AGENDA

8th Meeting, 2003 (Session 2)

Wednesday 8 October 2003

The Committee will meet at 10.00 am in Committee Room 1.

1. **Item in private:** The Committee will consider whether to take item 4 in private.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—
   - the Air Quality Limit Values (Scotland) Regulations 2003, (SSI 2003/428)
   - the Smoke Control Area (Exempt Fireplaces) (Scotland) Order 2003, (SSI 2003/436)

3. **Petitions:** The Committee will consider petitions PE246, PE462, PE463 and PE464 on the procedure for the designation of Sites of Special Scientific Interest, Special Protection Areas and Special Areas of Conservation.

4. **Nature Conservation (Scotland) Bill:** The Committee will consider arrangements for its consideration of the Bill at Stage 1.

   *Not before 11.30 am*

5. **Budget process 2004-05:** The Committee will take evidence from Ross Finnie MSP (Minister for Environment and Rural Development).

6. **National Waste Plan inquiry:** The Committee will take evidence from Ross Finnie MSP (Minister for Environment and Rural Development).

Tracey Hawe
Clerk to the Committee
Direct Tel: 0131-348-5221
tracey.hawe@scottish.parliament.uk
The following papers are attached or are relevant to this meeting:

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<td><strong>The Air Quality Limit Values (Scotland) Regulations 2003, (SSI 2003/428)</strong></td>
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<td><strong>The Smoke Control Area (Exempt Fireplaces) (Scotland) Order 2003, (SSI 2003/436)</strong></td>
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<td>The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 2) Regulations 2003, (SSI 2003/445).</td>
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<td>A paper from the Clerk is attached</td>
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<td>Copy of petitions PE246, PE462, PE463 and PE46 4</td>
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<td>PE246 – background briefing and correspondence</td>
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<td>A briefing paper from the Committee’s adviser <em>(TO FOLLOW - for members only)</em></td>
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<td>An extract from the <a href="#">Scottish Executive draft budget 2004-05</a> is attached</td>
<td>ERD/S2/03/08/5b</td>
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<td>Guidance from the Finance Committee to subject committees is attached</td>
<td>ERD/S2/03/08/5c</td>
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<td>An extract from papers by the Finance Committee’s adviser is attached.</td>
<td>ERD/S2/03/08/5d</td>
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<td>Agenda Item 6</td>
<td>Note from the Clerk (<em>for members only</em>)</td>
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1. At its meeting on 30th September the Committee determined that it did not need to draw the attention of the Parliament to the instruments listed in the Annexe to this report on any of the grounds in its remit.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

   Environment and Rural Development SSI 2003/428

Instruments subject to annulment

The Air Quality Limit Values (Scotland) Regulations 2003 (SSI 2003/428)

Background

1. The Committee raised five matters with the Executive on this instrument.

Question 1

2. The Committee asked the Executive to explain why, when Article 15(1) of the Directive provides that Member States were to implement the provisions of the Directive by 9 September 2003, the Regulations will not come into force until 2 October 2003.

Answer 1

3. This Directive is technical and complex. Preparation of the transposition Regulations, which are a consolidation, took some time. The Executive was unable to complete the instrument before the summer recess and would have breached the 21-day rule by laying it during the recess for commencement on 9th September 2003. This instrument was therefore laid as soon as could be arranged after recess and commencement was delayed for a short period in order to respect the 21-day rule. The Executive has made every endeavour to transpose this Directive in good time but in the circumstances a slight delay in transposition was unavoidable. The Executive’s response is reproduced at Appendix 1.

Report 1

4. The Committee recalls that the Executive has on previous occasions cited as justification for breaches of the rule the need to implement Community legislation in good time. The Committee observes that there is an evident inconsistency to be addressed in arguing both for late implementation of Directives in order to avoid breaches of the 21-day rule and, at other times, justifying breaches of the 21-day rule as necessary to avoid late implementation.

5. Without wishing to encourage breaches of the 21-day rule, it seems to the Committee that, in view of the continuing doubt as to the effect of section 57(2) of the Scotland Act on breaches of provisions in such legislation imposing deadlines for
implementation, every effort ought to be made to ensure that such deadlines are met.

6. In the present case, the Committee notes that the Regulations were in part a consolidation and, although in terms of the Directive, the new Community provisions have to be incorporated into domestic law by 9 September, it would appear that the relevant provisions will not have full force and effect for some time. In addition, the Committee acknowledges that the delay in implementation is very short.

7. In all the circumstances, therefore, the Committee simply draws the Executive’s response to the attention of the lead committee and the Parliament as providing the information requested.

Question 2

8. The Committee noted that, in Part II of Schedule 2 (the table headed “Target Values for Ozone”) on page 14, there are two entries in column one that read “Target value for the protection of human health” and asks whether one of these entries ought not to read “Target value for the protection of vegetation” (as referred to in Part II of Annex III to the Directive).

Answer 2

9. The Executive understands that the Committee is referring to the table contained in Part 2 of Annex I of the Directive, and not Part 2 of Annex III of the Directive. The second entry in the table headed up “Target values for ozone” in Part 2 of Schedule 2 should, as the Committee has noted, read “Target value for the protection of vegetation” and not “Target value for the protection of human health”. The Executive is grateful to the Committee for pointing out this error, and confirms that it will bring forward an amending instrument to rectify it as soon as is possible.

Report 2

10. The Committee acknowledges the erroneous reference. However, the Executive has taken the point correctly and accepts that the provision in question is defectively drafted. The Committee therefore reports the instrument to the lead Committee and the Parliament on the ground that it is defectively drafted in the above respect, acknowledged by the Executive. The Committee also draws attention to the Executive’s undertaking to bring forward an amending instrument to correct the error.

Question 3

11. The Executive was asked to explain why in paragraph 1.1(c) of Schedule 3 on page 16 a footnote appears to be missing from the heading to the table “Particulate Matter”. This provision is a consolidation of a provision contained in paragraph (c) of Part 1 of Schedule 2 to the 2001 Regulations and does not appear to have been subsequently amended to remove the footnote.

Answer 3

12. The Executive is grateful to the Committee for pointing out that the footnote does not appear after the heading of paragraph 1.1(c) of Schedule 3. The Executive notes however, that the footnote does not form part of the Instrument. The Executive will ensure that this omission is rectified in the Annual Volume.
Report 3
13. Although a footnote is formally part of an instrument and may have interpretative value as, indeed, the Executive itself has acknowledged on previous occasions, the Committee agrees that, as a rule, errors in footnotes are not as serious as errors in the substantive text and may be corrected in the way suggested. The Committee therefore reports the instrument on the grounds of defective drafting acknowledged by the Executive though not affecting the validity of the instrument.

Question 4
14. The Committee asked whether in respect of paragraph 1.1 of Part 1 of Schedule 5 on page 21 the heading in the first column of the table ought to read “Population of agglomeration or zone”. The Committee noted that this provision has been consolidated and was originally contained in Part 1 of Schedule 4 where the word “agglomeration” is used, however, there has been no amendment removing this word. Further, the word is defined in the current regulations and is also used in the heading to Column 4 of the table.

Answer 4
15. The Executive notes that in paragraph 1.1 of Part 1 of Schedule 5 the words “agglomeration or” should have been included in the heading, as noted by the Committee. This was a typing error and the Executive is grateful to the Committee for pointing it out. This item will be included in the amending regulations that are to be prepared.

Report 4
16. The Executive has again acknowledged that the provision is defectively drafted and the Committee reports it to the lead committee and the Parliament on that ground.

Question 5
17. The Committee noted that the definition of “public” in regulation 14(15) has been restricted to that regulation when it appears from regulation 2 that it is to have that meaning for the purposes of every relevant regulation. The Committee therefore asked why the term was not simply defined in regulation 2 alone.

Answer 5
18. The Executive notes the Committee's comments. The Executive considers that provisions will have the intended legislative effect, and this to be a matter of style. It will, however, bear this point in mind for future regulations.

Report 5
19. The drafting of these two provisions seemed confusing to the Committee although the meaning is not affected. Whilst, strictly, it could be considered to be defective drafting, as the error does not appear to go to the substance of the instrument the Committee considers it sufficient to report the instrument for failure to follow proper legislative practice in this respect.
Appendix 1

THE AIR QUALITY LIMIT VALUES (SCOTLAND) REGULATIONS 2003
(S.S.I. 2003/428)

On 23 September the Committee asked the Scottish Executive the following questions in respect of the above Instrument —

1. “The Committee asks the Executive to explain why when Article 15(1) of the Directive provides that Member States were to implement the provisions of the Directive by 9 September 2003 the Regulations will not come into force until 2 October 2003.

2. The Committee notes that in Part II of Schedule 2 (the table headed up “Target Values for Ozone”) on page 14 there are two entries in column one that read “Target value for the protection of human health” and asks whether one of these entries ought not to read “Target value for the protection of vegetation” (as referred to in Part II of Annex III to the Directive).

3. The Executive is asked to explain why in paragraph 1.1(c) of Schedule 3 on page 16 a footnote appears to be missing from the heading to the table “Particulate Matter”. This provision is a consolidation of a provision contained in paragraph (c) of Part 1 of Schedule 2 to the 2001 Regulations and does not appear to have been subsequently amended to remove the footnote.

4. The Committee asks whether in respect of paragraph 1.1 of Part 1 of Schedule 5 on page 21 the heading in the first column of the table ought to read “Population of agglomeration or zone”. This provision has been consolidated and was originally contained in Part 1 of Schedule 4 where the word “agglomeration” is used, however, there has been no amendment removing this word. Further, the word is defined in the current regulations and is also used in the heading to Column 4 of the table.

5. The Committee notes that the definition of “public” in regulation 14(15) has been restricted to that regulation when it appears from regulation 2 that it is to have that meaning for the purposes of every relevant regulation. The Committee therefore asks why the term was not simply defined in regulation 2 alone.”.

The Scottish Executive responds as follows:

First question
This Directive is technical and complex, and preparation of the transposition Regulations, which are a consolidation, took some time. The Executive was unable to complete the instrument before the summer recess, and would have breached the 21 day rule by laying it during the recess for commencement on 9th September 2003. This instrument was therefore laid as soon as could be arranged after recess, and commencement was delayed for a short period in order to respect the 21 day rule. The Executive has made every endeavour to transpose this Directive timeously, but in the circumstances a slight delay in transposition was unavoidable.
Second question
The Executive understands that the Committee is referring to the table contained in Part 2 of Annex I of the Directive, and not Part 2 of Annex III of the Directive. The second entry in the table headed up “Target values for ozone” in Part 2 of Schedule 2 should as the Committee has noted, read “Target value for the protection of vegetation” and not “Target value for the protection of human health”. The Executive is grateful to the Committee for pointing out this error, and confirms that it will bring forward an amending instrument to rectify it as soon as is possible.

Third question
The Executive is grateful to the Committee for pointing out that the footnote does not appear after the heading of paragraph 1.1(c) of Schedule 3. The Executive notes however, that the footnote does not form part of the Instrument. The Executive will ensure that this omission is rectified in the Annual Volume.

Fourth question
The Executive notes that in paragraph 1.1 of Part 1 of Schedule 5 the words “agglomeration or” should have been included in the heading, as noted by the Committee. This was a typing error, and the Executive is grateful to the Committee for pointing it out. This item will be included in the amending regulations that are to be prepared.

Fifth question
The Executive notes the Committee’s comments. The Executive considers that provisions will have the intended legislative effect, and this to be a matter of style. It will, however, bear this point in mind for future regulations.

Scottish Executive

25 September 2003
PETITION PE246

PE246 Petition by Kildaton and Oa Community Council, Kilarrow and Kilmeny Community Council and the Kilchoman and Portnahaven Council, and Councillors J Findlay and R Currie, calling for the Scottish Parliament to request Scottish Natural Heritage, the Scottish Executive and the Scottish Ministers, as appropriate not to proceed with the designation of the South-East Islay Skerries Special Area of Conservation.

Progress of the Petition

1. On 12 September 2000 the Public Petitions Committee (PPC) agreed to copy the petition to the Minister for Transport and Environment asking for the petition to be considered as part of the consultation process on the South-East Islay Skerries Special Area of Conservation (SAC).

2. On 24 October 2000 the PPC agreed to pass a copy of a letter received from Scottish Natural Heritage (SNH) to the Scottish Executive requesting that it inform the Committee of the outcome of the consultation on the SAC designation. The Committee also agreed to seek the Minister for Transport and Environment’s views on various issues raised by members during the meeting.

3. Following further correspondence with the Scottish Executive on points raised by members, the PPC agreed on 27 March 2001 to pass a copy of the petition and associated correspondence to the European Committee and seek its views on whether there should be a right of appeal against designation of a SAC and on how the views of local communities can be taken into account during the designation process.

4. On 11 September 2001 the European Committee agreed that, in the light of a letter from the Scottish Executive outlining the reasons for designation in advance of any deliberations from them, no further action could be taken in respect of this Petition. Copies of relevant correspondence are attached.

5. On 21 May 2002 the PPC agreed to link and further consider petition PE246 with related petitions PE462, 463 and 464.

6. Following evidence from SNH, and the Advisory Committee on Sites of Special Scientific Interest (ACSSSI) and further written evidence from the Scottish Executive, on 25 June 2003 the PPC agreed to refer petition PE246 to the Environment and Rural Development Committee for further consideration.

7. On 10 September the Environment and Rural Development Committee considered the petition, noted that the area of South-East Islay Skerries has now been designated a SAC and agreed to take any issues of general principle raised by the petition into account as part of Stage 1 scrutiny of the Nature Conservation (Scotland) Bill.
PETITIONS PE462, PE463 AND PE464

PE462 Petition by Mrs Margie Currie, calling for the Scottish Parliament to ask Scottish Natural Heritage (a) to provide the original data sheets for all alleged hen harrier sites on Arran for the purpose of verification and (b) to give details of the changes in data collection and presentation procedures which it proposes for all Site of Special Scientific Interest (SSSI) designations in future to ensure adequate corroboration.

PE463 Petition by Councillor Donald Manford, calling for the Scottish Parliament (a) to ask Scottish Natural Heritage why it allegedly published erroneous information about local public opinion on the Sound of Barra consultation that it carried out for the Scottish Executive and (b) to verify that SNH’s general procedures for consultations of this sort comply with the duty imposed on it by Sections 3(1)(e) and (f) of the Natural Heritage (Scotland) Act.

PE464 Petition by Robert Cunyngham Brown, calling for the Scottish Parliament to ask Scottish Natural Heritage to provide (a) scientific justification for the list of raingoose Special Protection Areas it has classified or is in the process of classifying and (b) details of the measures it took when compiling that list, to satisfy the statutory duty to take account of the interests of landowners, crofters and local communities.

Progress of the Petitions

1. The petitions were initially considered on 26 February 2002 by the Public Petitions Committee (PPC) which took evidence from the petitioners and, on 10 September 2002, from SNH and the Advisory Committee on Sites of Special Scientific Interest (ACSSSI). Extracts from the Official Report of these meetings are attached. The PPC also considered further written evidence from the Scottish Executive. A copy of the letter from the Countryside and Natural Heritage Unit is also attached, together with a summary of written responses.

2. In February 2003 the PPC agreed to refer the petitions to the Transport and the Environment Committee with the request that the petitions be considered together due to similarities in subject matter. It also requested that the Committee take a view as to whether its successor committee should be invited to consider conducting a review of SNH’s consultation procedures and whether the remit of the ACSSSI should cover appeals on the scientific validity of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

3. At its meeting on 18 March 2003 Transport and Environment Committee agreed to refer the petitions back to the PPC on the grounds that a suitable opportunity to consider the issues raised by the petitions was likely to arise as part of the scrutiny of the Nature Conservation Bill.
Options for action

On 10 September the Environment and Rural Development Committee agreed to consider issues raised by the petitions as part of Stage 1 scrutiny of the Nature Conservation (Scotland) Bill.

The Committee is invited to consider how it wishes to incorporate consideration of these four petitions into the Stage 1 scrutiny of the Nature Conservation (Scotland) Bill.

Option A

The Committee may consider that the evidence which the petitioners have already given to the PPC is sufficient to enable the issues to be taken forward during Stage 1. In this case the Committee may decide to conclude the petitions and pass a copy of the Official Report of the Committee discussion to each of the petitioners.

Option B

The Committee may wish to seek further written submissions from the petitioners, both on the questions raised in the open call for evidence, and also on the extent to which they believe the changes proposed by the Bill address their general concerns. In this case the Committee may either decide to conclude the petitions and pass a copy of the Official Report of the Committee discussion to each of the petitioners, or to defer further consideration of the petitions until such written evidence has been received.

Option C

The Committee may agree to invite the petitioners to give oral evidence during Stage 1 of the Nature Conservation (Scotland) Bill. In this case the Committee may wish to defer further consideration of the petitions until such evidence has been heard.
**Background**

**PE246 Petition by Kildalton and Oa Community Council, Kilarrow and Kilmeny Community Council and the Kilchoman and Partnahaven Council, Councillors J Findlay and R Currie, calling for the Scottish Parliament to request Scottish Natural Heritage, the Scottish Executive and the Scottish Minister, as appropriate not to proceed with the designation of the South-East Islay Skerries Special Area of Conservation.**

12/09/2000 The Public Petitions Committee agreed to copy the petition to the Minister for Transport and Environment asking for the petition to be considered as part of its consultation process on the South-East Islay Skerries Special Area of Conservation. In addition the Committee agreed to draw the Minister's attention to the Official Report of the meeting and to the views expressed by its members and that local opinion on this matter should be taken into consideration.

24/10/2000 The Public Petitions Committee agreed to pass a copy of a letter received from Scottish Natural Heritage to the Scottish Executive requesting that it inform the Committee of the outcome of the consultation on the SAC designation. The Committee also agreed to seek the Minister for Transport and Environment's views on various issues raised in the letter from Scottish Natural Heritage by members during the meeting.

23/01/2001 The Public Petitions Committee considered a response from the Scottish Executive and agreed to seek its further comments on various points raised by members.

27/03/2001 The Public Petitions Committee considered a response from the Scottish Executive and agreed to pass a copy of the petition and associated correspondence to the European Committee and seek its views on whether there should be a right of appeal to designation of a SAC and on how the views of local communities can be taken into account during the designation process. The Committee also agreed to pass copies of the correspondence to the petitioners.

08/05/2001 The European Committee considered the contents of the petition and tasked the Clerk with seeking further information on this issue to enable more detailed consideration at a future meeting.

19/06/2001 The European Committee agreed that no further action be taken by them at this stage with respect to the general principles of the petition and that the Public Petitions Committee be instructed accordingly. However, John Home Robertson MSP agreed to liaise with the Clerk to examine how procedures in relation to such issues are handled and to seek access to further information held within the Scottish Executive and other agencies on the designation of this area.

11/09/2001 The European committee agreed that in the light of the Scottish Executive’s letter outlining the reasons for designation in advance of any deliberations from them, no further action could be taken in respect of this Petition. However, it was agreed that a letter be written to the Convener of the Public Petitions Committee noting the Committee’s concerns in relation to processes for consideration of petitions.

21/05/2002 The Public Petitions Committee considered responses from the Executive, Scottish Natural Heritage (SNH) and the Advisory Committee on Sites of Special Scientific Interest (ACSSSI) in relation to the issues raised in petitions PE462, PE463 and PE464. The Committee agreed to invite SNH and the
ACSSI to appear before the Committee to present their views and to hold an additional meeting for this purpose before the summer recess. The Committee also agreed to link and further consider the related petition PE246 with these petitions.

06/06/2002 The Public Petitions Committee agreed to the Convener’s proposal to defer further consideration of petitions PE462, PE463, PE464 and PE246 until after the summer recess when the Advisory Committee on Sites of Special Scientific Interest would be available to give evidence to the Committee.

10/09/2002 The Public Petitions Committee took evidence from—
- Mr Ian Jardine, Chief Executive, SNH
- Mr John Markland, Chairman, SNH
- Mr Simon Fraser, Chairman, SNH’s North Areas Board
- Professor W Ritchie, Chairman, ACSSSI
- Professor Donald Davidson, ACSSSI
- Professor Bob Furness, ACSSSI
- Ms Sue Bell, Secretary, ACSSSI

The Committee agreed to write again to the Scottish Executive seeking clarification on a number of issues.

25/02/2003 The Public Petitions Committee considered a response from the Scottish Executive in relation to the issues raised in the three petitions and agreed to ask the Transport and Environment Committee for a view on whether its successor committee should be invited to consider the merits of conducting a review of SNH’s consultation procedures and extending the remit of the ACSSSI.

25/06/2003 The Public Petitions Committee agreed a paper on referrals to other committees of the Parliament. The Committee agreed to refer petition PE246 to the Environment and Rural Development Committee for further consideration.
1. The budget process this year has been truncated because of the May elections. There has been no Annual Expenditure Report, although Committees had some opportunity to discuss strategic priorities prior to the 2002 Spending Review.

2. This means that no spending recommendations have been made at Stage One for Ministers to consider, and that as this is the midway point between Spending Reviews, there is only limited scope for adjusting the budget at the margins. There is, therefore, no need to ask for spending recommendations in the event of additional funding becoming available, as last year. Rather, the Committees should consider whether the pattern of expenditure within its portfolio is acceptable, or whether it wishes to recommend transfers between programme budgets.

3. Thirdly, it appears from messages emerging from the Treasury that next year’s Spending Review will bring the first tight settlement since devolution. The Finance Committee, therefore, advises the subject committees to be forensic in their questioning of Ministers, with a view to obtaining the best available supplementary evidence on the financial and policy assumptions underpinning the draft budget, so that they can begin to develop a systematic and rigorous ranking of their own spending priorities for the Spending Review 2004.

4. With these comments in mind, the Finance Committee would welcome responses from the subject committees on the undernoted key questions:

   a) Is the committee satisfied that any outstanding issues from last year have been addressed in the budget proposals (where appropriate)?

   b) Is the committee content with the additional funding proposals made by the Executive under the Partnership Agreement, or would it suggest alternative uses of such funding? (This relates to the new resources section.)

   c) Does the committee wish to recommend a spending priority for use of unallocated EYF funding in its portfolio?

   d) Does the committee wish to recommend any specific changes to programme budgets within the portfolio. If so, where should programmes be increased, and where should compensatory reductions be made?
e) Does the committee feel that the portfolio priorities are appropriate and are reflected in the budget proposals?

f) Is the committee satisfied with the performance information contained in the chapter, and does it feel that the links between aims, budgets and targets are properly integrated?

g) Does the committee have any comment on the sections covering the cross-cutting issues of closing the opportunity gap; sustainable development and equality?

h) Further to the above, each chapter contains a new section of specific initiatives under equality. Does the Equal Opportunities Committee have a view on the utility of the information in this section, and does it wish to make any comments or recommendations regarding specific spending proposals to enhance equality?

Professor Arthur Midwinter
September 2003
Dear Mr. McAllion,

PETITION PE246: ISLAY AND SEALS

I and my colleagues in SNH have read with interest the petition presented to your Committee by Ian Mitchell and also your Committee’s discussion. We noted a good deal of mention of democratic deficit about SNH. Whilst SNH strongly welcomes the establishment of the Petitions Committee and the ability of any interest in Scotland to submit petitions, we do have concerns when those public bodies who are referred to and criticised in a petition have no opportunity to make their views known to the Committee. We strongly feel that this was the case with the Petition PE246.

I note that the Committee has agreed to send the petition to the Minister for Transport and the Environment. Nevertheless, I would welcome the opportunity for SNH to explain its position on this matter so that the record is rather more evenly balanced than that presented by Ian Mitchell. I attach a note of our comments which I hope that you would agree to circulate to your colleagues on the Petitions Committee.

I hope that you will be able to respond to my request. I would be happy to discuss this matter with you. If your Committee Clerk wishes to discuss the matter further, I would be grateful if contact could be made with the Chief Executive of SNH, Roger Crofts.

Yours sincerely,

[Signature]

John Markland

Chairman: John Markland CBE  Chief Executive: Roger Crofts CBE

Working with Scotland's people to care for our natural heritage
Petition PE246: Statement from Scottish Natural Heritage

South East Islay Skerries proposed Special Area for Conservation

We noted with interest the petition from Kildalton and Oa Community Council and others to the Parliament (PE246) arising from the recent consultation over the possible designation of the South East Islay Skerries as a Special Area for Conservation. We are very much aware of local views about the proposals as a result of these consultations.

However, there is a need to correct a number of the assertions which were made by Mr Ian Mitchell when he made a brief presentation to the Committee on behalf of the petitioners. We have had very voluminous correspondence with Mr Mitchell (over 80 letters in the past eighteen months), and despite his suggestion to you that SNH does “not tell” people things, SNH has provided him with full and abundant information in response to his many enquiries.

It was particularly disappointing to observe him commenting that “anyone who took up their right to submit comments on the original SSSI designation proposal were told they were out of time”. The facts point to the opposite. When Sir John Mactaggart, on whose behalf Mr Mitchell was working, asked for further time to make his objection, we were pleased to offer a considerable extension to the normal period, despite this curtailing the timescales for both ourselves and the Advisory Committee on SSSIs. That first consultation sought views from over 30 bodies including the local community council, the Clyde Fisherman’s Association, The Port Ellen Harbour Association and the local branch of the National Farmers Union. Public meetings were hosted by both the Islay Land Use Forum and the Kildalton and Oa Community Council. We received responses from many consultees. We are aware of nobody who was told “they were out of time”.

Mr Mitchell reported to you that, in 1996, the Advisory Committee on SSSIs found that the scientific case made at that time for designation of the site as an SSSI “was inadequate”, and that since that time, no further work has been done; the revised scientific basis being but “a rearrangement of the existing figures”.

Whilst it is true that no new research has been carried out between the original and the revised cases being made, it is unfair to suggest that this does not address the concerns of the Advisory Committee on SSSIs. That Committee did not suggest that further research should be undertaken. Rather, it advised SNH that the case was inadequate in its presentation and discussion of data. The Committee was concerned that we had not provided adequate contextual information to justify the selection of the South East Islay Skerries as against other possible sites. It concluded that whilst in its view “a case could be made for SSSI notification……..SNH’s case has not yet been made sufficiently clearly….”. The
revised case sought to address the contextual and data presentation questions raised by the Advisory Committee on SSSIs.

It should be noted, too, that Mr Mitchell, himself, this year arranged for a further count of seals to be made at the proposed site. The results confirm the continuing importance of the area for the common seal.

The Minister has given the assurance that the designation will not be confirmed unless there is a sound scientific case for doing so. In 1999, at the request of the Scottish Executive, SNH prepared a revised scientific appraisal of the case for designation. This case has been the basis of the recent consultation. A report on that consultation will be considered by the Minister in due course. There is neither the intention, nor the possibility, that SNH itself will designate the site. The proposal to designate is made by the Minister. Confirmation of any designation is a matter for the European Commission. SNH’s role is advisory.

We were also disappointed that the Petition and the discussion which followed failed to recognise a number of key features about the process we are currently engaged in.

The designation of SACs is required to meet the UK’s commitments under the European Union’s Habitats Directive. The selection of sites is not arbitrary. Consultation with local communities, with local landowners and others with an interest in the land, and with other interested parties is undertaken in all cases where land is being considered for designation. However, under the terms of the Directive, sites must be selected on a scientific basis and accordingly, the decision of the Minister on the boundaries and location of sites can only be influenced by scientific criteria.

SNH, in its consultations, works hard to ensure that all local concerns are expressed so that where these are scientific, they can be properly considered in determining the selection of sites; and where these are of a socio-economic nature, they can be considered in the management regimes for the sites thereafter.

There is a continuing misapprehension that sites designated as SAC’s will somehow be “set aside” as a “sanctuary” or reserve for the species or habitat concerned. (It is notable that the term “sanctuary” is repeatedly used by Mr Mitchell in his submissions.) SAC’s are not nature preserves. They will normally be places where a wide range of other land uses continue or develop. The designation as stated in the EU Directive simply requires the Government to seek to ensure that the interest for which the site was designated is maintained at “favourable conservation status”.

In relation to the South East Islay Skerries, it is our view that there are no current proposals or uses of the area which would have to be curtailed as a result of the
designation. Indeed, we have recently supported the development of a local business offering seal watching excursions into the area of the proposed SAC. Furthermore, despite Mr Mitchell’s assertions, there is no suggestion that the coast would have to be “closed off” to people who walk in the area. Far from damaging local tourism, there are real opportunities for areas which are given such international recognition for their natural heritage.

It is not surprising to us that local people and businesses look sceptically at proposals from government over the designation of land. It is inevitable that there will be fear of unfavourable restrictions and additional bureaucracy. For our part, we try to be as open and honest as we can, and to provide clear information about what we see as being the real consequences and opportunities of the designation. It is unhelpful and unfortunate that a false picture is painted by such as Mr Mitchell, and promoted with such vigour, particularly where, as in this case, SNH is not provided the opportunity to state our case.

Scottish Natural Heritage
29 September 2000
Mr. J. McAllion MSP.,
Convener Petitions Committee,
Scottish Parliament,
EDINBURGH,
EH99 1SP.

Dear Mr McAllion

Thank you for your recent correspondence regarding our petition, PE246 ISLAY SEALS.

Although I was unable to address the Committee personally, Mr Mitchell was co-opted by our community council to speak on our behalf; his interest in the matter is well documented.

We take exception therefore to Mister Merklands' remarks in the attendant document that somehow Mr Mitchell is the prime mover in our petition, we should like to reaffirm that the main petitioner in this instance is the community of Kildalton & Oa, furthermore Mr Merkland seems to dismiss the island wide level of support not to proceed with SAC status.

SNH were categorical that only a scientific objection would hold water with the Scottish Office when the original submission for SSSI status was put forward. It is a matter of public record that such status was denied February 1999.

Criteria for SAC have not altered since then; we would respectfully remind the committee that our community concern is also a matter of public record as we responded to the original consultation process. The 27 Potentially Damaging Operations listed we believe would impinge on traditional island pastimes as innocuous as walking on the beach!
We must therefore continue to ask why such a thriving community of common seals requires protected status as they are clearly in no danger from indigenous activity.

Management infers expense does the taxpayer require unnecessary expenditure?

We understand SNH have an advisory role in such matters but we would ask that the Scottish Office consider local opinion as part of the new devolved governmental process.

Yours sincerely

Richard Grey
CHAIRMAN
John McAllick MSP  
Chairman  
Public Petitions Committee  
The Parliament  
EDINBURGH EH99 1SP  

November 13, 2000

Dear Mr McAllion

PE246: Islay seal sanctuary

Richard Grey and I have studied the letter (dated 30 September) and submission put in to the Public Petitions Committee and think it is a disgraceful misrepresentation of the true state of affairs. We would like the opportunity to put the record straight. This will, however, take time. This is therefore a sort of "holding" letter, asking that we be given three weeks in order to compile a full record of the facts.

We feel it is very important that the Petitions Committee and the Parliament are properly informed on this matter, which may not be of great national importance in itself but is of crucial importance to the people of Islay. Since SNH is in the process of imposing so many other seal and other sorts of sanctuaries throughout Scotland, almost all in the teeth of local opposition (the Barra SAC is the latest to cause controversy), we feel that SNH's disingenuous approach must be brought to public notice. This is not an isolated occurrence; it represents a pattern of conduct. I therefore trust you will not mind putting your deliberations on hold until we have had time to compile our answer to Mr Markland's letter.

Yours sincerely,

Ian Mitchell

cc Richard Grey, Chairman, Kildalton and Oa Community Council
Dear Mr. McAllion,

Public petition PE246

I write as I said I would on 13 November to correct some of the factual errors in John Markland's letter to the committee on the subject of the Islay people's petition against the proposed seal sanctuary (pSAC) for the island.

1. (letter, para. 1) The petition was not presented by me; it was presented by the Kildalton and Oa Community Council, the Kilarrow and Kilmeny Community Council, the Kilchoman and Portnahaven Community Council, Cllr John Findlay and Cllr Robin Currie. I came to Edinburgh because no-one directly connected with the petition could afford the time. It is not helpful for SNH to try to personalise this issue, since the basic point is that it is the whole community which is against the seal sanctuary.

2. (letter, para. 2) My address to the Petitions Committee was only by way of amplification of the basic Objection document which was submitted earlier to the Committee and, I trust, circulated to all members. I and the Islay community strongly resent Mr. Markland's comment that SNH's views on this matter might be more 'evenly balanced' than those of the people of Islay. SNH is entitled to its views; but so are the people of Islay--and without having them deprecated in this snide manner.

3. (letter, para. 3) I hope that the Committee will not avail itself of the opportunity of discussing the matter with Mr. Markland without offering an equivalent opportunity (preferably at the same time) to the petitioners.

4. (Statement, para. 1) The whole point is that SNH is not aware of local views about the seal sanctuary. An SNH spokesman was quoted in The Oban Times recently as saying that the balance of opinion was in favour of the proposal,
when in fact every democratically elected representative of both Islay and Argyll has come out against it.

5. (Statement, para. 2) Mr Markland denies our point that SNH does "not tell" people things, when in fact SNH withheld the press release announcing the notification of the south-east Islay skerries pSAC from the local paper, The Ileach, until after the closing date for the submission of public comments. Thus the bulk of the people on Islay were prevented from commenting until SNH could say, as the senior local officer, Mr Douglas Gilbert, did more than once, that he was very sorry but they were out of time. Roger Crofts, the SNH Chief Executive, defended this procedure in subsequent correspondence in The Herald when he suggested that the editor of the paper, Mrs Dorothy Carmichael, was negligent in that she should have scanned the Scottish Office website looking for SNH's press release (it was not on SNH's website). Mrs Carmichael was (she has since retired) a hard working, under-paid, part-time community worker with no knowledge of the internet. Moreover it was the custom for SNH to deliver press releases to her, so she would have assumed anything would come by that route. This was the first occasion when no delivery was made. Mr Crofts's criticisms are unwarranted, unmannerly and deeply unpleasant. The correspondence in The Herald ended with Mrs Carmichael writing, "Whatever Mr Crofts chooses to believe, most people on Islay were unaware of the SNH proposals until after the end of the consultation period."

Finally, it should be said that when the junior SNH officer, Ms Rae McKenzie, addressed the Kildalton and Caan Community Council on the subject of the notification, she told them that the designation was going to go ahead anyway and that it was pointless objecting. She said that only scientific objections were allowed, the clear implication being that as none of them was a scientist, they risked making fools of themselves if they took the matter any further.

Subsequently Fergus Ewing wrote to Roger Crofts on the Ileachs' behalf suggesting that SNH had a duty to consult local communities. Roger Crofts replied saying Mr Ewing was wrong: "We are required to take account of the interests of local communities, but there is no duty on SNH to consult local communities."

6. (Statement, para. 3) Mr Markland is being completely disingenuous when he says it is "particularly disappointing" that I make the point about public comments when in fact, as he knows full well, Sir John Mactaggart put in a scientific objection in the correct way as prescribed by Section 12 of the Natural Heritage (Scotland) Act 1991. Public comments do not have to be scientific (pace Ms McKenzie), but unresolved scientific objections lodged within the time for public comments are then referred to the Advisory Committee on Sites of Special Scientific Interest. There is no formal timetable for this, except that the designation procedure
has to be completed within nine months. SNH gave us a deadline of 31 December 1996 (three months) for the preparation and submission of the scientific objection. I wrote it, finally submitting the document on 5 January, after I asked the Chairman of the ACSSSI for this extension, which he readily granted saying that he was on holiday until then anyway. The reason for our delay was that neither SNH nor their advisors, the Sea Mammal Research Unit, would supply me with the seal population figures which I needed to make my objection. It was only after intense pressure was applied that the material eventually came on 23 December, just seven days, including Christmas, before the deadline. Not only that, I was presented with a bill for £140.17 for supplying the information (see copy invoice attached). In such ways do SNH assist objectors in making the scientific objections to which they have a legal right.

Mr Markland says that I "asked for further time" and that "we were pleased to offer a considerable extension." Not so; it was Professor Ritchie (Chairman ACSSSI) who granted the five day extension after I succeeded in contacting him at his daughter’s home in Bournemouth where he was staying over the festive season.

Incidentally, the ACSSSI eventually found for us, rejecting SNH’s science as inadequate, which is why the SSSI plan has been dropped and the SAC plan taken up. Against SACs there is no right of scientific objection—hence our petition.

7. (Statement, para. 4-5) Mr Markland is quite wrong when he says that the ACSSSI did not recommend that further scientific work be undertaken before the site is designated. (At least he admits what SNH has so far denied, namely that no further work has been done.) I quote from the ACSSSI’s judgement:

"In order to establish if the SSSI is one of the largest two sites in the area of search, information is needed on the other sites to determine if the SSSI is indeed the largest, second largest, or third largest, etc. The only SNH source of this information is the three poorly explained maps and the Table... On the basis of this data the SSSI is the third largest, not second... Insofar as it is possible to use these maps for comparison, it would appear that there are alternative sites which SNH should consider... This would argue for deferral pending further advice on whether the guidelines in the JNCC document are the last word and on progress which is still to be made on further site selection for common seals on a UK basis."

8. (Statement, page 2, para. 1) If Mr Markland thinks that our survey of the site this year, which counted 359 seals as against the SNH claimed site population of over 600, represents confirmation of his views, then it only shows how incredibly amateurish SNH “science” really is. Not only
that, Mr Markland knows that we made no attempt to arrive at a site total, only to investigate the species ratios, the pupping densities and the relative use of different areas of the site. SNH was sent our full report, but has chosen to misuse it for the purposes of defeating our legitimate right to object to this designation. No wonder local communities are fearful of co-operating with his organisation.

9. (Statement, page 2, paras. 4 and 5) Mr Markland says that in selecting sites, SNH consults with local communities "in all cases". This is total nonsense—see para. 5 above.

10. (Statement, top of page 3) Finally, Mr Markland confirms my point that SNH has no understanding of Islay opinion when he says that designation will open the site up. Islay people want to exercise their ordinary rights to use the site, which are at present threatened by an aggressively litigious local laird who invokes nature conservation as a justification for denying the right to roam and who regularly tells the press that if the seals are not protected they will be shot by fishermen. This is completely untrue. Then seals are not protected at the moment, yet they live completely undisturbed (which is why they have multiplied and why in turn SNH want to confiscate local management rights). Mr Markland is totally ignorant of local views if he thinks Islay people want the area turned into a sort of international seal-watching resort. This would disturb the seals, as would all SNH’s usual intrusive "monitoring". The people of Islay want to continue to enjoy the freedom to make peaceful use of the area for casual recreational purposes, both by themselves and with the moderate number of visitors which at present visit the site, as well as for small-scale fishing. The last thing they want is undue attention and a steep rise in visitor numbers, which would wreck everything. SNH’s plans are entirely destructive, both as far as the seals are concerned and as far as relations with the local community go—which is why the petition has received almost universal support on the island and adjacent areas.

In closing, I would like to object to Mr Markland’s complaint that SNH does not have any opportunity to state its case. On 21 September this year, George Lyon MSP, the Member of Argyll & Bute, arranged a meeting with the then Minister for the Environment, Sarah Boyack, so that he and I could try to present our case against the seal sanctuary to her. Mrs Kathryn Farrell arrived from the Scottish Executive to brief the Minister. She came fully conversant with the SNH case for the designation but when I asked her if she had studied my Objection, which stated the community’s side of the argument, she told me she had not. ("I’ve flicked through it," she said.) This is gross administrative bias. For SNH to claim that it has not had a fair hearing is the opposite of the truth. Within the Scottish Executive, where the decision is actually to be taken, it is the
community on Islay which has not had a fair hearing. We appeal to the Public Petitions Committee to do what it can to help us.

I would be grateful if you would circulate this letter to all members of the Public Petitions Committee and to any other officials or departments of government who were given sight of Mr Markland's letter and statement.

Yours sincerely,

Ian Mitchell
Thank you for your letter of 28 November, addressed to Neil MacLennan, about the proposed Special Area of Conservation (SAC) on Islay. As you point out, Mr Sam Galbraith is now responsible for this area of work and your letter has been passed to me for reply.

You report that Members of the Public Petitions Committee have asked whether the identification of a number of new proposed SACs around Scotland is fully justified or if it is an exercise purely designed to meet the requirements of the EU Habitats Directive.

Scottish Ministers are committed to meeting in full the requirements of the European nature conservation directives. One of the requirements of the EU Habitats Directive is to identify to the European Commission a list of sites which meet the requirements of the Directive for designation as SACs. The UK list was scrutinised by the Commission alongside the lists of the other Member States in the north west Atlantic region at seminars held in autumn 1999. All the Member States present were found to have submitted lists that were insufficient in some respect. The UK was asked to review its list with particular regard to the geographic range of sites selected, to ensure that the geographic and ecological range of individual interests was represented, and also to ensure that a sufficient proportion of each resource was included in proposed sites.

Failure to produce a satisfactory list of candidate SACs could result in legal action by the European Court of Justice against the UK Government, potentially resulting eventually in the imposition of daily fines against the UK. It seems likely that, if any part of the criticism related to the Scottish element of the UK list, a portion of any fines imposed would be passed on to the Scottish Parliament. The European Environment Commissioner also signalled earlier this year that the payment of structural funds was under threat if the Commission were not satisfied that the requirements of the Habitats Directive had been fully met by Member States. That threat remains until the UK has
proposed a revised list of candidate SACs that meets the Habitats Directive requirements. The current programme of consultations on proposed new SACs is part of the UK effort to meet those requirements.

The justification for the proposed SACs in Scotland is, therefore, to meet the requirements of the Habitats Directive. That is part of the Scottish Ministers' commitment to the protection of Scotland's biodiversity.

Yours sincerely

[Signature]

Katy McNeil
Private Secretary
Thank you for your letters of 30 January and 2 February in relation to petition PE246 about the proposed South East Islay Skerries Special Area of Conservation (SAC). I am grateful for copies of the additional information forwarded by the petitioners, which I have passed on to officials dealing with the case.

Members of the Public Petitions Committee have requested confirmation that only scientific factors can be considered in identifying sites for designation and in determining their boundaries. This is an issue that has been subject to consideration in the European Court of Justice (ECJ). In the Lappel Bank case, the ECJ determined that an area had been improperly excluded by the UK Government from a Special Protection Area (SPA) classified under the EC Wild Birds Directive. The boundary of the Medway Estuary and Marshes SPA was drawn to exclude 22 hectares at Lappel Bank on the grounds that reclamation of this area was important to the continued viability of the Port of Sheerness. The Port had a valid planning permission to undertake works on the excluded area. The ECJ found that the UK Government should not have taken account of socio-economic factors when classifying the SPA or defining its boundaries. The case confirmed that non scientific factors should be taken into account only following designation, in accordance with Article 6 of the Habitats Directive. The principle that social and economic considerations cannot be taken into account when Member States make decisions about site selection has been affirmed in subsequent judgements of the ECJ. The judgement of the ECJ in November 2000, in relation to a case about whether social and economic considerations could be taken into account in the selection of a possible Special Area of Conservation in the Severn Estuary, was that the UK could not take account of economic, social or cultural factors when deciding what sites to propose to the European Commission as candidate SACs under the Habitats Directive.

The Committee wanted the Executive’s views on the compliance with ECHR of implementation of the Habitats Directive, insofar as it relates to the infringement of human rights. We are of the view that the implementation of the Directive does comply with ECHR.

You asked for comments on the doubt expressed by the Committee about the statement in my previous response that daily fines could potentially be imposed by the ECJ for failure to meet the
requirements of the Habitats Directive. I can provide an example of a landmark case: in July 2000 the ECJ imposed the first ever fine on a Member State for failure to comply with EC law. The government of Greece was fined €20,000 per day (just under £5 million per year) for failing to comply with a previous court ruling to close a landfill site on the island of Crete, to be paid until the site was closed. I understand that Greece has already paid €2.98m in fines for this case, and that its outstanding fine is €1.22m, which is rising by €20,000 a day.

I trust that the Committee is persuaded that the threat of severe penalties by the ECJ is indeed real. Efforts are continuing to complete the implementation of the Habitats Directive in Scotland and until the European Commission is content that its requirements have been met, there is an outstanding risk that further legal action could be taken against the UK Government.

Yours sincerely

KATY McNEIL
Private Secretary
PETITION 246: SOUTH EAST ISLAY SKERRIES SPECIAL AREA OF CONSERVATION

The Clerk to the European Committee, by his letter of 20 June to the Scottish Executive, sought information relating to the proposed selection of the South East Islay Skerries as a candidate Special Area of Conservation for common seals.

In answer to a written question from Andy Kerr on 7 August Rhona Brankin announced a list of sites which, having considered the representations made by consultees, the Scottish Ministers had decided should be selected as candidate Special Areas of Conservation. Among these sites was the South East Islay Skerries.

As I am aware that petition 246, calling on the Scottish Ministers not to proceed with the designation of this area as a Special Area of Conservation, is still under consideration by the European Committee, I thought it would be useful to write to you to inform the Committee of the background to this decision.

You are aware that Scottish Natural Heritage (SNH) first consulted interested parties about this proposal on Ministers’ behalf during 1998. Scottish Office Environment Minister Lord Sewel reached the view that the scientific case for the site had not at that stage been made to his satisfaction. One of the proprietors of the site petitioned the Court of Session in August 1999 for a judicial review of Lord Sewel’s decision not to propose the site to the European Commission as a candidate SAC. This judicial review petition was subsequently withdrawn by the petitioner part-way through the hearing. The Scottish Executive gave an undertaking that, once new scientific advice was available, it would consult about whether the site should be proposed as a candidate SAC.
New scientific advice was submitted by SNH in November 1999. Unlike the earlier advice available to Lord Sewel, this new advice addressed the comparative case for the South East Islay site in relation to other possible sites on the west coast and Inner Hebrides. It advised that South East Islay Skerries was the site which best met the selection criteria of population size, population density and discreteness of the site. SNH consulted again on Ministers’ behalf from December 1999 to March 2000 about the scientific case for the site’s selection as an SAC. SNH received 26 letters of support for the proposed SAC and 17 letters of objection, including letters from the promoters of petition 246.

It took SNH some time to analyse the complex points made by some consultees, and the Scottish Ministers did not receive SNH’s finalised report on the consultation exercise until May 2001. I attach a copy of SNH’s consultation report, which includes copies of all representations received about the proposed SAC except those which consultees specifically asked to be treated as confidential.

A further scientific objection was received on 25 May 2001 from Mr Ian Mitchell acting on behalf of Sir John Mactaggart and the Kildalton and Oa Community Council. Mr Mitchell copyrighted his objection, so instead of copying it to you I am putting one of the original copies into SPICE. I enclose copies of the analyses of this further scientific objection which were made by Scottish Natural Heritage and by the Scottish Executive’s Ecological Adviser’s Unit.

Case-law in the European Court of Justice is clear that Member States can only take account of scientific considerations when considering what sites to propose to the European Commission as candidate Special Areas of Conservation. Having considered the representations received, and analysis of those representations, the Scottish Ministers reached the view that the South East Islay Skerries should be identified to the European Commission as a candidate SAC.

I know this is not the decision which the petitioners hoped for. I am, however, clear that it is the right decision in the light of the evidence available to the Scottish Ministers.

I am copying this letter to George Lyon as MSP for the area concerned, and John McAllion as Convenor of the Petitions Committee.

[Signature]
ROSS FINNIE
(Applied by the Minister and signed in his absence)
PUBLIC PETITIONS COMMITTEE - SUMMARY OF RESPONSES TO PETITIONS PE462, PE463 & PE464

Scottish Executive response

In its response, the Scottish Executive provides details of the different categories of designation, the number of consultations carried out and designations made:

- Sites of Special Scientific Interest (SSSIs) – designated by SNH under the Wildlife and Countryside Act 1981
- Special Areas of Conservation (SACs) – under the EC Habitats Directive, Member States must select suitable areas as SACs and propose them to the EC. Consultation carried out on 227 proposed sites, consultation on a further 4 sites and 1 extension announced. 222 sites (96%) have already been proposed to the EC.
- Special Protection Areas (SPAs) – under the EC Birds Directive, Member States must identify suitable areas for rare or vulnerable species and for regular migratory species. 135 out of the 141 (96%) of the sites proposed have now been designated.

SNH undertakes consultation on behalf of the Executive on proposed SACs and SPAs in Scotland and Scottish Ministers and Scottish Ministers then take decisions on, in the case of SPAs, whether or not to designate, and in the case of SACs, whether or not to approve sites for proposal to the EC.

The point is made that socio-economic factors cannot be taken into account when selecting any of these sites, although SNH reports any socio-economic concerns raised with them during consultation to Ministers.

The Executive indicates that it is aware of problems in relation to only a small minority of sites. It states that in the case of proposed SSSIs, SPAs and SACs, SNH has attempted to follow the spirit of the Executive's policy document, The Nature of Scotland, by going beyond the legal requirement to consult local owners and owner occupiers, by involving other interested parties.

Interestingly, the Executive also indicates that it intends to publish a draft Nature Conservation Bill as soon as possible which will provide for a stronger voice for local communities in the designation and management of SSSIs.

SNH response

In its response, SNH provides a more comprehensive explanation of the designation process at pages 1 and 2 of the submission, which members are encouraged to read. The response also includes more detailed comments on the specific issues raised in the petitions. The main points are as follows:

PE462

- Petition questioned SNH's reliance on a national population estimate of hen harriers based on a sampling procedure, rather than a total count across the whole of Great Britain. SNH asserts that sampling is a standard scientific process and a common and reasonable approach used to estimate a national population. The ACSSI has stated that it believes the national statistics have widespread support within the scientific community.
- The issue of data corroboration was raised in the petition. SNH addresses this by making clear that before using data from other sources, it assesses the ability and the relevant experience of the individual and the methods used in gathering the data. Only
ANNEX A

when it is confident of the source will the data be used to justify the inclusion of ground within an SSSI.

PE463

• SNH refutes the assertion made by the petitioners that it lied and suppressed information from the third count of common seals in the Sound of Barra. It states that the third count had not been carried out at the time the site was selected and consultation documents were prepared. However, SNH discussed the results of the third count (carried out by the Sea Mammal Research Unit) at the public meetings. Following advice from SMRU, SNH confirmed that it supported deferral of a decision on this SAC pending further survey of the seals, which is now planned for summer 2002.

• Details are provided of the procedure for reporting consultation responses to the Scottish Executive. SNH is of the view that the concerns expressed by the petitioners that SNH did not properly report the outcome of the Barra consultation are unfounded. It states that the proper procedures were followed and that all written representations received were reported to the Executive.

PE464

• SNH refutes the point raised in this petition that it does not adopt a consistent approach when selecting sites for red-throated divers. It explains that it follows the SPA Selection Guidelines and that sites with the greatest numbers and densities of red-throated divers have been included in the list of proposed SPA sites, as have additional sites to ensure that the distribution of SPAs adequately represents the range of the species.

SNH also provides comments on the more general issues raised with regard to the adequate and timely release of information to owners and occupiers, making clear that it fully supports this process. It also explains how information is made available and also the circumstances under which it may not be widely released e.g. where it could be harmful to the species.

Advisory Committee on Sites of Special Scientific Interest response

In its response, the ACSSSI also provides comprehensive details of the designation process. It also provides details of the role of the ACSSI in this process, which is essentially to advise SNH on unresolved scientific objections made in respect of proposed SSSIs, and to make an assessment of the quality of the science underpinning SSSI designation, and how SNH has applied its internal guidelines for selection of SSSIs. A leaflet attached to the response provides further details.

The ACSSSI makes clear that it does not make a systematic assessment of the way in which SNH has consulted with objectors, nor does it assess the procedures which have been used in promoting the designation (other than where these relate to the scientific data for the site).

The response also includes details of the ACSSSI’s response to the 1998 Scottish Office consultation paper “People in Nature” which focussed on the SSSI system. It is not known which, if any of the recommendations made have been taken on board by the Executive in the preparation of its proposed Nature Conservation Bill.

The ACSSSI also lists some of the observations it has included in its advice to SNH for specific sites. These include the need for effective verification of information from sources other than SNH; the need for transparency in relation to the decision-making process used in selecting the boundaries of SSSIs; the provision of relevant scientific information and data in good time for adequate consideration by all parties, including objectors; and the need for SNH to consider the concerns expressed by some objectors that requests for further
information are not produced quickly, thus hindering the production of a full and considered scientific objection.

Other information received

The Convener and clerks also received several e-mail messages from councillors and individuals representing community groups on Barra. They make the point that although they object to the proposed Sound of Barra SAC designation, they do not support the petition (PE463) which questions the handling of the consultation process by SNH and the actions of local SNH staff. They have asked to have their support removed from the petition, which they say was included without their permission. The view is expressed that this is also true of other groups and individuals on Barra.

An e-mail was also received from Professor David Houston of the University of Glasgow disassociating himself from the comment attributed to him by a supporter of the petitioners (i.e. that “there is an anti-science culture in SNH”).
Dear Mr Farrell

Petitions PE462, 463 and 464

I refer to your letter to Susie Gledhill on the above dated 16 September in response to the Public Petitions Committee’s decision to seek further Scottish Executive comments on SNH’s procedures with regard to designation of SSSIs, SPAs and SACs and related consultations and site management. I am sorry for the delay in replying. The Committee expressed particular interest in the following issues.

Representations to the European Commission

Consultations on SPAs and SACs are carried out by Scottish Natural Heritage on behalf of the Executive. Comments and representations on any aspect of the designation are of interest to Ministers, but the European Court of Justice has made it clear that only scientific factors may be taken into consideration when selecting areas for designation as SPAs and SACs. It is, however, possible, to take such considerations into account when considering the management of the sites, within the framework of Article 6 of the Habitats Directive. This provision applies in all cases except where priority habitats and species are concerned, for which only considerations of human health or public safety are relevant.

Appeals System

The decision to notify a site as an SSSI is taken by SNH on the basis of a scientific evaluation of its natural heritage features. Where SNH is of the opinion that the site is of special interest in terms of its flora, fauna, geology or physiography, it is duty-bound to notify that fact, on the basis of its objective assessment of the natural heritage quality of the site.

There is already provision for the scientific validity of SSSI notification to be scrutinised by an independent body. Where objection to notification is made on scientific grounds, SNH must refer the matter to the Advisory Committee on SSSIs for advice. It would not be appropriate to provide for an appeal on socio-economic grounds, where such considerations may not, in terms of European and national law be taken into account.
Draft Nature Conservation Bill

Most SACs and SPAs are underpinned by designation as SSSIs. Where SACs and SPAs are not also SSSIs, other arrangements are required to satisfy the European Commission that the conservation interest is being protected. SNH already consult widely on designation of SPAs and SACs and on notification of SSSIs, but the issues which can be taken into account in the final decision are limited, as already stated. The Nature Conservation Bill, which Ministers intend to publish in the near future will provide for local authorities, community councils and other local interests directly affected to be consulted on the notification in addition to owners and occupiers who are already consulted.

Review of SSSI Criteria

The Executive is committed to ensuring the transparency of decision-making and policy-making which is firmly based on the availability of evidence. The requirement for any amendment of the SSSI guidelines is therefore being kept under view, in co-operation with the other UK administrations and nature conservancy bodies.

Yours sincerely

DAVID MALLON
1. In this report, the focus is on the key trends and issues from a strategic perspective in the departmental chapters of the Draft Budget published on 11 September.

Environment and Rural Development

2. This chapter shows modest decreases from last year’s document, which may simply be accounting changes. The increase from £1137m to £1153m in the net budget is 1.5% - less than inflation. A similar change is planned for 2005-06.

3. There will be new resources of £8.6m in the current year, rising to £9.4m in 2004-05. These are Barnett consequentials of transferring the landfill tax credit scheme to a public scheme.

4. Under closing the opportunity gap, however the department simply describes several activities which will assist the rural dimension of this cross-cutting issue. It offers no explanation as to how these activities will do so in practice, nor any indication of additional resources being provided for this purpose. This should be pursued with the Minister in Committee. For sustainable development, the department highlights waste management reform by reducing landfilling as its main contribution.

5. By contrast, the equality section highlights two programmes which provide support for people with disabilities, and the Green Space for Communities initiative for areas of urban deprivation. In general, there is too much inference that core programmes benefit all, including disadvantaged groups, rather than specific initiatives.

6. Waste Initiatives are the major growth area, nearly trebling in real terms over SR2002 – with a further £14m per annum contributing to flood defence works in local authority finance.

7. Big increases are planned for the Countryside Premium Scheme, and the Rural Stewardship Scheme (both of which are partly funded by the EU) and also the Farm Business Development Scheme, (housed in the Rural Development Programme). Other Level 2 programmes are broadly in line with Draft Budget 2003-04, but there are significant reductions in CAP Market Support from £377m to £348m for 2004-05 and 2005-06 – reflecting EU Reforms of CAP. I have asked Finance Coordination to confirm that these are real reductions.
Table 1: Budget Increases 2003-04 to 2005-06

<table>
<thead>
<tr>
<th>Portfolio</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Justice</td>
<td>10.0</td>
</tr>
<tr>
<td>2. COPFS</td>
<td>5.2</td>
</tr>
<tr>
<td>3. Education and Young People</td>
<td>44.4</td>
</tr>
<tr>
<td>4. Tourism, Culture and Sport</td>
<td>28.8</td>
</tr>
<tr>
<td>5. Health and Community Care</td>
<td>17.6</td>
</tr>
<tr>
<td>6. Food Standards Agency</td>
<td>59.0</td>
</tr>
<tr>
<td>7. Enterprise and Lifelong Learning</td>
<td>8.9</td>
</tr>
<tr>
<td>8. Communities</td>
<td>8.5</td>
</tr>
<tr>
<td>9. Transport</td>
<td>17.5</td>
</tr>
<tr>
<td>10. Environment and Rural Development</td>
<td>3.7</td>
</tr>
<tr>
<td>11. Finance and Public Services</td>
<td>10.1</td>
</tr>
<tr>
<td>12. Capital Modernisation Fund</td>
<td>n/a</td>
</tr>
<tr>
<td>13. Administration</td>
<td>4.0</td>
</tr>
<tr>
<td>14. Scottish Parliament and Audit Scotland</td>
<td>n/a</td>
</tr>
<tr>
<td>15. Contingency Fund</td>
<td>+50</td>
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</tbody>
</table>

Total Budget                                          +12.3

Table 2: GAE Provision for Key Services (£m)

<table>
<thead>
<tr>
<th></th>
<th>2003-04</th>
<th>2004-05</th>
<th>2005-06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>3409</td>
<td>3686</td>
<td>3852</td>
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<tr>
<td>Social Work</td>
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<td>1740</td>
<td>1815</td>
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<tr>
<td>Police</td>
<td>889</td>
<td>938</td>
<td>998</td>
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<tr>
<td>Fire</td>
<td>233</td>
<td>248</td>
<td>262</td>
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<tr>
<td>Roads and Transport</td>
<td>426</td>
<td>442</td>
<td>458</td>
</tr>
<tr>
<td>Leisure and Recreation</td>
<td>269</td>
<td>280</td>
<td>291</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>850</td>
<td>790</td>
<td>816</td>
</tr>
</tbody>
</table>

Total GAE                                               7703  8124  8492
### Table 3: New Resources in Draft Budget 2004-05 (£m)

<table>
<thead>
<tr>
<th>Category</th>
<th>2003-4</th>
<th>2004-5</th>
<th>2005-6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice</td>
<td>0.5</td>
<td>13.5</td>
<td>25.0</td>
</tr>
<tr>
<td>COPFS</td>
<td>-</td>
<td>0.4</td>
<td>0.7</td>
</tr>
<tr>
<td>Education and Young People</td>
<td>-</td>
<td>29.0</td>
<td>49.0</td>
</tr>
<tr>
<td>Tourism, Culture and Sport</td>
<td>1.0</td>
<td>1.0</td>
<td>14.0</td>
</tr>
<tr>
<td>Health and Community Care</td>
<td>12.0</td>
<td>36.5</td>
<td>32.0</td>
</tr>
<tr>
<td>Food Standards Agency</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Enterprise and Lifelong Learning</td>
<td>20.0</td>
<td>10.0</td>
<td>15.0</td>
</tr>
<tr>
<td>Communities</td>
<td>15.0</td>
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<tr>
<td>Transport</td>
<td>5.0</td>
<td>36.7</td>
<td>43.0</td>
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<tr>
<td>Environment and Rural</td>
<td>8.6</td>
<td>9.4</td>
<td>9.4</td>
</tr>
<tr>
<td>Finance and Public Services</td>
<td>62.6</td>
<td>36.1</td>
<td>41.2</td>
</tr>
<tr>
<td>Administration</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>124.7</strong></td>
<td><strong>172.6</strong></td>
<td><strong>274.3</strong></td>
</tr>
</tbody>
</table>

Professor Arthur Midwinter
September 2003