



Scottish Executive Environment Group

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

Part 2

**DRAFT FINANCIAL GUIDELINES and
REGULATORY IMPACT ASSESSMENT**

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

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**Financial guidelines for
supporting the management of Sites of Special Scientific
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A draft for consultation

Financial guidelines for supporting the management of Sites of Special Scientific Interest and Natura 2000 sites

Introduction

This guidance sets out the Scottish Ministers' intentions for the availability of financial incentives for the managers of Sites of Special Scientific Interest (SSSIs)¹ and Natura 2000 sites². It will replace the "Financial Guidelines for Management Agreements", which were published by the UK Government in 1983. The new Financial Guidelines will constitute a code prepared under section 37 of the Nature Conservation (Scotland) Bill.

There are 2 principal parts to this guidance, namely:

- brief guidance on the ways in which the managers of SSSIs and Natura sites can enter into voluntary agreements with public authorities which provide financial support to maintain or enhance the nature conservation interest of these sites, and
- guidance on specific entitlements which land managers may have when Scottish Natural Heritage ("SNH") or the Scottish Ministers use their powers to ensure the maintenance of the nature conservation interest of these sites.

Policy background to these Draft Guidelines

The Scottish Ministers published the policy statement *The Nature of Scotland*³ in March 2001. This proposed reforms to policy and law on the way in which SSSIs and Natura 2000 sites are managed and protected. *The Nature of Scotland* set out the following commitments:

- SSSIs should remain at the heart of our system of protecting Scotland's natural heritage, in a way which respects both the importance of the natural features they protect and the sustainable development which rural communities depend upon,
- increased resources to provide incentives for the positive management of SSSIs by their owners or occupiers, so that more land managers should benefit from owning an SSSI, and
- claims for large compensation payments which reward people for not undertaking new projects which damage SSSIs would end. Land managers should not be paid simply for not going ahead with a damaging new project which would harm the nature conservation interest of an SSSI. Owners or occupiers of land should not, however, be penalised if the

1 An SSSI is a site of special scientific interest notified in accordance with section 23 of the National Parks and Access to the Countryside Act 1949, section 28 of the Wildlife and Countryside Act 1981 or section 3 of the Nature Conservation (Scotland) Act 2003

2 Natura 2000 sites collectively make up the Natura 2000 network, which is comprised of Special Areas of Conservation (SACs) designated under the 1992 EC Habitats Directive, and Special Protection Areas (SPAs) designated under the 1979 EC Birds Directive. (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Council Directive 79/409/EEC on the conservation of wild birds).

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

existence of an SSSI makes it more difficult for them to pursue their established land management activities. They should therefore be compensated if the established management of the land has to be altered to protect an SSSI.

- to ensure the effective protection of SSSIs, SNH would be able to refuse consent for certain operations, subject to the creation of an effective independent appeals mechanism for people who are prevented from undertaking particular projects on SSSIs.
- powers to ensure that the land is managed in a way which secures its conservation interests, including the use in exceptional circumstances of Land Management Orders and stiffer penalties for deliberate damage to SSSIs.

The Scottish Ministers consulted widely on these proposals in 2001, and the response demonstrated broad general support from land managers and nature conservation bodies for the key principles.

Subject to decision by a future administration following the elections in May 2003 and completion of the appropriate processes, the policies outlined above will be carried forward by means of the Nature Conservation (Scotland) Bill. That resulting legislation will refer explicitly to the guidance provided in the finalised version of these Financial Guidelines.

The new guidelines

In devising new guidelines which help to implement the new policies set out in the draft Nature Conservation (Scotland) Bill, the Scottish Ministers recognise that public financial support is appropriate for the proper management of SSSIs and Natura 2000 sites. Public support must, however, deliver the best value for money in securing these objectives.

With this in mind, this new guidance aims to:

- help land managers find the most appropriate financial help for managing protected areas,
- support the positive management of protected areas to sustain their special interest,
- set out the basis on which payments by SNH will be calculated,
- deliver transparent value for taxpayers' money,
- achieve equality of treatment for all owners/occupiers of designated sites,
- establish a flexible framework which leads to quicker establishment of management agreements and lower administrative costs, and
- comply with European legislation, and with the European Convention on Human Rights.

This guidance has been prepared in consultation with representatives of public authorities, the land management sector and nature conservation organisations.

The Scottish Ministers will monitor its application and review its content as necessary, in the light of experience gained through its practical application and of the continuing evolution of policy on financial support for different forms of land management.

Chapter 1

Incentives for the voluntary management of SSSIs & Natura 2000 sites

1.1 *The Nature of Scotland* emphasised the importance that the Scottish Ministers attach to the maintenance and enhancement of the special interest of SSSIs and Natura 2000 sites. Safeguarding the nature conservation interest of these sites is also a substantial contribution to the attainment of Biodiversity Action Plan targets.

Natural Care

1.2 The Scottish Ministers believe that financial incentives should be available to the managers of protected areas, and other areas of the countryside where this is desirable, to maintain or enhance key features of our natural heritage. These payments, to be delivered through the *Natural Care* strategy, will be provided to support the positive management that these special interests require rather than simply to prevent management that may be harmful to them. The overall aim of the *Natural Care* strategy is to bring 85% of the SSSI network into management that supports conservation needs, through the collective contributions of SNH management agreements and the other incentives available to the managers of SSSIs, notably via the Scottish Forestry Grants Scheme and the Rural Stewardship Scheme. It is estimated that this proportion of the network requires some form of active management that can be supported through these arrangements. The remainder of the SSSI network probably does not require financial support through these arrangements, for instance, because it consists of intertidal areas owned by the Crown or because it consists of robust geological formations. In other cases, the nature or level of funding that is appropriate will vary. For instance:

- Some SSSIs and Natura 2000 sites may be damaged because they are not managed in accordance with standards of good farming practice. Land managers are expected to comply with such standards and indeed with the requirements of any other regulatory regime or code of practice that is relevant to their operations. The taxpayer cannot be expected to pay farmers and other land managers simply to stop doing things they ought not to have been doing in the first place.
- There are inevitably constraints on the availability of public funding, and within those constraints public authorities may have to decide on the relative priority of different cases for the funding of SSSI and Natura 2000 site management. Some SSSIs and Natura 2000 sites are maintained in good condition through existing management, which is economically sustainable.

1.3 The objectives of *Natural Care* are four-fold:

- to avoid deterioration of, and to secure improvements in, the condition of SSSIs through arrangements that can assure their positive management,
- to foster the pride and commitment of land managers in the positive management of SSSIs and other conservation interests through direct rewards, and by drawing on their own knowledge and skills in land management through their active involvement in the development of management schemes,

- to broaden and improve access to support for land management that benefits the natural heritage, through a combination of additional resources and more effective integration of available incentives, and
- to establish conservation of the natural heritage as a legitimate output of rural development through the delivery of social and economic benefits to the people of Scotland.

1.4 *Natural Care* will operate principally through the use of “management schemes”. These are based on voluntary agreements with land managers, under which a standard rate of payment will be offered in particular parts of the country for particular activities which safeguard or enhance the conservation interest of SSSIs. SNH’s management schemes under *Natural Care* are intended to be non-competitive - if a land manager meets the requirements specified in the scheme, SNH will make the payments specified in the scheme. These schemes are locally tailored, rather than developed at the national level, so that payment rates are appropriate to local land use and economic conditions. Land managers can decide whether or not to enter into a management scheme, depending on whether they judge this to be in their interests. The context and priorities for the *Natural Care* programme are set out in SNH’s *Natural Care* strategy.

1.5 SNH will still be able to enter into individually-negotiated voluntary management agreements with land managers in the occasional circumstance where a management scheme is not appropriate.

1.6 The *Natural Care* strategy sets out how SNH will target the increased resources now available to it to significantly increase the availability of management agreements to the managers of SSSIs. Priorities for SNH support under the *Natural Care* strategy include:

Natura 2000 sites

- where features are deteriorating or suffering significant disturbance,
- where there is a likelihood or a risk of deterioration or of significant disturbance,
- where there is a legal obligation to restore the site (degraded raised bogs only), or
- where current management is essential to maintain the qualifying features and there may be a risk of modification or cessation of this management.

Sites of Special Scientific Interest

- SSSIs in urgent need of positive management to avoid deterioration or loss of their nature conservation interest where such management can reasonably be expected to avoid this deterioration or loss, and
- sites where improving the management of the SSSI interest can also achieve Biodiversity Action Plan targets.

1.7 Detailed rules governing SNH’s power to offer management agreements are set out in Annex A of this guidance note. These not only apply to agreements under a *Natural Care* management scheme or on an individually-negotiated basis for the management of SSSIs and Natura 2000 sites, but may also involve the management of the natural heritage in the wider countryside.

1.8 Contact details for information on the *Natural Care* strategy, including applications for assistance, are set out in Annex C to this guidance note.

Co-financed schemes under the Scotland Rural Development Plan

1.9 Whilst much of the *Natural Care* programme will be delivered through schemes funded and administered by SNH, it is important that owners and occupiers adopt mutual heritage objectives and consider how good stewardship can best be achieved through the opportunities available. Some schemes may be delivered by other agencies, alone or in partnership with SNH, and SNH will explore these opportunities wherever there is clear added value in so doing.

The relationship between the Scotland Rural Development Plan (RDP) schemes that support environmental outputs from rural land and SNH's *Natural Care* schemes and management agreements is a complex one. The two principal schemes co-financed by the EC under the Scotland RDP are the Rural Stewardship Scheme (RSS) and the Scottish Forestry Grants Scheme (SFGS), together with the SFGS: Farmland Premium (the Organic Aid Scheme is also co-financed under the RDP but is less likely to be directly relevant to SSSIs and Natura sites). Whilst there is considerable overlap of objectives and coverage, SNH's *Natural Care* schemes and agreements will seek to effectively complement these other schemes. *Natural Care* schemes may encourage application to an RDP scheme and a flexible approach to the timing of this will be fostered.

Rural Stewardship Scheme

1.10 This scheme is designed to encourage farmers, crofters and common grazings committees to adopt environmentally friendly practices and to maintain and enhance particular habitats and landscape features. The RSS supports biodiversity-friendly agricultural management in the interests of wildlife and habitats, including birdlife, species-rich pasture, moorland, wetland, peatland and woodland/ scrub on agricultural land. Entry to the RSS is competitive, and occupiers of agricultural land in any part of Scotland (not just SSSIs and Natura 2000 sites) may apply. Applications are assessed on the basis of a ranking system which gives weight to the environmental and other benefits which would be secured by the project. Within this ranking system, applications which benefit Natura 2000 sites or SSSIs attract extra points. Contact details for information on RSS assistance are set out in Annex C to this guidance note.

Scottish Forestry Grants Scheme

1.11 The SFGS, administered by the Forestry Commission, and the SFGS: Farmland Premium is focused on delivering the priorities of the Scottish Executive's Scottish Forestry Strategy, "Forests for Scotland". The aim of SFGS, and SFGS: Farmland Premium is, "to encourage the creation and management of woods and forests, in order to provide economic, environmental and social benefits for now and the future". SNH's *Natural Care* programme is seen as the main mechanism for achieving positive management of SSSIs and Natura sites, but SFGS plays an important role in relation to woodland habitats and will be the principal source of funding in this context.

Under the SFGS, Stewardship Grants are payable to contribute towards the cost of work which will significantly improve economic, ecological or social value of woodland. In the case of SSSIs and Natura sites, eligible work will attract the higher rate of grant that contributes 90% of approved standard costs. Supplementary funding to the SFGS may be available through SNH under the

Natural Care scheme. Within Stewardship Grants, work relating to woodland SSSIs and Natura sites is eligible for this higher rate of grant where the purpose is to:

- improve the ecological value of native woodlands, through work related to native woodland Habitat Action Plans (HAPs),
- improve the environmental value of woods and forests through work related to Biodiversity Action Plans (HAPs, Species Action Plans and Local Biodiversity Action Plans) and designated sites or species listed in the schedules of the Wildlife and Countryside Act 1981 or the EU Habitats and Species Directive,
- improve the economic, ecological and social value of woods and forests by encouraging more use of alternative systems to clear-felling, where this is practical and appropriate, and
- improve the economic and ecological value of woods and forests by reducing deer numbers.

In addition to the financial support provided by the SFGS, compliance with the UK Forestry Standard will continue to be a condition of any SFGS approval. These conditions include the protection of designated conservation sites such as SSSIs, as well as the maintenance and enhancement of biodiversity as part of the implementation of the UK Biodiversity Action Plans.

Contact details for information on SFGS assistance are set out in Annex C to this guidance note.

Which scheme should a land manager seek funding from?

1.12 Land managers may wish to seek their own professional advice about the sources of funding which can best support their aspirations for the management of their land. The funding agencies in Scotland will observe the following principles:

- If a project on a protected area clearly falls within the scope of a non-SNH scheme (eg RSS or SFGS) SNH may ask the land manager to make an application to one of these schemes before it offers to enter into a management agreement.
- If a project falls within the scope of a non-SNH scheme, but the land manager and SNH are of the view that it does not appear to be likely to be a successful candidate for funding under either of these schemes, SNH may offer a management agreement without any preconditions about prior application to another scheme. Discussion between the land manager, SNH and SEERAD/Forestry Commission may be appropriate to establish, in particular cases, which funding mechanism is the most likely to be able to support the appropriate management of the area and whether a combination of funding from different sources is appropriate.
- When SNH offers to fund management activities which could fall within the scope of a non-SNH scheme it may do so at a different rate of payment from the other scheme. In some cases this rate may be lower, for example, where a nationally-calculated rate of payment under another scheme exceeds the costs of particular projects in particular places. In other cases, SNH may offer a higher rate of payment, for example, where nationally-calculated rates under non-SNH schemes do not cover the costs of proposed management action in a particular place and circumstances, and do not provide a sufficient incentive for land managers to enter into contracts to manage the land in a way which will benefit its SSSI interest.

Future Developments

1.13 Policy on support for environmentally-sustainable land use is under continuing development. In particular, the Scottish Ministers are examining the concept of Land Management Contracts as a radical new support system that could pay farm businesses for the economic, social and environmental benefits needed by their area.

Chapter 2

Entitlement to compensatory management agreements

2.1 The Scottish Ministers believe that, for the most part, the management of SSSIs will be achieved through voluntary action, supported by the availability of appropriate incentives.

2.2 There may, however, be occasions when SNH cannot grant consent for operations or where the Scottish Ministers have to use their powers in the public interest, to protect a site from damage or deterioration. On these occasions, the land manager may have an entitlement to compensation through a management agreement. Where appropriate, it will also be possible for management agreements to include compensatory and voluntary elements.

2.3 The circumstances in which SNH may take this course of action, and the land manager may be entitled to compensation through a management agreement are where:

- SNH refuses consent for an operation which is part of the **established management** of the land,
- SNH only partially approves a proposal for an operation which is part of the **established management** of the land, or
- SNH requires to revoke or modify an existing consent for an operation which is part of the **established management** of the land,

and where that refusal, revocation, modification or partial approval affects the land manager's activities in such a way that his ability to earn income, by continuing with the established management of the land, is unavoidably reduced.

2.4 Entitlements to payments which may arise through the exercise of Ministerial powers to make Land Management Orders are dealt with further in Chapter 3.

2.5 The principles governing land managers' entitlement to compensation are that:

- A land manager should be entitled to compensation through a management agreement if he can show that the exercise of SNH's or the Scottish Ministers' powers will cause him actual loss because he can no longer do something which is part of the established management of the land.
- A land manager should not be entitled to compensation if the exercise of SNH's or the Scottish Ministers' powers prevents him from carrying out a new project which is not part of the established management of the land.
- A land manager should not be entitled to compensation if he is refused consent or grant assistance for a project under another consent regime (eg he is refused consent under SEPA's discharge control system or is refused SFGS approval or an agricultural capital grant for a project which would damage an SSSI or Natura 2000 site).
- A land manager should not be entitled to compensation where any loss arises from a failure to comply with relevant regulatory regimes, or with standards of good farming practice.

2.6 In some cases it will be relatively clear what constitutes a new project and what constitutes part of the established management of the land. In other cases this will be a matter of specialist judgement.

2.7 In general, projects which require Environmental Impact Assessment (EIA) under European EIA requirements⁴ are likely to be new projects for these purposes. Projects which require an EIA under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 or the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 are likely to be new projects for these purposes.

2.8 In judging what is part of the established management of the land and what is a new project, the following principles will be applied:

- a) An activity is part of the established management of the land if it is part of the habitual pattern of use of that land in the preceding 10 years or is part of the normal rotational pattern of use of the type of land in question. The length of time which is regarded as part of the normal rotational pattern will vary according to the type of land and the type of crop and ‘custom of the country’ in that locality;
- b) An activity which is necessary to maintain the existing use of the land in question, for example, restoring field drains in accordance with traditional practice is part of the established management of the land if it aims to maintain the land in its current use rather than to convert or intensify its use;
- c) Adjustments to grazing pressure or stocking composition are part of established land management if the land manager can establish that in the past 10 years the stocking density and pattern has been at the level he proposes to attain, and if that level is consistent with the standard of Good Farming Practice for the land in question;
- d) In the case of woodland management, activity is much more periodic in its pattern over the life-cycle of the wood or forest. However, most such activity is likely to have been, or currently is, the subject of Forestry Commission approval through an agreed Plan of Operations or agreed felling licence. Consequently, activities which fall within this criteria are, in most cases, likely to be established management for the woodland in question, provided they currently accord with the UK Forestry Standard;
- e) Non-agricultural activities may be part of the established management of the land. For instance, a land manager may be entitled to compensation if the exercise of SNH’s or the Scottish Ministers’ powers will cause him an actual loss because of a loss in revenue from non-agricultural activities from which he has in the past 10 years earned revenue or (where no revenue is earned) from activity which has contributed to the capital value of the property.

⁴ Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC

2.9 Land managers may make a case that exceptional circumstances exist in which a period longer than 10 years should be taken into account in assessing what is established land management.

2.10 In all cases, a land manager is expected to take reasonable steps to minimise the losses for which he may be compensated, and a failure to do so may affect his entitlement. A land manager may be required to demonstrate that he had no reasonable alternative way of pursuing the intended activity on his holding before SNH enter into a compensatory management agreement.

2.11 In some instances, the established management of the land may in future become uneconomic because of changed market circumstances, and the economically rational course of action for the land manager may be to convert from one land use to another or to withdraw the land entirely from management. In cases where continuation of the existing land use is essential to maintenance of the special interest of the site, SNH will normally try to enter into a voluntary management agreement which makes it worthwhile for the land manager to continue to manage the land in a manner consistent with its special interest.

2.12 Where no such agreement is reached, and where conversion to another use or withdrawal of the land from management involve an operation requiring consent, SNH may be obliged to refuse consent, especially on a Natura 2000 site. It will then be an offence for the land manager to carry out the operation and he will be unable to effect the proposed change in land use.

2.13 If it is clear (either before or after dispute resolution mechanisms have been attempted) that SNH will not reconsider its refusal of consent, and that the land manager is either not entitled to a compensatory payment or is not content that the compensatory payment offered makes it economically worthwhile to continue with his established land management, SNH may offer to enter into a lease or purchase the area in question so that they can take responsibility for its management in a manner consistent with its nature conservation interest if this has become economically unviable for the land manager. In exceptional circumstances where voluntary lease or purchase can not be agreed between SNH and the land manager, SNH may use its powers of compulsory purchase. The decision on whether SNH should lease or purchase the land will be at SNH's discretion. In some circumstances SNH may choose not to lease or purchase and will therefore allow the proposed operation to proceed. SNH may lease or purchase an area greater than the SSSI or Natura 2000 site, in particular if the part of the holding outside the SSSI or Natura site does not constitute a viable enterprise on its own.

Chapter 3

Land Management Orders – Compensatory entitlements

3.1 Land Management Orders may be made only where it has proven impossible to enter into a management agreement, or where an existing agreement has broken down. Where the Scottish Ministers serve a Land Management Order on a land manager requiring him to take particular action over and above the requirements of good land management practice - in order to safeguard or enhance the special interest of an SSSI or Natura 2000 site - the land manager will be entitled to payment for the costs of the work which the Order requires him to carry out

3.2 If the land manager fails to carry out the work required in the Order, or fails to arrange for the work to be carried out, he is in breach of the law and has forfeited any compensatory entitlement. SNH may then arrange for the work to be carried out, and a court may order the recovery of SNH's additional costs from the land manager.

Chapter 4

Dispute resolution

4.1 The following dispute resolution arrangements will apply when SNH and the land manager do not agree about:

- whether the land manager is entitled to the payment of compensation under a management agreement,
- whether SNH should have offered a management agreement on the basis of income foregone or of loss in capital value,
- the amount of compensation offered under a management agreement, and
- whether SNH should reasonably have offered to lease or buy the land in question.

4.2 In all such cases SNH and the land manager are expected to seek to resolve matters through private negotiation. If the dispute remains unresolved the parties will be expected to pursue one of the following dispute resolution mechanisms the appropriateness of which may vary with the nature of the matter in dispute:

- mediation,
- expert determination,
- arbitration by a single arbiter appointed by agreement

4.3 Only if no agreement can be reached about the dispute resolution mechanism or no resolution can be reached through the above means, the parties will have recourse to the Scottish Land Court.

Annex A

Rules applying to SNH management agreements

1 Management agreements may be made under section 16 of the National Parks and Access to the Countryside Act 1949, section 15 of the Countryside Act 1968, Regulation 16 of the Conservation (Natural Habitats, &c.) Regulations 1994 (the “Habitats Regulations”), or section 49A of the Countryside (Scotland) Act 1967. SNH may make payments by way of a Management Agreement in the following circumstances:

- under section 16 of the National Parks and Access to the Countryside Act 1949 to secure the management of the land as a nature reserve;
- under section 15 of the Countryside Act 1968 for the purpose of conserving the flora, fauna or geological or geomorphological features of an SSSI (s15, 1968 Act), payment may also be made under this section as amended by the Environmental Protection Act 1990 for land management activities outside the SSSI which may benefit the nature conservation interest of the SSSI; and for the purposes of conserving the natural beauty, or facilitating the enjoyment of the countryside;
- under Regulation 16 of the Habitats Regulations for the management, conservation, restoration or protection of a European site, or any part of it or land adjacent to it; and
- under section 49A of the Countryside (Scotland) Act 1967 for conserving the natural beauty of the countryside or for facilitating or enhancing its enjoyment and appreciation.

2 Payments to agricultural producers under management agreements must be consistent with the European Union rules on payments set out in the Community Guidelines for State Aid in the Agricultural Sector. As a matter of policy, similar provisions will normally apply to non-agricultural occupiers unless other specific State Aid requirements apply. These rules require agreements to comply with the European Council's Rural Development Regulation (RDR) and the European Commission's Implementing Regulation. Article 24 of the RDR states that the basis for calculating support for agri-environmental commitments shall be:

- Income foregone;
- Additional costs resulting from the commitment given; and
- The need, where justified, to provide an incentive.

These terms are explained below.

3. SNH may offer to enter into a management agreement in accordance with standard rates of payment established in a management scheme. Alternatively, *in certain circumstances*, SNH may offer an individually-calculated management agreement reflecting the actual costs (or a proportion of the actual costs) and income foregone of carrying out the agreed management, excluding any VAT recoverable by the land manager. Entitlement to compensation on an individually-calculated basis will arise where consent is refused by SNH for “established” management of an SSSI and may also arise where a Land Management Order or Nature Conservation Order is made.

4. Payments will ordinarily be calculated on an annual basis and will be made either in arrears or at the mid-year point. In exceptional cases where entitlement to compensation arises and there is no loss in an annual revenue, payments may reflect the actual loss of capital value. In all cases, best value for taxpayers' money must be achieved.

5. In accordance with State Aid guidelines an owner/occupier who enters into a management agreement with SNH will be required to observe at least the standard of Good Farming Practice (see below) over that part of the farm. Where the management agreement includes an undertaking to adjust livestock grazing levels on or around an SSSI or Natura 2000 site, appropriate provision may be made to verify that permanent grassland elsewhere on the holding are maintained in area and quality within the standards of overgrazing and undergrazing as contained in SEERAD's standards of Good Farming Practice.

6. In assessing the level of payments it is a requirement that these do not include the costs of compliance with usual good farming practice in the area. In determining this, regard will be had to the developing range of codes of good practice and those provisions set out in SEERAD's standards of Good Farming Practice which may be appropriate. These are contained in Chapter 9 of the Rural Development Plan for Scotland. In so far as possible, this will apply regardless of the actual land use as many aspects of these codes are relevant to uses other than agriculture.

Income foregone

7. This element of the payment is calculated on the basis of net income foregone by owners/occupiers in modifying or maintaining the land management practice on the SSSI or Natura 2000 site to that required to manage it for the benefit of nature conservation. Calculation of income foregone will take into account current land management practices of similar land uses and revenue and cost estimates based on typical farm or other rural businesses within the general area of the SSSI or Natura 2000 site. Where the management undertakings involve the loss of, or loss of entitlement to, agricultural support payments, this should be reflected in the calculation of net income foregone.

Additional costs

8. Where additional recurring costs of managing a SSSI or Natura 2000 site may be incurred, for example, where it is necessary to introduce livestock grazing to a site in order to achieve the appropriate level of management, a contribution towards the annual net costs of this (if any) may form part of the annual management payment. In calculating these additional costs, account will be taken of any incidental benefits to the land manager.

9. Agreements may also include payments for works and one-off measures to restore or enhance the land's nature conservation value, for example, fencing or scrub control. Where these involve investment in productive assets of a holding, payments may be limited to a proportion of the cost. If appropriate, payment may also be made for the preparation of a whole farm plan showing how the management of the SSSI can be integrated with that of the total farm area.

10. In all such cases, payments will take account of any reasonable incidental costs *and* benefits to the land manager. In such cases, the length of the management agreement should reflect the reasonable expectation of the life of the investment in terms of its nature conservation benefit or the achievement of that benefit.

Incentive

11 State Aid rules permit payments to include an incentive, normally limited to a maximum of 20% of the income foregone and additional costs (calculated as set out above) to encourage positive management measures to be adopted. In certain circumstances SNH may consider whether justification exists to permit the inclusion of such an incentive in the payment. This will reflect the special management needs of the specific SSSI or Natura 2000 site above normal land management practice in the locality and any significant additional conservation outcomes that the agreement may deliver as well as its contribution to the overall objectives of the *Natural Care* programme.

Financial impact

12. Ministers expect owners and occupiers to minimise any potential adverse financial impact arising, during their negotiations with SNH. An owner/occupier should not make any contractual or other legal commitment to any operation envisaged in a management agreement before it is concluded, without this having been agreed in writing with SNH. In assessing compensation for modification of established management, account shall be taken of the ability to mitigate any loss elsewhere on a holding.

Terms of the agreement

13. When making an offer of a management agreement, SNH should ensure the following:
- There should be a formal agreement setting out clearly the obligations of the parties, the payments that will be made, and the management that will be carried out on the land. An agreement should be in the form of a contract which will bind both parties when completed. SNH may register an agreement as a conservation burden;
 - EC rules require that an agreement will normally be for a minimum term of 5 years, and for no longer than 10 years, except in the case of specific management undertakings where it is shown that the conservation benefits cannot be delivered or secured in a shorter period. There are limited grounds on which agreements for periods of less than 5 years can be entered. An agreement may include provision for review of the standard payments and other terms, including where appropriate, changes in the circumstances giving rise to the agreement. Prior to its expiry, SNH should consider the need for renewal of an agreement if appropriate to the conservation of the site;
 - Where land is let and a tenant proposes to accept an offer of a management agreement, it may have implications for the tenancy agreement and for the landlord. In all cases, the tenant is required to notify the landlord of the proposed agreement, and SNH will require confirmation that the landlord does not object to the terms of the agreement. As an alternative, a tripartite agreement may be completed between the landlord, the tenant and

SNH on the management obligations under the agreement. In addition, where there is a tenancy or licence with less than 5 years remaining, SNH will normally require a tripartite agreement with the landlord, that he/she agrees to maintain the land in accordance with the management agreement for the remainder of its term. Similar assurances may be required in relation to mortgagees, or other legal interests in the property;

- Owners and occupiers are responsible for obtaining all necessary consents and permissions which are required in order to undertake the management in accordance with the terms of the agreement; and
- Owners of land, which is subject to a management agreement, must notify future tenants, licensees and other third party interests of all the details, and the management requirements contained in the agreement; and they should ensure as far as in their power to do so that the tenant/licensee complies with the terms of the agreement.

SNH will make a contribution to the professional fees reasonably and appropriately incurred in completing a management agreement (VAT on such fees should only be met where the owner or occupier is not registered for VAT purposes). Annex B sets out SNH's current policy on reimbursement of fees incurred by owners or occupiers.

Alternative schemes

14. Payments made by SNH for land management will not duplicate payments for the same undertakings under any other environmental land management schemes. Examples of such schemes include the Rural Stewardship Scheme and Environmentally Sensitive Areas Schemes operated by SEERAD and the Scottish Forestry Grants Scheme operated by the Forestry Commission. Land managers must give details of any other schemes of which they are beneficiaries, when entering into discussions with SNH. SNH may require a prior application to an alternative scheme before it offers to enter into a management agreement.

15. SNH may make payments in respect of land, subject to other agreements where this is for additional management requirements, provided that these complement and do not duplicate payment.

16. In normal circumstances, SNH would not encourage land managers to seek early termination of agreements in order to allow them to enter into other schemes. However, provision may be made, where all parties (including the body administering the scheme to which transfer is proposed) agree for agreements to be terminated before their expiry, in order to facilitate their replacement with another scheme where this would serve the nature conservation objectives of the land better.

Transitional Arrangements

17. The introduction of new guidance will result in a period of transition. Where the annual payment in an existing agreement is due to be reviewed, except where the agreement contains specific provisions to the contrary, the basis of that review will be in accordance with the method of assessment set out in paragraphs 3-11.

18. There may also be circumstances where it would be beneficial for both parties to an existing agreement to terminate it, and for the owner/occupier either to enter the land into another environmental land management scheme, or take up the offer of a new standard agreement from SNH which is in accordance with this guidance. It must be understood by both parties that this is an entirely voluntary option. However, in negotiating a new contractual arrangement with SNH, the following points may help the parties achieve a satisfactory outcome:

19 In order to achieve the surrender of the existing agreement SNH may pay a lump sum, but this will be conditional on the future management being guaranteed to achieve the conservation objectives for a minimum of ten years or the remaining term of the existing agreement, whichever is less.

20 In calculating any lump sum that may be paid by SNH, reference may be made to the Land Compensation (Scotland) Act 1963 (and any amendment to this Act). However, the overriding criteria are the need to secure the favourable condition of SSSIs or Natura 2000 sites and to deliver best value for money for the taxpayer.

21 Accordingly, in calculating any lump sum that may be justified, SNH will need to balance the existing nature conservation objectives, the level of payments and the remaining length of term under an existing agreement against the desired nature conservation objectives and the level of payments under a new agreement calculated in accordance with this guidance.

Breach of agreement

22 In all agreements, SNH shall be able to withhold or reduce annual payments where the agreed management has not been carried out to a satisfactory standard. In some circumstances, SNH may terminate the agreement before it has run its full term. Where any annual or capital payments have been made and the terms of the agreement have been breached, SNH may reclaim part or the whole of any funding, plus an appropriate level of interest. The Scottish Ministers would not, however, expect SNH to take these steps without all efforts, including alternative dispute resolution being made to resolve the issues.

Capital Taxation

23 Exemption from certain capital taxes may be available to owners of heritage land and property. Inland Revenue Capital Taxes can provide further information about the exemption. Their address is:

Inland Revenue Capital Taxes
Ferrers House
PO Box 38
Castle Meadow
Nottingham
NG2 1BD

24 If land which benefits, or will benefit, from exemption is already partly or wholly funded by payments made under a management agreement with SNH, the agreement may be amended or terminated to avoid any effective duplicate funding. This is a matter that should be discussed with SNH, not Inland Revenue Capital Taxes.

Land acquisition

25 It may be appropriate under certain circumstances for SNH to acquire ownership of the property, either voluntarily or by exercising its compulsory purchase powers (in sections 17 and 18 of the 1949 Act, section 24 of the 1967 Act, section 5 of the 1991 Act, Regulation 32 of the 1994 Regulations or under Chapter 4 of the draft Nature Conservation (Scotland) Bill.

26 Compensation will be paid according to the Compensation Code, which is based on the Land Compensation (Scotland) Act 1963 (and any amendment to this Act, in particular the Land Compensation (Scotland) Act 1973 and the Planning & Compensation Act 1991). In this event, SNH may choose to manage the land directly, or through a leasehold arrangement with a recognised voluntary conservation organisation or other appropriate body. There may also be circumstances where SNH may wish to support the acquisition of land by a voluntary conservation organisation or other appropriate body, and may offer a land purchase grant.

Annex B

Reimbursement of Professional Fees by SNH

I. Introduction

1.1 SNH will reimburse the reasonable costs incurred by owners or occupiers in obtaining assistance and professional advice when negotiating management agreements.

1.2 Please note that if you employ a professional adviser this establishes a contractual relationship between you and your adviser rather than one between your adviser and SNH.

1.3 SNH will only reimburse reasonably incurred professional fees. If there is any difference between SNH's assessment of reasonableness and the fee note the difference will not be recoverable from SNH and you will be liable to pay the difference. It is therefore in your interests to ensure that when employing an adviser their fees will be reasonable in relation to the management agreement and the services required. If you have any doubts over this you should seek SNH's advice and obtain quotations.

1.4 Once you have confirmed the appointment of an adviser you should inform SNH immediately and provide details of the arrangements, including those about fees, you have entered into. The cost of employing advisers without notifying SNH in this way may not be reimbursed. SNH will respond and inform you of any ceiling above which fees will not be reimbursed without further consultation and written agreement.

2. Eligible Costs

2.1 SNH will only reimburse professional costs incurred in the negotiation of a management agreement. For the avoidance of doubt, costs in relation to the following expenditure *will not be reimbursed*:

- a) Discussions surrounding the Notification of an SSSI;
- b) The submission of an application for consent under Section of [insert name of new legislation], including the preparation and submission of proposals such as a business plan, environmental assessment or other investigation; or any subsequent amendment;
- c) Fees incurred before SNH has advised that it be prepared to negotiate a management agreement; and
- d) Negotiations following an application for consent under section 11 of the draft Nature Conservation (Scotland) Bill over the terms of a written consent from SNH, or where SNH has not intimated that it would like to conclude a management agreement.

3. Assessment

3.1 The cost of employing a professional adviser to negotiate payments under a management agreement will be reimbursed on a quantum meruit basis. This is consistent with the provisions of paragraph 3.26 of Ryde's Scale (1996), published by the Valuation Office Agency. SNH will assess *quantum meruit*, as follows:

- i) That amount which represents the level required to provide adequate professional representation reflecting the amount of work and the level of expertise commensurate with the complexity and size of the claim. Accurate time records should be maintained to assist the assessment of fees;
 - a) Where a lump sum payment is made under a management agreement, the fee will be compared with the *ad valorem* fee generated as if Table E of Ryde's Scale was applied. SNH will not normally reimburse a fee higher than this and may, where appropriate to the case, reimburse a lesser sum.
 - b) Where payments are made annually, the agreed annual payment (ignoring any phasing) will be converted in order to apply Table E, by multiplying by a factor of 5.
- ii) In exceptional circumstances SNH may, at its sole discretion, reimburse a higher level of fee than indicated at 3.1(i) above, subject to being satisfied that the necessary time spent by an adviser, and the circumstances of the case, fully justify it. It is unlikely to be possible for SNH to make this judgement until towards completion of a case. However, SNH will only consider such requests if it has been given prior notice of the situation at the earliest practical opportunity that the normal basis of assessment is likely to be inadequate. Retrospective requests for an alternative basis of assessment will not be accepted.
- iii) The Financial Guidelines for Management Agreements do not include explicit provision for the reimbursement of professional fees on the review of an annual payment. This is discretionary. Where SNH agrees, reimbursement will be on the basis set out above. It should be borne in mind, however, that in many cases a payment review would involve relatively little work, often just the simple arithmetic update of a number of variable costs. In these circumstances SNH require the fee to reflect this.
- iv) Where an adviser negotiates the terms of a management agreement, other than compensation, fees incurred in undertaking this work, providing it does not duplicate the work done by others, will normally be settled on a quantum meruit basis.
- v) In all cases the hourly rate to be charged should be agreed in advance with SNH.
- vi) If an adviser changes during the course of negotiations, the time spent duplicating earlier work by, for example, briefing themselves on the case, will only be reimbursed by SNH in exceptional circumstances.
- vii) SNH will not reimburse the costs of advisers incurred in agreeing the basis on which their fees will be calculated or reimbursed.

3.2 SNH will assess the reasonableness of Solicitors fees on the basis of its own and its Solicitor's accumulated experience in relation to the negotiation of management agreements. If SNH considers any fees claimed excessive, and an amended fee note cannot be agreed, the matter may be referred via SNH's Solicitor to a Law Accountant. If the Law Accountant's assessment of the fee is not agreed then the matter may be referred to the Auditor of the Court of Session.

3.3 If you propose to employ additional or other professional advisers and you also intend to claim for their fees as well you should consult SNH beforehand and obtain SNH's prior consent on their terms of engagement and the basis for calculating their fees.

3.4 In addition to reimbursing an adviser's fees SNH is prepared to also consider including their travel expenses and other disbursements necessarily and reasonably incurred. However where the same adviser is carrying out other work on your behalf only those expenses relevant to the fees SNH is reimbursing will be eligible. Interest is not paid on professional fees.

4. Abortive Negotiations

4.1 Paragraph 31 of the Financial Guidelines for Management Agreements provides that if SNH offers to negotiate a management agreement and subsequently withdraws from this it will defray your reasonable costs incurred up until that time. The assessment of the reasonableness of costs in these circumstances will take account of guidance given in paragraph 3 above as far as possible.

4.2 If you withdraw from negotiations SNH will only reimburse costs in exceptional circumstances.

5. VAT

5.1 Paragraph 13 of Annex A of this guidance provides that SNH will only pay VAT on professional fees where the owner or occupier is not registered for VAT purposes. If you are registered and able to reclaim VAT, fees will be reimbursed net of VAT with the tax being reclaimed by you in the normal way.

6. Payment Procedure

6.1 Land Agents' fees will normally be paid following completion of Missives.

6.2 Solicitors' fees will normally be paid following the execution and delivery of the agreement.

6.3 Advisers fee notes should be made out to and sent to their clients in duplicate; with one copy for your retention and the other for forward transmission to SNH supported by adequate time records. You will then be reimbursed upon SNH's approval of the details submitted.

6.4 In exceptional circumstances SNH may be prepared to consider other arrangements but all payments will always be made directly to you.

7. Dispute Resolution

7.1 In the event of dispute over fees it will be open to both parties to seek dispute resolution in accordance as laid out in the 'Financial Guidelines'. SNH's preference will be to seek resolution through mediation or expert determination rather than through arbitration.

Annex C

Contact Details

Information about SNH's *Natural Care* programme, management schemes and agreements can be obtained from:

Natural Care Team, Operational Support Unit,
SNH,
Battleby,
Redgorton,
Perth,
PH1 3EW
Telephone: 01738 444177
e-mail: Natural.Care@snh.gov.uk

Information on *Natural Care* can also be obtained from the SNH website (www.snh.org.uk)

Information regarding the Rural Stewardship Scheme and Forestry Commission Schemes may be obtained from your local SNH, SEERAD or Forestry Commission offices.

SECTION F

Regulatory Impact Assessment

REGULATORY IMPACT ASSESSMENT

Introduction

This draft Regulatory Impact Assessment (RIA) forms part of The Scottish Executive's published proposals for a new system for nature conservation. It develops and replaces the draft RIA contained in the Scottish Executive's consultation paper *The Nature of Scotland*.

We have considered potential costs to business as a result of our proposed changes to the law on wildlife offences and have concluded that there will be no significant additional costs to business as a result of our wildlife crime proposals. The only additional burden will fall on offenders. Similarly, in relation to SSSIs, obligations will be placed on those who have carried out damage to sites to restore or remedy this damage. This is, however, a sanction under criminal law rather than a regulatory requirement. Neither should there be any costs to business associated with the proposed general duty on public authorities to further the conservation of biodiversity. **If any reader believes, however, that these proposals may impose costs on business, we would be grateful for views, which we will take into account in considering the way forward.**

PURPOSE

Issue

Sites of Special Scientific Interest (SSSIs) in Scotland are part of a UK-wide system of protection for sites of biological or geological importance. The current SSSI system has provided a substantial degree of protection for the best of Scotland's natural heritage since it was introduced in its current form in the Wildlife and Countryside Act 1981. There are currently about 1,450 SSSIs, protecting almost 13% of Scotland's area.

The SSSI system has, however, attracted various criticisms, notably, that it did not take sufficient account of local sensitivities and local socio-economic objectives, that it had failed to protect Scotland's most special natural environments from slow degradation, and that it did not meet its full potential for contributing to sustainable development. The system has also been perceived as confusing and somewhat bureaucratic.

In *Working together for Scotland: A Programme for Government* the Executive made clear its intention to "improve the system of nature conservation and to work with local communities to achieve effective protection" for Scotland's natural heritage. That promise led to the publication in March 2001 of a detailed consultation paper entitled *The Nature of Scotland*.

The Nature of Scotland contained a wide range of proposals for the modernisation of nature conservation in Scotland, primarily by means of amendments to the principal statute governing both species and site protection arrangements, the Wildlife and Countryside Act 1981. *The Nature of Scotland* proposals were welcomed by a broad range of consultees.

Objective

The overall objective of the draft bill is to deliver policy enhancements in three key areas – the conservation of biodiversity, a strengthened system for designated SSSIs, and wildlife crime measures. Combined, these site elements with enhancements to species protection, underpinned by a general duty on public authorities will considerably enhance Scotland’s statutory framework for nature conservation.

In doing so, it will link with and develop a number of themes which are part of the wider thinking of the Executive. These include; sustainability and environmental justice, valuing and enhancing Scotland’s environment and natural resources, working together with, and involving, local communities and key stakeholders, tackling crime effectively, implementing European and international obligations and respect for human rights and compliance with the ECHR.

Risk Assessment

SSSIs have existed since 1949, but were only fully developed into one of the cornerstones of nature conservation policy in Britain by the Wildlife and Countryside Act 1981. That legislation has essentially served Scotland’s natural heritage well, but a significant modernisation and enhancement is now overdue. The existing SSSI system has at times failed to secure the management of the land in the most appropriate way to secure the protection and, where appropriate, enhancement of its special interest. It only provides temporary protection against damaging operations going ahead on SSSIs if they are not controlled by any other consent regime (eg the planning system), and does not provide an effective means of ensuring that, where necessary, action can be taken to prevent the gradual deterioration of the nature conservation interest of an SSSI.

It has also failed to deliver the best possible value for money. A considerable proportion of the money available to support SSSI management has been taken up by large payments to a few landowners to prevent damaging developments from going ahead. This, and the time consuming processes of negotiation and dispute resolution associated with such large claims, has limited SNH’s ability to enter into management agreements with more businesses to protect a larger proportion of the SSSI network. The current SSSI system has failed to recognise that a wider range of interests than simply SNH and the land manager have an interest in decisions affecting the land. Change is, therefore, required to try to address that failure and achieve conservation-friendly management across the whole series of sites. There is also a need to ensure that public funds spent on conservation measures, including on SNH management agreements, deliver best value for money for the taxpayer.

By improving the SSSI system we aim to:

- ◆ secure effective protection for the best examples of Scotland’s natural heritage;
- ◆ reward land managers for the good stewardship of SSSIs,
- ◆ create a better understanding of the role and purpose of the series of protected sites,
- ◆ operate an effective system which actively involves the relevant stakeholders and which provides good value for public money, and
- ◆ make a larger contribution to the promotion and sustainable development of the areas within which sites are located.

COMPLIANCE COSTS FOR BUSINESS

This section evaluates the potential costs and benefits for business arising from the operation of those aspects proposed that will impact directly upon business.

Most aspects of the proposed reforms to the SSSI system should not involve additional costs to business.

1. The proposed arrangements for the notification of SSSIs should not add to the costs of businesses whose property includes the site. SNH are already under a statutory duty to allow at least 9 months for consultation with the owners of tenants of the site in question when they notify that site as an SSSI. The time taken by owners and tenants to discuss a site management statement and the possibility of entry to a *Natural Care* scheme or other management agreement is largely at the owner/tenant's discretion, but should not represent an overall increase on the estimated 6 days of time which owners/tenants typically spend at present on consultation about SSSI notification and negotiation of a management agreement.
2. The proposed reforms to the procedures for designating SSSIs principally give other stakeholders, in particular bodies representative of the local community, the opportunity to decide whether or not to invest time and effort making representations about the selection and management of SSSIs. If a land manager is subject to a Land Management Order and complies with its terms, he will be paid for the costs incurred in carrying out the necessary work.

In general, the proposed reforms will at worst be cost-neutral for business compared with the existing situation, with the specific exception of the proposed restriction of entitlement to compensatory payments for not going ahead with damaging operations on SSSIs. Many more businesses should gain money from the increased availability of positive management incentives than should lose money from the restriction of compensatory payments. Some individual businesses would in future lose the benefit of purely compensatory payments when their existing agreements expire, although the positive incentives available may offset this, or when new circumstances arise which would, under current provisions, entitle them to a compensatory management agreement.

The effects of this are detailed below:

Positive Management of SSSIs and Restriction of Compensatory Payments

Objective: Resources should be targeted at providing incentives to businesses to manage SSSIs in a way which is consistent with their nature conservation interest, rather than at paying businesses not to go ahead with damaging new projects on SSSIs.

Owners and occupiers of SSSIs will no longer be automatically entitled to compensation for profit foregone when they are prevented from carrying out a new project by SNH. The emphasis will instead be on offering “positive” management incentives to land managers for doing things to help to secure and enhance the positive nature conservation status of sites. This will mean that resources which under current provisions may be spent to prevent a damaging operation from

going ahead will instead be available to provide incentives for the positive management of a larger area of land of importance for Scotland's nature. The SSSI system will be brought into line with other consent regimes, such as the planning system, under which businesses are not compensated when, for reasons relating to the wider public interest, they are refused consent for a proposed operation or development.

Proposal

This consultation paper incorporates draft Financial Guidelines explaining the circumstances in which the existence of a SSSI leads to a change in or restricts the established management of the area in question, and where that leads the land manager to incur an actual loss (or where he can demonstrate that such a loss will be incurred) SNH shall take account of such a loss when considering and offering a management agreement. A land manager will not, however, be entitled to a management agreement if SNH refuse permission for an operation which constituted a new project which was not part of the established management of the area. Compensation under existing management agreements will continue until their expiry date but thereafter entitlement will be governed by the new rules.

SNH and the land manager may choose to enter into a positive management agreement which instead of simply compensating a land manager for their losses, involves them agreeing to undertake specific actions to maintain or enhance the conservation interest of the site. While, as a matter of policy, SNH will seek where possible to secure positive conservation gain when negotiating management agreements, neither party will be obliged to offer or accept a management agreement on this basis. Furthermore, there will be no obligation to pay owners or occupiers of SSSIs simply for having an SSSI on their land because many sites will not require any change to existing management to safeguard the nature conservation interest. The positive management of a site may, alternatively, be secured by an owner or occupier receiving support under other Government incentive schemes for environmental-friendly land management, eg under the Scottish Forestry Grants Scheme or the Rural Stewardship Scheme.

Disagreement about whether an owner or occupier is entitled to a management agreement, or the assessment of the level of the payment necessary to compensate them for their losses, may result in referral of the matter to an arbiter or to the Scottish Land Court, where the dispute cannot be resolved at a lower level. Further appeal would be to the Court of Session, on points of law only.

Cost Implications

More businesses will gain than lose under the proposed reformed SSSI system. Increased resources will be made available to provide incentives for the positive management of SSSIs, as part of SNH's Spending Review settlement and the other financial mechanisms which will support businesses' management of SSSIs.

Currently, there are around 10,000 owners/occupiers of SSSIs, the majority of whom are engaged in agricultural business. Of that number, around 200 agricultural businesses currently have compensatory management agreements.

Ending the entitlement to compensation for new plans and projects means that those owners and occupiers who would previously have received compensation under a management agreement for not going ahead with damaging new projects will lose out if circumstances arise in future which under current rules would lead to them qualifying for compensation under a management agreement. With the advent of the EIA Regulations for Uncultivated and Semi-Natural Land and the cross-compliance conditions applied to agricultural payments under the Rural Development Plan (“RDP”) this will be increasingly rare. When existing compensatory management agreements expire they will not be renewed unless continued modification or restriction of established management is involved. Based on figures for recent years, however, fewer than 1% of the 300-400 annual notices of intent to carry out a damaging operation resulted in SNH entering into management agreements which were purely compensatory. While some notices of intent might still lead to management agreements with a compensatory element, it is estimated that no more than 4 owners or occupiers each year would lose the full compensation to which they would at present be entitled.

Not entering into these management agreements will potentially release a further £50,000 per year to pay for positive management of the natural interest of the land, additional to the increased resources for management agreements available as a result of SNH’s increased grant in aid.

Given that the typical cost of a purely compensatory management agreement is around £50/ha compared to a typical cost of around £10/ha for positive management scheme agreements, more businesses and, therefore, a greater area of area of the SSSI series will benefit from positive management agreements. In crude terms, every hectare of compensatory management agreement no longer required might buy an average of 5 hectares of positive management.

Real Case Examples

The following real case examples compare income received by various types of farm businesses under existing compensatory management agreements with that potentially available from future management agreements. The income calculations are based on the following estimated positive management cost rates and the land type categories developed by SNH and SEERAD:

Land Type Categories and Costs of Positive Management

1. Geological features/unproductive land (including peatlands, marshes & montaine habitats)	£1.60/ha
2. Extensive rough grazing (including heather moorlands, scrub, dunes & saltmarshes)	£9/ha
3. Improved pasture	£125/ha
4. Intensive managed agricultural land	£275/ha
5. Woodland	£35/ha

A range of farm businesses have been used covering management agreements in respect of land type categories 1, 2 and 5 as well as covering farm holdings that include all 5 categories. These cases are fairly typical in that the management agreements cover a small unproductive area of the farm holding. All the management agreements with the exception of two relate to pure statutory compensation, and for these two the current positive elements of income have been excluded. The level of income from future positive management has been calculated in different ways: firstly on the basis that only the area covered by the existing management agreement is eligible for positive management; and secondly where the entire farm receives positive management incentives.

Type of Farm Business	Current Annual Income from SNH compensatory management agreement	Annual Income from SNH if a management agreement covered the same area as the compensatory agreement		Annual Income from SNH if a management agreement applied to whole holding	
	£	£	% of amount currently received from SNH	£	% of amount currently received from SNH
<i>Cattle/Sheep</i>	8,700	250	3%	22,500	259%
<i>Sheep</i>	690	100	14%	6,000	870%
<i>Upland Cattle</i>	18,700	4,400	24%	47,500	254%
<i>Arable</i>	5,200	22	0%	27,000	519%
<i>Cattle</i>	8,100	300	4%	6,700	83%
<i>Cattle/Sheep</i>	11,100	400	4%	8,100	73%
<i>Hill Sheep</i>	38,000	11,000	29%	31,500	83%
Average % of current amount received from SNH			11%		416%

Under the proposed reforms a handful of cases every year will occur where farm businesses will not be entitled to compensatory payments from SNH which under current circumstances they are entitled to. In most cases, if the holding enters into a management agreement covering a wider area of the holding than is typically covered by a management agreement compensating for restrictions on an SSSI, the business may receive an amount of money from SNH which is either similar to or greater than that currently received from SNH.

Alternative option 1: Do nothing

The existing entitlement to compensation could be retained, and no additional resources made available for *Natural Care* management incentives. This would not put a stop to the perceived abuse of the existing system under which very substantial amounts of money have been paid to a few owners or occupiers to prevent new damaging projects from going ahead on SSSIs, which is recognised by Ministers as an unsatisfactory policy and a failure to obtain value for money. Nor would this option ensure that public money is better spent on assuring the positive management of a larger proportion of the SSSI series, which the proposed option would deliver. There would be no difference in costs or benefits to business compared to the present.

Alternative option 2: More resources, retain compensatory entitlement

Under this option more resources could be made available for *Natural Care* management incentives, but an entitlement to compensation when SNH refuse consent for a damaging new project could be retained. This option would secure the increased availability of *Natural Care* management incentives and, consequently, the assured management of a larger part of the SSSI network, although to a lesser extent than if the new resources were targeted solely on *Natural Care*. It would, however, be less acceptable in public policy and value for money terms than the preferred option since money would still be paid to businesses for not going ahead with damaging new projects.

Alternative option 3: Completely abolish entitlement to compensatory payments and allow SNH to break all existing management agreements which are compensatory.

Existing annual management agreements which are compensatory commit SNH to approximately £1.14 million in 2002-03. (The equivalent figure for 2015 is significantly less at approximately £200,000, with such management agreements tailing-off by the year 2080). If all these agreements were terminated, this sum would be saved immediately and could be re-allocated for positive management purposes.

While this option would clearly release substantially more resources for the positive management of the SSSI series, unconditionally abolishing an entitlement to compensation would not be acceptable. Existing compensatory management agreements were entered into in good faith by both parties, and should be allowed to run for their agreed duration. There will continue to be circumstances where, having been prevented from carrying out established management activities, it would be inequitable for a farmer to lose income or have the value of their land diminished without receiving any compensation under a management agreement which reflected their losses. This is why the preferred option will ensure that policy guidelines governing the financial arrangements for management agreements will require SNH to offer agreements based on an assessment of actual losses suffered under those circumstances.

ANY OTHER COSTS

It is estimated that it may cost around £9 million pa to bring 85% of the SSSI/Natura 2000 series into assured management which is the target for Natural Care by 2007/08. Subject to the extent to which SFGS and RSS can contribute, SNH expects that it will need to increase its expenditure from £4M pa in 2001/02 to around £7.5M by 2008/09.

There will be additional costs for SNH, mainly in terms of staff time, for increased consultations with owners, occupiers and interested stakeholders in advance of the notification of SSSIs. These costs are estimated at around £500,000 a year.

Additional costs to the public sector, arising from the creation of the new appeal procedures detailed in the draft bill are estimated at approximately £80,000 a year.

We expect that referral of appeals and disputes to the Land Court will be relatively infrequent. SNH currently consents to the vast majority of operations proposed on SSSIs and so we expect that its proposed new power to refuse consents which could lead to associated appeals will not be exercised very often. Land Management Orders will only be used in situations where negotiation over changes to existing land management with a land manager have not proved successful. In cases involving disputes over compensation levels, SNH and land managers will be encouraged to reach resolution through mechanisms such as mediation, expert determination or arbitration. We expect that only those disputes which can not be settled through these routes would be referred to the Land Court, and that any financial implications will not be significant.

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