

EAST AYRSHIRE COUNCIL

SPECIAL DEVELOPMENT SERVICES COMMITTEE: 25 JUNE 2003

DRAFT NATURE CONSERVATION (SCOTLAND) BILL

Report by the Director of Development Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the contents of the draft Nature Conservation (Scotland) Bill, Draft Financial Guidelines and Regulatory Impact Assessment, and Technical Amendments to the Conservation (Natural Habitats etc) Regulations 1994 issued in March 2003 by the Scottish Executive and to make recommendations as to how the Council should formally respond to the Scottish Executive.
- 1.2 As the deadline for responses to the above Bill was Friday, 06 June 2003 the Head of Planning and Building Control has already sent a response to the Scottish Executive based on the contents of Section 5 of this report.
- 1.3 The Scottish Executive also required a response on the Technical Amendments to the Conservation (Natural Habitats etc) Regulations 1994 by 06 May 2003. However, as this is essentially a technical memorandum it was considered more appropriate that SNH should respond to the Scottish Executive on its contents.
- 1.4 The Department of Community Services has been consulted during the preparation of this report and the views of the Dean Castle Country Park Manager have been assimilated within the Report's conclusions.

2. BACKGROUND

- 2.1 On 05 June 2001 the Development Services Committee considered a joint report by the Director of Development Services and the Director of Community Services on the Scottish Executive's policy statement 'The Nature of Scotland'. This document proposed a number of changes to current legislation regarding the designation and management of, and the financial provisions relating to, Sites of Special Scientific Interest (SSSIs), and the detection and punishment of wildlife crime.
- 2.2 The Nature Conservation (Scotland) Bill and the Draft Financial Guidelines and Regulatory Impact Assessment are intended to give a legal and financial framework to the policies set out in 'The Nature of Scotland' document referred to above.

3. MAIN PROVISIONS OF DRAFT NATURE CONSERVATION (SCOTLAND) BILL

3.1 The proposed Bill is designed to deliver important legislative enhancements in three key areas,

- the conservation of biodiversity;
- enhanced protection for SSSIs, and
- measures to secure species protection and tackle wildlife crime.

Conservation of Biodiversity

3.2 Sections 1 & 2 of the draft Bill introduce a general duty for all Scottish public bodies to further the conservation of biodiversity in exercising their functions in accordance with the new Scottish Biodiversity strategy. It should be noted that a separate report on the Scottish Executive's strategy proposals regarding biodiversity issues appears elsewhere on this Committee Agenda.

Enhanced Protection for SSSIs

3.3 A key feature of the Bill is its provision for SSSI reforms. The Bill in particular will:

- provide an overall statutory purpose that clarifies SSSIs as being not only important individually but as part of the wider, national network of natural heritage sites in Scotland;
- advocate the involvement of a broader group of stakeholders – including local communities and statutory undertakers – in decisions affecting SSSIs;
- require SNH to produce management statements when an SSSI is notified. Such statements should include reference to socio-economic issues;
- improve protection for SSSIs through prohibition of damaging activities including control of third party actions on adjacent land which might affect SSSI sites;
- provide a more specific definition of limitations on management of SSSI sites with a right of appeal for land managers where management of their land is restricted;
- suggest that voluntary management agreements would be the normal mechanism through which land managers would obtain financial support from SNH and others; however, Land Management Orders for SSSIs will be required for certain management/operations particularly with regard to

protection of Special Areas of Conservation (SAC) and Special Protection Areas (SPA);

- ensure that SNH offer a compensatory management agreement to land managers where it becomes necessary to refuse consent for an SSSI operation already agreed under the above voluntary arrangement. Compensation will not be payable where the development is speculative and does not form part of the established use of land;
- provide a duty for statutory undertakers and regulatory authorities to consult SNH before consenting to an operation affecting an SSSI,

3.4 Measures to Secure Species Protection and Tackle Wildlife Crime

This sections advocates:

- updating penalties available to the courts in dealing with offences involving protected sites;
- improved measures to tackle wildlife crime (these particular measures are listed in the Appendix to this report).

4. MAIN PROVISIONS OF DRAFT FINANCIAL GUIDELINES AND REGULATORY IMPACT ASSESSMENT

4.1 This document sets out guidelines for implementation of the Nature Conservation (Scotland) Bill through public financial support for the proper management of SSSIs, SACs and SPAs. The guidelines introduce a 'Natural Care' strategy with the aim of bringing 85% of SSSIs into management that supports conservation needs through incentives from SNH.

4.2 The objectives of the 'Natural Care' strategy are

- to avoid deterioration of, and/or improve the condition of SSSIs through positive management;
- to encourage land managers in positive management of SSSIs through their active involvement in development of management schemes;
- to improve access to support for land management through additional resources and effective integration of these and existing incentives;
- to establish conservation of natural heritage as being of social and economic benefit.

4.3 It is intended that the SNH management schemes under 'Natural Care' would complement existing incentives under the Scotland Rural Development Plan, such as the Rural Stewardship Scheme and the Scottish forestry Grants Scheme. In allocating 'Natural Care' resources SNH will target those SSSIs,

SACs and SPAs which are deteriorating and in urgent need for sympathetic land management to maintain and improve their nature conservation value.

Draft Financial Guidelines

- 4.4 The Guidelines provide for land manager entitlement to compensation where SNH cannot grant consent for operations on SSSIs. The principles that would govern land managers' entitlement to compensation are listed in Appendix 2 of this report.

Regulatory Impact Assessment

- 4.5 The proposed Regulatory Impact Assessment aims to target resources to enable the management of SSSIs in a way which is consistent with their nature conservation interest. Under the Regulatory Impact Assessment owners and occupiers of SSSIs will no longer be automatically entitled to compensation for profit forgone when they are prevented by SNH from carrying out a new project.
- 4.6 Under the new regulations SNH will also no longer be obliged to pay owners or occupiers of SSSIs not to undertake operations that would damage SSSIs. Compensation of landowners would however apply if SNH considered that the established management of land had to be altered to protect an SSSI.

5. COMMENTS

- 5.1 It is considered that the provisions of the draft Nature Conservation (Scotland) Bill in relation to the Council's duty to promote biodiversity are already incorporated within the East Ayrshire Local Plan in its references to the preparation of the now approved Ayrshire Local Biodiversity Action Plan (Proposal PROP 12) and in the Council's stated commitment to the principles and proposals of the Action Plan.
- 5.2 The proposed enhanced protection for SSSIs is welcomed. It is considered that the provisions for maintenance and enhancement of SSSIs in the Bill by financial support to land managers through the 'Natural Care' scheme fills a gap in such support for rural conservation. The statutory recognition that SSSIs have social and economic benefits, particularly in terms of green tourism accords with the general tenor of the Tourism, Leisure and Recreation section of the Local Plan. It is, however, recognised that Policy ENV 10 of the Local Plan may have to be reviewed to reflect the above proposed changes in provisions for protection of SSSIs were the Bill to be passed. This will be considered as part of the Local Plan Review process currently under way.
- 5.3 The new incentives for management of SSSIs should, together with existing incentives such as the Rural Stewardship Scheme, Environmentally Sensitive Areas Scheme, and the Scottish Forestry Grants Scheme assist in the creation of strong background financial support for the development of existing environmental projects, such as the Coalfield Environment Initiative.

They should also encourage increased participation of land managers and the local community in conserving the natural heritage.

- 5.4 The proposed new powers for SNH as advocated in the Bill would seem to be worthy of support and could help reduce the number of inappropriate planning applications affecting SSSIs.
- 5.5 The proposed measures to tackle wildlife issues will be of particular value in protecting the habitats and species of the SACs (at Airds Moss Loch Doon and Merrick Kells) and the Muirkirk Uplands SPA, within East Ayrshire, the latter SPA having in recent years been subject to vandalism and species predation. Also, it is considered that these new measures will assist in maintaining local biodiversity, so that potential SSSI sites, including Provisional Wildlife Sites, can be safeguarded until SNH can make assessments regarding their future status.

6. LEGAL AND FINANCIAL IMPLICATIONS

- 6.1 There are no legal or financial implications for the Council in respect of the provisions of the proposed Draft Bill and Draft Financial Guidelines and Regulatory Impact Assessment.

7. RECOMMENDATIONS

- 7.1 It is recommended that the Committee agrees to homologate Section 5 of this report as the Council's official response to the Scottish Executive regarding the proposed Nature Conservation (Scotland) Bill.

Stephen Chorley
Director of Development Services

12 June 2003
(JT/MMM/SA)

FV/AN

LIST OF BACKGROUND PAPERS

- 1. Draft Nature Conservation (Scotland) Bill: Draft Financial Guidelines and Regulatory Impact Assessment: Technical Amendments to the Conservation (Natural Habitats etc) Regulations 1994 – Scottish Executive, March 2003.**
- 2. 'The Nature of Scotland', A Policy Statement – Scottish Executive, March 2001.**

For further information on the contents of this report contact Alan Neish, Head of Planning and Building Control. Telephone 01563 576782.

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PROPOSED NATURE CONSERVATION (SCOTLAND) BILL: PRINCIPAL FEATURES OF SECTION D – SPECIES PROTECTION AND WILDLIFE CRIME

The proposed reforms on securing species protection and tackling wildlife crime would,

- 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 Directives in cases where the wording of current provisions is less clear than it ought to be.

**PROPOSED NATURE CONSERVATION (SCOTLAND) BILL:
PRINCIPLES GOVERNING LAND MANAGERS' ENTITLEMENT
TO COMPENSATION**

- a land manager should be entitled to compensation through a management agreement if he can show that the exercise of SNHs 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 SNHs 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.