the keeping of captive birds of prey (and other species which are under threat in the wild, including some non-native species).

⁴ Statutory Instrument 1994 No. 2716

B28 Practical experience has predictably enough revealed important, but essentially technical, weaknesses in the existing provisions. The proposed bill will address these. The reforms we propose implementing will, amongst other things:

- Introduce the concept of “recklessness” to extend and enhance the existing offences of intentionally killing, taking, destroying or disturbing protected wildlife. Recklessness is a robust and well understood concept in Scots law and it imposes a strict test in any prosecution. But we will ensure that adequate safeguards are provided to ensure that environmentally responsible land managers, and recreational users of the countryside, cannot inadvertently contravene the new provisions.
- Respond to public concern about the misuse and abuse of snares, by improving controls. Where they are used properly, snares must continue to provide a legitimate and practical method of pest control.
- Enhance the protection available to birds at a European Union level. Improved protection for plants, as well as for fungi and non-vascular plants will also feature prominently in the bill.
- Improve compliance with the Birds and Habitats Directives⁵ in cases where the wording of current provisions is less clear than it ought to be.

B29 The full package of proposals which will deliver the species protection and wildlife crime components of the draft Nature Conservation (Scotland) Bill are set out in full in *Section D* of this paper.

⁵ Council Directive 79/409/EEC on the conservation of wild birds (O.J. No. L103, 25/4/79, p1) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (O.J. No. L206, 22/7/92, p7)

SECTION C

NATURE CONSERVATION (SCOTLAND) BILL

A draft for consultation

Nature Conservation (Scotland) Bill

[CONSULTATION DRAFT]

CONTENTS

Section

PART 1

BIODIVERSITY

- 1 Duty to further the conservation of biodiversity
- 2 Scottish Biodiversity Strategy

PART 2

CONSERVATION AND ENHANCEMENT OF NATURAL HERITAGE

CHAPTER 1

SITES OF SPECIAL SCIENTIFIC INTEREST

Notification of sites of special scientific interest

- 3 Duty to give notification of sites of special scientific interest
- 4 Site management statements
- 5 Enlargement of sites of special scientific interest
- 6 Review of operations requiring consent
- 7 Denotification of sites of special scientific interest
- 8 SSSI notifications and related notifications: procedure
- 9 Effect of SSSI notifications

Exercise of functions in relation to sites of special scientific interest

- 10 Exercise of functions by public bodies etc.

Operations affecting sites of special scientific interest

- 11 Operations by owners or occupiers of sites of special scientific interest
- 12 Appeals in connection with operations requiring consent
- 13 Operations by statutory undertakers
- 14 Consent by certain regulatory authorities

Offences and byelaws

- 15 Offences in relation to sites of special scientific interest
- 16 Byelaws

Supplementary

- 17 Change of owner or occupier
- 18 SSSI Register

CHAPTER 2

NATURE CONSERVATION ORDERS

- 19 Nature conservation orders

- 20 Amendment or revocation of nature conservation orders
- 21 Nature conservation orders and related orders: procedure
- 22 Review of prohibited operations
- 23 Offences in relation to nature conservation orders
- 24 SNH functions in relation to nature conservation orders

CHAPTER 3

LAND MANAGEMENT ORDERS

- 25 Proposals for land management orders
- 26 Power to make land management orders
- 27 Content of land management orders
- 28 Review of land management orders
- 29 Land management orders and related orders: procedure
- 30 Appeals in connection with land management orders and related orders
- 31 Effect of land management orders
- 32 Offences in relation to land management orders
- 33 Enforcement of land management orders

CHAPTER 4

COMPULSORY PURCHASE

- 34 Compulsory purchase for purpose of conserving natural heritage

CHAPTER 5

SUPPLEMENTARY

- 35 Restoration orders
- 36 Powers of entry
- 37 Guidance
- 38 Offences: penalties, defences and time limits
- 39 Offences by bodies corporate etc.
- 40 Notices
- 41 Interpretation of Part 2

PART 3

GENERAL

- 42 Orders: general
- 43 Ancillary provision
- 44 Minor and consequential amendments and repeals
- 45 Interpretation
- 46 Short title and commencement

Schedule 1—Notifications relating to sites of special scientific interest: procedure
Schedule 2—Nature conservation orders and related orders: procedure
Schedule 3—Land management orders and related orders: procedure
Schedule 4—Minor and consequential amendments and repeals

Nature Conservation (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to make provision for the conservation of biodiversity; to make provision for the conservation and enhancement of Scotland’s natural heritage; and for connected purposes.

PART 1

BIODIVERSITY

1 Duty to further the conservation of biodiversity

- (1) It is the duty of every public body and office-holder, in exercising functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.
- (2) In complying with the duty imposed by subsection (1) a body or office-holder must have regard to—
 - (a) any strategy designated under section 2(1), and
 - (b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention).

2 Scottish Biodiversity Strategy

- (1) The Scottish Ministers may designate as the Scottish Biodiversity Strategy one or more strategies for the conservation of biodiversity (whether prepared by them or by one or more other persons).
- (2) The Scottish Ministers must publish any strategy so designated in such manner (including on the internet or by other electronic means) as they think fit.
- (3) A strategy so designated may include different provision for different cases or classes of case.

PART 2

CONSERVATION AND ENHANCEMENT OF NATURAL HERITAGE

CHAPTER 1

SITES OF SPECIAL SCIENTIFIC INTEREST

Notification of sites of special scientific interest

3 Duty to give notification of sites of special scientific interest

- (1) Scottish Natural Heritage (“SNH”) must, where it considers that any land is of special interest by reason of any aspect of its natural heritage, notify that fact to the persons mentioned in section 40(2) (“the interested parties”).

- (2) In determining for the purposes of subsection (1) whether any land is of special interest SNH may, in particular, have regard to whether any aspect of the natural heritage of the land—
 - (a) is particularly representative of the natural heritage of Scotland, and
 - (b) as such, is of national importance.
- (3) A notification under subsection (1) must be accompanied by—
 - (a) a document which—
 - (i) describes the land to which the notification relates,
 - (ii) specifies the aspect of natural heritage by reason of which SNH considers the land to be of special interest,
 - (iii) specifies acts or omissions which appear to SNH to be likely to damage that aspect, and
 - (iv) contains such other information as SNH thinks fit, and
 - (b) a map on which the land is delineated.
- (4) The notification, document and map referred to in subsection (3) are in this Part together referred to, in relation to the land in question, as the “SSSI notification”.
- (5) An SSSI notification has effect from the date on which it is given; and the land in question is, until the notification ceases to have effect, to be known as a “site of special scientific interest”.
- (6) Each act or omission specified in an SSSI notification by virtue of subsection (3)(a)(iii) is, in relation to the site of special scientific interest, in this Part referred to as an “operation requiring consent”.

4 Site management statements

- (1) An SSSI notification must be accompanied by a site management statement.
- (2) A site management statement is a statement prepared by SNH which—
 - (a) provides guidance to owners and occupiers of land within a site of special scientific interest as to how the aspect of natural heritage by reason of which the SSSI notification has effect should be conserved or enhanced, and
 - (b) contains such other information in relation to the site of special scientific interest as SNH thinks fit.
- (3) SNH may, at any time during which an SSSI notification has effect—
 - (a) on the request of any owner or occupier of land within the site of special scientific interest, or
 - (b) of its own accord,review and, if it thinks fit, revise the site management statement.
- (4) SNH must provide a copy of any statement so revised to the interested parties.

5 Enlargement of sites of special scientific interest

- (1) Where SNH considers that if land which is contiguous to or which it considers to be otherwise associated with a site of special scientific interest (the “extra land”) were combined with the site, the combined land would be of special interest by reason of any aspect of its natural heritage, it may notify that fact to the interested parties.
- (2) Sections 3(3) and 4(1) and (2) apply in relation to a notification of extra land under subsection (1) of this section as they apply to a notification under section 3(1), but as if—
 - (a) in section 3(3)(a)(ii), the reference to the land were a reference to the combined land,
 - (b) in section 4(2), the references to a site of special scientific interest were references to the combined land.

6 Review of operations requiring consent

- (1) SNH—
 - (a) must, on the request of any owner or occupier of land within a site of special scientific interest,
 - (b) may when it thinks fit,review the operations requiring consent specified in an SSSI notification.
- (2) SNH must not carry out—
 - (a) the first such review within 5 years of the date on which the SSSI notification was given,
 - (b) any subsequent such review within 5 years of the previous review,except where the review is carried out under subsection (1)(b) and SNH has obtained the agreement of every owner and occupier of land within the site of special scientific interest.
- (3) Such agreement is obtained if SNH gives notice of a proposed review to every owner and occupier of land within the site of special scientific interest and—
 - (a) every such person agrees in writing to SNH carrying out the review, or
 - (b) no objection by any such person to the carrying out of the review is received by SNH within 28 days of the date on which the notice was given.
- (4) If, on completion of a review, SNH is of the opinion that the SSSI notification should be amended by—
 - (a) adding to the operations requiring consent specified in it,
 - (b) modifying the description of any operation requiring consent so specified, or
 - (c) removing any operation requiring consent so specified from it,SNH must amend the SSSI notification by giving notification of the amendment to the interested parties.

7 Denotification of sites of special scientific interest

- (1) SNH may, where it considers that all or any part of a site of special scientific interest is no longer of special interest by reason of the aspect of natural heritage by reason of which the SSSI notification has effect, give notification to the interested parties of its intention to revoke the SSSI notification or, as the case may be, modify it so as to disapply its effect to the part of the site in question.
- (2) A notification under subsection (1) must be accompanied by—
 - (a) a document which—
 - (i) describes the site of special scientific interest or, as the case may be, the part in question, and
 - (ii) explains why SNH considers the site of special scientific interest or, as the case may be, the part in question no longer to be of special interest by reason of that aspect, and
 - (b) a map on which the site of special scientific interest or, as the case may be, the part in question is delineated.

8 SSSI notifications and related notifications: procedure

Schedule 1 sets out procedure relating to SSSI notifications and notifications given under sections 5(1), 6(4) and 7(1).

9 Effect of SSSI notifications

- (1) From the date when SNH gives—
 - (a) notice under paragraph 8 of schedule 1 of a decision to confirm an SSSI notification with modifications,
 - (b) notification under section 5(1) or 6(4) in relation to it,
 - (c) notice under paragraph 8 of schedule 1 of a decision to confirm a notification given under section 5(1) or 6(4) with modifications,
 - (d) notice under that paragraph of a decision to confirm a notification given under section 7(1) in relation to part only of the site of special scientific interest,the SSSI notification has effect as amended by the modifications or, as the case may be, the notification given under section 5(1), 6(4) or 7(1).
- (2) Where SNH gives notice under paragraph 8 of schedule 1 of a decision to withdraw a notification given under section 5(1) or 6(4), the SSSI notification to which the withdrawn notification relates has effect, from the date on which the notice under that paragraph is given, as if the withdrawn notification had never been given.
- (3) An SSSI notification ceases to have effect on SNH giving notice under paragraph 8 of schedule 1 of a decision—
 - (a) to withdraw it, or
 - (b) to confirm a notification given under section 7(1) in respect of it.

*Exercise of functions in relation to sites of special scientific interest***10 Exercise of functions by public bodies etc.**

- (1) 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.
- (2) Before exercising the function the body or office-holder must—
 - (a) consult SNH, and
 - (b) have regard to any representations made by SNH within such reasonable time as the body or office-holder may specify.
- (3) In exercising the function, the body or office-holder must have regard to the desirability of conserving and enhancing the aspect of natural heritage by reason of which SNH considers the site to be of special interest.

*Operations affecting sites of special scientific interest***11 Operations by owners or occupiers of sites of special scientific interest**

- (1) An owner or occupier of land within a site of special scientific interest must not carry out, or cause or permit to be carried out, an operation requiring consent on the land except—
 - (a) with the written consent of SNH given on an application under subsection (2), or
 - (b) where subsection (7) applies.
- (2) An application for such consent must be made at least 28 days before the proposed date of commencement of the operation and must specify—
 - (a) the nature of the operation, and
 - (b) the land on which it is proposed to carry out the operation.
- (3) On an application under subsection (2) SNH may—
 - (a) give consent to the operation being carried out, whether or not subject to conditions, or
 - (b) refuse such consent.
- (4) The conditions referred to in subsection (3)(a) may, in particular, provide—
 - (a) that, despite the terms of the application under subsection (2), the operation may be carried out—
 - (i) only in such manner as SNH may specify,
 - (ii) on part only of the land on which the owner or occupier wishes the operation to be carried out,
 - (b) that the operation may be carried out only for, or within, such period as SNH may specify.
- (5) Where SNH—
 - (a) either refuses to consent to an operation being carried out or makes its consent subject to conditions, and
 - (b) considers, having had regard to any code issued under section 37 so far as relating to circumstances in which it should offer to enter into a management agreement, that, despite the decision referred to in paragraph (a), it should offer to enter into such an agreement with the applicant,

it must offer to enter into such an agreement on such terms and conditions (including provision for payment to the applicant by SNH) as it, having regard to the code, thinks fit.

- (6) SNH must give an applicant reasons for a decision by virtue of this section—
 - (a) to make its consent subject to conditions,
 - (b) to refuse consent,
 - (c) where paragraph (a) of subsection (5) applies, not to offer to enter into a management agreement in pursuance of that subsection.
- (7) SNH's consent is not required in relation to the carrying out of an operation requiring consent—
 - (a) in respect of which permission has been given by a relevant regulatory authority in accordance with section 14,
 - (b) which is an emergency operation particulars of which (including details of the emergency) are notified to SNH as soon as practicable after the necessity for the operation becomes apparent,
 - (c) in accordance with the terms of a management agreement, or
 - (d) which is carried out as required by a land management order.
- (8) Subsection (9) applies where—
 - (a) an owner or occupier of land within a site of special scientific interest carries out, or causes or permits to be carried out, an operation which would, but for subsection (7)(b), require SNH's consent, and
 - (b) the operation damages an aspect of natural heritage by reason of which an SSSI notification has effect.
- (9) Where this subsection applies the owner or occupier must—
 - (a) consult SNH as to the manner in which the aspect should be restored to its former condition, and
 - (b) restore it, so far as is reasonably practicable, to that condition.

12 Appeals in connection with operations requiring consent

- (1) An owner or occupier of land within a site of special scientific interest who is aggrieved—
 - (a) by a condition imposed under subsection (3)(a) of section 11,
 - (b) by a decision under subsection (3)(b) of that section to refuse consent,
 - (c) by a decision, where paragraph (a) of subsection (5) of that section applies, not to enter into a management agreement in pursuance of that subsection,
 - (d) by the terms and conditions (including any provision for payment by SNH) on which SNH has offered to enter into a management agreement in pursuance of that subsection,may appeal to the Scottish Land Court.
- (2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which SNH notified the appellant of the decision being appealed.

- (3) If, within—
- (a) the period of 4 months beginning on the date on which the owner or occupier seeking the consent made an application under section 11(2), or
 - (b) such longer period, beginning on that date, as may be agreed in writing between SNH and the owner or occupier,

SNH neither gives nor refuses the consent sought in the application, SNH is to be treated, for the purposes of this section, as having refused consent on the day on which the period expired and an appeal may be made and determined under this section accordingly.

- (4) If, within—
- (a) the period of 4 months beginning on the date on which SNH either refuses consent to an operation being carried out or makes its consent subject to conditions, or
 - (b) such longer period, beginning on that date, as may be agreed in writing between SNH and the owner or occupier,

SNH has not offered to enter into a management agreement in pursuance of subsection (5) of section 11, SNH is to be treated, for the purposes of this section, as having decided not to so offer on the day on which the period expired and an appeal may be made and determined under this section accordingly.

- (5) The Scottish Land Court must determine an appeal made under subsection (1) on the merits rather than by way of review and may do so by—
- (a) affirming the decision appealed against,
 - (b) where the appeal is against a refusal of consent, directing SNH to give consent,
 - (c) where the appeal is as to the conditions to which a consent is subject, quashing all or any of those terms or conditions,
 - (d) where the appeal is against a decision not to offer to enter into a management agreement, directing SNH to so offer,
 - (e) where the appeal is as to the terms and conditions of a management agreement, quashing all or any of those terms or conditions,
 - (f) making such other order as it thinks fit.
- (6) The Scottish Land Court may direct SNH—
- (a) where it determines an appeal under paragraph (b) or (c) of subsection (5), as to any conditions to which its consent to the carrying out of the operation requiring consent are to be subject,
 - (b) where it determines an appeal under paragraph (d) or (e) of that subsection, as to terms and conditions of the management agreement (including provision for payment by SNH) which it must offer to enter into.

13 Operations by statutory undertakers

- (1) A statutory undertaker must not carry out any operation which is likely to damage any aspect of natural heritage by reason of which an SSSI notification has effect except—
- (a) with the written consent of SNH given on an application under subsection (3),
 - (b) where subsection (9) applies, or

- (c) in accordance with subsection (10).
- (2) Subsection (1) applies whether or not the operation would take place on land within a site of special scientific interest.
- (3) An application for SNH's consent must be made at least 28 days before the proposed date of commencement of the operation and must specify—
 - (a) the nature of the operation, and
 - (b) the land on which it is proposed to carry out the operation.
- (4) On an application under subsection (3) SNH may—
 - (a) give consent to the operation being carried out, whether or not subject to conditions, or
 - (b) refuse such consent.
- (5) The conditions referred to in subsection (4)(a) may, in particular, provide—
 - (a) that, despite the terms of the application under subsection (3), the operation may be carried out—
 - (i) only in such manner as SNH may specify,
 - (ii) on part only of the land on which the statutory undertaker wishes to carry out the operation,
 - (b) that the operation may be carried out only for, or within, such period as SNH may specify.
- (6) SNH may, in giving or refusing consent, provide the statutory undertaker with written advice in relation to the operation.
- (7) SNH must give a statutory undertaker reasons for a decision under this section—
 - (a) to give consent subject to conditions,
 - (b) to refuse consent.
- (8) SNH is, if it neither gives nor refuses consent within 28 days of the date of the application under subsection (3), to be treated as having refused consent.
- (9) SNH's consent is not required in relation to the carrying out of an operation of the type described in subsection (1)—
 - (a) in respect of which permission has been given by a relevant regulatory authority in accordance with section 14, or
 - (b) which is an emergency operation particulars of which (including details of the emergency) are notified to SNH as soon as practicable after the necessity for the operation becomes apparent.
- (10) A statutory undertaker may, if both of the conditions set out in subsection (11) are satisfied, carry out an operation of the type described in subsection (1)—
 - (a) in respect of which SNH has refused consent, or
 - (b) in a case where SNH has given consent, otherwise than in accordance with any condition to which the consent is subject.
- (11) Those conditions are—
 - (a) that the statutory undertaker has, more than 28 days after the date of the application under subsection (3), given notice to SNH of—

- (i) the date (which must be at least 28 days after the date of the notice) on which it proposes to commence the operation, and
 - (ii) what (if anything) the statutory undertaker has done, or proposes to do, in consequence of any written advice in relation to the operation which it has received, before the date of the notice, from SNH in pursuance of subsection (6),
 - (b) that the statutory undertaker carries out the operation in such a way as to give rise to as little damage or disturbance as is reasonably practicable in all the circumstances to any aspect of natural heritage by reason of which an SSSI notification has effect (having had regard, in particular, to any such advice as is referred to in paragraph (a)(ii)).
- (12) Subsection (13) applies where—
- (a) a statutory undertaker carries out an operation for which it would, but for subsection (9)(b) or (10), require SNH’s consent, and
 - (b) the operation damages an aspect of natural heritage by reason of which an SSSI notification has effect.
- (13) Where this subsection applies the statutory undertaker must—
- (a) consult SNH as to the manner in which the aspect should be restored to its former condition, and
 - (b) restore it, so far as is reasonably practicable, to that condition.

14 Consent by certain regulatory authorities

- (1) This section applies where the permission of a relevant regulatory authority is needed before operations may be carried out.
- (2) Before deciding whether to permit the carrying out of an operation which is likely to damage any aspect of natural heritage by reason of which an SSSI notification has effect, the authority must notify SNH of the proposal to carry out the operation specifying—
 - (a) the nature of the operation, and
 - (b) the land on which it is proposed to carry out the operation.
- (3) Subsection (2) applies whether or not the operation would take place on land within a site of special scientific interest.
- (4) The authority must not decide whether to give its permission until the expiry of the period of 28 days beginning with the date of the notification to SNH unless SNH has notified the authority that it need not wait until then.
- (5) The authority must have regard to any advice received from SNH—
 - (a) in deciding whether to give its permission, and
 - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to its permission.
- (6) If the authority does not follow any such advice which—
 - (a) advises it against permitting an operation, or
 - (b) advises it to attach certain conditions to a permission,

it must give notice of the permission it has given, and of its terms, to SNH.

- (7) The terms of such a permission must not allow the permitted operation to be commenced before the end of the period of 21 days beginning with the date on which notice is given under subsection (6).
- (8) Such a notice must include a statement specifying what (if anything) the authority has done, or proposes to do, in consequence of the advice given by SNH.

Offences and byelaws

15 Offences in relation to sites of special scientific interest

- (1) A person who intentionally or recklessly damages any aspect of natural heritage by reason of which an SSSI notification has effect is, subject to subsection (2), guilty of an offence.
- (2) A person who does anything which would, but for this subsection, amount to an offence under subsection (1) is not guilty of the offence if the person shows that the act—
 - (a) was the incidental result of a lawful operation, and
 - (b) could not reasonably have been avoided.
- (3) An owner or occupier of land within a site of special scientific interest who, without reasonable excuse, contravenes section 11(1) or (9) is guilty of an offence.
- (4) A statutory undertaker which, without reasonable excuse, contravenes section 13(1) or (13) is guilty of an offence.
- (5) Any person guilty of an offence under subsection (1), (3) or (4) is liable—
 - (a) on summary conviction, to a fine not exceeding £20,000,
 - (b) on conviction on indictment, to a fine.
- (6) It is not a defence in proceedings for an offence under subsection (3) or (4) of contravening section 11(1) or, as the case may be, 13(1) that the carrying out of the operation did not damage any aspect of natural heritage by reason of which an SSSI notification has effect.

16 Byelaws

- (1) SNH may make byelaws for the protection of a site of special scientific interest.
- (2) The following provisions of the National Parks and Access to the Countryside Act 1949 (c.97) apply, subject to subsection (3), in relation to byelaws under subsection (1) as they apply in relation to byelaws under section 20 of that Act—
 - (a) subsections (2) and (3) of section 20 (reading references in those subsections to nature reserves as references to sites of special scientific interest), and
 - (b) sections 106 and 107.
- (3) SNH may—
 - (a) put up, maintain or remove signs on any land, or
 - (b) take such other action as it considers appropriate,

for the purpose of providing information to the public in relation to any land in respect of which byelaws have been made under subsection (1).

*Supplementary***17 Change of owner or occupier**

- (1) This section applies where the owner of land within a site of special scientific interest—
 - (a) disposes of any interest in the land, or
 - (b) becomes aware that it is occupied by an additional or a different occupier.
- (2) The owner must, within the period of 28 days beginning with the date on which the owner disposed of the interest or became aware of the change in occupation, send a notice to SNH.
- (3) The notice must specify the land concerned and—
 - (a) in the case of a disposal, the date on which the owner disposed of the interest in the land and the name and address of the person to whom the owner disposed of the interest,
 - (b) in the case of a change in occupation, the date, to the best of the owner's knowledge, on which the change took place and, as far as the owner knows them, the name and address of the additional or different occupier.
- (4) A person who, without reasonable excuse, fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) For the purposes of this section, an owner is treated as disposing of an interest in land if the owner disposes of it by way of sale, exchange or lease, or by way of the creation of any servitude, right or privilege over that interest or by any other way except the grant of a standard security.

18 SSSI Register

- (1) SNH must compile and maintain, in respect of each planning authority, a register containing—
 - (a) copies of each SSSI notification which relates wholly or partly to land situated within the district of the authority,
 - (b) copies of all—
 - (i) notifications given under section 5(1), 6(4) or 7(1),
 - (ii) notices given under paragraph 8 or 11 of schedule 1,in relation to the SSSI notification, and
 - (c) such other information as SNH considers appropriate in relation to the SSSI notification.
- (2) Each planning authority must keep a copy of the register relating to its district available at its principal office for public inspection free of charge, and may similarly keep, at such of its other offices as it thinks fit, a copy of such part of the register as appears to it to relate to the area in which the office is situated.

CHAPTER 2

NATURE CONSERVATION ORDERS

19 Nature conservation orders

- (1) Where the Scottish Ministers consider that, for either or both of the purposes specified in subsection (2), the carrying out of an operation on—
 - (a) land which is, or forms part of, a site of special scientific interest,
 - (b) land which is not, or does not form part of, a site of special scientific interest but is, in the opinion of the Scottish Ministers, of special interest by reason of any aspect of its natural heritage,
 - (c) land which is contiguous to, or which the Scottish Ministers consider to be otherwise associated with, land of the type described in paragraph (a) or (b), or
 - (d) any combination of land of the types described in paragraphs (a) to (c),should be prohibited, they may make an order (a “nature conservation order”) specifying the operation and prohibiting any person from carrying it out on such land.
- (2) Those purposes are—
 - (a) the conservation of any aspect of natural heritage by reason of which land (whether or not the land in question) is a site of special scientific interest or, as the case may be, is otherwise considered by the Scottish Ministers to be of special interest,
 - (b) compliance with an international obligation.
- (3) Each operation specified in a nature conservation order is, in relation to the land to which the order relates, referred to in this Part as a “prohibited operation”.
- (4) A nature conservation order has effect on being made.
- (5) A nature conservation order ceases to have effect—
 - (a) on the date on which a decision not to confirm it is made under paragraph 5 of schedule 2,
 - (b) if no decision is made under that paragraph within the period mentioned in subparagraph (a) of that paragraph or that period as extended under paragraph 12 of that schedule, at the end of that period, or
 - (c) on the date on which an order under section 20(1) revoking it is confirmed.

20 Amendment or revocation of nature conservation orders

- (1) The Scottish Ministers may by order amend or revoke a nature conservation order (and an order under this subsection is, in this Part, referred to as an amending order or, as the case may be, a revoking order).
- (2) An amending order may—
 - (a) add to the prohibited operations specified in a nature conservation order, modify the description of any prohibited operation so specified or remove any prohibited operation so specified from the order,
 - (b) extend or restrict the area of land to which a nature conservation order relates.
- (3) An amending order has effect on being made.

- (4) A nature conservation order which is amended by an amending order has effect, for so long as the amending order has effect, as amended.
- (5) A revoking order may revoke a nature conservation order in relation to part only of the land to which the nature conservation order relates.
- (6) A revoking order does not have effect until confirmed in accordance with paragraph 5 of schedule 2.

21 Nature conservation orders and related orders: procedure

Schedule 2 sets out procedure relating to nature conservation orders, amending orders and revoking orders.

22 Review of prohibited operations

- (1) The Scottish Ministers—
 - (a) must, on the request of any owner or occupier of land to which a nature conservation order relates,
 - (b) may when they think fit,review the prohibited operations specified in a nature conservation order.
- (2) The Scottish Ministers must not carry out—
 - (a) the first such review within 5 years of the date on which the nature conservation order was made,
 - (b) any subsequent such review within 5 years of the previous review,except where the review is carried out under subsection (1)(b) and the Scottish Ministers have obtained the agreement of every owner and occupier of land to which the nature conservation order relates.
- (3) Such agreement is obtained if the Scottish Ministers give notice of a proposed review to every owner and occupier of land to which the nature conservation order relates and—
 - (a) every such person agrees in writing to the Scottish Ministers carrying out the review, or
 - (b) no objection by any such person to the carrying out of the review is received by the Scottish Ministers within 28 days of the date on which the notice was given.
- (4) If, on completion of a review, the Scottish Ministers are of the opinion that the nature conservation order should be amended by—
 - (a) adding to the prohibited operations specified in it,
 - (b) modifying the description of any prohibited operation so specified, or
 - (c) removing any prohibited operation so specified from it,they must make an amending order to that effect.

23 Offences in relation to nature conservation orders

- (1) A person who carries out, or causes or permits to be carried out, a prohibited operation on any land to which a nature conservation order relates is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £20,000,
 - (b) on conviction on indictment, to a fine.
- (2) It is not a defence in proceedings for an offence under subsection (1) that the carrying out of the prohibited operation did not damage any aspect of the natural heritage of the land to which the nature conservation order relates.

24 SNH functions in relation to nature conservation orders

- (1) SNH may—
- (a) put up, maintain or remove signs on any land, or
 - (b) take such other action as it considers appropriate,
- for the purpose of providing information to the public in relation to any land to which a nature conservation order relates.
- (2) A report submitted by SNH under section 10(2) (annual report) of the Natural Heritage (Scotland) Act 1991 (c.28) for any year must set out particulars of any land in relation to which a nature conservation order, amending order or revoking order has come into effect during that year.

CHAPTER 3

LAND MANAGEMENT ORDERS

25 Proposals for land management orders

- (1) This section applies to—
- (a) land which is, or forms part of, a site of special scientific interest,
 - (b) land which is contiguous to, or which SNH considers to be otherwise associated with, a site of special scientific interest,
 - (c) any combination of land of the type described in paragraphs (a) and (b).
- (2) Where—
- (a) subsection (3) or (4) applies, and
 - (b) SNH considers that an order under section 26(1) (a “land management order”) in relation to the land is necessary or expedient for the purpose of conserving or enhancing any aspect of natural heritage by reason of which an SSSI notification has effect,
- SNH may propose to the Scottish Ministers that they make a land management order.
- (3) This subsection applies where—
- (a) SNH has offered to enter into a management agreement in relation to land to which this section applies for the purpose specified in subsection (2)(b), and
 - (b) the offeree has refused or failed to enter into the agreement.
- (4) This subsection applies where a person who has entered into a management agreement with SNH in relation to land to which this section applies for the purpose specified in subsection (2)(b) has failed to comply with the agreement.
- (5) A proposal under subsection (2) must—

- (a) describe the land to which it relates in a manner which would be sufficient to enable a document relating to the land to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland,
- (b) be accompanied by a map on which the land is delineated,
- (c) describe the aspect of natural heritage in question,
- (d) explain why SNH offered to enter into the management agreement referred to in subsection (3)(a) or, as the case may be, specify the failure to comply with the management agreement referred to in subsection (4),
- (e) specify—
 - (i) any operations (including any operations requiring consent) which should be carried out on the land for the purpose of conserving or enhancing that aspect of natural heritage,
 - (ii) the persons who should carry out the operations, and
 - (iii) how the operations should be carried out,
- (f) state—
 - (i) the costs which the persons referred to in paragraph (e)(ii) are likely to incur by so doing, and
 - (ii) whether SNH should make any payments to those persons in respect of those costs and, if so, the amount of those payments, and
- (g) specify any operations which should not be carried out on the land.

26 Power to make land management orders

- (1) The Scottish Ministers must, within 3 months of the expiry of the period during which representations on a proposal for a land management order may be made in pursuance of paragraph 3(c) of schedule 3, after considering the matters specified in subsection (2)—
 - (a) make a land management order in the manner which has been proposed,
 - (b) make such other land management order as the Scottish Ministers think fit in relation to the land, or any part of the land, to which the proposal relates, or
 - (c) refuse to make a land management order in relation to that land or any part of it.
- (2) Those matters are—
 - (a) the proposal under section 25(2) and the accompanying map,
 - (b) any representations made to them in pursuance of paragraph 3(c) of schedule 3, and
 - (c) any information provided to them in pursuance of paragraph 6 of that schedule in relation to the proposal.

27 Content of land management orders

- (1) A land management order must—
 - (a) describe the land to which the order relates in a manner which would be sufficient to enable the order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland,

- (b) be accompanied by a map on which the land is delineated,
 - (c) describe the aspect of the natural heritage of the land which is to be conserved or enhanced in pursuance of the order, and
 - (d) specify—
 - (i) the operations which are to be carried out on the land for the purpose of conserving or enhancing that aspect,
 - (ii) the persons who are to carry out those operations, and
 - (iii) how those operations are to be carried out,
 - (e) specify any operations which must not be carried out on the land,
 - (f) specify the date on which the order is to come into effect and the period for which it is to have effect, and
 - (g) set out the circumstances in which an appeal may be made, under section 30(1), against the decision to make the order.
- (2) Any operation specified in a land management order by virtue of subsection (1)(e) is, in relation to the land to which the order relates, referred to in this Part as an “excluded operation”.
- (3) A land management order may provide for the making of payments by SNH to any person in respect of costs incurred by the person in carrying out an operation specified in the order by virtue of subsection (1)(d)(i).

28 Review of land management orders

- (1) The Scottish Ministers—
- (a) must, on the request of any owner or occupier of land to which a land management order relates,
 - (b) may when they think fit,
- review the land management order.
- (2) The Scottish Ministers must not carry out—
- (a) the first such review within 5 years of the date on which the land management order was made,
 - (b) any subsequent such review within 5 years of the previous review,
- except where the review is carried out under subsection (1)(b) and the Scottish Ministers have obtained the agreement of every owner and occupier of land to which the land management order relates.
- (3) Such agreement is obtained if the Scottish Ministers give notice of a proposed review to every owner and occupier of land to which the order relates and—
- (a) every such person agrees in writing to the Scottish Ministers carrying out the review, or
 - (b) no objection by any such person to the carrying out of the review is received by the Scottish Ministers within 28 days of the date on which the notice was given.
- (4) If, on completion of a review, the Scottish Ministers decide that the land management order should be amended or revoked they may make an order to that effect.

29 Land management orders and related orders: procedure

Schedule 3 sets out procedure relating to land management orders and orders under section 28(4).

30 Appeals in connection with land management orders and related orders

- (1) Any owner or occupier of land to which a land management order relates who is aggrieved by—
 - (a) a decision of the Scottish Ministers to make a land management order or an order under section 28(4), or
 - (b) the terms or conditions of such an order,may appeal to the Scottish Land Court.
- (2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the Scottish Ministers gave notice to the appellant of the decision being appealed.
- (3) The Scottish Land Court must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—
 - (a) affirming the order in question,
 - (b) directing the Scottish Ministers to amend the order in such manner as the Court may specify,
 - (c) directing the Scottish Ministers to revoke the order,
 - (d) making such other order as it thinks fit.

31 Effect of land management orders

- (1) A land management order—
 - (a) has effect—
 - (i) from the expiry of the period within which an appeal against the decision to make the order may be made, or
 - (ii) where such an appeal is made, from the day on which the appeal is finally determined (otherwise than by a direction to revoke the order) or, as the case may be, abandoned,
 - (b) ceases to have effect—
 - (i) on the expiry of the period within which an appeal against the decision to make an order under section 28(4) revoking the land management order may be made, or
 - (ii) where such an appeal is made, on the day on which the appeal is finally determined (otherwise than by a direction to revoke the land management order) or, as the case may be, abandoned.
- (2) A land management order has effect—
 - (a) from the expiry of the period within which an appeal against the decision to make an order under section 28(4) amending the land management order may be made, or

- (b) where such an appeal is made, from the day on which the appeal is finally determined (otherwise than by a direction to revoke the order) or, as the case may be, abandoned,

as amended by the order under that section.

32 Offences in relation to land management orders

- (1) A person who fails to carry out an operation which the person is required, by a land management order, to carry out in the manner so required is guilty of an offence.
- (2) A person who carries out, or causes or permits to be carried out, an excluded operation is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.

33 Enforcement of land management orders

If SNH considers that—

- (a) any operation required to be carried out by a land management order has not been carried out within the period or by the date specified in it, or
- (b) any such operation has been carried out otherwise than in the manner so specified,

SNH may carry out the operation, or carry out such further work as is necessary to ensure that it is carried out, in the manner so specified.

CHAPTER 4

COMPULSORY PURCHASE

34 Compulsory purchase for purpose of conserving natural heritage

- (1) SNH may, with the authorisation of the Scottish Ministers, acquire compulsorily all or any part of—
 - (a) a site of special scientific interest,
 - (b) any other land to which a nature conservation order or land management order applies,

where it considers it necessary to do so for the purpose of securing the conservation of any aspect of natural heritage by reason of which the SSSI notification, nature conservation order or, as the case may be, land management order has effect.

- (2) The power to acquire land under this section includes power to acquire a servitude or other right in or over land by the creation of a new right.
- (3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to an acquisition under this section as if—
 - (a) this section had been in force immediately before the commencement of that Act,
 - (b) references in that Act to a local authority were references to SNH.

- (4) The Scottish Land Court may, on being satisfied, on an application by any person who has an interest in land which SNH proposes to acquire under this section, that reasonable steps have been taken for the purpose referred to in subsection (1), by order prohibit further proceedings on the acquisition.
- (5) An application for an order under subsection (4) must be lodged not later than 28 days after the service of the notice required to be served under paragraph 3(b) of Schedule 1 to that Act of 1947.
- (6) Any person aggrieved by a decision of the Scottish Land Court on such an application may appeal, on a point of law only, against the decision to the Court of Session.
- (7) Where SNH acquires land compulsorily under this section it may—
 - (a) manage the land itself, or
 - (b) dispose of the land, or of any interest in it, on terms designed to secure the conservation of any aspects of natural heritage by reason of which an SSSI notification has effect in relation to the land or part of it.

CHAPTER 5

SUPPLEMENTARY

35 Restoration orders

- (1) Where—
 - (a) a person is convicted of an offence under section 15(1), or
 - (b) the operation in respect of which a person is convicted of an offence under section 15(3) or (4), 23(1) or 32(2) has damaged any aspect of natural heritage by reason of which land is a site of special scientific interest or, as the case may be, is considered by the Scottish Ministers to be of special interest,

the court by which the person is convicted may, in addition to dealing with the person in any other way, by order require the person to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the aspect of natural heritage to its former condition as may be so specified.
- (2) Before making an order under subsection (1), the court must have regard to any representations by SNH as to the manner in which the aspect should be restored.
- (3) At any time before an order under subsection (1) has been complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or modify the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.
- (4) If, within the period specified in an order under subsection (1), the person against whom the order was made fails, without reasonable excuse, to comply with it, the person is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding £20,000,
 - (b) on conviction on indictment, to a fine.
- (5) If, within the period specified in an order under subsection (1), any operations specified in the order have not been carried out in accordance with the order, SNH may—
 - (a) carry out those operations, and

- (b) recover from the person against whom the order was made any expenses reasonably incurred by it in doing so.
- (6) An order under subsection (1) is, for the purposes of any appeal or review, to be treated as a sentence.

36 Powers of entry

- (1) Any person authorised in writing by SNH may, at any reasonable time, enter any land for any of the following purposes—
 - (a) to determine whether to give or confirm an SSSI notification or a notification under section 5(1), 6(4) or 7(1) in relation to the land,
 - (b) to assess the condition of the aspect of the natural heritage of land by reason of which it is a site of special scientific interest or, as the case may be, considered by the Scottish Ministers to be of special interest,
 - (c) to determine whether or not to offer to enter into a management agreement in relation to the land or to ascertain the terms on which it should offer to enter into such an agreement,
 - (d) to ascertain whether a management agreement is being, or has been, complied with,
 - (e) to determine whether or not to formulate a proposal under section 25(2) for a land management order,
 - (f) to ascertain whether an offence under section 15(1), (3) or (4), 17(4), 23(1) or 32(1) or (2) or under byelaws made by virtue of section 16 is being, or has been, committed on or in relation to the land,
 - (g) to ascertain whether an operation required to be carried out by a land management order or an order under section 35(1) has been carried out in accordance with the order in question,
 - (h) to carry out operations in pursuance of section 33 or 35(5),
 - (i) to determine any question in relation to the acquisition of the land by agreement or compulsorily,
 - (j) to determine any question in relation to compensation under section 20(3) of the National Parks and Access to the Countryside Act 1949 (c.97) as it applies in relation to byelaws made under section 16,
 - (k) to put up, maintain or remove signs, or to do anything else, in pursuance of section 16(3) or 24(1).
- (2) Any person authorised in writing by the Scottish Ministers may, at any reasonable time, enter any land for either of the following purposes—
 - (a) to determine whether a nature conservation order, or an amending order or revoking order, should be made in relation to the land,
 - (b) to determine whether a land management order, or an order under section 28(4) amending or revoking such an order, should be made in relation to the land.
- (3) The powers conferred by subsections (1) and (2) to enter land for any purpose mentioned in those subsections include power to enter for the same purpose any land other than that referred to in the subsection in question.
- (4) Nothing in this section authorises any person to enter a dwelling.

- (5) A person authorised under this section to enter any land must, if so required by the occupier or anyone acting on the occupier's behalf, produce evidence of the person's authority.
- (6) A person so authorised may not demand admission as of right to any land which is occupied unless—
- (a) the entry is for the purpose mentioned in paragraph (f) of subsection (1), or
 - (b) at least—
 - (i) in a case where admission is for purpose mentioned in paragraph (h) or (k) of that subsection, 14 days', or
 - (ii) in any other case (other than where admission is for purpose mentioned in paragraph (f) of that subsection), 24 hours',notice of the intended entry has been given.
- (7) Any such notice must be given to the occupier of the land and, where practicable, to the owner of the land.
- (8) The sheriff, if satisfied that there are reasonable grounds for a person to enter any land for any of the purposes mentioned in subsections (1) and (2) and that—
- (a) admission to that land has been refused,
 - (b) such refusal is apprehended, or
 - (c) the land is unoccupied or the occupier is temporarily absent,
- may grant a warrant authorising the person to enter the land, if necessary using reasonable force, and a warrant so issued continues in force until the purpose for which the entry is required has been satisfied.
- (9) The sheriff must not grant a warrant under subsection (8) unless notice of the intended entry has been given in accordance with subsections (6) and (7).
- (10) A person entering any land by virtue of this section may—
- (a) be accompanied by such other persons, and
 - (b) take onto the land such machinery, other equipment and materials,
- as may be necessary for the purpose for which the entry is taken.
- (11) A person leaving any land which has been entered by virtue of this section, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the person found it.
- (12) Any person who intentionally obstructs a person acting in the exercise of any power conferred by this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (13) SNH or, as the case may be, the Scottish Ministers must compensate any person who has sustained damage by reason of—
- (a) the exercise by a person authorised by SNH or, as the case may be, the Scottish Ministers of any powers conferred on the person by virtue of this section, or
 - (b) the failure of a person so authorised to perform the duty imposed by subsection (11),
- unless the damage is attributable to the fault of the person who sustained it.

- (14) Any dispute as to a person's entitlement to compensation in pursuance of subsection (13) or as to the amount of the compensation is to be determined by arbitration.

37 Guidance

- (1) The Scottish Ministers may prepare or adopt codes containing such recommendations, advice and information as they consider proper for the guidance of—
- (a) SNH in exercising its functions under this Part, and
 - (b) persons affected or likely to be affected by the exercise by SNH of any of those functions.
- (2) A code prepared or adopted under subsection (1) may, in particular, contain information as to circumstances in which, and the terms and conditions on which, SNH should offer to enter into a management agreement.
- (3) The Scottish Ministers may revise any such code by revoking, modifying or adding to the provisions of the code in such manner as they think fit.
- (4) Before preparing a code under subsection (1), the Scottish Ministers must consult SNH and such persons appearing to them to represent other interests concerned as they think fit.
- (5) If the Scottish Ministers exercise their power to prepare, adopt, modify or revoke a code they must—
- (a) prepare a report on their exercise of the power, and
 - (b) lay—
 - (i) the report, and
 - (ii) where a code has been prepared, adopted or modified, a copy of it, before the Scottish Parliament.
- (6) The Scottish Ministers must—
- (a) publish every code prepared, adopted or revised under this section in such manner (including on the internet or by other electronic means) as they think fit, and
 - (b) arrange for copies of it to be put on public sale at such price as they may determine.

38 Offences: penalties, defences and time limits

- (1) The court must, in determining the amount of any fine to be imposed on a person convicted of an offence under this Part, have regard in particular to any financial benefit which has accrued or is likely to accrue to the person in consequence of the offence.
- (2) Subsection (3) applies where a person charged with an offence under this Part relies—
- (a) in the case of an offence under subsection (1) of section 15, on a defence under subsection (2) of that section,
 - (b) in the case of an offence under section 15(3) or (4), 17(4) or 35(4) or paragraph 8 of schedule 3, on a defence of reasonable excuse,
- and evidence is adduced which is sufficient to raise an issue with respect to that defence.

- (3) Where this subsection applies the person charged with an offence is to be taken to have adduced evidence which is sufficient to show that the defence is satisfied unless the contrary is proved by the prosecution beyond reasonable doubt.
- (4) Summary proceedings for an offence under this Part may, subject to subsection (5), be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.
- (5) No such proceedings may be brought more than 3 years—
 - (a) after the commission of the offence, or
 - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (6) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

39 Offences by bodies corporate etc.

- (1) Where an offence under this Part committed—
 - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a director, manager or secretary of the body corporate, or
 - (ii) purports to act in any such capacity,
 - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a partner, or
 - (ii) purports to act in that capacity,
 - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is concerned in the management or control of the association, or
 - (ii) purports to act in the capacity of a person so concerned,

the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

40 Notices

- (1) In this Part “notice” and “notification” mean notice or notification in writing.
- (2) A reference in this Part to SNH or the Scottish Ministers giving notice or notification to the interested parties is a reference to giving notice or notification to—

- (a) every owner and occupier of the land, or any part of it, to which the notice or notification relates,
- (b) the Scottish Ministers or, as the case may be, SNH,
- (c) every local authority in whose area the land, or any part of it, is situated,
- (d) where the land, or any part of it, is situated in a National Park, the National Park authority for the National Park,
- (e) where a planning authority for the district in which the land, or any part of it, is situated is not notified under paragraph (c) or (d), that planning authority,
- (f) every community council (within the meaning of Part IV of the Local Government (Scotland) Act 1973 (c.65)) in whose area the land, or any part of it, is situated,
- (g) every statutory undertaker which the person giving the notice or notification considers may carry out operations which may affect the land or any part of it,
- (h) every relevant regulatory body which the person giving the notice or notification considers likely to have functions which relate to the land or any part of it,
- (i) every community body which has registered an interest in the land, or in any part of it, under Part 2 of the Land Reform (Scotland) Act 2003 (asp 2),
- (j) every other person appearing to the person giving the notice or notification to have an interest in the land or any part of it, and
- (k) such other persons as the person giving the notice or notification thinks fit,

and the date on which the Scottish Ministers or, as the case may be, SNH receive a notice or notification given to the interested parties is to be treated as the date on which the notice or notification is given.

- (3) The Scottish Ministers may by order modify subsection (2) so as to—
 - (a) add or remove a type of person to or, as the case may be, from those referred to in that subsection, or
 - (b) amend any description of a type of person so referred to.
- (4) Subsection (5) applies where, in any case where notice or notification is to be given under this Part to the owners and occupiers of land, SNH is or, as the case may be, the Scottish Ministers are not aware of the name or address of any owner or occupier of the land.
- (5) Where this subsection applies a copy of the notice or notification must be addressed to “The owners and any occupiers” of the land (describing it) and a copy of it must be affixed to some conspicuous object on the land (and so doing is to be treated as sufficient for the purposes of providing notice or notification to each owner or occupier whose name and address is unknown).

41 Interpretation of Part 2

- (1) In this Part—
 - “amending order” has the meaning given in section 20(1),
 - “excluded operation” has the meaning given in section 27(2),
 - “land management order” has the meaning given in section 25(2),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39)

“management agreement” means an agreement under—

- (a) section 16 (agreements for establishment of nature reserves) of the National Parks and Access to the Countryside Act 1949 (c.97),
- (b) section 49A (agreements to secure the conservation and enhancement, or to foster the understanding and enjoyment, of natural heritage) of the Countryside (Scotland) Act 1967 (c.86), or
- (c) section 15 (agreements for the purpose of conserving the natural heritage of areas of special scientific interest) of the Countryside Act 1968 (c.41),

“natural heritage” means, in relation to land, the flora, fauna and geological and geomorphological features of the land,

“nature conservation order” means an order under section 19(1),

“operations” includes works and other activities,

“operation requiring consent” has the meaning given in section 3(6),

“permission” includes authorisation, consent and any other type of permission (and “permit”, “permitted” and “permitting” are to be construed accordingly),

“prohibited operation” has the meaning given in section 19(3),

“relevant regulatory authority” means a person designated as such for the purposes of this Part by order made by the Scottish Ministers,

“revoking order” has the meaning given in section 20(1),

“site of special scientific interest” has the meaning given in section 3(5),

“SNH” means Scottish Natural Heritage,

“SSSI notification” has the meaning given in section 3(4),

“statutory undertaker” means—

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of water or hydraulic power,
- (b) the operator of a telecommunications code system (within the meaning of the Telecommunications Act 1984 (c.12)),
- (c) an airport operator (within the meaning of the Airports Act 1986 (c.31)) operating an airport to which Part V of that Act applies,
- (d) a gas transporter, within the meaning of Part I of the Gas Act 1986 (c.44),
- (e) a holder of a licence under section 6(1) of the Electricity Act 1989 (c.29),
- (f) Scottish Water,
- (g) the Civil Aviation Authority or a holder of a licence under Chapter I of Part I of the Transport Act (c.38) (to the extent that the person holding the licence is carrying out activities authorised by it), or
- (h) a universal postal service provider within the meaning of the Postal Services Act 2000 (c.26).

- (2) A reference in this Part to damaging an aspect of natural heritage includes a reference to causing that aspect to deteriorate.

PART 3

GENERAL

42 Orders: general

- (1) Any power of the Scottish Ministers under this Act to make orders (except nature conservation orders, amending orders, revoking orders, land management orders and orders under section 28(4)) is exercisable by statutory instrument.
- (2) Any such power includes power to make—
 - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes and different areas.
- (3) An order under section 43 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order under this Act (except section 43 (where subsection (5) applies) and section 46) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No order under section 43 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

43 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

44 Minor and consequential amendments and repeals

Schedule 4 sets out minor amendments and amendments and repeals consequential upon the provisions of this Act.

45 Interpretation

In this Act, “public body or office-holder” includes any person exercising functions of a public nature.

46 Short title and commencement

- (1) This Act may be cited as the Nature Conservation (Scotland) Act 2003.
- (2) This Act (except sections 42 and 43 and this section) comes into force on such day as the Scottish Ministers may by order appoint.

SCHEDULE 1
(introduced by section 8)

NOTIFICATIONS RELATING TO SITES OF SPECIAL SCIENTIFIC INTEREST: PROCEDURE

Application of schedule

- 1 This schedule applies to SSSI notifications and notifications given under sections 5(1), 6(4) and 7(1).

Publication

- 2 SNH must publish a copy of each notification to which this schedule applies—
- (a) in at least one local newspaper circulating in the area in which the land to which the notification relates is situated, and
 - (b) in such other manner (including on the internet or by other electronic means) as SNH thinks fit.

Content of notification

- 3 A notification to which this schedule applies must—
- (a) name a place where a copy of it and each document and map which accompanies it may be inspected free of charge at all reasonable hours,
 - (b) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by SNH, a copy of it or any such document or map, and
 - (c) specify the period (not being less than 3 months from the date on which the notification is given) during which, and the manner in which, representations with respect to the notification may be made.

Confirmation or withdrawal of notification

- 4 SNH must, within—
- (a) the period of one year beginning with the date on which a notification to which this schedule applies was given, or
 - (b) if that period is extended under paragraph 9, the period as so extended,
- after considering any representations made within the period specified in the notification, decide to confirm or withdraw the notification.
- 5 SNH is, if it does not give notice under paragraph 8 within the period mentioned in paragraph 4(a) or that period as extended, to be treated as having withdrawn the notification and as having given notice of that fact on the day on which the period expired.

Modification of notification

- 6 SNH may confirm a notification to which this schedule applies with or without modifications; and the notice under paragraph 8 must specify the modifications (if any) which it has made.

- 7 Such modifications must not have the effect of—
- (a) adding to the operations requiring consent specified in an SSSI notification, or
 - (b) extending the area of a site of special scientific interest.

Notice of decision to confirm or withdraw

- 8 SNH must, as soon as practicable after making a decision under paragraph 4—
- (a) give notice of it to the interested parties, and
 - (b) publish it in accordance with paragraph 3(a) and (b).

Extension of period during which notification is to be confirmed or withdrawn

- 9 SNH may, with the agreement (obtained in accordance with paragraph 10) of every owner and occupier of land within the site of special scientific interest, extend or further extend the period mentioned in paragraph 4(a) by such period as may be agreed with those persons.
- 10 Agreement is obtained for the purposes of paragraph 9 if SNH, at any time before the expiry of the period to be extended or further extended, gives notice of the proposed extension or further extension to every owner and occupier of land within the site of special scientific interest and—
- (a) every such person agrees in writing to the extension, or
 - (b) no objection by any such person to the extension is received by SNH within 28 days of the date on which the notice was given.
- 11 Where SNH extends or further extends the period mentioned in paragraph 4(a) it must give notice of the extension, or further extension, to the interested parties.

SCHEDULE 2
(introduced by section 21)

NATURE CONSERVATION ORDERS AND RELATED ORDERS: PROCEDURE

Application of schedule

- 1 This schedule applies to nature conservation orders, amending orders and revoking orders.

Consultation

- 2 Before making an order to which this schedule applies the Scottish Ministers must—
- (a) consult SNH on the proposed order, and
 - (b) have regard to any representations made by SNH.

Notification

- 3 The Scottish Ministers must, as soon as practicable after making an order to which this schedule applies, give notice of it—
- (a) to the interested parties,

- (b) in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and
 - (c) in such other manner (including on the internet or by other electronic means) as they think fit.
- 4 The notice must—
- (a) set out the order or describe its general effect and, in either case, state whether it has taken effect,
 - (b) where the notice does not set out the order—
 - (i) name a place where a copy of it may be inspected free of charge at all reasonable hours, and
 - (ii) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by the Scottish Ministers, a copy of it, and
 - (c) specify the period (not being less than 3 months from the date on which the notice is given) during which, and the manner in which, representations with respect to the order may be made.

Confirmation of orders

- 5 The Scottish Ministers must, within—
- (a) the period of one year beginning with the date on which an order to which this schedule applies was made, or
 - (b) if that period is extended under paragraph 12, the period as so extended,
- after considering any representations made within the period specified in the notice and the report of any person appointed under paragraph 10 to hold an inquiry or to hear representations, decide either to confirm or not to confirm the order.
- 6 The Scottish Ministers may confirm the order with or without modifications; and the notice given under paragraph 8 of the decision to confirm must specify the modifications (if any) which they have made.
- 7 Such modifications must not extend the area of land to which a nature conservation order relates.
- 8 The Scottish Ministers must, as soon as practicable after making a decision under paragraph 5, give notice of it in accordance with paragraph 3(a) to (c).
- 9 An order which is confirmed with modifications has effect, from the giving of notice under paragraph 8 of the decision to confirm, in its modified form.

Inquiry or other opportunity to be heard

- 10 If any representation made during the period specified in the notice is not withdrawn during the period mentioned in paragraph 5(a), or that period as extended, the Scottish Ministers must—
- (a) cause a local inquiry to be held, or
 - (b) give the person who made the representation an opportunity of being heard by a person appointed by the Scottish Ministers for the purpose.

- 11 Subsections (4) to (8) (which relate to the giving of evidence at, and defraying the cost of, local inquiries) of section 210 of the Local Government (Scotland) Act 1973 (c.65) apply in relation to any inquiry held under paragraph 10(a) as they apply in relation to a local inquiry which is caused to be held under subsection (1) of that section.

Extension of period

- 12 The Scottish Ministers may, with the agreement (obtained in accordance with paragraph 13) of every owner and occupier of land to which the order relates, extend or further extend the period mentioned in paragraph 5(a) by such period as may be agreed with those persons.
- 13 Agreement is obtained for the purposes of paragraph 12 if the Scottish Ministers, at any time before the expiry of the period to be extended or further extended, give notice of the proposed extension or further extension to every owner and occupier of land to which the order relates and—
- (a) every such person agrees in writing to the extension, or
 - (b) no objection by any such person to the extension is received by the Scottish Ministers within 28 days of the date on which the notice was given.
- 14 Where the Scottish Ministers extend or further extend the period mentioned in paragraph 5(a) they must give notice of the extension, or further extension, to the interested parties.

Recording or registration of orders

- 15 An order to which this schedule applies and a notice under paragraph 8 must be recorded in the General Register of Sasines or registered in the Land Register of Scotland as appropriate.

Procedure for questioning validity of orders

- 16 Paragraph 17 applies to any order to which this schedule applies in respect of which the Scottish Ministers have given notice under paragraph 8.
- 17 The Court of Session may, on being satisfied on the application of any person with an interest in land to which the order relates—
- (a) that the order is not within the powers of section 19, or
 - (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the requirements of this schedule,
- make such declarator as seems to the Court to be appropriate.
- 18 The validity of an order to which this schedule applies may not be questioned in any legal proceedings otherwise than in accordance with paragraph 17.

SCHEDULE 3
(introduced by section 29)

LAND MANAGEMENT ORDERS AND RELATED ORDERS: PROCEDURE

Notification of proposals for land management order

- 1 SNH must—

- (b) give a copy of a proposal under section 25(2) for a land management order and the map accompanying it to the every owner and occupier of land to which the proposal relates,
 - (a) give notice of the proposal to each of the other interested parties, and
 - (b) provide the Scottish Ministers with—
 - (i) the name and address of each of the interested parties, and
 - (ii) such other information as SNH thinks fit in relation to the proposal.
- 2 SNH must also arrange for notification of the proposal to be published—
- (a) in at least one local newspaper circulating in the area in which the land to which the proposal relates is situated, and
 - (b) in such other manner (including on the internet or by other electronic means) as SNH thinks fit.
- 3 A notification under paragraph 1 or 2 must—
- (a) name a place where a copy of the proposal and the map which accompanies it may be inspected free of charge at all reasonable hours,
 - (b) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by SNH, a copy of the proposal or map,
 - (c) specify the manner in which representations with respect to the proposal may be made to the Scottish Ministers.
- 4 Such representations may be made at any time—
- (a) during the period of three months beginning on the date on which the notice under paragraph 1(a) is given, or
 - (b) if that period is extended under paragraph 5, during that period as extended.
- 5 The Scottish Ministers may, on the application of any person or of their own accord, extend the period mentioned in paragraph 4(a) by such further period of up to 3 months as they think fit by giving notice of the extension, at any time before the expiry of the period so mentioned, to the persons to whom notice was given under paragraph 1.

Power to require disclosure of information

- 6 The Scottish Ministers may give notice to—
- (a) SNH, or
 - (b) any person to whom SNH has given notice, under paragraph 1, of a proposal for a land management order,
- requiring SNH or the person to provide the Scottish Ministers, at a time and place and in the form and manner specified in the notice, with such document or other information relating to the proposal as may be specified in the notice.
- 7 Paragraph 6 does not authorise the Scottish Ministers to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- 8 A person who—
- (a) refuses or fails, without reasonable excuse, to do anything required of the person by a notice given under paragraph 6, or

(b) intentionally alters, suppresses or destroys a document containing any information which that person has been required by such a notice to produce,

is guilty of an offence.

9 A person guilty of an offence under paragraph 8 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Withdrawal of proposal

10 SNH may, at any time before the Scottish Ministers decide whether to make a land management order on a proposal under section 25(2), withdraw the proposal by giving notice to each person to whom it gave notice, under paragraph 1, of the proposal.

Notification of decision on orders

11 The Scottish Ministers must publish a decision under section 26(1) or 28(4)—

(a) in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and

(b) in such other manner (including on the internet or by other electronic means) as they think fit.

12 The Scottish Ministers must also give notice of their decision to the interested parties.

13 Such a notice must specify—

(a) the Scottish Ministers’ reasons for making their decision,

(b) if they have decided to make a land management order other than in the manner proposed by SNH, the manner in which the order made differs from the order proposed,

(c) if they have decided to amend the order, the amendments to be made to the land management order, and

(d) the circumstances in which an appeal may be made under section 30(1) against their decision.

Recording or registration of orders

14 A land management order, and any order under section 28(4) amending or revoking a land management order, must be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

SCHEDULE 4

(introduced by section 44)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Harbours Act 1964 (c.40)

1 In Schedule 3 to the Harbours Act 1964 (procedure for making harbour revision and empowerment orders), in paragraph 1 (interpretation), for paragraphs (a) and (b) of the definition of “sensitive area” substitute—

“(a) land within a site of special scientific interest;

- (b) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2003 (asp 00) has effect;”.

Conservation of Seals Act 1970 (c.30)

- 2 In section 10 of the Conservation of Seals Act 1970 (power to grant licences to kill or take seals), in subsection (4)—
- (a) for paragraphs (b) and (c) substitute—
 - “(b) is a site of special scientific interest;
 - (c) is an area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2003 (asp 00) has effect; or”;
 - (b) in paragraph (d), for “that Act” substitute “the Wildlife and Countryside Act 1981”.

Wildlife and Countryside Act 1981 (c.69)

- 3 (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) Sections 28, 29, 30 and 31 are repealed.
 - (3) In section 50(1) (payments by SNH under agreements for establishment of a nature reserve or for conservation of area of special scientific interest), in paragraph (a), subparagraph (i) is repealed.
 - (4) In section 51 (powers of entry)—
 - (a) in subsection (1), paragraphs (a) and (b) are repealed,
 - (b) in subsection (2), paragraph (a) is repealed,
 - (c) in subsection (3)(b), “29,” is repealed.
 - (5) Section 74(5A) is repealed.

Channel Tunnel Act 1987 (c.53)

- 4 Section 9 of the Channel Tunnel Act 1987 is repealed.

Environmental Protection Act 1990 (c.43)

- 5 In section 36(7) (requirement to consult SNH before issuing waste management licence) of the Environmental Protection Act 1990, for the words from “land”, where it second occurs, to “areas)” substitute “within a site of special scientific interest or any area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2003 (asp 00) has effect”.

Natural Heritage (Scotland) Act 1991 (c.28)

- 6 (1) Section 12 (Advisory Committee on sites of interest) of the Natural Heritage (Scotland) Act 1991 is amended as follows.
- (2) For subsection (5), substitute—

- “(5) Where—
- (a) SNH has—
 - (i) given notification under section 3(1), 5(1), 6(4) or 7(1) (notification etc. of sites of special scientific interest) of the Nature Conservation (Scotland) Act 2003 (asp 00); and
 - (ii) received from any person to whom the notification is given by virtue of section 40(2) of that Act and who has an interest in the land, within the time specified in the notice, representations relating to any aspect of natural heritage to which the notification relates; and
 - (b) the person who made the representations does not agree to withdraw them,
- SNH shall refer the matter to the Committee.”

- (3) Subsection (6) is repealed.
- (4) In subsection (7)—
 - (a) the words from “or”, where first occurring, to “applies” are repealed,
 - (b) for “owner or occupier”, in both places where those words occur, substitute “person”.
- (5) In subsection (8), the words “or (6)” are repealed.

Scottish Land Court Act 1993 (c.45)

- 7 In section 1(7) (determination by Court of Session of point of law) of the Scottish Land Court Act 1993 (c.45), after “enactment” there is inserted “, or under Part 2 of the Nature Conservation (Scotland) Act 2003 (asp 00),”.

Town and Country Planning (Scotland) Act 1997 (c.8)

- 8 The Town and Country Planning (Scotland) Act 1997 (c.8) is amended as follows—
- (a) in section 54(1) (land which may not be included in simplified planning zone), for paragraph (d) substitute—
 - “(d) land in a site of special scientific interest;
 - (e) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2003 (asp 00) has effect;”, and
 - (b) in paragraph 2(4) (Phase I mineral sites) of schedule 9, for sub-sub-paragraph (a) substitute—
 - “(a) special scientific interest;
 - (aa) an area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2003 (asp 00) has effect;”.

SECTION D

SPECIES PROTECTION AND WILDLIFE CRIME

Introduction

D1 This section sets out the detailed species protection measures which we intend to incorporate within the bill before it is introduced to Parliament. As such, these provisions deliver the third vital component in the overall package of reforms which Ministers committed themselves to in *The Nature of Scotland*.

D2 We propose to make changes primarily to Part I of the Wildlife and Countryside Act 1981⁶ (“the 1981 Act”). That legislation has served Scotland’s wildlife well in the two decades since it was brought into force. However, the practical application of the 1981 Act over that period has revealed a number of weaknesses and loopholes which it is necessary to correct. So too, the policy objectives of government have evolved and changed, as indeed the expectations of society at large have altered.

D3 From a more technical perspective, there is a clear commitment on the part of the Scottish Executive to the effective transposition into domestic law of obligations which arise at the European level. The 1981 Act is the primary mechanism by which the Birds Directive⁷ is implemented in Scotland and a number of the changes we propose are designed to address areas where we feel the aims of the Directive might better be reflected in the Act.

D4 In parallel with the proposed changes to the 1981 Act, we also intend to clarify, strengthen and up-date relevant sections of the Conservation (Natural Habitats &c.) Regulations 1994 (“the 1994 Regulations”)⁸. The Regulations transpose into the law of Scotland the obligations placed on the UK by the Habitats Directive⁹. The Regulations are themselves largely modelled on the wording of the 1981 Act and we therefore intend to reflect changes made to the Act in the corresponding parts of the Regulations.¹⁰

Enhanced Protection for Birds

Definition of “Wild Bird”

D5 As it currently stands, the 1981 Act does not provide protection to European bird species which are not ordinarily resident in, or a visitor to, Great Britain. As a result, where birds or eggs are illegally taken from another EU member state and subsequently brought to Scotland,

⁶ 1981 c.69.

⁷ Council Directive 79/409/EEC on the conservation of wild birds (O.J. No. L103, 25/4/79, p1)

⁸ Statutory Instrument 1994 No. 2716

⁹ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (O.J. No. L206, 22/7/92, p7)

¹⁰ Further changes to the Regulations, to be made by statutory instrument, are being consulted on in parallel with this consultation paper. This paper covers only those changes which will form part of the proposed Nature Conservation Bill. The parallel consultation document is available on the Executive website at <http://www.scotland.gov.uk/views/views.asp> or from the address given in the front of this paper.

the possession of those items cannot be dealt with effectively. By applying a wider definition, which encompasses all wild birds found within the European territories of the EU, as well as the subspecies of such birds, greater protection will be afforded to birds naturally occurring in any member state. We believe this is desirable both as a matter of domestic policy and to reflect properly the requirements of the Birds Directive.

D6 We therefore propose to extend the current definition of “wild bird”, for the purposes of the 1981 Act, to encompass all species which are ordinarily resident in, or are visitors to, the European territories or any EU member state. It will be made explicit that all subspecies are also covered within this new definition.

Protection of Lek Sites

D7 Following consultation on *The Nature of Scotland*, Ministers agreed to upgrade the protection afforded in Scotland to the endangered capercaillie, by listing the species in Part 1 of schedule 1 of the 1981 Act. This was achieved by Scottish Statutory Instrument 337/2001 and the new protection came into force on 4 November 2001.

D8 However, the breeding success of the capercaillie in common with a small number of other birds, such as black grouse, is heavily dependent on the male birds being able to display effectively to females at traditional and regularly-used woodland areas known as “lek” sites. Disturbance or destruction of leks can have serious consequences, as the birds are highly sensitive to intrusion or over enthusiastic observation. Any interruption and disturbance at this crucial time can lead to the failure of females to mate. This can result in lost breeding opportunity, possibly for the whole breeding season. Where a traditional lek site is destroyed or significantly damaged, this too can have serious implications for the maintenance of a viable breeding population in that locality.

D9 As a further conservation measure targeted in particular at capercaillie, we propose to make it an offence to damage or destroy an established lek site or to disturb birds on the site whilst it is in use. In common with our plans for other offences under Part I of the 1981 Act, the offence will be one of “intentionally or recklessly” carrying out the prohibited action. The penalties already instituted by the Criminal Justice (Scotland) Bill for bird-related offences (a maximum of a 6 month custodial sentence or a Level 5 fine) will apply to the proposed new offence.

Improved Protection for Wild Plants

Definition of “Wild Plant” and Related Issues

D10 Section 13 of the 1981 Act makes it an offence for any person to intentionally pick, uproot or destroy any wild plant included in schedule 8, or to intentionally uproot any other wild plant without authorisation. On a strict interpretation, however, the current wording of the Act runs the risk of excluding fungi and non-vascular plants (bryophytes, lichens, stoneworts and algae) from this protection. The intention of the Act as it stands is, we believe clear enough, and the listing of fungi and non-vascular plants in schedule 8 is evidence that the term “plant” has indeed been understood to include organisms which are popularly thought of as analogous to vascular plants. Nonetheless, we intend to put the matter beyond doubt, by explicitly extending the definition of “wild plant” for the purposes of the Act.

D11 We also intend to make clear that the existing protection afforded to wild plants extends to all stages in their biological life cycle. The objective is to preclude any dispute in cases where, for example, bulbs, corms or rhizomes are taken or destroyed - or where it might be argued that the plant was not, at the time of the offence, actually “growing”. We recognise that seeds represent a special case and that the offence in this instance should occur only where the seeds of schedule 8 plants are taken.

D12 Finally, we intend to remove any doubt associated with the use in the 1981 Act of the words “picked” and “uprooted”. Appropriate terminology will be employed to ensure that the intention of the Act is adequately expressed in all situations, including where a “plant” does not, for example, have roots - as is perhaps most obviously the case with fungi. In doing so, we will take proper account of the terminology used in the Habitats Directive. The effect will be to amend the existing provisions of the Act to prohibit picking, collection, cutting, uprooting, removal or destruction of a plant. The current differentiation between schedule 8 plants (protected in all circumstances) and other plants (protected against actions by unauthorised persons) will be maintained.

D13 *We therefore propose to:*

- a) extend the definition of wild plant to explicitly encompass fungi and non-vascular plants,*
- b) ensure that the protection afforded to wild plants extends to all stages in their biological life cycle (whilst recognising the special case of seeds), and*
- c) clarify the current terminology related to the taking, removal or destruction of plants.*

New Protection Measures for Wild Animals

Cetaceans and Basking Sharks

D14 All cetaceans (whales, dolphins, porpoises) already enjoy full protection under the 1981 Act. They are also fully protected under European law. As animals listed in schedule 5 of the Act, it is an offence to kill, injure or take any cetacean. Schedule 5 animals are also protected from disturbance in certain important circumstances, and in particular when they are in a holt, nest, roost or other place of refuge.

D15 Unfortunately, as currently worded, the 1981 Act does not take account of the ecology and environment of marine mammals. The consequence is that whales, dolphins and porpoises do not at present enjoy protection from disturbance or harassment. These animals can, nonetheless, be extremely vulnerable to human intervention. Ironically, public interest in and concern for whales and dolphins has led in recent years to a huge growth in “whale watching” as an activity. Whilst most of this activity is entirely responsible and properly respects the needs of wild cetaceans, there have been incidents where animals have been harassed and disturbed by boat operators who ignore established codes of conduct.

D16 Basking sharks face similar pressures. As the largest fish to be seen in Scottish waters (and the second largest fish in the world) these increasingly rare animals are also considered to be in need of additional protection. Dependent on filter feeding near the surface, they are comparatively easy to approach and are therefore particularly vulnerable to disturbance.

D17 *We therefore propose to make it an offence to disturb or harass a cetacean or a basking shark. In common with our plans for other offences under Part I of the Act, the offence will be one of “intentionally or recklessly” carrying out the prohibited action. The penalties already instituted by the Criminal Justice (Scotland) Bill for similar existing offences (a maximum of a 6 month custodial sentence or a Level 5 fine) will also apply to the proposed new offence.*

Enforcement and Penalties

DNA Evidence

D18 As it currently stands, the 1981 Act makes no explicit provision for enforcement agencies to take blood or tissue samples from bird, animal or plant specimen found in the possession of a suspect. Analysis of such samples can be vital to establishing key facts - such as the identity and origin of a specimen. This is particularly true in cases involving live schedule 4 birds where there is doubt as to the provenance of a particular specimen and the clear suspicion exists that the bird has been illegally taken from the wild. In such cases, DNA evidence can demonstrate with certainty whether or not the bird is genetically related to the parent birds from which it is claimed to have originated. The technique also has value in cases involving the sale of controlled specimens or in identifying individual specimens recovered during theft investigations.

D19 *We propose to make specific provision within both the 1981 Act and the 1994 Regulations to allow police officers (where they have reasonable grounds for doing so) and wildlife inspectors (when acting under specific instruction) to require the taking and production of DNA samples. These provisions will be subject to the requirement that the taking of a sample must not do lasting harm to the specimen. In the case of any live bird or animal, the provisions will ensure that the sample may only be taken by a qualified veterinary surgeon.*

Further Enhancement of Powers to Secure Evidence

D20 In tackling wildlife crime effectively, it is essential that the police have adequate and appropriate powers to search for and seize evidence of the commission of an offence. It has become clear, following detailed discussions with experienced Police Wildlife Liaison Officers, that certain aspects of the current provisions in the 1981 Act - and specifically aspects of the existing section 19 - lack the degree of clarity and precision which is necessary for effective law enforcement.

D21 Wildlife law enforcement also brings its own challenges. One of these is the speed with which vital evidence - such as the carcass of a dead bird or animal - is likely to disappear or be rendered unusable (as a result, for example, of the actions of scavengers such as foxes) if prompt action is not taken to secure it. We do not wish to see a situation in which the police lack sufficient statutory authorisation to enter land promptly to secure evidence of wildlife offences. In our view it is unacceptable for a situation to arise where the police can be alerted to evidence by a member of the public, but for officers to remain powerless to seize and remove that evidence in time.

D22 In making these improvements we will, of course, be maintaining very firmly the existing principle that a search warrant must first be obtained in any situation where entry to a dwelling house is required.

D23 *We propose to further review the enforcement powers available to the police under section 19 of the 1981 Act, and to ensure that these are properly clarified and updated, whilst remaining fully consistent with the relevant obligations arising under the European Convention on Human Rights.*

Updating the 1994 Regulations

D24 As a result of the Criminal Justice (Scotland) Bill, a number of important enforcement and penalty enhancements have been made to the 1981 Act. In particular:

- custodial sentences of up to 6 months have been introduced,
- financial penalties for wildlife offences have been upgraded to Level 5 on the standard scale in all cases,
- a specific power of arrest has been provided,
- search warrants are now available in relation to all Part I offences, and
- the time limit within which a prosecution must be brought has been extended. A prosecution must now start within 6 months of sufficient information becoming available to the prosecutor, rather than within 6 months of the actual commission of the offence.

D25 We now intend to ensure consistency by making equivalent changes to the 1994 Regulations. We will also make changes to reflect any revision of the enforcement powers available to the police under section 19 of the 1981 Act.

COTES Offences

D26 Section 7 of the 1981 Act provides that a person who has been convicted of an offence involving birds or animals will commit a further offence if he or she is subsequently found to be in possession of any schedule 4 bird. The period during which this prohibition is effective has now been standardised by the Criminal Justice Bill at 5 years.

D27 Given the close relationship between the subject matter of the 1981 Act and the COTES Regulations¹¹, we believe that there may be a case for invoking the 5 year ban where an individual has been convicted of a relevant bird or animal related offence under COTES. The nature of COTES offences is such that a person who has demonstrably and significantly flouted the law in this area - for example, by illegally importing globally endangered species - cannot be regarded as a fit person to possess schedule 4 birds. In addition, we believe that it is helpful to supplement the deterrent effect of the existing COTES offences by invoking this additional existing sanction.

D28 *We are therefore exploring the possibility of further amending section 7 of the 1981 Act in order to make it an offence to keep, possess or control any schedule 4 bird, within 5 years of being convicted of an offence under COTES.*

¹¹ The Control of Trade in Endangered Species (Enforcement) Regulations 1997, Statutory Instrument 1997, No. 1372.

Revised Powers and Duties of Wildlife Inspectors

D29 Wildlife Inspectors are drawn from a panel of expert and suitably-experienced individuals who are able to bring specialist skills to the business of wildlife law enforcement. Inspectors are, for example, employed by the Scottish Ministers to undertake checks in connection with the keeping of schedule 4 birds. They are also available, if required, to assist the police by providing expertise in matters such as the identification of specimens. Parallel functions are carried out on behalf of the UK Government in relation to the international trade in endangered species.

D30 The 1981 Act currently contains powers of entry for Wildlife Inspectors (under provisions in section 6, 7 and 14 relating to “authorised persons”). We believe that these powers can usefully be clarified by amending the Act. This will entail setting out in clear terms the powers which are available to Wildlife Inspectors and the drawing of a clear distinction between the role of the Wildlife Inspector and that of a police officer.

D31 *We therefore propose to provide a new definition of the powers of Wildlife Inspectors. This will enable Wildlife Inspectors in Scotland to enter premises in order to ascertain whether certain regulatory offences (relating to a sale of a specimen, to bird registration or in connection with an unauthorised release into the wild) have been or are being committed. In line with human rights principles, this power will only extend to a dwelling house in situations where appropriate additional safeguards have been invoked.*

D32 *As a result, Inspectors will only be able to require entry to a private dwelling where the occupant has indicated his or her consent. Consent to a future inspection will, however, be a pre-requisite where a person decides to:*

- *apply to sell controlled bird, animal and plant specimens (whether alive or dead),*
- *submits an application to release specimens into the wild (section 14),*
- *applies for registration documents (under section 7) for schedule 4 birds.*

D33 *Additional safeguards will be provided by a new Code of Practice regulating the conduct of inspections, which we intend to publish before introduction of the finalised bill. We will also create the new offence of impersonating a Wildlife Inspector.*

D34 *In parallel with these developments, we also intend to make it an offence for any person to intentionally or recklessly obstruct or fail to provide assistance to a wildlife inspector when the inspector is carrying out an inspection. We will, in addition, consider carefully whether the role of the Wildlife Inspector might usefully be extended to cover other regulatory matters, such as compliance with the welfare requirements set out in section 8 of the 1981 Act; in relation to controls on the sale of animals (under section 9(5) of the Act) and in connection with the analogous controls established by the 1994 Regulations.*

Recklessness and “Causing or Permitting”

Offences involving Recklessness

D35 The current provisions of the 1981 Act already provide significant protection for wild birds, animals and plants.

D36 In the case of birds, this includes protection against a wide range of *intentionally* destructive and damaging actions. It is, for example, an offence for any person (unless licensed) to deliberately kill, injure or take wild birds or to damage, destroy or take their nests and eggs. It is also an offence to *intentionally* disturb the nesting site of any of the specially protected species listed in schedule 1 of the 1981 Act.

D37 Similar provisions apply to wild animals, such as the red squirrel, otters and bats – all of which are listed under schedule 5 of the 1981 Act. Protection against *intentional* uprooting, picking or destruction is provided to plants by virtue of section 13 of the Act.

D38 However, in bringing a prosecution it must be demonstrated that the accused acted with intent and the action was pre-meditated and deliberate. We believe that the law, at present, provides too great an opportunity to argue that, whilst the offence was committed by the accused, the action was not intended or deliberate. The law, as it currently stands, also does nothing to deter or prevent grossly irresponsible and unacceptably negligent actions which, whilst they may not be intentional acts of destruction, can nonetheless have serious consequences for Scotland’s wildlife.

D39 Recklessness implies that, where an individual is aware of the presence of a protected species, particular care should be taken to avoid any consequent death, injury, damage, destruction or disturbance. The legal test involved in establishing recklessness is strict, and is one which is already well understood by the Courts, for instance, in relation to motor traffic and firearms offences. The concept of recklessness is, moreover, sufficiently robust to ensure that land managers, hill-walkers, anglers and other legitimate and responsible users of the countryside will not be inadvertently penalised for accidents or as a result of the unforeseen consequences of otherwise lawful activities. An offence involving recklessness will not have been committed where destruction, damage or disturbance is accidental and could not reasonably have been foreseen - or where it is clear that genuine efforts have been made to minimise any risks. As a related measure we are considering the need to update the existing statutory defences covering such incidental and unforeseen effects of lawful activity.

D40 The proposed change to the law will significantly update the provisions of the 1981 Act and will bring it into line with other pieces of wildlife protection legislation, such as the Protection of Badgers Act 1992¹².

D41 *We propose to enhance the protection already available to Scotland’s wildlife by introducing the principle of recklessness in relation to the majority of offences under Part I of the 1981 Act. As a consequence, the existing offences involving intentionality will, in future, become offences of “intentionally or recklessly” carrying out the prohibited action. We will also make equivalent changes to the 1994 Regulations.*

Offences of “Causing and Permitting”

D42 As it currently stands, the 1981 Act makes it an offence in certain circumstances to “knowingly cause or permit” another person to carry out an act which is illegal. This applies, for example, in the case of illegal poisoning, trapping or snaring as well as in cases involving the breach of Nature Conservation Orders protecting SSSIs.

¹² 1992 c.51.

D43 The provision is intended primarily to deal with situations where a person in authority (for example a landowner) instructs an employee (such as a gamekeeper) to set illegal traps or poisoned bait. Without the “cause or permit” provision, the full weight of the law would be felt only by the employee, who may well have been pressured or coerced into the illegal act. The person who is, arguably, the more culpable would however remain untouchable, since he or she would not in a strict sense have carried out the illegal act.

D44 The value and desirability of this provision is now well established and it has been important in providing at least some degree of protection to individuals, such as gamekeepers, who might otherwise be placed in an invidious position by their employer - being forced to choose between keeping their job and breaking the law.

D45 The principle has not however been applied throughout Part I of the 1981 Act and we believe that it would now be appropriate, for the sake of consistency as well as practical effect, for other relevant Part I offences to be made subject to the same “cause or permit” provision. This would resolve the anomaly whereby it is currently an offence to cause an employee to set poisoned bait to kill a bird of prey, but not to cause the same employee to shoot the bird, or to destroy its nest and chicks.

D46 We therefore propose to extend the offence of “knowingly causing or permitting” an illegal act to encompass offences under other sections of the 1981 Act where such a provision would be relevant but where it does not currently feature. We will make analogous changes to the 1994 Regulations.

Controls on the Use and Abuse of Snares

D47 Section 11 of the 1981 Act regulates methods of killing or taking wild animals and imposes specific requirements relating to the use of snares. Whilst these controls remain broadly effective, we believe it is now time to respond to particular public concern in this area by improving controls on the use of snares and by ensuring that any weaknesses and loopholes in the existing legislation are removed.

D48 Free-running (as opposed to self-locking) snares are a legal means of capturing a number of animals - in particular those (such as foxes) which are commonly regarded in the countryside as pest species and those (such as rabbits) which are both agricultural pests and a source of food. Used in the proper manner, snares can be very effective and they are widely used by farmers and other land managers.

D49 Moreover, given that self-locking snares are illegal, non-target species can be released alive, which ensures that any general risk to wildlife is minimised. However, this does depend on snares being checked at least once a day to ensure that trapped animals are not subjected to unnecessary suffering and that non-target species are released promptly. This is already a clearly-stated legal requirement. Some land managers evade this responsibility by failing to check snares at least every 24 hours. On the basis of “at least once every day” a snare could, potentially, be left unchecked for almost 48 hours.

D50 Animals left in such unattended snares may then die either from starvation, dehydration or from slow strangulation. In such cases it is often impossible to prove that snares are not being visited every 24 hours. The mere presence of a dead animal in a snare

does not, at present, prove beyond doubt that a snare has not been regularly checked. It is possible for the accused to claim that the snare was checked but that the animal was discovered to be dead and that it was merely left in place.

D51 We firmly believe that snares should remain available to land managers as a legal method of dealing with pest species. But we also believe that the use of snares must be subject to robust safeguards. Snares are not intended for and should not be intentionally used to kill animals. No animal (and not simply those protected under schedule 6 of the 1981 Act) should be allowed to be caught in a snare set in a manner which is deliberately cruel. Thus, the placing of a self-locking snare is already illegal, as it is a device designed or constructed in such a manner as to prevent the loop formed by the snare loosening automatically when the force exerted to tighten the loop is relaxed. The result is that the loop continuously tightens and this process cannot be reversed, without the intervention of an external party. Although the 1981 Act prohibits the operation of a self-locking snare, *possession* of such a device (or indeed the simple possession of unauthorised traps and poisoned baits) is not currently prohibited under the Act. Given that the use of such devices is illegal, we believe that there is no legitimate reason for the possession or sale of a self-locking snare.

D52 The 1981 Act is also weak at present in that it does not adequately discourage unscrupulous individuals from setting snares on land where they have not been given permission to do so. At present, anti-poaching legislation makes it an offence to set a snare on someone else's property to catch game birds and animals. However, it is possible for an offender to claim that such a snare was targeted at foxes and other pest species. Land managers, such as farmers, as well as sporting estates and conservation organisations, need greater protection from such uncontrolled intrusion and the damage which unregulated and unauthorised snaring can cause. In order to achieve this, we intend to make it an offence both to set a snare on any land without being explicitly authorised to do so, and to be in possession of a snare on land where such authorisation has not been obtained.

D53 *In order to achieve the twin objectives of preventing unnecessary suffering on the part of wildlife and of deterring the unregulated setting of snares on land where the owner or occupier has not authorised their use, we intend to:*

- a) Create a new offence of possessing or selling a self-locking snare.*
- b) Clarify the term, "at least once a day".*
- c) Include the requirement that any animal caught in a snare - whether alive or dead, must be removed when the snare is inspected. Failure to do so will become an offence in its own right.*
- d) Make it an offence for any person to set or operate a snare on land where they are not authorised to do so by the owner or occupier. Additionally, we propose to make it an offence for any person to be in possession of a snare on land without being a person authorised to set a snare on that land.*
- e) Ensure that the controls on snaring in section 11 apply, as appropriate, to all snares and not, as at present simply to those which are "of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith". This change will clearly recognise that snares are intended first and foremost as devices for holding and restraining an animal, and are not set by responsible operators with the intention of inflicting injury.*

Better Implementation of European Obligations

D54 The Scottish Executive takes its obligations under European law seriously. We are taking the opportunity presented by the Nature Conservation (Scotland) Bill to enhance (or remove) a variety of existing provisions in the 1981 Act, to maintain effective compliance with the requirements of the Birds and Habitats Directives.

D55 The changes we propose are essentially of a technical nature, and include:

Statutory Defences

D56 Sections 1, 4, 9, 10 and 13 of the 1981 Act all contain statutory defences which can potentially be invoked where a person is accused of having committed an offence. In practice, these defences amount to standing derogations from the Birds and Habitats Directives. As a result it is possible that an action might be undertaken, in the belief that the defence legitimises it, but without the necessary derogation preconditions or tests having been applied.

D57 We propose to review the statutory defences in Part I of the 1981 Act to ensure that these are fully consistent with European requirements. In revising the relevant sections we will also be seeking to ensure consistency between the requirements as they apply to birds, animals and plants. We will, for example, ensure that in all cases where an emergency operation has to be undertaken, that fact must then be reported as soon as practicable. This provision currently applies in relation to birds, but not to animals or plants.

D58 We will also ensure consistency between the 1981 Act and the 1994 Regulations.

Methods of Taking Wild Birds

D59 Section 5(5) of the 1981 Act amounts to a standing derogation from the Birds Directive. The effect of the section is to permit the use of methods of taking wild birds - specifically traps and nets - which are otherwise prohibited by both the Act and the Directive. It is doubtful whether this arrangement is in every possible circumstance fully consistent with the derogation provisions of the Directive.

D60 We therefore propose to remove the standing derogation by deleting subsection 5 of section 5 in its entirety. In cases where it does remain appropriate and justifiable to continue using nets and traps, such methods will still be capable of being authorised under licence, in accordance with the provisions contained in section 16 of the Act.

Licensing and Derogations

D61 Section 16 of the 1981 Act allows for a variety of prohibited actions to be authorised on an exceptional basis, by means of a licence issued either by SNH or Scottish Ministers. This can be necessary, for example, where birds or animals require to be disturbed, taken or killed for purposes such as disease prevention, air safety, conservation or research into natural heritage issues. Since the granting of such licences will generally amount to a derogation from either the Birds Directive or the Habitats Directive, it is important that the provisions of section 16 are compliant with European requirements.

D62 There are also currently some situations in which it is possible for a person to comply fully with the requirements of the 1994 Regulations but, nonetheless, to breach the almost identical provisions of the 1981 Act. This can occur, for example, in economic development cases when a licence is issued to disturb European protected species which are also in schedule 5 of the Act. This anomaly arises because the licensing provisions in the Act relating to animals and plants differ in important details from the equivalent provisions in the Regulations. The provisions in the 1994 Regulations do, however, represent the more up-to-date thinking on this issue and, we believe, provide a useful potential model for revision of the existing provisions in the Act.

D63 *We therefore intend to review section 16 to ensure that the granting of licences is subject in all circumstances to the conditions and tests prescribed in the relevant Directives. We will also evaluate whether it would be desirable to ensure even greater consistency between domestic law and European obligations, as well as between the 1981 Act and the 1994 Regulations, by replacing the licensing purposes currently contained in section 16 of the Act, with purposes which have been derived more explicitly from the Directives.*

Miscellaneous Technical Amendments

Methods of Killing or Taking Wild Birds

D64 Section 5 of the 1981 Act prohibits a variety of methods of killing or taking wild birds and provides a list of these prohibited methods. That list can readily be kept up-to-date by means of the power given to Ministers in subsection (2) to “add any further method of killing or taking wild birds or by omitting any such method”. The power to do so is, however, restricted by subsection (3) in relation to firearms. Although the restriction does not limit Ministers in complying with international obligations, we believe it to be an unnecessary limitation and one which should now be removed from the Act. Ministers have no current plans to amend the list and would of course consult widely were such an amendment to be proposed.

D65 *We are therefore considering the possibility of deleting subsection (3) of section 5, since this provision unnecessarily limits the powers of Scottish Ministers to prohibit methods of killing and taking wild birds.*

Power to Vary Schedules

D66 The provisions in section 22 of the 1981 Act regulate the process by which Scottish Ministers can update those schedules to the Act which are most relevant to species protection and wildlife crime concerns. We believe that there is scope for improving these provisions to ensure that Ministers can respond flexibly to changing circumstances.

D67 *We are therefore considering revision of section 22, to ensure that the various schedules can readily be amended in a flexible and appropriate manner, as circumstances require. Central to the flexibility which we are seeking will be the ability to add, amend or remove any entry and to qualify any entry, where necessary, by restricting its effect to particular areas of Scotland, certain times of the year or specified provisions in the 1981 Act.*



Small changes in the way we perform everyday tasks can have huge impacts on Scotland's environment.

Walking short distances rather than using the car, or being careful not to overfill the kettle are just two positive steps we can all take.

This butterfly represents the beauty and fragility of Scotland's environment. The motif will be utilised extensively by the Scottish Executive and its partners in their efforts to persuade people they can do a little to change a lot.

I SBN 0 - 7559 - 2330 - 8



9 780755 923304