ENIRONMENT AND RURAL DEVELOPMENT COMMITTEE

AGENDA

12th Meeting, 2003 (Session 2)

Wednesday 19 November 2003

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

1. **Nature Conservation (Scotland) Bill:** The Committee will take evidence at
   Stage 1 from—

   Douglas Batchelor, Chief Executive, League against Cruel Sports

   Eleanor Dickson, Scottish Manager, Whale and Dolphin Conservation Society

   Dr Colin Shedden, Director (Scotland), British Association for Shooting and
   Conservation

   Bert Burnett, Scottish Gamekeepers’ Association

   Ian McCall, Director, Game Conservancy Trust

   Superintendent Mike Flynn, Scottish Society for the Prevention of Cruelty to
   Animals

   Alan Stewart, Wildlife and Environment Officer, Association of Chief Police
   Officers in Scotland

   Duncan Burd, Chair, Rural Affairs Committee, The Law Society of Scotland

   Dave Dick, Senior Investigations Officer, RSPB Scotland.

2. **Public petitions:** The Committee will consider the following petitions—

   **PE449** on the impact of predatory birds on waders, songbirds, fish stocks and
gamebirds

   **PE645** and **PE517** on control of odours from water treatment works

   **PE604** on the regulation of greyhound sport

   **PE653** on issues relating to the Scottish Agricultural College
**PE365** on fixed fishing quota allocations and property rights. The Committee will consider correspondence from the Minister for Environment and Rural Development in relation to this petition.

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Tracey Hawe  
Clerk to the Committee  
Direct Tel: 0131-348-5221

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Introduction

The League Against Cruel Sports is a membership organisation working across the United Kingdom. We were pleased to work with Members of the Scottish Parliament in connection with the Protection of Wild Mammals (Scotland) Act and are pleased to be invited to give evidence again in relation to the Nature Conservation (Scotland) Bill.

We welcome the general principles of the Bill, in aiming to further the conservation of biodiversity, and to improve the welfare of wild animals by enhancing the law on wildlife crime. Biodiversity includes an obligation to conserve the breadth and diversity of the natural world as a whole, as described in the Explanatory Notes to the Bill. As such, indiscriminate methods of killing are just as inappropriate as those that cause unnecessary suffering.

We believe that it is wrong to cause unnecessary suffering to animals, and that suffering caused for the sake of ‘sport’ is inherently unnecessary and therefore cruel.

We accept that rabbits can be pests and therefore may need to be controlled. Equally, some individual foxes cause an economic problem for farmers, although not nearly as many as is sometimes claimed. Therefore, where the control of animals is necessary, it should always be undertaken in a humane manner.

Snaring

We warmly welcome the proposals in the Nature Conservation (Scotland) Bill to tighten the law with regard to snaring. The Bill addresses a number of significant concerns that have been raised since the passage of the Wildlife and Countryside Act 1981. For example:

- It will become an offence to use a self-locking snare, even if not “calculated to cause bodily injury”, thus removing the need for the court to address the state of mind of the accused. (para 10 (2))
- It will become an offence to use other snares where these are calculated to cause unnecessary suffering. (para 10 (3))
- It will become an offence to set a snare “likely” to cause bodily injury to Schedule 6 animals (such as badgers) – as opposed to “calculated” to cause such injury, as the Wildlife and Countryside Act currently reads. Our view is that this will remove the need for the court to address the state of mind of the accused and thereby prevent the setting of any snare near to a badger sett or on a badger path. (para 10 (5))
- It will require snares to be inspected once every 24 hours, whereas previous legislation can result in inspections separated by as much as 47 hours and 58 minutes whilst still falling under the previous definition of ‘daily’. (para 10 (6))

However, we believe that the Bill could be improved, both in principle and in enforceability, and could enhance the causes of biodiversity and wild animal welfare, by banning the use of all snares.

The provisions of the Bill as presented to the Parliament, while welcome, will not prevent:

- Animals being trapped in snares, suffering severe stress, for up to 24 hours;
Substantial numbers of non-target animals being caught in snares. Snares are, by their nature, indiscriminate. For example, an RSPCA survey of snaring incidents in 2000 found that 103 of 246 animals snared were badgers. A 1983-84 survey reported in BBC Wildlife showed that amongst 360 snaring reports dealt with by RSPCA inspectors during their routine work, 150 related to cats, 52 to badgers, 29 to dogs and the remainder to various animals including rabbits, hedgehogs, a deer, squirrel, stoat, polecats and a partridge. In a 1968 MAFF trial on Forestry Commission land, 155 foxes and 132 non-target animals were caught. Permitting the use of snares therefore goes directly against the Bill's aim of encouraging biodiversity, by permitting indiscriminate killing.

Non-target animals being killed rather than restrained by free-running snares. Even legal snares can cause serious injuries, and can cause pressure necrosis (where tissue around the snare dies). Evidence submitted to the committee by Les Stocker of St Tiggywinkles Wildlife Hospital has shown graphically that pressure necrosis in animals caught in snares can develop over time, causing death several days later. One response to this is that animals should not be released from snares but taken to a wildlife hospital; our view is that snares should not be used at all.

The use of ‘free-running’ snares which are likely to cause unnecessary suffering to an animal, where such suffering is not the intention of the snare setter. An example of this would be a snare set on a drag pole, where a fox can exhaust itself by pulling the pole, or can drag the snare away entirely, where it will starve to death as the snare can no longer be checked. We do not claim that land managers deliberately cause suffering, yet the requirement for such suffering to be intentional for an offence to have been committed weakens the protection which an animal could otherwise benefit from.

A snare, originally designed as free-running, operating as a self-locking snare, for example where age, rust, kinks or the desperate movements of the trapped animal reduce the ability of the snare to expand when the animal is caught within it. Experience shows that snares can lock in a tight noose at the eye of the snare as the trapped animal twists and turns within it.

The use of home-made snares, manufactured to a lower standard and not approved and tested as legal.

Snares being set on public footpaths or close to dwelling houses, with the resulting danger of domestic pets being ensnared.

Land owners putting undue pressure on their gamekeepers to set snares in illegal ways. The Wildlife and Countryside Act bars landowners from “knowingly causing or permitting” the setting of illegal snares. However, this places no obligation on them to ensure that their staff set only legal snares.

It is not always easy to enforce the law with regard to the actions of a gamekeeper, working alone on a large estate. While we accept that most gamekeepers will wish to abide by any legislation passed by the Parliament, some requirements, such as those for regular inspections or for snares not to be set near badger setts, are inherently difficult to enforce.

Crucially, the difference between a legal and an illegal snare is not always clear. Indeed, BASC accept that “minor modification, or even rust, could cause a legal snare to fall foul of this clause”. AB snares were withdrawn from sale for this very reason.

In contrast, a ban on all forms of snare provides clarity to land managers and certainty to law enforcement authorities.
Like the SSPCA, we therefore believe that all forms of snare should be banned in legislation.

Finally, on this issue, we would urge the committee to seek legal advice on the compatibility of any form of snaring within the Bern Convention on Conservation of European Wildlife and Natural Habitats, in relation to the indiscriminate nature of snares. Hitherto, the reason cited for the compatibility of snares with the Bern Convention is that legal snares are a form of restraint and therefore do not kill unselectively. However, the evidence that even legal snares are lethal, whether through pressure necrosis or free-running snares starting to lock, puts compatibility within the Convention in severe doubt.

Other issues within the Bill
- The creation of an offence of “recklessly...” as opposed to “intentionally...” will greatly lessen the level of proof needed to address the state of mind of the accused.
- Section 1(6) of the Wildlife and Countryside Act 1981 excludes from protection given to wild birds “any bird that is shown to have been bred in captivity”. This is designed to allow the shooting of reared birds, such as pheasants. We see no welfare justification for restricting the protection of birds in this way. Currently, these birds appear to fall between two stools, notably because the intention behind the original legislation is to ensure that welfare legislation does not prevent them being shot for sport. The Nature Conservation (Scotland) Bill should ensure that such birds are treated either as farmed or as wild, so that they receive a measure of protection under law.
- The issue of ‘catching up’ of birds. We argue that it is wrong to capture wild birds purely for the purpose of shooting them or their offspring.
SUBMISSION FROM THE WHALE AND DOLPHIN CONSERVATION SOCIETY (WDCS)

WDCS welcomes the opportunity to provide evidence at this stage and offer our support for the proposals in this Bill. We recommend that the Committee should support the general principles of the Bill and suggest some additional points for consideration.

General Comments
Our main concern with the Bill is that it does not sufficiently address marine nature conservation issues. Marine conservation currently lags well behind that on land and we urgently need comprehensive legislation to achieve better protection for marine wildlife and effective management of our seas. Achieving this will require more than simply extending this bill to cover the seas so we welcome the Executive’s commitment to addressing some of these broader marine issues in the medium term via, for instance, the Scottish Sustainable Marine Environment project and the Scottish Marine Strategy.

Thus, while not pressing for additional measures in this particular bill relating to the marine environment, we believe the Committee should seek assurances from the Executive that plans to address marine conservation issues are in hand and the process to achieve comprehensive marine legislation will begin now, allowing for such legislation to be brought forward at latest during the next term of parliament.

However, as certain marine issues are dealt with in the bill, particularly species protection matters in Part 3 through amendments to the Wildlife and Countryside Act (1981), our evidence includes comments on these proposals, and some additional suggestions.

Part One – Biodiversity
Although we assume that the provisions of the bill are to apply out to 12nm, it is not stated that this is the case. For the avoidance of doubt, we believe it would be beneficial to clearly state the geographical application of the bill as applying to all of Scotland’s territory, both land and sea out to the 12 nautical mile limit.

WDCS welcomes the proposal to place a duty on all public bodies and office-holders to further the conservation of biodiversity. We hope this will go some way to ensuring that from the highest level of government to local authorities ‘on the ground’, biodiversity will being taken into consideration when making decisions.

We would also suggest that to create a stronger framework to support the conservation of biodiversity, the following additions are also considered:

- a requirement that priority habitats and species in Scotland should be identified;
- a requirement that criteria are developed for prioritising species and habitats for recovery measures;
- a requirement to report on trends and status of priority habitats and species, along with defining goals and targets for their recovery;

We hope that the Nature Conservation Orders detailed in Chapter 2, could be applied when important biodiversity interests are threatened by an activity.
Part Three – Protection of Wildlife

WDCS supports the amendments proposed by Schedule 6 to the Wildlife and Countryside Act, 1981. Particularly, the addition of ‘reckless’ to sections of the Act that currently require intent to be proven, and the inclusion of a disturbance clause specific to cetaceans and basking sharks, making it an offence to disturb them wherever they are. We feel that tightening up the ‘incidental result of a lawful operation’ defence is also a very positive move as this clause has long been identified as a major loophole in the effectiveness of the Act.

Further improvements we would like to suggest to the Committee are:-

- **Marine Wildlife Watching Regulations**

  Human interaction with marine wildlife, particularly marine mammals, is increasing through a growing ecotourism industry and increasing recreational boat use. Whilst being generally supportive of responsible ecotourism and people’s increasing involvement with the marine environment, these activities have the potential to disturb and harm wildlife, and improved regulations to better protect them from these threats are required.

  In the Moray Firth, a voluntary code of conduct for commercial operators, the “Dolphin Space Programme”, was established in 1995 in order to minimise the impacts of commercial wildlife watching on the dolphins. Evidence from the anonymous monitoring scheme (in place for the past 2 years) proves that the code is not being adhered to. WDCS recognises the immense value of dolphin-watching to the local economy, however it is important that operations are not allowed to continue to disturb dolphins. The problem is only set to increase unless the number of licences given to operators in the Moray Firth is limited for reasons of wildlife protection. The number of wildlife watching boats operating in the Firth has increased from one in 1990, to nine boats registered with the DSP in 2003.

  WDCS believes that a national, consolidated code of conduct with legislative backing is needed. Its purpose would be to offer guidance to individuals and commercial operations wanting to observe marine wildlife without disturbing them, and to aid enforcers by giving them a code which non-compliance with can be used as supporting evidence for the offence of disturbance. At present a confusing variety of voluntary codes exist but there is very little to make people abide by any of them. Multiple codes can often be operating in a specific area and on the whole, they give quite different advice to people as to the correct way to behave around marine wildlife, with some a lot more restrictive and cautious than others. This wide array of codes would make it hard to prosecute someone using non-compliance of a code as evidence because all the codes set different standards as acceptable. For this to work there needs to be one generic code, with legal underpinning. The generic code could be developed (by additional clauses) for local situations.

  Section 33 of the Wildlife and Countryside Act 1981 provides a useful example of how such codes may be underpinned by statute, but without the whole code itself being included in the legislation. The benefits of producing codes in this manner are that they can be easily adapted to particular species of wildlife and local
circumstances. The process to update and amend them should be made relatively easy.

- **Areas where protection is offered**
  Section 9(4) of the Wildlife and Countryside Act provides an example of where wording has been developed with the terrestrial environment in mind and has prevented application of the section to marine species. Currently, it states that it is an offence to “damage or destroy, or obstruct access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection”. An improvement would be “damage or destroy, or obstruct access to, a habitat or shelter used by a Schedule 5 animal”.

- **Enforcement**
  In many cases, the legislation relating to species protection in the marine environment is seen as strong but the subsequent enforcement weak. Elements of this problem have been related to a lack of bodies with appropriate powers or a reliance on those whose major concerns relate to non-nature conservation matters or who are non-marine. We believe that full consideration needs to be given to whichever bodies could most effectively enforce wildlife protection legislation in the marine environment, and powers subsequently extended to them. We do not advocate the removal of enforcement powers from any existing body as this would only result in the loss of any expertise developed.

  Appropriate training and resources are essential for all those given these enforcement powers. There is a significant lack of knowledge about marine species and what constitutes a crime at all levels, from the member of public who may witness an incident, up to the Procurator Fiscal preparing a case. Full training is vital for those expected to enforce this legislation in the marine environment.

- **Penalties**
  Penalties for wildlife offences are set by Section 21 of the Wildlife and Countryside Act. We believe that when determining the level of penalty, a Court should bear in mind, as well as the financial gain accrued as a result of the offence, the conservation impact of the offence.

  In the Moray Firth, illegal salmon netting along the coastline poses a serious risk to the threatened bottlenose dolphin population. The dolphin population in the Moray Firth is small and estimated to only number approximately 130 animals. A recent scientific evaluation has shown a high likelihood that they are in decline. They are therefore extremely vulnerable and the loss of just one individual from entanglement in an illegal net could have significant consequences for the remaining population. This particular crime should be treated very seriously and the penalty imposed should take into account the conservation value of the population that is being threatened.
SUBMISSION FROM THE BRITISH ASSOCIATION FOR SHOOTING AND CONSERVATION

BASC was founded in 1908 as the Wildfowlers’ Association of Great Britain and Ireland and incorporates the Gamekeepers’ Association of the United Kingdom. BASC is the UK’s largest shooting association, supported by 120,000 people including some 5,500-gamekeeper members. BASC is the representative body for sporting shooting in the UK. It aims to promote and protect sporting shooting and the well being of the countryside throughout the UK. BASC Scotland has over 10,000 members, including over 600 gamekeepers.

Background

This paper addresses the implications for wildlife crime arising from the Nature Conservation (Scotland) Bill. Our concerns over the wider implications of this Bill will be detailed in a separate submission.

During the passage of this Bill we appreciate that there will be considerable focus on issues relating to wildlife crime, since this attracts both press and public attention in Scotland. The shooting community and representative organisation like BASC treat wildlife crime seriously. However, there are no clear trends with respect to wildlife crime in Scotland over recent years. A range of reports show only a small number of reported offences each year, but hint at a much higher level of unreported offences. BASC Scotland is supportive of legislative amendment that addresses both reported and suspected wildlife crime, and seeks to reduce both. However, we caution against legislative amendment that results in law that is either unnecessary, impractical (difficult to detect or enforce) or damaging to essential game and wildlife management and the associated environmental and socio-economic benefits. We believe that legislative amendment should be proportionate to any problem.

Part 3: Protection of Wildlife (Schedule 6)

Recklessness

While we accept that recklessness is a well-defined legal concept, we feel that there may be occasions in the future when there is considerable debate over whether or not a person’s actions were reckless. To be reckless, under this Bill, a person must be aware of a nesting Schedule 1 bird, a capercaillie lek or the presence of other listed plants or animals. How could a court prove the charge of recklessness if a person denied knowledge of, or expectation of such an animal or plant being present? Much would hinge upon an individual’s perceived or admitted awareness of a protected species.

Sections 4 (2A), Section 10 (3A) and 13 (3) do, however, provide useful mitigation over the matter or recklessness.
Deletion of Section 5 (5)

This amendment removes the provisions that allow the trapping of game birds for breeding purposes. It is suggested that a Section 16 licence will replace this. BASC Scotland is concerned that while a licence under this Section may cover “repopulation” or “re-introduction” it will not cover “introduction”. Consequently, it would be impossible to comply with the conditions of such a licence to catch up and breed pheasants, for instance, unless the breeder was sure that the birds would be released in an area hitherto occupied by pheasants. This would become more problematic for red-legged partridges that have a less widespread distribution.

BASC Scotland would prefer the retention of Section 5 (5) (c) and notes that this activity has never been implicated in any aspect of wildlife crime. The deletion of Section 5 (5) in its entirety also removes the only reference in the Act to the illegal use of nets. We are not sure whether this is intended.

Snares and Traps

BASC research has shown that the majority of gamekeepers regard snaring as the second most effective method of pest control after shooting. Snaring is also the only viable alternative where it is impossible to shoot foxes because of the terrain or the proximity to populated areas. Many farmers and crofters also use snares to protect livestock.

Section 11 of the Act prohibits the use of self-locking snares (a killing trap) though no legal definition exists. BASC defines a self-locking snare as ‘a wire loop device that continues to tighten by a ratchet action as the animal struggles’. Legal, ‘free-running’ snares are essentially a restraining, not a killing device designed to hold, but not kill. We define them as ‘a wire loop which relaxes when the animal stops pulling’. BASC believes that these definitions set out in the booklet ‘Traps & Snares – a field guide to legal and illegal traps and snares’ produced by BASC as an aide memoir for Police Wildlife Liaison Officers, accurately define the role of each snare. These definitions have been readily accepted by WLOs and have been quoted in court.

- The Bill proposes changing the controls on snaring currently set out in Section 11 of the Wildlife and Countryside Act 1981 to ensure they apply to all snares. At present these apply to self-locking snares which are “of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact therewith”. The Bill proposes extending this to all snares and then replacing “calculated” with the term “likely”, with respect to some animals such as badgers and pine martens in Section 11 (2). The Explanatory Notes (281) describe this as allowing an offence to be proven on objective rather than subjective grounds. We feel that this new term (“likely”) is no more objective, and suggest that “calculated” remain, maintaining consistency with its use in Section 11 (1) (aa). We believe the present wording has worked well and provides adequate scope to prosecute anyone deliberately misusing snares.
• The Bill also changes “to cause bodily injury to ” to “to cause unnecessary suffering to” with respect to all snares in Section 11 (1). While anyone operating a snare will endeavour, at all times, to avoid unnecessary suffering, this new term is again more subjective than “bodily injury”, having a wider range but possibly harder to prove in court. (The term “bodily injury” is retained in Section 11 (2) with respect to some animals.)

• Section 11 of the 1981 Act currently specifies that snares should be checked “at least once every day”. Amendment in this Bill proposes that snares should be “inspected at least once every day at intervals of no more than 24 hours”.

  We accept that the current wording permits a snare to be left unvisited for more than 24 hours. However, the suggested amendment effectively means that if a snare was visited at 07.00 one morning it would have to be visited earlier than this the next morning, and so on. We see considerable merit in legislation stating that a snare should be “inspected at least once within each 24 hour period after setting”. This would ensure that snares were regularly inspected but would avoid operators having to check their snares earlier and earlier each day to stay within the law. (Note: BASC’s own Code of Practice on Fox Snaring recommends that snares be inspected “at least twice a day and as soon after dawn as is practical”. While this is the ideal, it would be too prescriptive to introduce this as a mandatory legal requirement.)

• We note the proposals regarding the possession and sale of self-locking snares. We would be concerned if mere possession became an offence in itself. Under Section 8 of the Pest Act 1954 it is illegal to use or permit the use of an unapproved spring trap such as a gin trap. It also makes it an offence to sell, offer for sale or possess any spring trap for such an unlawful purpose. We believe this important exemption removes an unnecessary bureaucratic burden from individual trap collectors, museums and even public houses, some of which display unapproved traps as curios. We believe the same exemption should also apply to the possession of self-locking snares. (Note: Other evidence presented has suggested that legislation prohibits possession of such traps.)

• We fully support the provisions that, on inspection, any animal caught in a snare must be released or removed, and that it should be an offence to set a snare without the authorisation of the owner or occupier of the land. However, while it may be useful to make it an offence to be on land with a snare without the owner’s authorisation this is one situation that would have to be cross-referenced to the Outdoor Access Code. It may have to become an “irresponsible behaviour” that would then fall out with the rights of responsible access.

Possession of Pesticides

BASC Scotland is uncomfortable with the inclusion of this new Section. As with the above discussion on both traps and self-locking snares we feel that making mere possession an offence is too much. Every user of once-common garden pesticides could fall under the remit of this Section, and full consideration would then have to be given to publicity, an amnesty and the subsequent disposal of all collected pesticides. The full impact of this Section would not be known until the order (under 15A (3)) was published.
Wildlife Inspectors

We note the increased powers and authorities conferred on Wildlife Inspectors. Our main area of concern relates not to powers to be afforded to Wildlife Inspectors per se, but to the powers “to search for evidence; to examine items and to seize evidence” to be afforded to other persons accompanying a constable. While we accept that others may accompany a constable to provide specialist or technical knowledge, we feel that it is entirely unnecessary and indeed provocative that they are given powers normally reserved for the police. Only trained police officers should be authorised to search for and seize evidence. What parallels, if any, exist in other areas of criminal investigation?

Summary

While a number of the provisions contained under Part 3 (Protection of Wildlife) are sensible, many of the apparently minor changes could have a profound effect upon the day to day work of gamekeepers and shoot managers. We argue that many are either unnecessary, cause confusion or will not assist in deterring the small number of individuals intent on breaking existing legislation.
Response to Stage 1 of the Nature Conservation (Scotland) Bill

From
The Scottish Gamekeepers Association

The Scottish Gamekeepers Association, or SGA as we are more commonly known, is widely recognised as the representative body of Scotland’s wildlife managers and we have over 1,000 professional members.

The most important part of the Bill from our members’ perspective concerns wildlife crime and so we would like to take the opportunity to ask the committee to consider carefully what it constitutes as wildlife crime.

When a few misguided individuals take the law into their own hands and kill a protected species, a great deal is made and media attention grabbed but in reality the chances of these incidents affecting the overall population of these birds or animals is minimal.

Could it be that more serious and damaging incidents of wildlife crime have occurred and yet no one has been held to account for them?

Examples might include:

1. The destruction of thousands, if not millions, of eggs and chicks eaten by hedgehogs while conservation bodies stood by and did nothing for almost twenty years.
2. Allowing the expansion of mink populations in the Western Isles when the dangers were well recognised.
3. The failure to control foxes and crows in capercaillie strongholds.
4. Allowing populations of predatory birds to expand unchecked while watching their prey species – such as Golden Plover, Dunlin and small passerines decline.

Anecdotal evidence suggests that bird watchers and conservation bodies have caused birds not only to desert the nest site that year but also to fail to return in subsequent years by continually visiting nest sites for various reasons.

All this has resulted in a serious loss of wildlife which is costing us millions of pounds to rectify.

What other crimes against our wildlife have been committed by conservation bodies? Could it be that the examples we have given are just the tip of the iceberg? What provisions can be made by this Bill to safeguard our wildlife from subsequent mismanagement by these so called experts?

Turning to other forms of wildlife crime; the SGA recognises that there is a problem in some localised areas. We also recognise the need to eliminate the problem and have at all times worked closely with the police in connection with wildlife crime.

We have produced literature in the form of codes and good practice, a copy of which has been sent to all MSPs, in conjunction with articles in our members’ magazine. We have also held several meetings – with and without the police – for our members promoting the need to follow good practice.

The SGA is no different from any other organisation as it will undoubtedly, from time to time, have a rogue element. It has been strongly suggested by conservation bodies...
and the police that the SGA should deal with this rogue element and remove them from the organisation. Unfortunately even the police fail to recognise that, unless the person is convicted, this is not an option; we do not have the moral or legal right to act as police, judge and jury. If a person is found guilty of a serious wildlife crime, our governing committee will then decide how to deal with that individual case.

Every time a poisoning incident is detected, the nearest gamekeeper is blamed and may consequently be raid by the police. Unfortunately, gamekeepers outwith the crime area have also been raided creating very bad feelings indeed. These bad feelings are then shared by gamekeepers across Scotland and this unfortunately leads to non cooperation between some of our members and the police.

Many incidents of wildlife crime happen in areas where no professional gamekeepers are employed or on moorland areas where no ‘grouse’ interests exist.

For example, in Aberdeenshire, Kincardine and Angus over the last twelve months seven buzzards, one eagle and two peregrines have been killed in five separate incidents. In four of these incidents it appears no professional gamekeeper was involved and one of which was actually reported by a gamekeeper.

As we are not consulted on actual cases across Scotland, we have to ask how many more such cases exist and because of an apparent set agenda to blame gamekeepers have been reported to the media with bias against keepers.

The SGA provides a network and a voice for gamekeepers, who in the past have been too frightened to speak up for themselves for fear of the possible unjustified accusation of wildlife crime involvement. It has recently come to light that dead raptors – and sometimes baits – have been found by gamekeepers on the land they manage but because of their reluctance to become involved, they have chosen to destroy the evidence rather than call the police. The reasons given have varied from ‘fear of being blamed’ to ‘even if we reported it, this would be used as another statistic to batter gamekeepers’.

It has to be recognised that anyone harbouring a grudge against the keeper or the estate or trying to discredit keepers or shooting in general has only to plant poisoned bait and then wait patiently for it to be found for the keeper to become a statistic!

For this reason it has become very difficult to pinpoint the truth and determine what is actually happening out there.

We firmly believe that the majority of cases of deliberate wildlife crime are caused by frustration. This frustration arises when, for example, ravens attack private stock – be it sheep, grouse or anything else, as there is widespread and in some instances proven belief that licenses will not be granted to alleviate the problem. Some individuals then take the law into their own hands which, if poison is used, leads to non target species such as kites and eagles eating the baits and consequently these innocent and unfortunate creatures die.

Surely, if we are to combat wildlife crime, we must look at the causes and how to reduce them. In that way, perhaps people will not feel the need to take the law into their own hands. We are not convinced that the Bill as presented will achieve this objective.

We are extremely concerned about the proposal to grant increased powers to Wildlife Inspectors, powers normally granted only to police officers. We see no reason to extend powers ‘to search for evidence, to examine items and to seize evidence’ to members of the public accompanying police officers. It is our opinion that members of the public with specialist knowledge should only be present in order to provide knowledge to the police and should not be able to assume additional powers; we are
concerned that “Wildlife Inspectors” are not necessarily unbiased (as should be by the police) and so we will strenuously resist these proposals which will in no way enhance nature conservation in Scotland.

Finally we would like to comment briefly on other sections of the Bill:

We applaud the Executive’s intention to retain **snaring** as a valued and necessary tool in predator control and we thank the Minister for taking the time to listen to our concerns.

We are however concerned that the inclusion of the term ‘recklessly’ throughout this section of the Bill could result in malevolent prosecutions. We are also concerned that despite our best efforts to educate our members in best practice, in some cases ignorance might be judged as recklessness and could result in prosecutions. There could also be incidents where snares set and used legally could, despite the best will in the world, result in the accidental capture of non-target species.

A rusty or twisted snare could be considered to be self locking by virtue of the fact it is no longer free running. It should not be an offence to be in possession of a rusty snare, many keepers re use the swivels from old snares and replace rusty wire with new wire. Anyone caught taking home a damaged snare for disposal or repair could be charged. By removing a damaged snare the gamekeeper is adhering to good practice and following the law, however, if he is caught in possession he could be charged with possessing an illegal snare and consequently forced to defend himself in court at considerable expense.

He will also probably have his firearms removed by the police – a tool that without which a gamekeeper cannot do his job – and will not be able to apply for their return until legal proceedings are complete (this could take 18 months), even then there is no guarantee of a quick return and so the wildlife manager will be unable to carry out his employment and protection of Scotland’s wildlife properly for anything up to 2 years or in some cases even longer. Furthermore, a pile of old snares in a shed waiting to be renewed should not constitute a crime.

Concerns we have about **SSSIs** we would hope to see addressed at Stage 2 of the Bill’s passage through Parliament.
SUBMISSION FROM THE GAME CONSERVANCY TRUST

The Game Conservancy Trust conducts research into the biology and ecology of game animals and the flora and fauna that share their habitats. The research aims to improve knowledge so that these species can be better managed and conserved. This knowledge is passed to the public through regular publications and scientific papers. Professional advice and training courses are given to land managers by the Advisory Services of our wholly-owned subsidiary organisation Game Conservancy Limited.

The Trust employs over 60 research scientists (14 post-doctoral) with expertise in ornithology, entomology, biometrics, mammalogy, agronomics, forestry and fisheries science. The Trust undertakes its own research as well as projects funded by contract and grant-aid from Government and private bodies. In 2002 it spent £2 million on research.

The Game Conservancy Trust (GCT) was a lead partner in the Joint Raptor Study at Langholm.

1. Nature Conservation (Scotland) Bill – Overview

While broadly welcoming the measures outlined in the Nature Conservation (Scotland) Bill as introduced, we have restricted this paper largely to wildlife crime (but excluding egg theft) as requested in the briefing note.

The Game Conservancy Trust (GCT) does not condone the illegal killing of any species, and supports all efforts to reduce wildlife crime. It supports all initiatives to end illegal poisoning and is a founder member of “The Campaign Against Illegal Poisoning of Wildlife”. We are however firmly of the view that the most effective way to reduce illegal activity is to provide, promote, inform and offer training on effective, practical, legal measures for predation control.

The Trust is concerned that the number of legal options available to the land manager and gamekeeper for predation control is relatively small and diminishing. Without an adequate range of legal methods and flexibility over their application, delivery of effective predation control can pass from challenging/sensible to impossible.

As previous GCT research has demonstrated, predation control is a major factor to successful husbanding of a harvestable surplus of game species. It can also be a critical factor for the commercial viability of properties which rely on game conservation and shooting, stalking or fishing for a significant part of the income stream they generate and, as a consequence, a source of direct and indirect rural employment.

Wildlife crime, and in particular illegal persecution, could be reduced most effectively if the available legal methods of control were more effective and better information and training were available.

Section 5(5)

The deletion of this section removes the provision to trap game birds for breeding. It is then suggested a Section 16 license will replace the provision for ‘repopulation’ or ‘reintroduction’. This will not provide for the ‘introduction’ of game species which could prevent catching up for the production of game for an area where such game may not recently exist.

It would be preferable to retain Section 5(5)(c).
2. **Snares and Traps**

Regarding snares and traps, illegal activity and associated wildlife crime excluding that which is deliberate poaching, is often a result of ignorance through lack of education.

We were reassured by the statement in the draft Bill for consultation that ... *snares should remain available to land managers as a legal method of dealing with pest species.* We are however concerned with the prospect of the introduction of *robust safeguards* for their use.

In particular we consider that the inclusion of the term *recklessly* throughout this section of the Bill may result in malicious prosecutions. While one is no excuse for the other, we are concerned also that ignorance perceived as recklessness may result in prosecutions.

There will also continue to be incidents where snares set and used legally will result in the occasional accidental capture of non-target species.

GCT has researched, pioneered and provides education/training on the use of a range of techniques for the capture or restraint of pest species - these include Larsen traps, corvid cages, fox snares, rat and other small mammal trapping and mink trapping. We have also developed and are currently refining a new regime for trapping mink more effectively (mink rafts) in the south of England.

GCT also runs courses for hill keepers, experienced keepers, trainee keepers, amateur keepers and shoot managers, all of which include an education element on legal predation control measures.

This demonstrates our commitment to increased education which has a clear role to play in delivering effective and legal predation control. Wider education should also result in increased adoption of legal methods, and a reduction in illegal practices such as poisoning, and trapping and snaring outside the law. We believe more emphasis should be placed on the Scottish Executive to encourage and invest in the essential educational aspects.

3. **Quarry species**

We believe that a reduction in wildlife crime can also be achieved through a more flexible approach to the scheduling and descheduling of quarry and other species.

We are concerned that the current system of scheduling of protected species under the Wildlife and Countryside Act (and amended as appropriate through the Nature Conservation Scotland Bill) is a source of frustration to many land managers.

When species are under threat, rescheduling is an effective means to enhance their protection. It is equally important to set a target level at which point that process is automatically reversed.

With Capercaillie now removed from the quarry list, and given greater protection, it must be asked whether and at what point in its recovery that position will be amended. A target level for them to be returned to the quarry list would provide land managers with an added incentive to invest in the conservation of this species. This principle fits the Game Conservancy’s guiding principle *‘conservation through wise use’.*

A system which allowed some local flexibility within regions of Scotland on scheduling of species would be especially helpful in maximizing this incentive for game and wildlife conservation.
Where locally in a region there is an opportunity to manage a population to provide a sustainable harvestable surplus, which has potential to yield income and employment, there is a much stronger likelihood of private investment in that species and its habitats.

4. WILDLIFE INSPECTORS

We see no reason to extend powers ‘to search for evidence, to examine items and to seize evidence’ to persons accompanying a constable. The constable already has such powers, and wildlife inspectors or others with specialist knowledge should be present only to provide that knowledge to the police, not to assume additional powers currently reserved only for trained police officers.
SUBMISSION FROM THE SCOTTISH SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

Introduction

1. The Scottish SPCA is Scotland’s oldest and largest animal welfare charity. Scottish SPCA Inspectors carry out rescues, collect injured animals and conduct investigations into suspected cruelty offences, reporting any charges direct to Procurators Fiscal. Most investigations result from complaints by members of the public. In 2002, the Society’s control centre received 90,000 calls from the public and tasked out 8,000 for investigation. As a result, 29 cases were taken to court by Procurators Fiscal, with a further 22 outstanding.

2. The Scottish SPCA is a member of the Partnership Against Wildlife Crime (Scotland), works under ISCJIS (Integration of the Scottish Criminal Justice Information Systems); and has a draft working protocol with police regarding the investigation of animal welfare offences.

3. In October 2003, the Society entered a joint initiative with Crimestoppers, to allow anonymous reports of crimes such as dog fighting, badger baiting, and cockfighting.

4. Between April 2002 and April 2003, the Society received 18,979 calls from the public concerning wildlife (badgers 284; deer 851; foxes 1,440; hedgehogs 1,518; rabbits 1,094; seals 647; swans 2,315; wild birds 10,243; squirrels 586).

5. The Scottish SPCA welcomes the Nature Conservation (Scotland) Bill, having a particular interest in the proposed measures to enhance protection for wildlife. The Society has long maintained that discussion of wildlife crime obscures the fact that such offences are a major animal welfare threat. Specifically, snaring, illegal trapping and poisoning can cause great suffering to their victims.

6. The Scottish SPCA witness on 19 November will be pleased to respond to the Committee on any aspect of the proposed wildlife measures. However, the issues described below are those where the Society has the most experience.

Recklessness (Paragraphs 2(2), 4., etc.)

7. The Scottish SPCA welcomes the references in several sections to recklessness. The Society maintains that individuals should exercise a positive duty of care in any interaction with wildlife, and agrees with the Executive that recklessness is a robust and well-understood concept in Scots law. On these grounds, and given the comprehensive list of defences in Paragraph 5(3) and elsewhere, the Society would not expect anyone committing an accidental or careless act to be at risk of prosecution.

Likelihood (Paragraph 6, 8(2), 8(5), 10(5) etc.)

8. References to traps that are likely, rather than calculated, to cause injury, are welcome and will be important in the enforcement of wildlife protection. It is currently difficult to prove that a device, or the use of such a device, was calculated for any particular purpose; it is to be hoped that this more objective term will promote more careful use of traps and snares, where they are legal. The Society recommends that
likely should also be introduced in Paragraph 10(3) inserting new paragraph (aa) to the 1981 Act.

Snaring (Paragraph 10)

9. The Scottish SPCA is opposed to the manufacture and use of all snares, and recommends that they be banned on animal welfare grounds. As the Scottish Executive has acknowledged, the argument for a ban is not one which can be dismissed out of hand.

10. The Scottish SPCA investigates many complaints regarding animals caught in snares, and disagrees with the Executive view that “where they are used properly, snares should continue to provide a legitimate and practical method of control”.

11. Inspectors’ investigations indicate that:

- although self locking snares are illegal, they are still being used in Scotland;

- free-running snares are being used illegally. This negates even the limited protection provided by the current legislation. For example, when legally-set snares are not inspected every day, as the law requires, many animals die of dehydration, or starvation;

- free-running snares, even when legally used, are capable of causing great suffering. Animal carcasses have been found with severe injuries, apparently resulting from frantic attempts to escape. The animal’s struggles can cause the wire to become tangled and knotted, in effect creating a self-locking snare. Post mortem examinations of snared animals have shown evidence of death by slow strangulation, which is inhumane, and an unacceptable way to kill an animal.

A kinked or rusted snare will not run freely; responsible field sports organisations such as BASC warn that the only way to ensure that a snare is free-running is by testing its action. This, however, would require physical daily inspection of every snare set on land - highly labour-intensive and, due to the remoteness of many locations and the large numbers requiring inspection, extremely difficult to achieve.

12. In the absence of a proposal to ban snares, the Scottish SPCA therefore welcomes:

- the proposal to ban possession and sale of self locking snares. If their use is illegal there can be no legitimate reason to possess them, and this provision will undoubtedly aid enforcement;

- the setting of a maximum period - 24 hours - between inspections. The Society recommends that, as long as snares are legal, they should be inspected every twelve hours, but the period definition is at least better than the current once every day; which could allow an animal to be caught in a snare for almost 48 hours;

- the requirement to remove any animal found in a snare at inspection. In many cases, Scottish SPCA Inspectors have found long-dead animals in snares, but this has not been accepted as evidence that the snares were not regularly inspected by their owner;

1 Policy Memorandum, page 8
- the requirement to have the landowner’s permission to set snares. This will prevent the setting of snares where they are not welcome, and will ensure that landowners take responsibility for the actions of their employees.

**Stops (Paragraph 10(7))**

13. In addition to these provisions, the Scottish SPCA would recommend that all snares be fitted with a crimped stop appropriate to the target species. This would prevent strangulation and disembowelment, and in many cases would prevent non-target species such as deer being caught.

**Identification of snares (Paragraph 10 (7))**

14. The Society would like to see permanent identification tags fixed to the base of snares, with an identification code or number relating directly to the operator of the snare, and a record of the code or number held by the landowner or his / her agent. This would enable those investigating offences to link an illegal snare to the operator; and a snare set in the open without identification could safely be assumed to have been set without the permission of the landowner, and therefore to be illegal and subject to removal.

**Alternatives to snaring**

15. The Scottish SPCA is not opposed to humane lethal control, where this is considered necessary. Fundamentals of humane lethal control are that the animal is either killed instantly by the technique (for example, by shooting or by an instant kill trap such as a Fenn trap); or, if it is to be restrained prior to despatch, this must be as humane and as brief as possible (for example, in a humane cage trap or a correctly-used drop trap).

16. Alternative types of control are widely used. In 2000, the Macaulay Land Use Research Institute asked landowners about the methods they employed. From the survey, 12 % of current vermin control activities were undertaken using terrier work, 70 % shooting and lamping, and 18 % snaring and other methods. It was estimated that following a ban on terrier work, shooting and lamping would increase from 70% to 82% as a proportion of total effort, with virtually no change in other methods.

17. The United Kingdom is one of only five member states of the EU still allowing the use of snares, the others being Belgium, France, Ireland and Spain.2

**Causing and permitting (Paragraph 8.7)**

18. The Scottish SPCA has always acknowledged that gamekeepers are required to control extremely large areas of land, and that this may create a pressure to use methods which appear less time-consuming. The Society therefore welcomes the proposal that responsibility for wildlife control lies equally with those who commission it.

**Enforcement issues (Paragraph 14)**

19. The Scottish SPCA fully supports the proposed enhancement of police powers, but considers that the Wildlife Officer Network requires greater resourcing. While individual WLOs are extremely dedicated, they are, with very few exceptions, under-provided in terms of time and support.

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2 White, Harris et al, (2000), *Methods Of Controlling Foxes, Deer, Hare And Mink*, for Lord Burns’ Committee of Inquiry into Hunting with Dogs, 36
20. Scottish SPCA Inspectors frequently co-operate with police officers in wildlife cases, for example by providing expert testimony or by assisting in the care or removal of animals. Inspectors also investigate cases independently in fulfilment of the Society’s role as a reporting agency to the Crown, and this function is particularly important when a member of the public reports a case involving animal suffering, but the police do not have resources to respond immediately.

21. The Society therefore welcomes Paragraph 14(c), which provides that a constable entering land may be accompanied by other persons, or may take machinery, equipment or materials. The law can only be better served by allowing constables to have specialist advice and experience at their disposal in the initial stages of investigations and evidence gathering. The presence of experts can also ensure the health and safety of constables dealing with wildlife matters. Similarly, the use of photographic or video evidence is invaluable in recording the nature of terrain or a particular scene, when the sites involved in suspected wildlife crime are usually remote and subject to the weather, scavenging animals, etc.

Pesticides (Paragraph 12)

22. Scottish SPCA Inspectors continue to receive reports of pesticides and other substances being used to poison animals, and views such acts as likely to cause extreme suffering, not always in the target species. The Society therefore welcomes the proposed improved powers for Scottish Ministers to proscribe certain ingredients.
SUBMISSION FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

From the policing perspective, the comments are divided into particular headings covering the main proposed changes to the Wildlife and Countryside Act, 1981 under the Nature Conservation (Scotland) Bill.

Supplementing the term *intentionally* with the term *recklessly* under Sections 1, 9 and 13 of the Act

This is a major step forward in relation to the defining of illegal acts against birds, mammals and plants. *Intentionally* committing the offences described is exceptionally difficult to prove, and can readily be used to create an escape from conviction of what should clearly be an offence. The current problem where the *intentional* committing of an offence is the only option is best demonstrated by examples of cases:

1. A foreign visitor shooting wood pigeons in Scotland was charged with shooting a buzzard. The man appeared at court the day after the shooting took place and pleaded guilty. In mitigation he stated that he did not intend to shoot a buzzard, but that when the bird landed in the tree he had failed to make the correct identification before pulling the trigger. The sheriff stated that, since the man was saying he had not killed the buzzard *intentionally*, he would either have to withdraw this mitigation or change his plea to not guilty. He changed his plea to one of not guilty, and a date was set for trial, for which he failed to return.

2. A dead red kite was found from which, on x-ray and post mortem examination, a bullet fragment, probably from a .223 rifle, was recovered. After enquiries a suspect emerged and was duly interviewed. During the interview the suspect stated that he used his .223 rifle to shoot crows from trees, which is unusual in itself. He also claimed to be colour-blind, thereby creating the excuse, if he ever was charged with shooting the red kite, that he did not shoot a red kite *intentionally* but mistook it for a bird of another colour, a crow.

In both of these examples, even if the act was not proved to be *intentional*, at the very least it was a *reckless* act in failing to identify a protected quarry before pulling the trigger.

There are various precedents in law in relation to an offence of committing a reckless act; the Road Traffic Act with reckless driving, and the Common Law offences of reckless discharge of a firearm and culpable and reckless conduct. There appear to be adequate safeguards against anyone being wrongly convicted of committing any reckless act, firstly with discretion of the police, then discretion of the procurator fiscal, and finally the decision of a court after hearing the evidence.

Extension of offences under Sections 1, 9 and 13 of the Act to specimens brought from member States of the European Union and from non-EU countries

This is fairly complex, and in some cases will put an onus on police and prosecutors to establish what specific laws are in EU countries. Nevertheless it will close a particular loophole in the Act currently being exploited by those who collect the eggs of rare birds. Concerted action has been taken UK-wide against egg thieves over the past 6 years and, combined with the option now available to courts of a prison sentence, this has had two distinct results. Firstly some of the less determined egg thieves have given up, and secondly, monitoring of egg thieves through the national Operation Easter has shown that many now travel abroad to collect eggs. Currently the possession of most of these eggs in
Scotland would not constitute an offence. This will now be addressed by the proposed change.

**Intentional or reckless disturbance of capercaillie on lek**

While the police are clearly not a conservation body, we work closely with all such organisations. We are presently developing a strategy to address wildlife offences that are seen as conservation priorities. This new proposed offence falls into that category. Proof of this new offence beyond reasonable doubt will be a challenge but this is no reason for not having such an offence. The enforcement of the proposed new offence will pose no more policing difficulties than do some other aspects of wildlife legislation.

**Cause or Permit**

The proposed inclusion of a cause or permit offence under more sections of the Act is welcomed. Though cause or permit is extremely difficult to prove it is only right that employers and supervisors have accountability for illegal actions committed by employees. Equally importantly it is hoped that this proposal will encourage employers and supervisors to take appropriate action to prevent wildlife crimes.

**Snares**

It should be stated at the outset that the police are not seeking a ban on snaring. A ban may indeed be counter-productive. It may result in snares being set and never checked so that the person setting them cannot easily be linked to them. It may even result in an upsurge in the use of poisoned baits or the gassing of fox dens and the associated risk to badgers sharing the use of their sett with foxes. Nevertheless it is incumbent on those depending on the use of snares to take all possible steps to ensure that they use snares legally and professionally, and that they encourage others to do likewise. Police wildlife crime officers have been working closely with gamekeepers for some time now encouraging professional and responsible use of snares. This will continue.

Tightening up on the use of self-locking snares, ensuring that those who use snares are ‘authorised persons’, ensuring that any animal caught is removed at each inspection, and the possession of snares on land where there is no entitlement to use them will all make enforcement much easier. At the same time many of these proposals are principles of ‘best practice’ which any responsible user of snares should embrace.

One of the main loopholes in the Act will now be closed; that of failing to remove carcasses from snares. It is presently extremely difficult to prove, even when a long-dead fox is found in a snare, that the snare was not being checked daily. Even with a rotting or desiccated carcass the operator just needs to say that the snare was set one day, checked the next day and found to contain a fox which was dead. The operator may allege he never had time to remove the carcass from the snare and had never been back to it. This is a regularly-used statement, cannot be verified, is totally unprofessional and encourages those who are not checking snares daily to continue this practice.

With the proposed new offence at Section 11(1)(aa) ‘sets in position or otherwise uses any other type of snare which is either of a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it’. It is important that the wording is such that it does not imply that snaring is unlawful. Any fox being caught in a snare will have some degree of suffering. Is this necessary suffering and when would unnecessary suffering be inflicted? It may be reasonable to conclude that checking legally set snares within the recognised maximum period results in necessary suffering, whereas failing to carry out such a check results in unnecessary suffering. This needs clarified for
effective and fair enforcement. In other subsections of Section 11, the word calculated has been replaced by likely. Likely is again the most relevant wording in this subsection.

Those who use snares will argue that it is impossible always to check them at intervals of no more than 24 hours. To check at intervals of not more than 24 hours a snare needs to be checked earlier and earlier each day. It also does not allow the operator to check a line of snares in a different order or to be delayed by some entirely reasonable situation. Balancing better enforcement with the right to use snares responsibly, this period would be better set at intervals of no more than 28 hours. This would be a common-sense approach that would allow some slippage of time between daily checks. If we expect those who use snares to be competent and professional we must also be aware of the practicalities of using snares.

The principle of the offence of possession of a self-locking snare is excellent. If a person is not allowed to possess such an item legally then he is likely to comply. If he does not possess a self-locking snare then he cannot use one. The police may, however, still be faced with an enforcement dilemma. The possession of snares which are either self-locking by design or modification pose no problem. The possession of snares which were originally free running but have become rusty – and hence capable of operating as a self-locking snare – after hanging outside on a wall for some months technically constitute an offence. Can the wording be modified to address this anomaly rather than risk persons being charged with something which is merely a technical offence?

The creation of a technical offence such as this can be remedied by the following:

- Change the term for an illegal snare, throughout Section 11, from self-locking to a snare which is not free-running. (A snare which does not run freely may also be more easily proved to be such than a snare which is self-locking.)

- Change the wording of Section 11(3C) to-
  Subject to the provisions of this Part, any person who-
  (a) is in possession of; or
  (b) sells, or offers or exposes for sale, a snare which is not a free-running snare by design, or has become such a snare by modification or alteration.

This then provides a safeguard to a person who had allowed stored snares to become rusty. Such snares are not free-running but they have neither been designed, modified or altered to prevent them running freely. Their state can probably also be reversed by cleaning with a wire brush so that they again can legally be used.

Whether the term of the offence be self-locking or a snare that is not free-running, there should be a definition under Section 27 of the Act for the avoidance of any doubt or dispute.

Possession of pesticides

The new proposed Section 15A dealing with possession of pesticides will address a situation fairly frequently encountered when a person is found in possession of one of the pesticides regularly abused in the poisoning of wildlife. Lame excuses are frequently given for possession of carbufuran, the most commonly abused pesticide. This proposal should discourage persons from possessing chemicals, such as carbofuran, that they have no legal use for, as well as creating an offence with which those who ignore the law can be charged.

Enforcement

The powers that police, and any persons accompanying them, are relying on during a search are the main issue with defence lawyers during every wildlife trial where access has been
taken without warrant to land or to buildings. Considerable trial time is taken up and frequently cases are lost. It is therefore important to make the power of search without warrant as strong and unambiguous as possible. It is also important that such powers do not authorise ‘fishing expeditions’ not do they diminish the requirement in certain circumstances for police to obtain a search warrant.

The proposed amendments to Section 19 of the Act are welcomed and will make enforcement a good deal easier that at present. The proposal to reinforce the use for corroboration of non-police personnel is particularly beneficial bearing in mind the shortage of suitably trained and equipped officers and the other roles that compete for their time. The proposals still stop short, however, of what would be clear and unambiguous. The proposed power to enter land without warrant still seems to assume that the items which there is a requirement to search, examine or seize can readily be found. This is not always the case and the new proposals still don’t make it clear whether there is power to carry out some form of search. This is again best illustrated by practical example:

A telephone call is received by the police of the presence of a dead buzzard in woodland. The caller is able to state that the buzzard appears in good condition, there is no obvious reason for its death and suspects that it may either have been poisoned or shot. The caller describes exactly where the dead bird is lying. The proposed wording in Section 19 which clearly allow the police, with non-police personnel if required, to enter land to examine and seize this buzzard.

Police attend and examine this buzzard. It is in good condition and there is some dribbling of mucus from the beak on to the breast feathers, often indicative of poisoning. The police are aware that poisoned birds are often found not too far from a bait. So that other creatures – or even humans – are not at risk, the police carry out a search of the surrounding area in an attempt to find a bait. During the search they recover two suspected poisoned baits and another dead buzzard.

Section 19, as amended by the new proposals, only states that without warrant, police may enter land to search or examine (and seize or detain) any thing that a person may be using or may have used. It does not state that he may search for such an item. The baits are items which the person may be using, though any victims of the baits do not fall into this category. The search described above would be challenged by the defence and the items found may or may not be allowed into evidence.

This example hopefully demonstrates that there is a need for the power for the police to enter land without warrant to at least have a limited power of search built in where it is impractical to leave the land to obtain a search warrant, bearing in mind the inherent risk to wildlife of leaving poisoned baits or illegally set traps, etc., any longer than necessary.

**Power to take samples**

This proposed power is welcomed, has in-built safeguards for birds and animals subject to the sampling in respect of the use and guidance of a veterinary surgeon, and causes no enforcement problems.
SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

The Law Society of Scotland is delighted to have this opportunity to submit written evidence at the Stage 1 consideration of the Nature Conservation (Scotland) Bill. The Society’s Rural Affairs Sub-Committee and its Criminal Law Committee have had the opportunity to consider this Bill and have the following comments to make:-

PART 1 OF THE BILL: THE CREATION OF A NEW GENERAL DUTY ON PUBLIC BODIES TO FURTHER THE CONSERVATION OF BIO-DIVERSITY:

• Is the scope and effect of the duty appropriate and clearly understandable?

The Committees agree that the scope and effect of the duty is appropriate but there is a lack of clarity due to there being no definition of bio-diversity in the bill.

PART 2 OF THE BILL: CHANGES TO THE EXISTING ARRANGEMENTS FOR THE ESTABLISHMENT AND PROTECTION OF SITES OF SPECIAL SCIENTIFIC INTEREST (SSIs)

• Do the proposals for changes to the SSSI regime mesh appropriately with other legislation in this area, both domestic and EU-wide level?

The Committees are of the view that this is the case. It is the opinion of the Committees that the provisions comply with other domestic and EU Law, for example, the Conservation (Natural Habitats) Regulations 1994, which implemented the Habitats Directive 92/43/EEC.

Schedule 1: Notifications relating to sites of special scientific interest: procedure

The Committees welcome the decision to continue the existence of the Advisory Committee. However, further consideration needs to be given to whether this is sufficient to comply with Article 6 of the ECHR. Furthermore, with reference to paragraph 11 of Schedule 1, the Committees believe that SNH should give a reason irrespective of whether they have decided to refer the matter to, or consider the advice of, the Advisory Committee or whether they have decided not to refer the matter to the Advisory Committee.

• Will the proposals achieve the stated aim of encouraging stakeholder involvement and making the administration of the SSSIs more transparent and accessible?

The Committees have no comment to make on the first part of this question. However, on the second part of the question, the Committees are of the view that clarification is required as to whether the site management statement will be made available on the internet or in public libraries. The Committees believe that this would greatly enhance the transparency and accessibility of administration of SSSIs.

• Are the new provisions relating to land management and nature conservation orders appropriate?
Section 6: Review of operations requiring consent

In section 6(2), the Committees note that SNH must obtain the agreement of every owner and occupier of land within the site of special scientific interest. The Committees are of the view that that sub-section should also make provision for the agreement of everyone having an interest in the land and not just the owners and occupiers. Furthermore, in terms of sub-section (2) and (5) the Committees also hold the view that those with an interest in the land and not just owners and occupiers should receive notice from SNH.

Section 13(1): Operations by Public Bodies etc.

Section 19(3) of the Bill provides that “any person who, without reasonable excuse, contravenes section 13(1)… is guilty of an offence”. Section 13(1) should be drafted in a way that clearly sets out the offence provision. Section 13(1) currently states that the public body or office-holder must not carry out any operation which is “likely to damage” any aspect of natural heritage by reason of which an SSSI notification has effect except in certain prescribed circumstances. It is unclear as to whether the standard which is being applied to the likelihood of damage occurring is to be assessed on a subjective or objective basis. The Committees would suggest that this sub-section should be amended and would propose the following wording:

“A public body or office-holder shall not carry out any operation if there are reasonable grounds for believing that the operation may damage any aspect of natural heritage by reason of which an SSSI notification has effect…”

Section 19 - Offences in Relation to Sites of Special Scientific Interest

Section 19(1) of the Bill makes provision for the creation of an offence in circumstances where a person has intentionally or recklessly damaged any aspect of natural heritage by reason of which an SSSI notification has effect. Whilst the mental element (“mens rea”) of the crime has been referred to, the Committees would suggest that reference should also be made to the individual’s knowledge that the site is a site of natural heritage by reason of the SSSI notification.

If the individual concerned damaged property and had no knowledge of the fact that it was in fact an aspect of natural heritage by reason of the SSSI notification, then a common law charge of wilful or reckless damage or a contravention of section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995 (vandalism) would be competent. The crucial element of an offence under section 19 appears to be the knowledge of the nature of the property itself. The Committees would suggest that after the word “effect” on the second line of subsection (1), the following is inserted, “knowing that the land is a site of special scientific interest”.

Section 23: Nature conservation orders

The Committees believe that the powers specified in section 23(1)(b) and (c) are too widely drawn. In the context of this Bill, which turns round the current provisions relating to potentially damaging alterations so that an owner cannot lawfully proceed with an
operation without the consent of Scottish Natural Heritage or the Scottish Land Court, the Committees question the need for Nature Conservation Orders (NCO) that appear to duplicate the powers SNH already have. In particular, in relation to land specified in section 23(3)(b) the implication is that either Scottish Natural Heritage has failed in its duty under section 3 to notify such land as an SSSI or that the Ministers have different criteria for assessing an SSSI. If that is so, it ought to be clarified in the Bill.

Section 27 - Offences in Relation to Nature Conservation Orders

The Committees would suggest that there should be some degree of knowledge on the part of the person involved in the alleged commission of the offence to the effect that the operation which has been carried out is a prohibited operation. The Committees propose the following amendment:

Section 27, page 17, line 10 leave out <a prohibited operation> and insert <an operation, in the knowledge that the operation is a prohibited operation in terms of section 23 of this Act>

Section 36 - Offences in relation to land management orders

Section 36(1) creates an offence if a person fails to carry out an operation which the person is required to carry out by a Land Management Order. This would appear to be an offence of strict liability and makes no provision for the defence of "reasonable excuse". The Committees suggest the following amendment:

Section 36, page 21, line 2 after <who> insert <without reasonable excuse>

Subsection (2) creates an offence if a person “carries out, causes or permits to be carried out, an excluded operation”. No reference is made to the fact that the person should know that the operation concerned is in fact an “excluded operation”. The Committees would suggest the following amendment:

Section 36, page 21, line 3 leave out <an excluded operation> and insert <an operation in the knowledge that the said operation is an excluded operation in terms of this Act>

Section 38: Acquisition of land by SNH

With reference to section 38(6)(b) the Committees feel that, for the sake of clarity, reference should be made to conservation burdens under section 38 of the Title Conditions (Scotland) Act 2003.

The Committees also note a lack of specific appeal provision in this section and again questions compliance with Article 6 of the ECHR.

Schedule 2: Nature conservation orders and related orders: procedure

The Committees note the provisions of Schedule 2, paragraph 10, which set out a form of appeal procedure for someone who wishes to make a representation in respect of a nature conservation order. The Committees would question whether this procedure can be categorised as a fair and impartial tribunal under the terms of Article 6 of ECHR.
Schedule 3 - Land Management Orders and Related Orders: Procedure

Paragraph 6 of Schedule 3 makes specific reference to the fact that the Scottish Ministers can give notice to the SNH or any person to whom the SNH has given notice to the effect that specified documents or other information must be produced. Paragraph 7 states that disclosure can be refused in circumstances where a person would be entitled to refuse such disclosure on grounds of confidentiality in proceedings in the Court of Session. The Committees submit that the reference to a particular court in which confidentiality applies is not appropriate and that in general reference should be made to the doctrine of legal professional privilege, which has traditionally been adopted in Scottish legislation. Accordingly, we would suggest that paragraph 7 is re-drafted as follows:

(a) “Paragraph 6 does not authorise Scottish Ministers to require the disclosure of items subject to legal privilege.

In sub-paragraph (a) above “items subject to legal privilege” means - communication between a professional legal adviser and his client; or (b) communications in connection with or in contemplation of legal proceedings and for the purposes of these proceedings, being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications.”


Schedule 6, Paragraph 15 – Wildlife Inspectors

Paragraph 15 of Schedule 6 inserts a new section (section 19ZC) into the Wildlife and Countryside Act 1981. Subsection (3) grants wildlife inspectors the right to enter and inspect premises in certain circumstances. The restrictions in regard to entering a dwellinghouse which apply to similar provisions under section 44 do not appear to apply to this section. The Committees would question this apparent incongruity. Any infringement of Article 8 of the ECHR (the right to privacy) will require to be justified and must be necessary.

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1 For example, the Criminal Law (Consolidation) (Scotland) Act 1995
SUBMISSION FROM RSPB SCOTLAND

Summary

• The Committee should commend the engagement of stakeholders in the development of this legislation, and recommend such a process for any future legislative proposals.

• Part 1 on biodiversity is welcome, both in itself and as a context for the site and species protection measures. The general duty is very positive and the link to a strategy particularly welcome. There is however much scope to improve the provisions relating to the Strategy.

• Part 2 on SSSIs reflects the conclusions of the Expert Working Group, representing farmers, landowners and environmentalists. It is therefore both a step forward for the protection and management of such sites and fair to their owners and occupiers. One or two areas could be fine-tuned to deliver these aspirations to an even greater extent.

• Part 3 on wildlife crime greatly improves the protection of wildlife and the systems of deterrence and investigation of wildlife crime. It is widely supported by all members of the Partnership for Action against Wildlife Crime (Scotland). We make a number of suggestions for improvements.

• Overall, we believe the Committee should support the general principles of the Bill while recommending a number of improvements be considered as part of stage 2.

Introduction
This Bill has been a long time in gestation – and has been widely discussed by a wide range of stakeholders, as well as subject to extensive consultation. The popularity and need for these measures was shown by the petition presented to the Parliament in 2001 supported by nearly 10,000 signatures (PE387).

Part 2 on SSSIs has emerged from almost five years of consultation and dialogue, initiated in 1998 by the Scottish Office paper People and Nature and continued by the Scottish Executive consultation paper The Nature of Scotland. The detailed proposals have been developed, agreed and scrutinised by an Executive-convened Expert Working Group. Part 1 on biodiversity has been discussed by both that group and by the Scottish Biodiversity Forum. Many of the wildlife crime proposals originate from the legislation sub-group of the Partnership for Action against Wildlife Crime (Scotland), and consultation via The Nature of Scotland.

This process culminated in the publication of a draft bill in March 2003, to which the Executive received 141 responses, 128 broadly supportive and only 7 opposed in principle (S2W-1159, 4 August 2003). We therefore believe that Committee should support the general principles of the Bill as well as commend the engagement of stakeholders in the development of this legislation.

General comments – marine issues
Over two-thirds of Scotland is the sea. These marine areas are of great conservation importance – but not addressed by this bill¹. At present, the seas are inadequately protected and not managed holistically. Marine legislation is a hotch-potch of over 80 different Acts covering fisheries, fish-farming, navigation, oil and gas, etc - some devolved, some reserved. It is important that the principles of a modern nature conservation system, set out in this bill, are extended to the marine environment. However, a simple extension of this bill to cover the seas (without parallel reform to other marine legislation) would be inappropriate. We therefore welcome the Executive's commitment to address this issue in the medium term via, for instance, the Scottish Sustainable Marine Environment project and the Scottish Marine Strategy². Thus, while not pressing for extension of this bill to the marine environment, we believe the Committee should seek assurances from the Executive that plans to address marine conservation issues are in hand and legislation will be brought forward within 2-3 years.

¹ With odd exceptions such as the protection of cetaceans and basking sharks from disturbance.
General comments - resources

One key policy objective of this legislation is to shift the emphasis of SSSI management from ‘negative’ (compensation for not doing damage) towards the ‘positive’ (encouraging beneficial management, primarily by incentives). SNH needs to be adequately resourced for this new positive management era, and provide sufficient schemes such as *Natural Care* to cover all SSSIs. Much of this funding should be derived from the re-direction of existing expenditure, as the negative compensation arrangements expire and as SSSI-beneficial components in *eg* agri-environment or forestry schemes encourage positive stewardship. Moreover, if CAP reform is implemented well, the incentives for environmentally damaging land use practices will be reduced, thus lowering the [real] costs of compensating for any changes to ‘established practice’ and of positive management agreements.

1. Biodiversity

“Scotland’s nature is at the heart of our common wealth as a nation”

*Sam Galbraith, then Scottish Executive Minister for the Environment (Foreword to The Nature of Scotland, March 2001).*

RSPB Scotland warmly welcomes the proposal to enact a duty to further the conservation of biodiversity and its application to all public bodies and office holders. This is an important means of demonstrating the Government’s ongoing commitment to the conservation of biodiversity, a global responsibility – thus ensuring that our natural heritage is protected both for its own sake and for the benefit of future generations.

Furthermore, we strongly commend the linkage of this duty to the Scottish Biodiversity Strategy (currently subject to separate consultation). We further welcome the addition (since the draft Bill) of the requirement to report to Parliament on the implementation of this strategy. There are however a number of ways in which this provision can be improved; including:

- making the designation of a strategy obligatory rather than optional - ie “must” rather than “may” in line 18. (With public bodies required to have regard to a strategy in fulfilling their duty under section 1, we suspect they may be rather surprised, when considering their responsibilities under this duty, to discover there is, in fact, no strategy to which to have regard!)  
- adding a requirement that the strategy should identify priority habitats and species in Scotland and report on their status and trends; and  
- adding a requirement on Ministers and public bodies to take, or promote the taking of, action to further the conservation of these species and habitats. In effect, this simply requires those with “action points” in the strategy to carry out those actions. We see little point in producing an admirable strategy and plan of action if there is no parallel requirement or commitment to ensure the plans are carried out.

Finally, while welcoming the use of the term “biodiversity”, we are concerned that it is not defined. We recommend the addition of a clause stating clearly that “biodiversity” has the meaning given in the UN Convention on Biological Diversity to which the UK is a signatory.

2. Sites of special scientific interest (SSSIs)

“We believe that the designation of Scotland’s most special natural places continues to be essential to their effective protection and management. The current SSSI system requires reform, especially to the way in which it secures the appropriate management of sites … to secure better protection … and if [the] interests of the people who manage these areas and the communities that depend on them for jobs or amenity are to be taken into account more effectively.”

*The Nature of Scotland (p32), The Scottish Executive, March 2001*
The current legislation establishing and regulating SSSIs in Scotland is the Wildlife and Countryside Act 1981 (as amended) [hereafter "WCA"], which when passed applied throughout Great Britain. New legislation for England and Wales (the Countryside and Rights of Way Act 2000 – [hereafter “CRoW”]) has updated and improved legislation in relation to SSSIs in those countries. This bill includes some similar measures, but varied to be appropriate for Scotland, as well as some measure unique to Scotland.

RSPB Scotland warmly welcomes the retention of SSSIs and the plans to modernise the legislation. The proposed measures offer significant improvements over existing legislation in terms of clarity of purpose and interpretation. RSPB Scotland and others have long pressed for such legislation – to address the current situation where 45% of SSSIs are not in favourable condition (see Time to Act: Saving Scotland’s wildlife).

Overall, we welcome:

- the wider involvement of interested parties (S49(2)), reflecting the aim of encouraging stakeholder involvement in the notification and management of SSSIs;
- SNH’s duty to notify SSSIs as part of a series of sites of special interest in terms of the natural heritage not only of Scotland, but also of Great Britain and of EU member states. This reflects the biogeographical reality that much of Scotland’s wildlife lives within a British and European context;
- we welcome the retention of NCOs – which deals with both third party damage – as well as their applicability to comply with international obligations as well as the conservation of SSSIs;
- the proposals in relation to Land Management Orders (LMOs) which seek to address the way that SSSIs can, at present, deteriorate through neglect as much as by deliberate damage. Consensual processes (voluntary management agreements etc) are, rightly, encouraged by the Bill, but Orders such as these should be available where these fail;
- the suggested role for the Scottish Land Court in relation to appeals over consents or management orders seems an appropriately Scottish solution; and
- in general, the offences set out in this part of the Bill are clearly defined. The maximum fines suggested seem appropriate when compared with financial penalties for other environmental crimes such as fly-tipping. However, giving the courts the additional option of imposing a prison sentence of up to six months would enable appropriate sentencing in cases of malicious damage and would put damage to SSSIs on a par with crimes against species.

RSPB Scotland is therefore of the view that primary legislation to ensure the protection of sites of special natural heritage value is essential and that modernisation of existing legislation is the appropriate delivery mechanism. This Bill, as introduced, offers significant improvements over existing legislation in Scotland and in England and Wales, as well as over the draft Bill, issued for consultation in March 2003. Overall, we believe the proposals in part 2 of this Bill fulfil the Executive’s policy aspiration quoted above. We feel however that there is still room for improvement in some areas and the suggestions below would, we believe, help to meet these aspirations to an even greater extent.

- We warmly welcome the Executive’s agreement to and proposal for legislation to give SSSIs a “statutory purpose”. However, as drafted, it is restricted to SNH’s duties in relation to notification, enlargement and denotification. A broader statutory purpose to conserve and enhance the site series is necessary to give statutory underpinning to management of SSSIs. It should also apply to all relevant bodies, such as ACSSSI and the Land Court, as well as SNH.

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Moreover, the setting of management objectives, at the site level, will allow owners/occupiers to know how their site fits into the series as a whole and for all parties to know whether positive management is needed and/or an LMO appropriate.

The duty on public bodies etc (S.12) are present appears to relate only to specific projects affecting individual sites. We believe such a general duty on all public bodies should also relate to the development of broad policies and strategies that may affect the integrity of all SSSIs collectively.

One specific area where the Bill as introduced is weaker than CRoW is in its failure to include, as an offence, disturbance of fauna for which an SSSI is notified. Although this could be construed as damage, specific inclusion of disturbance of fauna (in S.19 or S.56(2)) would add clarity.

Unlike CRoW, this bill makes no provision for the underpinning, in domestic law, of designations under the Ramsar Convention protecting wetlands. We believe this to be a missed opportunity to demonstrate commitment to this important international obligation to which the UK is a signatory. A new section could be added requiring Scottish Ministers to publish designations and SNH to manage SSSIs so designated in accordance with the provisions of the Convention.

3. Wildlife crime

"Illegal persecution of birds of prey in Scotland is a national disgrace and the Government will take all possible steps to eliminate it."
Donald Dewar MP, Secretary of State for Scotland, September 1998, at launch of Counting the Cost.
(Scottish Office news Release 1765/98, 6 September 1998)

Both RSPB Scotland and the wider Partnership for Action against Wildlife Crime (Scotland) have long called for improvements in the legislation on wildlife crime and its detection and investigation. Such measures are necessary due to the continuing high level of wildlife persecution – despite the protection afforded by the WCA. The levels of such persecution are widely reported\(^4\), and illustrated in the appendix. The first step was taken, last year, in the Criminal Justice (Scotland) Act 2003 with its provisions to allow arrest and custodial sentences. This was very welcome and the Committee should be aware that police officers have had cause to exercise these powers on a number of occasions in the six months these provisions have been in force.

The further proposals, in Schedule 6 of this Bill, continue the process of improving Part 1 of the WCA and are all very welcome. RSPB Scotland supports Schedule 6 in its entirety, particularly (due to the continued abuse of pesticides, see figure 2) the proposals to tighten control of these substances (new WCA S.15A). We therefore support the early enactment of these measures - indeed, one improvement to the Bill would be the inclusion of S.51 in S.57 so that these provisions come into effect immediately upon Royal Assent. Other improvements the committee may wish to consider include the following:

- **Protection of nests and nest sites throughout the year.** At present, WCA, S.1(1)(b) only protects nests when in use or being built. This is satisfactory for most species, who build new nests each year. However, a number of species (eg golden eagle, osprey or kingfisher) use the same site and/or nest year after year and their breeding performance and conservation can be severely disrupted if these are destroyed in the winter. Such a change was a

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recommendation of the UK-wide Raptor Working Group (on which the Executive and SNH were represented) and is, we believe, necessary to comply with the EU Birds Directive.

- **Extension of lekking provision (Para 2(6)) to any schedule 1 species.** This added protection for capercaillie leks is most welcome but, to be consistent, should be applied to any scarce species that leks. Such an extension would only apply to Ruff, a scarce and occasional breeder here. However, this approach is consistent and means that, if circumstances mean that species move on or off schedule 1 in future (by Order), this provision does not need to be amended (requiring primary legislation).

- Capercaillie are also often the unintentional by-catch of poorly set snares; we therefore welcome the proposal to tighten the regulation of snare use but also believe that that where rare and endangered species may be inadvertently caught, there is a case for short-term or localised prohibitions. The Committee may wish to consider such a proposal.

- **New measures to address non-native species and inappropriate re-introductions.** Since the draft Bill was published, the Executive has consulted separately on legislative proposals regarding non-native species. We would recommend that these are brought forward at stage 2 as Executive amendments, and would encourage the Committee to seek such a commitment from the Executive.

- **Financial gain/conservation impact.** Penalties for wildlife offences are set by WCA, S.21. At present, for most offences, the maximum penalty is a £5000 fine and/or six months imprisonment. We believe that, like offences against SSSIs (see S.47(1)), a Court should, when determining the level of penalty, bear in mind the possible financial gain accrued as a result of the offence. In addition, we would recommend that “conservation implications” should also be considered – as some offences (eg stealing eggs of white-tailed eagles) may accrue little financial gain but have major conservation implications.

- RSPB Scotland is content with the proposals to streamline the processes for the variation of schedules. However, the intention of the original legislation, that such variation should be based on sound scientific advice, should be maintained. Scottish Ministers should therefore be required, before making such an Order, to consult with SNH and others, and to publish the consultation results.

- **Single witness provisions.** At present, S.19A of the WCA (inserted by the Prisoners and Criminal Proceedings (Scotland) Act 1993) allows that an accused charged with egg-taking (and/or destruction) to be convicted on the evidence of one witness (albeit with other corroborating evidence). We recommend that the Committee consider extending this provision to other wildlife offences that may take place in remote areas where multiple witnesses are very unlikely. Alternatively, the Committee may consider a wider review of single witness provisions – such as those relating to poaching, littering, etc.
Appendices

Figure 1 – poisoning and confirmed, probable and possible bird of prey persecution in Scotland 1995 to 2001

KEY
1995 to 2001
• Poisoning
■ Confirmed persecution
□ Probable persecution
○ Possible persecution
Figure 2 – alpha-chloralose and carbofuran use in Scottish wildlife poisoning incidents – 1983 to 2002

Sources: RSPB, SASA, DAFFS/SOAFD/SAEFD/SEERAD
This includes all incidents known to the RSPB but excludes cases where it was deemed that no threat existed to birds of prey. Excluded incidents mostly involve the killing of companion animals – usually cats – in urban and suburban areas. Carbofuran has also become the most widely used poison in these urban cases. Note that the chart shows 20 records for 2002 rather than the 18 reported for the year. This is because in two incidents both carbofuran and alpha-chloralose were recorded.
PETITION PE449

PE449 Petition by Mr Alex Hogg, on behalf of the Scottish Gamekeepers Association (SGA), calling for the Scottish Parliament to initiate an independent investigation into the impact of predatory birds on waders, songbirds, fish stocks and gamebirds.

Background

1. Members may wish to note that the issues raised in petition PE449 are very similar to those raised in petition PE187 which has now been concluded. PE 187 called for the amendments to be made to allow limited licensing of culling of raptors under the Wildlife and Countryside Act 1981. In May 2000 the Public Petitions Committee (PPC) referred PE187 jointly to the Rural Development Committee and to the Transport and the Environment Committee.

2. In March 2001 the Transport and the Environment Committee appointed Maureen MacMillan MSP as a reporter on PE187. She noted in her report in December 2001 that a Moorland Working Group had been established, with membership including the Scottish Executive, Scottish Natural Heritage (SNH), RSPB, Scottish Landowners’ Federation, and the Game Conservancy Trust. SNH considered that habitat management was the best method to deal with the challenges highlighted by the petition. While the petitioners did not agree with this approach, the T & E Committee agreed to conclude consideration of the petition by writing to the SGA, the Scottish Executive, and SNH to recommend that the SGA became a member of the Moorland Working Group, and that the views of the SGA were, where possible, taken into account in the work of the Group.

Progress of Petition PE449 during Session 1

1. On 26 March 2002 the PPC agreed to pass a copy of PE449 and related correspondence to the Rural Development and Transport and the Environment Committees for information only at that stage. The PPC subsequently formally referred PE449 to the Transport and Environment Committee for consideration.

2. The Rural Development Committee discussed PE449 on 30 June 2002, noted that the Moorland Forum (formerly the Moorland Working Group) provided a mechanism for addressing some of the SGA’s concerns, and agreed to seek confirmation from SNH that the SGA had been invited to join the Moorland Forum. This confirmation was received.

3. The Transport and the Environment Committee discussed PE449 on 9 October 2002, similarly noted the role of Moorland Forum, agreed to
refer the petition to the Rural Development Committee and to take no further action on the petition.

4. On 25 February 2003, the Rural Development Committee heard evidence from the SGA, SNH and the Deputy Minister for Environment and Rural Development. The Committee agreed to write to the Minister drawing attention to deficiencies in the knowledge base regarding the impact of raptors on wild birds, fish stocks and reared gamebirds, and requesting that further independent research be carried out, possibly in consultation with the Moorland Forum.

5. On 18 March 2003, the Rural Development Committee considered a response from the Minister and agreed to refer the petition back to the PPC with a recommendation that the petition be considered by the relevant successor committee in the new session.

Progress of Petition PE449 during Session 2

6. The petition was re-referred by the PPC to the Environment and Rural Development Committee who further considered it on 10 September. The Committee agreed to write to the Minister to ask whether the Executive had yet identified specific research projects into the interaction of various species and habitats, and the timescale for commissioning such projects. A copy of the response from the Deputy Minister dated 27 October is attached to this paper.

Further action

3. The Committee is invited to consider how it wishes to proceed with this petition.

Option A

4. The Committee may consider that the issues raised by the petition have been sufficiently examined, and that dialogue between the expert bodies on the Moorland Forum and the proposed research outlined in the Deputy Minister’s letter is the appropriate means by which to tackle the detailed concerns of the SGA. In this case, the Committee may wish to conclude the petition by noting it, and passing to the petitioner a copy of the Official Report of the Committee discussion.

Option B

5. The Committee may wish to conclude the petition, but write to the Minister or SNH expressing any further outstanding concerns.

Option C

6. The Committee may wish to defer deciding the petition until further information has been received (by way of further oral or written
evidence from the petitioners, SNH or the Minister) on whether the petitioners' concerns are being adequately addressed.
By Mrs Norma Rutherford, calling for the Scottish Parliament to take a range of steps to ensure the control of offensive and noxious odours from waste treatment works.

Introduction

1. The petitioner is specifically concerned with the Kirkcaldy Waste Water Treatment Works which began operating in September 2001. The petitioner claims that despite the statement in the original plans for the Treatment Works that there would be no odour emissions, noxious odours are emanating from the plant. The petitioner argues that the noxious odours have a detrimental effect on the health and quality of life of the local community. The petitioner states that the Treatment Works is ‘within a stone’s throw’ of residential housing.

2. The petitioner specifically requests that the Scottish Parliament:

- acknowledges that no community within Scotland should be exposed to noxious odours and should recognise as a matter of urgency the threat posed by water treatment plants to health and quality of life;
- recognises the overwhelming feeling of despair within the local community;
- carries out an investigation to determine why local authorities have been unwilling or unable to ensure that water treatment works operate within the terms of the Environmental Protection Act, the Control of Substances Hazardous to Health and planning conditions; and
- carries out an extensive study, as a matter of urgency, into possible solutions to the problem of noxious odours and make it law that treatment works should not be allowed planning permission within one mile of built-up residential areas.

Progress of the Petition

3. The Public Petitions Committee (PPC) considered the petition at its meeting on 17 September 2003. The relevant extract of the Official Report of the PPC meeting is attached at Annex A.

4. The PPC noted that the issues raised in the petition are broadly similar to those raised within petition PE517. The PPC agreed to refer the petition to the Environment and Rural Development Committee with the strong recommendation that this Committee considers the issues raised in petition PE645 alongside those highlighted in petition PE517.

Options for Action

5. The Committee is invited to consider the options for action outlined below or take any other competent action that it deems appropriate.
Option A

6. Members may wish to accept the referral and carry out further consideration of the issues raised in the petition. Any such consideration would of course require to be scheduled around the Committee’s existing work programme and legislative commitments. Should the Committee agree to accept the referral, Members are invited to consider whether, as recommended by the PPC, the petition should be considered alongside PE517.

Option B

7. Members may wish to refer the petition back to the PPC for further consideration on the basis that the issues raised merit further action but that this Committee has insufficient capacity in its work programme to allow it to carry out any further action.

Option C

8. Members may feel that the petition does not merit any further consideration. In this case, the Environment and Rural Development Committee should refer the petition back to the PPC, explaining the rationale behind its decision, in order to allow the PPC to provide the petitioners with a detailed explanation as to why no further action will be taken in relation to their petition. It will also enable the PPC to consider whether any alternative action might be appropriate, such as referring the petition to the Executive or another public body.
The Convener: Petition PE645 in the name of Mrs Norma Rutherford calls on the Scottish Parliament to take a range of steps to ensure the control of offensive and noxious odours from waste water treatment works.

The petition is prompted by the petitioner's experience of the Kirkcaldy waste water treatment works, which she claims has had a detrimental effect on the community's health and quality of life since it began operating in September 2001. She also claims that the original plan stated clearly that there would be no odour emissions from what is said to be a state-of-the-art plant. Scottish Water is now unable to eliminate the problem, despite trying a number of measures such as chemicals, peat and shell beds and sealing off buildings.

Jackie Baillie: I have had exactly the same experience with the new waste water treatment works at Ardoch in Dumbarton in my constituency, so I sympathise entirely with what the petitioner is calling for. I understand that the Environment and Rural Development Committee has considered a similar petition and I wonder whether we should send this petition to that port of call with the strongest push for having that committee's view on the issue quickly, which we would welcome.

The Convener: You would benefit from that, too.

Jackie Baillie: Absolutely. I declared my interest, which was coincidental.

Helen Eadie: The same issue has been raised in my area, too.

The Convener: The subject is of general interest and many people are concerned about it.

John Scott: The problem is becoming more prevalent throughout Scotland. In the past, one managed to live with it, but that is no longer acceptable.

Mike Watson: Perhaps the most worrying aspect is that the treatment plants are new. We are not dealing with worn-out equipment that needs to be replaced. The equipment has been described as state of the art; if so, that state is unacceptable.

John Scott: The equipment is unacceptable because it has obviously failed in one environmental respect.
The Convener: As Jackie Baillie said, the Environment and Rural Development Committee is aware of the issue, so it would do no harm to send the petition to that committee and say that it is another petition that we would like that committee to pay attention to. Do members agree to that course of action?

Members indicated agreement.

John Farquhar Munro: I agree with the recommendation of passing the petition to the Environment and Rural Development Committee. As Jackie Baillie said, we should give that committee an extra push.

The Convener: Does everyone agree to our sending a memo to that effect?

Members indicated agreement.
PETITION PE517

PE517 By Mr Rob Kirkwood on waste water treatment plants.

Introduction

1. The petition by Mr Rob Kirkwood expresses concern that local authorities appear to be able to allow water treatment plants to operate outwith the terms of existing environmental protection and planning legislation. The petitioner calls for the Scottish Parliament to investigate this situation.

2. The petitioner also calls for the Parliament to investigate possible solutions to the problem of noxious odours and airborne bacteria released from such plants. The petitioner suggests covered conical shaped tanks positioned far away from residential communities as a possible solution.

3. The petitioner is specifically concerned with sewage processing at the Seafield Water Treatment Plant in the Leith Links area of Edinburgh. The petitioner is concerned that the odours and gases from this plant are having a detrimental impact on the health and quality of life of nearby communities.

Progress of the Petition

Consideration of the petition by the Transport and the Environment Committee

4. This petition was considered by the Transport and the Environment Committee in the previous parliamentary session. At its meeting on 8 January 2003, the Committee agreed to write to the Minister for Environment and Rural Development to seek his view on a number of issues arising from the petition including the effectiveness of the current system for regulating odour nuisance from water treatment plants. The response is attached at Annex A.

5. The response acknowledges that circumstances can arise in which measures to control odour nuisance prove not to be effective or appropriate.

6. The response also notes that in England and Wales, a recent court decision ruled that local authorities could be prevented from taking enforcement action against Water Companies that did not comply with removing offensive odour. In light of this decision, the Department for Environment Food and Rural Affairs (Defra) issued a consultation on alternative approaches for dealing with odour nuisance from public sewers and sewage treatment works.

7. The Minister for Environment and Rural Development's letter indicates that the court decision in England and Wales may have implications in Scotland and proposes to undertake a parallel consultation in Scotland.

8. The Transport and the Environment Committee considered the letter from the Minister at its meeting on 4 March 2003. In order to enable further consideration of
the petition in the second parliamentary session, the Committee agreed to refer it back to the Public Petitions Committee for reallocation to a future committee.

**Consideration of the petition by the Environment and Rural Development Committee**

9. The Public Petitions Committee formally referred the petition to the Environment and Rural Development Committee on 7 July 2003. A letter to the clerks from an Executive official dated 21 August 2003, provided an update on the Executive’s position in relation to the regulation of odour nuisance from sewage treatment plants. The letter is attached at Annex B.

10. The letter notes that the court decision in England and Wales was overturned in the High Court on appeal. The High Court ruling effectively allows local authorities to take enforcement action against water companies that do not comply with removing offensive odour. The letter states that the water company involved in the court case is currently seeking an appeal to the House of Lords against the High Court ruling. The letter suggests that this final appeal process may take some months to conclude, but that the definitive decision of the House of Lords will be binding in Scots Law.

11. The letter states that, whatever the outcome of the appeal, the Executive will produce a voluntary Code of Practice to provide guidance to local authorities, the sewage industry and the public on the resolution of odour nuisance problems from sewage treatment works, and that a draft will be put out for consultation later this year.

12. Should the House of Lords overturn the decision of the High Court, the Executive has indicated that it will consult on legislative change in addition to the voluntary Code of Practice.

13. The Committee previously considered this petition at its meeting on 10 September 2003. At this meeting, the Committee noted that an appeal has been lodged with the House of Lords relating to the regulation of waste water treatment plants. Pending the outcome of this appeal, the Committee agreed to write to the Minister for Environment and Rural Development requesting an update on how the Executive plans to take forward issues relating to odour control, and, in particular, issues relating to waste water plants. The Executive response from the Minister is attached at Annex C.

**Summary of Executive Response**

14. The response notes that leave to appeal to the House of Lords has been granted, and that the ruling is expected during the course of next year. The response adds that, in the interim, the English High Court ruling of 15 May 2003 (that the statutory nuisance provisions of section 79(1) in Part III of the Environmental Protection Act 1990 apply to odour from sewage treatment works) may be persuasive in Scotland.

15. This section of the Act allows local authorities to take enforcement action against water companies which do not comply with removing offensive odour.

16. The response notes that several Scottish local authorities have considered or are considering issuing abatement notices under Part III of the Environmental Protection
Act 1990. The response cites the present action being taken by Edinburgh City Council against Seafield Water Treatment Works as an example.

17. The response states that progress is being made on a proposed voluntary Code of Practice which will provide advice and guidance to local authorities, the public and the water industry on the resolution of odour and other nuisance problems from sewage treatment works.

18. The response concludes by reiterating the Executive’s commitment to consult on legislative change if the House of Lords overturns the decision of the English High Court.

Landfill

19. At its meeting on 24 September 2003, the Committee considered PE541 and PE543 on landfill sites. The Committee heard evidence from Dr James S Buchanan and Paul Dumble, from the Roslin, Bilston and Auchendinny Community Group on PE541. The Committee also heard evidence from Karen Whitefield MSP and Ann Coleman from the Greengairs Environmental Forum on PE543.

20. In concluding its consideration of the petitions, Members agreed to a number of further actions relating to the issues raised. These actions included agreeing to take forward issues raised by the petitioners relating to the regulation of noxious odours from landfill sites as part of its consideration of petition PE517.

Options for Action

21. The Committee is invited to consider the options for action outlined below or take any other competent action that it deems appropriate in relation to PE645 and PE517 respectively.

Option A

22. Should Members feel that the Executive response is satisfactory, the Committee could agree to defer further consideration of the petition until the House of Lords appeal is resolved.

Option B

23. The Committee may wish to write to the Minister for Environment and Rural Development outlining any further views on the issue. In addition, the Committee may wish to write to the Minister specifically asking how the Executive plans to address issues relating to odour control of landfill sites.

Option C

24. Alternatively, Members may wish to appoint a reporter to monitor developments in relation to noxious odours from waste water treatment plants and landfill sites and report back to the Committee.
Thank you for your letter of 21 January, following the referral to you by the Public Petitions Committee of Petition 517 from the Leith Links Residents Association. This petition related specifically to odours and airborne bacteria from waste water treatment plants.

You may be aware that Scottish Water, the Scottish Environment Protection Agency, The City of Edinburgh Council and my Department all gave detailed responses to the Public Petitions Committee last year about a number of the issues raised by this petition. Your letter develops some of the issues raised by the petition and by the PP Committee’s consideration of it, and seeks the Executive’s view on a number of specific aspects.

Four specific questions are covered in your letter and I would answer them as follows:

- **What is the Executive’s understanding of the respective role for local authorities; SEPA; HSE and Scottish Water in regulating (Waste) water treatment plants in respect of odour nuisance? In the Executive’s opinion, how effective is the current regulatory system?**

**Local Authorities**

As is described in greater detail in the section relating to the regulatory regime in England & Wales, local authorities have enforcement powers to deal with a range of statutory nuisances, including odour, under section 79 of the *Environmental Protection Act 1990*. Until recently, it had been assumed this would include odour nuisance from waste water treatment plants. However, as is made clear in that section, it has now been the subject of a decision in English case law, which suggests this is not the case.

Local authorities also have powers under planning legislation to impose conditions on approval of planning applications, and these could include requirements relating to odour control. Failure to comply with such conditions would constitute a breach of planning control.
SEPA

The legislative provisions for regulating odour from water treatment plants is complicated by several factors. These include the capacity of the plant, whether sludges are disposed of or recovered, and whether the sludge is imported from another plant. The respective roles of SEPA are as follows:

Certain categories of water treatment plants (e.g. those with a capacity exceeding 50 tonnes per day that import non-hazardous waste which then undergoes treatment and the resultant sludges are disposed of) will fall within the scope of the Pollution Prevention and Control (Scotland) Regulations 2000. In these cases SEPA would be able to impose the odour control provisions contained in the PPC Regulations.

Other water treatment plants (e.g. those with smaller capacities or those that do not dispose of sludges) will not fall within the scope of the PPC Regulations. It is the Executive’s understanding that most water treatment plants, including Seafied, do not dispose of sludges. Rather, they go for recovery under an exempt activity or in accordance with the Sludge (Use in Agriculture) Regulations 1989. In this case, the imported sludges would continue to be regulated under Part II of the Environmental Protection Act 1990 which would allow SEPA to impose conditions to regulate odour emissions.

If a water treatment plant is currently regulated under Part I of the Environmental Protection Act 1990 (IPC and LAPC controls), SEPA's authorisation can include conditions to control odour. However, the Executive understands that no water treatment plants in Scotland currently fall within the scope of Part I.

If a water treatment plant is only regulated under the Control of Pollution Act 1974, only discharges to water are regulated. In that case SEPA would be unable to regulate odour. Instead, that function would fall to local authorities under statutory nuisance controls.

Waste management legislation empowers SEPA to control odour from plants treating waste but the Controlled Waste Regulations 1992 prescribe that sewage treated within the curtilage of a sewage treatment works as an integral part of the operation of the works is not treated as industrial or commercial waste. Consequently, SEPA does not have powers to control odour from these plants. Odour from these plants would be controlled through planning legislation or statutory nuisance legislation regulated by the local authorities.

Where sewage sludge is imported for treatment from another works it is no longer exempt from the waste categories referred to above. In the case of larger plants like Seafied, where the amount of sludge brought into the works exceeds 10,000 cubic metres per annum, there is a requirement that that part of the plant taking imported sludge must have a waste management licence under Part II of the Environmental Protection Act 1990. This licence can include conditions relating to the treatment of malodorous air from the plant such that it does not give rise to offensive odour outwith the site boundary. If the quantity of sludge brought into the works in any 12-month period does not exceed 10,000 cubic metres the activity can be registered exempt from the full waste licensing regime under the Waste
Management Licensing Regulations 1994. These regulations provide that operations must not cause nuisance through odour.

In summary, SEPA has powers under the Environmental Protection Act 1990 and the PPC Regulations to control offensive odours. SEPA is unable to control odour from premises falling within the scope of the Controlled Waste Regulations 1992 or regulated under the Control of Pollution Act 1974. In these cases, SEPA relies on local authorities to exercise statutory nuisance powers to regulate odour.

HSE

Our understanding of the Health and Safety Executive’s functions are that they ensure risks to people’s health and safety from work activities are properly controlled, rather than that they have any specific role in relation to the regulation of operational matters in industry. Health and Safety legislation provides that employers have to look after the health and safety of their employees; that employees and the self-employed have to look after their own health and safety; and that all have to have regard to the health and safety of others, for example members of the public who may be affected by their activities.

Scottish Water

Scottish Water has to have regard to the conditions imposed on it by the planning authority; by the legislative provisions relating to public health and the environment; by conditions required by the environmental regulator; and in relation to its own powers to impose conditions on discharges from its business customers.

Effectiveness of Current Regulatory Regime

The regulatory regime has been explained in some detail above, and in the section below on the regulatory regime in England & Wales. There are a number of ways in which odour can be controlled. However, it seems clear that circumstances can arise in which these measures prove not to be effective or appropriate.

- What is the Executive’s understanding of the benefits of covering primary tanks, or the use of conical primary tanks in the (Waste) water treatment process?

This is specifically an operational matter for Scottish Water and the water industry in general. Our understanding is that expenditure would not only involve the costs of covering tanks, but also the additional need for odour control and the difficulties of maintenance. Where tanks have been covered in Scotland, these were part of the design when built. Fitting covers after the tanks have been built is much more difficult.

- Has the issue of responsibility for odour control been considered during the review of SEPA’s responsibilities? When will this review be concluded?

The current Policy and Financial Management Review of SEPA has been set the task of examining the role of SEPA in relation to other bodies with responsibilities for environmental protection and regulation. We expect that the review will be concluded by the summer
• What is the Executive’s understanding of the regulatory regime for controlling odour nuisance in England & Wales and elsewhere in Europe?

England & Wales

Odour nuisance from Sewage Treatment Works has been rising in profile both south and north of the border over the last year. It became apparent there was a gap in legislation preventing Local Authorities taking enforcement action against Water Companies that did not comply with removing offensive odour, where voluntary action between authorities had failed to resolve the situation.

This followed the English Court case of East Riding of Yorkshire Council v Yorkshire Water Services Ltd (2001). This ruled that it was not Parliament’s intention to include sewage treatment works within the meaning of “premises” in Section 79 of the Environment Protection Act 1990 (EPA) – at least as far as England and Wales were concerned. Effectively, this allowed Water Companies to ignore other Local Authority abatement notices under Section 79 of EPA 1990. The context of that case explains why on 23 December 2002 DEFRA issued its consultation paper putting forward alternative approaches for dealing with odour nuisance from public sewers and sewage treatment works.

The English consultation paper presents four options for consideration. The first is to maintain the existing arrangements with the addition of a new voluntary code of practice. The other three options (which would all require legislative change) involve bringing odour from sewage treatment works within the scope of the statutory nuisance regime of EPA 1990; the Local Air Pollution Prevention and Control Regime; or Integrated Pollution Prevention and Control (IPPC) respectively.

Although section 79 of the EPA 1990 has not been tested in a Scottish Court with regard to sewers and sewer treatment works, it is possible that similar arguments would prevail in similar circumstances.

Subsequent to DEFRA issuing their consultation on 23 December, Hounslow Council are to appeal to the High Court against the decision of the Yorkshire Court that S79 of EPA does not apply to Sewage Treatment works. That appeal is to be heard on 10 March. In view of the Appeal hearing, it has been recommended that any Scottish consultation be held back until that time. The Deputy Minister for Environment and Rural Development has agreed to a Scottish consultation after 10 March, pending the outcome of the Hounslow Council Appeal.

SE officials have agreed with DEFRA at official level that the consultant commissioned to undertake the England-only regulatory impact assessment (RIA) will as appropriate extend his contract to include Scotland. The RIA will include details of comparative regulatory regimes elsewhere in Europe.

Europe

We understand the consultant did advise verbally that his research to date showed no European country having any national legislation relating to control of sewage odour. Germany has some Federal Laws and France some Regional laws on odour under
Nuisance control. By contrast, in the USA, there is no comparative legislation, and they rely entirely on private prosecutions to sue water companies.

To sum up, the Executive intend to issue a parallel consultation on this issue, pending the outcome of the Hounslow Council Court Appeal on 10 March, with a view to enhancing the guidance and legislation for remedying odour problems from sewage treatment works. This will include the commissioning of a full RIA, which will include comprehensive comparative regulatory regimes in Europe.

ROSS FINNIE
Dear Roz,

PE 517- SEWAGE ODOURS FROM SEAFIELD WASTE WATER TREATMENT WORKS

1. I refer to your e-mail of 24 July 2003 requesting an update on the current position, in relation to the above matter.

2. In his letter of 24 January 2003, Mr Finnie explained the background to the perceived lack of adequate enforcement measures concerning the control of odour from sewage treatment works, and that Defra had issued a consultation on this issue on 22 December 2002 following a Ministerial commitment made to the UK Parliament. Mr Finnie further advised that the Scottish Executive would also consider holding a public consultation on this matter in Scotland but this was dependent on the outcome of an appeal by the London Borough of Hounslow Council lodged on 15 January 2003, in a case concerning the non-applicability of abatement notices within the statutory nuisance regime of the Environment Protection Act 1990 in respect of odour from sewage treatment works.

3. The High Court’s decision was due in March 2003 but was delayed until 23 May 2003. The court ruled that an abatement notice issued by Hounslow Council under section 79(1)d of the Environmental Protection Act 1990, requiring the control of odour nuisance from Mogden Sewage Treatment works was valid. The High Court agreed with the Council’s argument that sewage treatment works constitute “premises” for the purposes of section 79(1)(d) of the Act. The owning company, Thames Water, are now in the process of obtaining leave to appeal against this ruling to the House of Lords. This final appeal process may take some months to conclude.
4. The High Court judgement may be persuasive authority in Scotland for the proposition that sewage treatment works are covered by the statutory nuisance regime. In due course the decision of the House of Lords will be definitive and binding in Scots law. Given this background, the Scottish Executive and as I understand it, the UK Government are of the view that action needs to be taken in advance of the House of Lords ruling. I understand that the UK Government is proposing to prepare, whatever the outcome of the House of Lords appeal, a voluntary Code of Practice that will provide advice and guidance to local authorities, the sewage industry and the public regarding the successful resolution of odour and other nuisance problems from sewage treatment works. The draft Code is expected to be put to public consultation towards the end of the year. The Executive agrees with this approach and we will work alongside Defra in preparing a draft Code and issuing a parallel consultation in Scotland later this year. In the event, however, of the House of Lords upholding Thames Water’s appeal we would wish to consult on legislative change after that.

5. I hope this enables you to update your Committee accordingly, and demonstrate that the Executive is and will be taking appropriate action on this matter. If you do require further information, please do not hesitate to contact me.

DUNCAN McNAB
PETITIONS 365, 449 AND 517

You wrote to me on 16 September asking for an update on a number of petitions. You have already received briefing on Petition 449, which you required prior to your meeting with the Scottish Gamekeepers’ Association on 28 October, and I attach a briefing note as requested on Petition 365 and the operation of the fish quota system and the tradeability of quota entitlement.

The position regarding Petition 517 and the progress of the appeal that has been lodged with the House of Lords on the court ruling in England and Wales relating to the applicability of the statutory nuisance regime to odour from sewage treatment works is as follows.

I can confirm that leave to appeal has now been granted, and the ruling is expected during the course of next year. In the interim, the English High Court ruling of 15 May 2003, (that the statutory nuisance provisions of section 79(1) (g) in Part III of the Environmental Protection Act 1990 do apply to odour from sewage treatment works), may have persuasive authority in Scotland.

I understand that several Scottish local authorities have considered or are considering issuing abatement notices under Part III of the Environmental Protection Act 1990, for example the present action being taken by the City of Edinburgh Council in connection with Edinburgh’s Seafield Sewage Treatment Works.

I can confirm again that while the House of Lords ruling is awaited, progress is being made on a proposed voluntary Code of Practice which will provide advice and guidance to local authorities, the public and the water industry on the resolution of odour and other nuisance problems from sewage treatment works. The Scottish Executive intends to consult on a draft of the Code in early 2004. My
officials are working with Defra and other relevant stakeholders on the preparation of this Code. In the light of this I think it would be inappropriate at this stage to consider a legislative approach. However, I would reiterate that if the House of Lords rules that the statutory nuisance provisions of the Environmental Protection Act 1990 do not apply to odour from sewage treatment works we would wish to consult on legislative change after that.

I trust this information will be helpful.

ROSS FINNIE
PETITION PE604

PE604 By Mr Andrew S Wood calling for the Scottish Parliament to establish a Scottish Independent Greyhound Racing Regulatory Body.

Introduction

1. The petitioner is concerned for the welfare of dogs involved in greyhound racing in Scotland. The petitioner suggests that there is a lack of:

- provision for veterinary checks at most greyhound race courses in Scotland;
- a method for tracing the movements of greyhounds between either race tracks or owners;
- provisions for the welfare of retired greyhounds; and
- any requirements for owners to declare how they disposed of or retired dogs.

2. The petition calls for the Scottish Parliament to establish an independent regulatory body, accountable in its actions to the Parliament and democratically elected from all groups with an interest in greyhound racing. The petitioner believes that the role of this body should be to oversee greyhound sport and the welfare of the dogs involved during and following their racing careers.

3. The petitioner proposes that the regulatory body should be provided with statutory powers to collect levies on all dogs racing and betting slips. The funds raised would go towards providing for retired greyhounds and to assist in the maintenance of racing tracks and dog handling facilities in Scotland.

4. The regulatory body would also be responsible for grouping greyhounds in races according to their age. The petitioner argues that this would extend the racing life of greyhounds and, as a consequence, reduce the current frequency of the retirement of greyhounds.

5. Members may wish to note, in relation to the proposal to provide statutory powers to collect levies, that the betting tax regime is reserved to Westminster.

Background

6. Under criteria agreed by the four home country Sports Councils and UK Sport, greyhound racing is not classified as a sport but as a business. At present, the greyhound industry is responsible for regulating itself.

7. The National Greyhound Racing Club (NGRC) is an independent body which licences greyhound stadia which meet its minimum standards. There are 6 greyhound stadia in Scotland, one of which, Shawfield Stadium, is licensed by the NGRC.
8. Stadia licensed by the NGRC are provided with support from the British Greyhound Racing Fund, a fund which collects voluntary payments from off-course bookmakers. PA News Ltd operates a database which contains the names of all NGRC registered greyhounds and their owners.

**Progress of Petition PE604**

9. The Public Petitions Committee (PPC) initially considered the petition during the first session on 11 March 2003 when the Committee took oral evidence from the petitioner and supporters of the petition. The relevant extract of the *Official Report* is attached at Annex A.

10. The Committee agreed to write to the Scottish Executive, the British Greyhound Racing Board, the British Greyhound Racing Fund, the National Greyhound Racing Club and the Irish Greyhound Board in relation to issues raised by the petition.

11. The successor PPC considered the petition and the responses received from the above organisations, and a response from the League Against Cruel Sports, at its meeting on 1 October 2003. A copy of each of the responses are attached at Annex B.

12. The PPC noted that both the petitioner and the League Against Cruel Sports were of the view that existing legislation was not sufficient to protect greyhounds from abuse and neglect, contrary to the view expressed by the Executive.

13. The PPC agreed to formally refer the petition to the Environment and Rural Development Committee to consider whether there is a case for strengthening existing animal welfare legislation to ensure the protection of greyhounds from abuse and neglect, perhaps within the scrutiny of the Executive’s forthcoming Protection of Animals Bill.

**Protection of Animals Bill**

14. The Executive’s Partnership agreement includes a commitment to introduce a Protection of Animals Bill. Consultation on a draft of the Bill closed on 27 June 2003. The Executive has not yet indicated a timescale for the introduction of the Bill to the Parliament. Members may wish to note that the Executive response to the PPC states that there are no plans to make specific reference to greyhounds in the proposed legislation.

**Options for Action**

15. The Committee is invited to consider the options for action outlined below or take any other competent action that it deems appropriate.

*Option A*
16. Members may wish to accept the referral from the PPC and carry out further consideration of the issues raised in the petition. Any such consideration would of course require to be scheduled around the Committee’s existing work programme and legislative commitments.

17. Members may agree with the PPC’s suggestion that this Committee could consider the issues relating to the welfare of greyhounds raised by the petition during its Stage 1 consideration of the Protection of Animals Bill. Members may wish to conclude consideration of the petition on this basis and write to inform the petitioner of its decision. The Committee may also wish to take evidence from the petitioner during its consideration of the Bill at Stage 1.

18. Alternatively, as there is as yet no timeframe for the introduction of this Bill, Members may wish to write to the Minister for Environment and Rural Development expressing a view on whether or not the proposed legislation should reflect the concerns of the petitioner.

Option B

19. Members may wish to refer the petition back to the PPC for further consideration on the basis that the issues raised merit further action but that this Committee has insufficient capacity in its work programme to allow it to carry out any further action.

Option C

20. Members may feel that the petition does not merit any further action. In this case, the Environment and Rural Development Committee should refer the petition back to the PPC, explaining the rationale behind its decision, in order to allow the PPC to provide the petitioners with a detailed explanation as to why no further action will be taken in relation to their petition. It will also enable the PPC to consider whether any alternative action might be appropriate, such as referring the petition to the Executive or another public body.
Annex A

EXTRACT FROM THE **OFFICIAL REPORT** OF 11 MARCH 2003

**Greyhound Racing (Regulation) (PE604)**

Col 2193

**The Convener:** PE604, which was submitted by Mr Andrew S Wood, calls for the establishment of a Scottish independent greyhound racing regulatory body. Mr Wood is accompanied by Howard Wallace, Doreen Graham, Hamish Hastie, Arthur Robinson and Maureen Purvis. I welcome them all to the committee. Although not all six petitioners can have three minutes to address the committee, your official spokesperson has three minutes to do so. I will then open up the meeting for questions, which any of you can answer.

**Andrew Wood:** First, I would like to thank the committee for giving us the opportunity to submit the petition and to add extra oral evidence to the information that has been circulated to committee members.

I will outline the key points. Key point 1 concerns traceability and accountability. There is a desperate need for the registration of all dogs on a central data system. Under such a system, dog passports with individual registration numbers that were identical to the number on the dog's ear tag would be issued. We would ensure that full owner details were included on the database and that the system included a facility to reregister changes of ownership, medical treatment and past injuries. Vets would be required to verify and sign off the final departure of a dog. Annual updating and auditing of owner records would be enforced.

Key point 2 concerns the provision of independent veterinary checks. There is a clear need for independent veterinary inspections before and after races. That would eliminate the compromising situation in which local or regular vets can find themselves. We would also ensure that regular visits were made to rescue centres and that random checks were made on rehomed dogs. The Scottish Parliament would set a level and a fair rate for such veterinary costs, which would be applied to all those who use Scottish facilities.

Key point 3 concerns provision for the welfare of retired dogs in homes. Supervision and financial support would be made available to all registered kennels with records being kept on all rehomed dogs.

Key point 4 concerns the need to address the image of the sport. Unfortunately, the system suffers as a result of its Del Boy image—we need to address that. We need to upgrade the facilities and expand the social side to attract a wider following. We should encourage a more family-friendly environment that would allow caring people to follow the track history of a dog that they might wish to rehome after the dog's retirement from the track.

Key point 5 concerns the need to make use of a valuable national resource. Greyhound racing should, and could, become an integral part of Scottish tourism, with overseas visitors encouraged to participate in evening excursions to greyhound-racing venues. Such visits could be built into package holidays, which could also include horse-racing, golf, fishing—the list is endless.

Key point 6 concerns the role of the Scottish Parliament and the assistance that it could offer. We hope that the Scottish Parliament will embrace and endorse our vision and give its support to an independent organisation of the type that the petition calls for. We hope that the Parliament will make the legislative powers to create the financial support, which would be collected from levies on Scottish bookmaking shops, for the office premises and the minimal staff that would be required in the first year. Should that not be possible, as a result of the powers being reserved to Westminster, it is hoped that the Public Petitions Committee will be prepared to support such an initiative.
Key point 7 concerns costs and staffing. In recognition that financial support could be limited, we plan to secure funding by means of a long-term loan, repayable when the system has been fully established and after we have generated our first sustainable annual accounts. We have based our office costs on rented premises of around £2,000 per month. Initially, we would need three members of staff, each on approximately £15,000 to £20,000 per annum, so that we could complete our task in the first year and get the system up and running as quickly as possible. We envisage that the total cost would be about £75,000 to £100,000 per annum. We would buy into existing services, including data recording and veterinary inspections.

Scotland must make a start to pull together all those who have an interest in greyhound racing in order to create a fair, honest and accountable sport. There is real potential to increase the interest and demand for the sport, and the fact that we have a unified commitment provides the opportunity to upgrade facilities, address animal welfare issues and increase jobs. I ask the committee to take forward petition PE604.

Before I finish, I want to introduce the rest of the people who are here. Petition PE604 is not the work of one person; it brings together all the sectors that have an interest in and commitment to greyhound racing. I am joined by Doreen Graham from the Scottish Society for the Prevention of Cruelty to Animals, Maureen Purvis and Arthur Robinson from greyhound rescue organisations, our vet Hamish Hastie and Howard Wallace from the greyhound tracks. I assume that it is permissible for any of them to answer questions.

The Convener: Absolutely—any one of them can do so. Before I move to questions from the committee, Alex Neil MSP is here to support the petition.

Alex Neil (Central Scotland) (SNP): In essence, there are two elements to the petition: the first is the animal welfare aspect and the other is the development of greyhound racing in Scotland. The animal welfare aspect is clearly within the remit of the Scottish Parliament. As the committee knows, within the next 12 months or so, the Parliament expects to have an animal welfare bill to debate—irrespective of who wins the election on 1 May. The committee that deals with that bill should investigate the animal welfare aspects of PE604 and give them serious consideration. It is clear from the evidence that there is an issue that needs to be addressed.

As far as the development side is concerned, we need clarification of the Scottish Parliament's powers in relation to raising levies. Perhaps the clerks can clarify whether such powers are devolved or reserved, although it is the case that the betting levy on horse-racing is reserved to Westminster. That does not stop us, as a Parliament, pursuing the need to develop greyhound racing as a sporting attraction.

The Convener: We understand that the power to introduce levies on racing dogs and betting slips is reserved to Westminster and is not currently within the power of this Parliament.

Andrew Wood: In that case, why is Quality Meat Scotland about to be given statutory powers to collect levies from farmers?

The Convener: I understand why you ask, but that power is in the Scotland Act 1998. It is not necessarily the fault of anyone here; it is just a fact. That does not mean that the Scotland Act 1998 cannot be reformed. It is a matter for the Scottish Parliament to discuss whether it wants such powers to be devolved.

Dr Ewing: The age of a greyhound can be relevant in deciding which race it is entered for. Is that the case for horses? I am ignorant about this.

Howard Wallace: Horses and greyhounds are graded more on their ability than on their age. Like us, as they get older, they are less inclined to perform well.

Dr Ewing: I see that Mr Wallace is looking at me.

Howard Wallace: Dr Ewing is excluded from that.
What we call puppy races are open to greyhounds that are younger than two years of age. Depending on their size, greyhounds start racing at 16 or 17 months old. Some greyhounds are given more time to mature because they are bigger young dogs.

Dogs that are racing when they are five, six, or seven years of age sometimes go in for veteran races. In common with all sports, people want to see the very best, and greyhounds, horses and athletes are all judged on ability.

As an aside, I would like to point out that my name is misspelt on the nameplate in front of me. That is disappointing for me, because my name is Wallace, with the Scottish spelling.

That apart, there are two codes for racing in Scotland, England and Wales—licensed and unlicensed racing. There is traceability and accountability in licensed dog racing. That is licensed by the National Greyhound Racing Club, which is the equivalent of the Jockey Club in horse-racing. As our authority, the NGRC watches over what we do. When someone sells a dog to another registered member, the authorities note the registration transfer of that dog.

There is one licensed racing track in Scotland—at Shawfield—and five unlicensed tracks. At one point in my youth, there were 26 unlicensed tracks in Scotland. The disappearance of heavy industries such as coal mining and shipbuilding meant that the natural supply of dogs for flapper races was no longer available. Most of the unlicensed tracks have disappeared, although five or six remain.

There is no accountability or traceability for unlicensed dogs. If I were a licence holder who owned a dog under NGRC rules and I sold the dog to a non-registered person, which I am legally entitled to do, I would tell my authorities that I had sold the dog and to whom I had sold it. However, if the dog goes to an unlicensed person, the new owner has no need to tell anyone that he now has that greyhound, so he can race the dog at Gretna or Ayr under different names, such as Tam, Dick, Nellie or whatever. The traceability of that greyhound would be lost forever because it has gone from a licensed to an unlicensed code. In Scotland, we could create a lead by bringing together the two codes through legislation that stated that greyhounds at all tracks must run under their registered names. We would then have traceability, which is very important.

Dr Ewing: That makes the matter clear, because it is desirable that greyhound racing be regulated and licensed. My knowledge of horse-racing is limited to my having been the member of Parliament for Hamilton. I went to races at the racecourse there because a lot of voters also went.

I have never seen a dog race, but when I was the MP for Hamilton I often saw individuals in the central belt enjoying what looked like a very happy relationship between dog and master. I am alarmed by the suggestion that those people kill off their dogs when they have stopped racing. Is that what happens?

Howard Wallace: I do not want to hog the discussion, but I will answer that question. The Retired Greyhound Trust has put in place a rehoming scheme for ex-racers from licensed tracks that have retired because of old age, injuries or lack of ability. By and large, that scheme has been successful. Many caring people are involved with unlicensed tracks, but—as in society as a whole—a tiny minority are callous and cruel. Some will not go to a veterinary surgeon to have their dogs put down. If, in the longer term, we can bring together the two codes through legislation, England and Wales will follow us. There are many unlicensed tracks in England.

If we have traceability, I hope that we will be able to raise funds and to organise levies through bookmakers to pay for retirement homes. That issue is very dear to the many good people who are involved with greyhound racing, in both codes. In this day and age, we need to bring the two codes together. If we do not, the sport will not grow and will not provide the benefits that Andrew Wood seeks—in tourism, job creation and training. That has happened very successfully in Ireland. The 16 dog tracks in southern Ireland are controlled by a semi-statutory body. In Victoria, Australia—where an ex-Scot chairs the controlling body—
arrangements are exactly the same. In Sweden, the sport is controlled by a statutory body that provides it with funds. The sport repays that support through job creation and tourism.

**Phil Gallie**: Mr Wallace has answered a number of the questions that I intended to ask. The only track that I have ever visited is the flapping track in Ayr. When I was there, I was struck by the fact that people were gambling without knowing what they were gambling on. The dogs could have come from Shawfield or anywhere else. Do flapping tracks have to be licensed with local authorities?

**Howard Wallace**: Under the Betting, Gaming and Lotteries Act 1963, tracks must have a betting licence from the local authority. They must also have a liquor and entertainment licence. The role of local authorities goes no further than that. Powers could be devolved to local authorities. As a condition of issuing licences—especially betting licences—local authorities could insist that veterinary care be provided. At flapping tracks, veterinary care is not provided on course, whereas at licensed tracks there is veterinary attendance both at trials and at races. Local authorities should make the granting of licences conditional on the provision of veterinary care and retirement and welfare schemes.

**Doreen Graham (Scottish Society for the Prevention of Cruelty to Animals)**: Some of the most appalling cases of cruelty with which the SSPCA has dealt have involved greyhounds at the end of their career. For the past six years, we have been one of many animal welfare groups that form part of the International Greyhound Forum. We have worked with the Society of Greyhound Veterinarians to produce a greyhound charter from cradle to grave. The charter covers everything from the number of litters that a bitch will have during her lifetime, racing and how dogs are transported to races, through to the dogs’ retirement and their departing this world. The British Greyhound Racing Board has embraced the charter. However, because most tracks in Scotland are flapping tracks and are unregistered, we have no way of ensuring that it is implemented there.

In Ireland, Bord na gCon—the Irish Greyhound Board—is able to do some good things, but some practices are worrying to welfarists. For example, the export of dogs to countries such as Spain is dire news. Let us look after dogs in Scotland and put in place a statutory body that will offer them a degree of protection. We do not want any more dogs to end up deliberately drowned in quarries, with their ears cut off to remove their greyhound tags. We represent both welfare and racing organisations and would like to improve greyhounds’ welfare. We ask the Scottish Parliament to support that aim.

**Andrew Wood**: Maureen Purvis can provide members with information on what is happening south of the border and at United Kingdom level.

**Maureen Purvis (Greyhounds UK)**: I represent an organisation called Greyhounds UK, which is led by the actress Annette Crosbie, who, unfortunately, could not be here today. We have been working for a long time with the British Greyhound Racing Board and the National Greyhound Racing Club. We have found that they regard the greyhound as a commodity. We have also found that the safeguards that are in place are just cosmetic—they are not real—and that the abuses that have been referred to happen. The money that is gained from the bookmakers in England is just put into the promoters’ pockets; it is not put into facilities for the dogs. A dog died in kennels at a track in London recently.

We have pressed the Westminster Parliament and the Government’s English representatives to include in the proposed animal welfare bill a statutory code of practice along the lines of the greyhound charter that the national bodies produced, but which would have teeth and would specify all the things for which Andrew Wood has called: independent vets; a database, which could be based on DNA, for example; and training and recognised vocational qualifications for those who look after the dogs. Scotland has a tremendous opportunity to do the whole package for the animals.

**Phil Gallie**: I acknowledge the sporting nature of the matter, and I want to ask Hamish Hastie, the vet, about that later.
Some of the dogs that run at Ayr, where I always believed that there was a vet on track, are owned not by companies, but by individuals who, as I understand it, love and care for their animals. I do not know how training for such individuals would be enforced. They race dogs as a sport. They have their own interests.

**Arthur Robinson (Dumfriesshire Greyhound Rescue):** I represent the independent greyhound rescue organisations. I am the chairman of Dumfriesshire Greyhound Rescue. There is one track in Dumfriesshire, which is at Gretna. Since we were formed in December 2001, we have rehomed 43 dogs. Five of them were lurchers and four were coursers; the rest were ex-racing dogs.

It is true that some owners look after their dogs when they finish racing and have a good relationship with the dogs, but many do not. We get dogs from trainers, but only perhaps 10 per cent of the trainers at Gretna are in touch with us. The vast majority are not. I have no idea what happens to their dogs.

At the moment we have 12 dogs in our care. We do not have any kennels. The trainers keep the dogs until we can rehome them or they are put into foster care—I have one at the moment. That is the sort of thing that goes on. Some of the dogs come to us in a dreadful condition and some are abandoned. We also assist with cases that are held by the SSPCA, the National Canine Defence League and local groups.

We support what Andrew Wood is trying to do on the registration of dogs, which would mean that some record would exist. At the moment, it is true that the majority of dogs are ear-marked, but a lot of them are not and those dogs are untraceable. Nobody knows where they came from and nobody knows what happens to them at the end of the day.

**Phil Gallie:** I have a question for Hamish Hastie. I thought that there were always vets at dog tracks—even at flapping tracks. If that is not the case, there are no tests for drugs and no other checks are made.

**Hamish Hastie:** At tracks such as Shawfield, doping tests are done after racing.

**Phil Gallie:** That is a licensed track. Is testing done at the unlicensed tracks?

**Hamish Hastie:** No. Not at all.

**Howard Wallace:** There is no identification. If I took a dog to Gretna to try to qualify it to race at that track, I would go along on the track’s trial-session day or evening and present the dog. If the dog does the qualifying time, he is marked up, as it is termed. In other words, the detail of his ear markings would be taken. If he did not have ear markings because he was not registered at birth, his body markings—such as colour and toenail colour—would be taken, but I could give a false name and address.

Anyone who is a sharp cookie or who is streetwise and does not want the handicapper to know that they have travelled all the way up from Manchester with the dog—because the handicapper will think that, if they have travelled all that distance, the greyhound must be pretty good—will give a local address. I did that when I was a wee boy. I got my first kiss from a greyhound. That was 50-odd years ago. The serious point is that I could present the greyhound falsely to race at a track.

I emphasise that there are many good people at unlicensed tracks—flapping tracks—or gaffs, as we used to call them years ago. Flapping is like society itself: there is a callous element in greyhound racing because there is a few bob to be made on a Friday or Saturday night. To those people, it does not matter how they get the money or whether they abuse the dogs.

We ask for traceability through a database of all greyhounds in Scotland. On 5 March, I surveyed all the major welfare centres in Scotland. They had 439 dogs, of which four were greyhounds. That gives you an idea of the situation. There are 435 other dogs that are not greyhounds in welfare centres. There is a problem in society in general, but that should not
preclude us from looking at greyhound racing, because £2 billion is bet on greyhound racing in the United Kingdom, of which £221 million is bet in Scotland. It is a serious business.

We have an opportunity to regenerate Scottish greyhound racing and to get all the add-ons to which Andrew Wood referred earlier. We need only a bit of help from the Scottish Parliament to bring together the codes and make it compulsory that dogs run under studbook names. That is the starting point. After that, we will have traceability of the dogs and owners and we can get all the wise guys out the game altogether.

**Dorothy-Grace Elder:** Do you have any rough figures for the dogs that are retired every year? What is your estimate of those that might be abandoned or put to death cruelly?

Secondly, Doreen Graham, the SSPCA representative, referred to Spain. I ask her to elaborate on that reference, regardless of who replies to my first questions.

**Howard Wallace:** I would be delighted to reply to the first questions, because I have been involved in greyhound racing all my life—since I was born. I have a great passion for the sport. That is why I have undertaken an in-depth study of what is happening in greyhound racing.

The decline in greyhound racing in Scotland is quite dramatic because of the loss of certain industries—in particular, the mining industry—in which the workers were attached to greyhounds. Today, to within 5 or 6 per cent, there are 760 racing greyhounds in Scotland. Compare that with England, where there might be 13,000 to 15,000 dogs. Of the 760 dogs in Scotland, 314 are on the racing strength at Shawfield, which is a licensed track. That leaves us with 446 dogs. Those dogs are a migrant pool that floats from track to track. I could run a dog at Ayr—I do not, but I am just giving you an example—and run the same dog under different names at Gretna, Corby, Thornton or Armadale, near Edinburgh.

What happens to a greyhound is like what happens to a first-division football player. When his ability declines, he goes into the second division and the third division to get an earner. When a licensed greyhound, which tends to be a better quality of greyhound, has passed his prime, he is sold or passed down to the flapping tracks. Roughly 105 or 110 dogs are retired and passed down from Shawfield to the flapping tracks every year.

**The Convener:** I ask for briefer answers, because we have a lot of business this morning.

**Howard Wallace:** Okay. To return to the question, there are 360 retired dogs from licensed tracks. Of those, 63 are waiting for rehoming. Nineteen are racing casualties or are injured and put down at the track for rebreaking a leg, for example. Thirty-four dogs are unsuitable for rehoming—they might have a wee bit of a nasty streak and be difficult to rehome into family care. Seventy-two dogs have been euthanised and I have come across three cases of non-euthanisation.

**Dorothy-Grace Elder:** Thank you. It is marvellous that you have such precise figures and that you have done a lot of work on what is, as you say, a migrant industry.

**Doreen Graham:** The vast majority of dogs that race in Scotland start their lives as Irish racing greyhounds. There are regular auctions in Ireland, through which many dogs are exported to Spain. The last remaining track in Spain is in Barcelona and is owned by a very powerful man. According to figures that I was given in February, there are 1,000 dogs there, 999 of which come from Ireland. Those dogs see one hour of daylight a day and are kept in 1m² kennels, which sometimes contain two dogs. The dogs lie in their faeces and urine and have no blankets; they have a life of darkness. That is unacceptable in animal welfare terms. The SSPCA is concerned about that and would like a board in Scotland to examine the export of dogs.

Many dogs that retire from the track have lived their lives in a kennel. The SSPCA works with various greyhound groups, which often foster dogs to allow them to get used to things like staircases and televisions. In the past five years, those groups have rehomed 1,000 dogs, which is a high percentage of the dogs that have retired.
Dorothy-Grace Elder: They are nice dogs.

Doreen Graham: They are wonderful; the breed is the oldest pure breed of dog in the world.

Andrew Wood: Since we have taken up the issue and it has started to receive media attention, people like Arthur Robinson have had more dogs presented to them—the number of dogs that are presented to Arthur has increased tenfold. The problem is serious and it must be addressed.

The Convener: Have you had any response from the British Greyhound Racing Board, which, technically, is in charge of the industry in Britain?

Andrew Wood: Yes. I received a letter from the board, which, if I recall correctly, said that everything was okay in its house.

The Convener: One of the witnesses mentioned lobbying Parliament. Previously, I was a member of Parliament and I know that MPs are appointed as parliamentary consultants to the British Greyhound Racing Board—I think that Jack Cunningham MP is the present consultant. Have you received responses from MPs when you have reported the atrocities and outrages that take place?

Arthur Robinson: I wrote to Jack Cunningham once and received no reply.

Maureen Purvis: I do not think that Mr Cunningham is involved with the board at present, although he was the consultant for a time. We have lots of experience of the British Greyhound Racing Board and the National Greyhound Racing Club. I asked the chief executive of the board how long he expects owners to subsidise the industry, which is the case at the moment because prizes do not cover kennel bills and trainers are not paid enough. He said, "We'll get away with it for as long as we can." The board is a business that looks after promoters and bookmakers—greyhound racing is a medium for betting.

Howard Wallace: There is no legislation in England either—the British Greyhound Racing Board is made up of stadium promoters and, crucially, bookmakers, which includes big public limited companies such as Ladbrokes.

The Convener: So the board is not a statutory organisation.

Howard Wallace: No—it is an industry organisation.

Doreen Graham: The welfare issues at flapping tracks relate not only to dogs. We know of two incidents involving rabbits at separate tracks. One track in the Borders used live rabbits on the lure to train dogs, which resulted in the rabbits' limbs being almost severed. All animals, including rabbits, are entitled to good welfare. There was also an incident in which live rabbits were sold outside an Ayr track for people to use in training their dogs. There have also been instances of dogs suffocating in vans on the way to races. There are many aspects to the welfare issue, which is why we want to ensure that flapping tracks are governed in some way.

The Convener: The suggested action on the petition includes writing to the Scottish Executive, the British Greyhound Racing Board and the British Greyhound Racing Fund. Given that our first job is to get a response to the petition, should we contact any other bodies?

Howard Wallace: I suggest the National Greyhound Racing Club.

Alex Neil: The committee should consider writing to the Chancellor of the Exchequer to point out that the revenue from betting on greyhounds in Scotland alone is about £221 million. The request for £3 million or £4 million of that to be reinvested in the industry is fairly modest and, it seems to me, a sensible proposition.

The Convener: I am not sure that it is the Chancellor of the Exchequer's decision.

Phil Gallie: I am not too keen on the Chancellor of the Exchequer getting the money, because I doubt whether it would be returned to the greyhound industry.
Alex Neil: Money is already received through the betting levy. All that the petitioners seek is for some of their money to be recycled and reinvested in the industry.

Doreen Graham: There has been a renaissance in horse-racing and if there is one in greyhound racing, which is possible, it should be done in the right way.

Alex Neil: I suggest that we draw the issue to the attention of the Minister for Tourism, Culture and Sport, who might be able to initiate action through sportscotland or other Executive agencies before we move towards legislation.

The Convener: I thank the petitioners, who have given a harrowing account of what goes on in the greyhound racing industry.

Andrew Wood: I ask members to bear in mind the positive side; I do not want them to think only about dogs dying and other negative issues. The industry has fantastic potential and could be of benefit to local rural areas and, through tourism, to Scotland as a whole.

The Convener: I thank the petitioners for giving us their time. They are welcome to listen to the discussion on what to do with the petition.

The suggested action is that we write to the Executive. When we do so, we should ask specifically for the Minister for Tourism, Culture and Sport to comment on the industry’s potential to contribute to Scotland.

Alex Neil: The Executive should consider incorporating the issue in the animal welfare bill that is being drafted.

The Convener: Yes. We will ask the Executive whether it intends to incorporate the issue in that bill.

We should also write to the British Greyhound Racing Board, the British Greyhound Racing Fund and the National Greyhound Racing Club. The clerk has suggested that we should get in touch with the Irish Greyhound Board to ask for its comments on how the industry in Ireland has changed in recent years. When we receive responses from those bodies, we will get in touch with the petitioners and decide what further action to take.

Rhoda Grant: Can we also contact the Convention of Scottish Local Authorities to find out whether conditions can be attached to betting and drinks licences that are issued to tracks?

The Convener: Yes. We will ask COSLA whether it has any views on animal welfare in relation to the issuing of betting and drink licences to greyhound racing tracks.

Dr Ewing: On the grounds of welfare alone, the case has been made that legislation is required to draw together the licensed and unlicensed sides of the industry. We must also ensure that other welfare measures are taken, such as the creation of a database to ensure traceability. Without such a database, we cannot be sure whether animal welfare rules are being obeyed. The new Parliament must conduct an inquiry into the issue with a view to the production of a bill.

The Convener: It has been suggested that we ask the Scottish Executive to comment on whether the issue will be included in the draft animal welfare bill, which will be considered in the new Parliament.

We should also ask the Executive to comment on the fact that, although the British Greyhound Racing Board collects a levy for the whole of the UK, it does not appear to be considering the issues. We will ask the Executive whether the matter should be devolved to the Scottish Parliament.

Phil Gallie: A couple of points have not been covered. Comments have been made about regulation in Ireland and the fact that Shawfield is a licensed track, but I am concerned that, although licensed tracks follow the rules until—in their opinion—the dog comes to the end of its useful life, dogs are then sometimes passed to unscrupulous tracks. The story that we heard about dogs from Ireland being sent to Spain is absolutely horrendous. That is a wider issue, but the petitioners might want to consider passing a similar petition to the European
Commission. The misery for the dogs is the same, whether they are in Europe or the UK. The petitioners, rather than the committee, might like to do that.

The Convener: They are listening.

Phil Gallie: Rhoda Grant mentioned COSLA. I am sure that COSLA could take action on animal welfare at unlicensed tracks. Councils could at least ensure that a vet is on site during races.

The Convener: When we receive the responses, we will get in touch with the petitioners. However, the matter will have to be pursued in the next session of Parliament, because this Public Petitions Committee has only two meetings left and we will not be able to resolve the matter in such a short period. I thank the petitioners for their evidence, which was useful.
Petition PE653

PE653 by Charlotte Gilfillan on behalf of students and staff of the Scottish Agricultural College (SAC) calling on the Scottish Parliament to consider the issues surrounding the Scottish Agricultural College board’s decision to relocate its Education and Research Services to Edinburgh, contrary to the Scottish Executive’s policy of jobs dispersal out of Edinburgh and to the detriment of the college’s ability to provide services for rural communities throughout the whole of Scotland.

Progress of the Petition

1. The petition was lodged on 25 June 2003, on the same date that the Environment and Rural Development Committee (ERDC) took evidence from a number of interested parties on the SAC proposals for rationalisation.

2. Subsequent to this meeting, the petition was initially considered by the Public Petitions Committee (PPC) at its meeting on 17 September 2003. The PPC agreed to refer the petition to the ERDC for further consideration in view of the Committee’s interest in the issues raised.

Background

3. The SAC currently has three campuses – Edinburgh, Auchencruive in Ayrshire and Craibstone in Aberdeenshire – and a variety of research and development farms, veterinary centres and advisory offices throughout Scotland. Core funding of approximately £18m per annum for education, research and advisory services comes from the Scottish Executive Environment and Rural Affairs Department (SEERAD). This funding equated to about 40% of SAC income in 2001-02. It should be noted that SEERAD plans to reduce SAC’s funding for education by 25% over the next 3 years.

4. In the light of this funding scenario, in May 2002 the SAC commissioned consultants Deloitte & Touche (D & T) to carry out a review of the SAC’s corporate strategy. As part of this strategic review, D & T were asked to identify a preferred option for the future of the SAC by appraising and assessing different configurations of service delivery. According to the review, the SAC maintains 4 times the infrastructure it requires, at a cost in excess of £300,000 a month. This finding has clear implications for the future of the current SAC campuses.

5. The preferred option identified in the report was to close the Auchincruive and Craibstone campuses, build a new headquarters and additional research and development accommodation at the Bush Estate in Midlothian and consolidate all educational services and the balance of research and development at King’s Buildings.
6. A number of stakeholders, including staff and unions, farming representatives and students of the SAC expressed great concern regarding this preferred option. As a result of these concerns, on 25 June 2003 the ERDC took evidence on SAC’s plans for rationisation from the groups listed above, and the Board of SAC. Following this meeting, the Committee wrote to the Minister for Environment and Rural Development and the SAC Board expressing a number of concerns regarding these proposals. This correspondence with the SAC Board and the Minister continued during the summer recess, and copies of relevant correspondence are annexed to this paper.

7. As a result of these concerns, and concerns expressed by the Minister, the SAC Board announced that a further phase to the D & T study had been commissioned. This study focussed on the educational strategy of the SAC, the viability of the options contained in earlier reports, and the potential for retention of services in the east and west regions. As a result of this third report, D & T continued to advise that the recommendations outlined in their earlier review remained valid and the SAC Board agreed to continue to pursue their core strategy or rationalisation of estates. However, they confirmed that a phased approach to parts of the project implementation process would be appropriate, and that some revisions to the preferred option identified in Phase 2 of the Report should be adopted.

8. The principal decisions arising from Phase 3 report were that—
   o SAC proposes to continue delivery of HNC/HND provision in the regions, initially by its own hand, then moving to a partnership basis;
   o SAC will adopt a hub-and-satellite model for delivery of education, with the hub being in Edinburgh, satellites initially in Ayrshire and Aberdeenshire, and with additional outreach services over a wider geographical area;
   o Research will be consolidated in the Lothians, but with the retention of specialist crop trialling, poultry and organic facilities in the regions;
   o The relocation of HQ has been postponed and will be reviewed in the light of business needs and affordability;
   o The SAC Board will seek to adopt a gradual phased approach to the release of assets from Craibstone, although the SAC believes that there remains a more urgent need to release assets at Auchincruive. The SAC has undertaken to explore every avenue with local agencies to develop the site to the benefit of the local community.

Copies of a letter from the Minister to the Convener, an open letter from the Chief Executive and Principal, Professor Bill McKelvey which outline these decisions are annexed to this paper together with a further letter from Professor McKelvey regarding petition PE653.
Options for action

9. The Committee is invited to consider how it wishes to deal with this petition. Under a change in the system of petition referrals, the following three options are available:-

Option A

10. The Committee has the option to agree to accept the referral and carry out further consideration of the issues raised in the petition. Any such consideration would of course require to be scheduled around the Committee’s existing work programme and legislative commitments.

Option B

11. The Committee may decide to refer the petition back to the PPC for further consideration, on the basis that the issues raised merit further action, but that the ERDC has insufficient capacity in its work programme to allow it to do the work itself. In this case, the views of the ERDC will be fully taken into account should an inquiry on the petition be instigated by the PPC.

Option C

12. The Committee may conclude that the petition does not merit further consideration in view of the work already undertaken on this issue by the ERDC, and subsequent events and decisions which occurred after the petition was submitted. In this case, the ERDC should refer the petition back to the PPC, explaining the rationale behind its decision, in order to allow the PPC to provide the petitioner with a detailed explanation as to why no further action will be taken in relation to the petition. It will also enable the PPC to consider whether any alternative action might be appropriate, such as referring the petition to the Executive or other public body.
Further to my letter of 9 August I am now writing to bring the Committee up-to-date with the position on the Scottish Agricultural College’s strategic review. My earlier letter indicated that the College had recently submitted their response to my concerns and that that was receiving consideration together with representations I had received.

I have now reached a view on SAC’s revised proposals and have written to the SAC Chairman to let him know the outcome. It might be helpful for the Committee to know my views.

Firstly, I welcome that SAC have listened to the concerns registered by Ministers and others in response to their preferred option arising from the Deloitte & Touche Phase II Report.

I am particularly encouraged by SAC’s revised proposals for education which reveal that SAC intend to place much greater emphasis on ‘sub-degree’ education being delivered in partnership with others on a more dispersed basis in Aberdeenshire, Ayrshire and other parts of Scotland. As a result of this evolution of the College’s proposals the number of students to be accommodated at Edinburgh is now likely to be less than half of the SAC’s total full time equivalent student complement.

The net results of these changes would be the provision of a more dispersed model of education provision, involving partnerships, while still having a central academic base at King’s Buildings for degree and sub-degree courses. In the meantime SAC have undertaken to continue with the provision of sub-degree courses at Craibstone and Auchencruive until the new alternative arrangements are in place.

These changes go a long way to addressing concerns about access to education provision in Aberdeenshire and Ayrshire. They also highlight that what is important is the delivery of services and not the campuses themselves - I think that this is a very important distinction.
A further consequence of the changes is that SAC now wish to adopt a lower cost option for reconfiguration in terms of capital investment by scaling back on the Phase II plans, including not relocating its headquarters unless the accommodation needs of education provision in Edinburgh should require it. By reducing the capital investment needs in this way the funding gap that was apparent in the College’s earlier proposals is virtually eliminated and SAC have assured me that they will be able to bridge the funding gap through either additional borrowings or receipts from the disposal of surplus assets.

SAC have also revised their financial projections on the basis of less austere but nevertheless realistic financial assumptions. The net effect has been to improve the financial viability of SAC’s proposals. These measures have confirmed SAC’s ability to fund the costs of the proposed reconfiguration from within their available resources, and I welcome that.

Furthermore the College’s revised proposals for education offer greater scope for the retention of jobs on a dispersed basis and mean that the number of jobs to be relocated to Edinburgh will be reduced. In the same vein the College’s intention to retain arable trial facilities in Aberdeen and their poultry unit at Auchincruive will have a similar effect.

As you know I believed that the Deloitte & Touche Phase II Report made a powerful case for change. Nevertheless, I had a number of concerns about SAC’s preferred option based on that Report. However having given very careful consideration to SAC’s response it is apparent that the College have listened to the concerns registered by me and others and I feel that the direction of travel that the College are now taking is the right one.

I am content, therefore, for SAC to press on with their intention to prepare more detailed business plans to fill out the operational and financial detail of their strategy. I have stressed to the College that in my view making substantive progress on reaching agreement with prospective partners for the delivery of education is a crucially important part of the work that lies ahead of them.

I have also stressed to the College that it is equally important for them to work closely with Local Authorities, the Scottish Enterprise Network and other appropriate organisations in helping to find alternative uses for the Auchincruive and Craibstone campuses.

I look forward to receiving SAC’s business plans and, in the interim, have asked them to continue to liaise with my Department so that it is kept informed of developments.

Lastly, SAC will be announcing the outcome of their strategic review at 2pm on Tuesday, 16 September 2003 and I should be grateful if the Committee would treat this letter on an “in confidence” basis until that time.

ROSS FINNIE
Dear MSP/MP

**SAC Strategic Review – Deloitte and Touche Phase III Study**

The SAC Board has today made public the details of the latest phase of the study carried out by Deloitte & Touche (D&T) together with information on the actions which SAC intends to take in response to the D&T III recommendations. The full text of the report, and SAC’s response to it can be viewed on SAC’s web site at [http://www.sac.ac.uk](http://www.sac.ac.uk).

**Main Issues**

The D & T Phase III Report covers four main issues on which the Minister, Mr Ross Finnie, asked for further work to be done:

- Clarification of SAC’s strategy for Education.
- The viability of various options identified in D & T Phase II.
- Plans for bridging any potential funding gaps.
- The retention of specific services in the West and North East.

The D & T Phase III report recommends that the SAC Board should continue to pursue the Preferred Option identified in the D & T Phase II Report.

However, after careful consideration of representations made by various stakeholders, regarding the future provision of specific services to local communities, the Board has concluded that some revisions to the D & T ‘Preferred Option’ should be adopted and that a phased approach to parts of the project implementation process would be appropriate.

This approach has been presented to the Minister, who has endorsed the “direction of travel” for SAC outlined in the revised proposals. SAC will now prepare a detailed business plan and the Minister will be kept fully informed of the details of the plan as it takes shape.

**SAC Board Responses to D & T Phase III Report**

a) **Education**

In response to students’ needs, SAC proposes to provide traditional HNC/HND provision on a regional basis in Ayrshire and Aberdeenshire, subject to market demand. Initially this will be by our own hand on existing sites, but moving to partnership delivery as soon as possible.
D & T Phase III has shown conclusively that SAC cannot sustain the ownership and management of more than one traditional campus. Therefore SAC will adopt a ‘hub and satellite’ strategy for Education delivery.

It is planned that the hub will be in Edinburgh with satellites initially in Ayrshire and Aberdeenshire. Additionally, Outreach Learning Centres will be developed over a widespread geographical area, using SAC’s network of offices and in partnership with other educational providers.

The net result of these changes will be the development of a dispersed model of education provision involving partnership arrangements which will ensure that student needs are met as comprehensively as possible.

b) **Research**

The overall strategy is to consolidate the majority of our research activities on facilities in the Lothians.

However, in response to stakeholder comment, we intend to retain some crop trialling facilities and our organic research unit (at Tulloch) in Aberdeenshire. We intend to retain our poultry research facilities in Ayrshire, subject to continued market demand. We will also retain Land Economy R & D staff in Aberdeen to continue productive working relationships with the Macaulay Institute and the University of Aberdeen.

c) **Consultancy**

No changes in the structure or geographical coverage of our Consultancy Division are envisaged as a result of the D & T Reports. Reductions in the overall overhead burden created by the current excessive estate will benefit the competitiveness of SAC’s consultancy services.

d) **Buildings and Facilities**

The strategy is to align appropriate resources with SAC’s future needs; to have facilities which are fit for purpose, and not overly large in capacity.

**Edinburgh**

The SAC Board has responded to stakeholder concerns regarding the projections for student numbers at Kings Buildings and the development of a new HQ at Bush.

Rather than moving to immediate implementation of the ‘Preferred Option’ in D & T Phase II (creation of a new HQ at Bush), the Board intends to postpone the relocation of the HQ and to review the position in due course in the light of business needs and affordability.

This will reduce the short-term requirements for capital to be released from other assets and allow more time to assess the likely needs for student teaching accommodation at KB.
Craibstone

As a result of postponing the development of a new HQ in Edinburgh, and the fact that the value of our assets at Craibstone is likely to increase in the medium term, the Board will be able to adopt a more gradual, phased release of assets from Craibstone. Our aim will be to work with the Local Council, politicians and Grampian Enterprise to develop the Estate in partnership with other organisations.

Auchincruive

Professional advice indicates that SAC owns and operates a very significant over-capacity of assets at Auchincruive, and that this asset base will not grow in value, even with considerable investment. Therefore there remains a need to release assets at Auchincruive.

A useful dialogue has been opened up with South Ayrshire Council and Ayrshire Enterprise to examine potential alternative uses for parts of the Estate.

We remain fully committed to continuing delivery of our services, including education programmes, in Ayrshire and to developing appropriate partnerships which will allow us to service stakeholders’ needs whilst releasing property holdings that are no longer required. Every avenue will be explored with local agencies to develop the site to the best advantage of the local community.

Services across Scotland

It should be noted that none of these proposals affect our nationwide consultancy and veterinary services provided from over thirty sites across Scotland. SAC will remain a pan-Scottish organisation, with most of its staff dispersed outwith the Central Belt.

SAC has always valued the inputs of parliamentarians and other representatives of local communities. The response of the SAC Board does, I believe, demonstrate that SAC has listened to the comments of stakeholders and has responded positively to those comments.

I now hope that all interested parties can work with us in helping to move SAC ahead to the benefit of land-based enterprises across the whole of Scotland and in evolving new and effective means for the local delivery of SAC led services.

Yours sincerely

W A C McKelvey
Chief Executive and Principal

The full D&T Phase III report is available on the SAC website: www.sac.ac.uk
Dear Ms Boyack

**Petition PE653 – ERDC agenda item for 19 November**

I understand that your Committee will be considering the above petition relating to SAC at its meeting next week.

The petition was presented to Parliament on or about the same time as SAC made public the Phase III findings from the Deloitte & Touche consultation and review process. As you will be aware, and as set out in my letter of 16 September to MSPs (which I now enclose for ease of reference), sentiments expressed in the petition have been overtaken by the proposals announced by the SAC Board on 16 September.

I propose to your Committee that the petition is therefore now irrelevant, given that the concerns expressed in the petition have now been largely addressed in response to stakeholder concerns, including those of your Committee and of the Minister.

I am of course happy for you to copy this letter to all the members of your Committee and, should you require any further clarification on these matters, I would be very pleased to provide further information.

Yours sincerely

[Signature]

Professor W A C McKelvey

*Chief Executive and Principal*

Enc.
PETITION PE365

PE365 Petition by Mr Iain MacSween on behalf of the Scottish Fishermen’s Organisation Limited, calling for the Scottish Parliament to review Fixed Quota Allocations which incorporate the track records of fishing vessels with a view to ascertaining with whom the property rights to Scotland’s fish stocks lie, and take appropriate action to ensure that the fish stocks that are currently under the jurisdiction of the Scottish Parliament are not sold to owners whose main place of business is outwith the UK.

The Committee considered petition PE365 at its meeting on 10 September 2003. The Committee agreed to conclude its consideration of the petition by noting the issues raised by the petitioner.

The Committee also agreed to write to the Minister seeking a detailed briefing on issues relating to quota ownership, and tradeability, particularly in the light of the current decommissioning schemes and restrictions on fishing opportunities. The Executive response is attached at Annex A.

The Committee is invited to consider whether it wishes to forward a copy of the response to the petitioner.
EXECUTIVE RESPONSE ON PETITION PE365

Summary of Response

- FQA system was reviewed in 2001/2002 and will be reviewed again in 2006

- Acknowledge that so-called “trade” in fish quotas takes place, but has not been encouraged or promoted by Fisheries Departments

- Owners of vessels decommissioned under the 2001 and 2003 Schemes have until 31 December 2004 to dispose of the FQA units associated with the vessel’s licence

- Shetland and Orkney Islands Councils have agreed to amend their schemes to bring them into compliance with EU law and proposed changes will be assessed by Fisheries Departments.

FIXED QUOTA ALLOCATIONS (Background):

The current quota management system operates on the basis of total allowable catches (TACs), which are set annually, at an EC level, by the Fisheries Council. These TACs are then divided between the Member States, who are, in turn, is free to determine the means for allocating its quotas.

Since January 1999, quotas have been allocated to groups in the UK, based on fixed quota allocation (FQA) units (originally based on reference period 1994-96 but updated during the course of 2002) of vessels in membership of the group as at 1 January of the relevant year. These groups are: Producer Organisation (POs), vessels over 10m not in membership of a PO, and all vessels 10m and under 10m. For vessels over 10 metres the units are linked to individual vessel licences and normally move with the licence when it is transferred or aggregated onto another vessel. FQA units are not normally associated with the licences of vessels in the under 10 metres fleet.

This FQA system involves each group (assuming no change in membership) receiving a fixed percentage share of the UK’s quotas each year irrespective of whether they fully finished their allocations in previous years (in contrast to the previous system of allocations based on a three year rolling reference period).

At the time of the inception of the FQA system, Ministers gave an undertaking to review the operation of the new arrangements in three years time. However, at the request of industry, this process was brought forward and was completed in 2002 with the new arrangements coming into operation on 1 September 2002.
Outcome of Review

It was decided that:

1. **The system of FQAs should be maintained and reviewed in 2006;**

2. Fishermen should be allowed to separate FQA units from licences when undertaking vessel licensing transactions, with special provision being made for those wishing to retain their FQA units pending the acquisition of a replacement vessel; and

3. POs will be able to manage ‘sectoral’ quota allocations for vessels of 10 metres and under in the same way as for vessels over 10 metres.

TRADEABILITY OF QUOTA ENTITLEMENT

Although it is repeatedly emphasised by the Fisheries Departments that POs or individual fishermen do not have a proprietary interest in their quotas, fish quotas are nonetheless transferred. One conclusion of the 2001 Review was that quota trading should be facilitated to allow vessel owners maximum scope to match their legitimate fishing opportunities with their fishing activities. This system of ‘swaps’ includes, from time to time, international swaps, which have proved very useful in situations where the alternative would be to close a fishery early. **At no time, however, have Fisheries Departments promoted or encouraged this so-called “trade in quotas”.**

QUOTA SYSTEM VIS-À-VIS DECOMMISSIONING SCHEME:

The owners of vessels decommissioned under the 2001 and 2003 schemes have until 31 December 2004 to transfer the FQA units from their decommissioned vessel’s licence to

(i) other vessels within their control or ownership
(ii) vessels outwith their ownership
(iii) producer organisations.

Any units that are not transferred by 31 December 2004 will revert to the Fisheries Departments for cancellation or redeployment as they see fit.

As regards foreign ownership of quota, the position is that under the terms of our membership of the EU our fishermen can buy licences/quota to fish in waters controlled by other EU nations in the same way as fishermen of other EU nations can licences/quota to fish here. We cannot discriminate between the owners of vessels (of whichever EU nationality) who are lawfully registered and licensed in the UK. However, the conditions attached to foreign ownership of licences include the following:

(i) quota can only be acquired from the existing UK fleet;
(ii) foreign licence holders must belong to a UK based fish Producer Organisation; and

(iii) it is necessary to demonstrate an “economic link” with this country. This usually takes the form of landings into the UK, but can also include crewing, purchasing services in the UK, transferring some of their quota to the indigenous fleet or a combination of all of these.

It should also be noted that foreign uptake of the UK quota during previous decommissioning schemes did not rise substantially. Despite this, we will ensure that this situation continues to be monitored by officials.

CURRENT/ FUTURE DEVELOPMENTS.:  

No. 10 Strategy Unit

The Scottish Fisheries Minister is on the Steering Group along with colleagues from the other administrations. Scottish industry interests are represented on the Stakeholder Advisory Group. Work is now coming to a conclusion and the final meeting with Stakeholders has taken place. Ministers have not, as yet, been advised of the conclusions of the Strategy Unit.

FQA System

The FQA system will next be reviewed in 2006.

A Working Group to examine a number of issues relevant to quota management (but not to review the FQA system), is scheduled to meet in early 2004. Its terms of reference have yet to be decided but, subject to Ministerial decisions in due course, it is likely that its deliberations will be influenced by the No. 10 Strategy Unit Report.

EC’s decision on Shetland (and Orkney) Islands Council Scheme:

Orkney and Shetland Councils accepted EC decisions announced earlier this year that their quota “purchase schemes” did not comply with EC law and the CFP and must be ended, or amended in order to comply. The Councils agreed to amend their schemes to bring them into compliance. OIC has already decided to formally notify (the Executive’s preferred option) its revised scheme to the EC as a state aid and seek formal approval for its introduction. Discussions continue with SIC, which may decide not to formally notify scheme; that is a matter for the Council. However, the Executive and Defra (the latter retains responsibility for fisheries state aids in the UK) are assessing the scheme changes and arrangements proposed by SIC, to determine that they are defensible in court. It is the UK Government, rather than the Council, which would be challenged.
SUPPLEMENTARY SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

I would also like to thank you for providing us with the opportunity to give evidence to the Environment and Rural Development Committee on 19 November 2003. Nora Radcliffe asked us two questions which we promised to respond to in writing.

Firstly, we stated in evidence that Nature Conservation Orders “appear to duplicate the powers Scottish Natural Heritage already have”. The basis for this statement lies in the fact that section 3 gives Scottish Natural Heritage powers to notify “interested parties” that a certain area of land is to be considered an area of special interest by reason of any aspect of its natural heritage. The remainder of chapter 1 of Part 2 of the Bill sets out a number of restrictions and procedures in relation to the SSSI, including a restriction on operations that can be carried on the land (section 16).

Section 23 outlines similar powers for Scottish Ministers. For example, Ministers can restrict operations (section 23(1)) on land that is in their opinion of special scientific interest by reason of any aspect of its natural heritage (section 23(3) (b)). Clarification is sought on the reason behind these apparent parallel powers.

Ms Radcliffe also asked a question on our evidence on section 19 of the Bill. I am afraid that the Official Report does not make her point sufficiently clear and I would ask Ms Radcliffe to write to me with her question, which I will be only too happy to respond to.

With regard to your request for information on single witness corroboration, this matter is still being discussed by the Criminal Law Committee and I am awaiting a report from the Secretary to that committee. As soon as I receive this information, I will pass it on to you.
SUPPLEMENTARY SUBMISSION FROM THE LEAGUE AGAINST CRUEL SPORTS

Snares and the Bern Convention

Thank you for your letter of 19 November. I would like to clarify an issue that I was questioned on my clerks during the meeting, on the Bern Convention on Conservation of European Wildlife and Natural Habitats. The UK became a signatory to the Convention in 1979, and ratified it in 1982.

DEFRA states the Conventions’ principal aims are

- to ensure conservation and protection of all wild plants and animal species,
- to increase cooperation between States in these areas, and
- to afford special protection to the most vulnerable or threatened species (including migratory species).

The Article the League is most interested in is Article 8, which reads as follows:

> In respect of the capture or killing of wild fauna species specified in Appendix III and in cases where, in accordance with Article 9, exceptions are applied to species specified in Appendix II, Contracting Parties shall prohibit the use of all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species, and in particular, the means specified in Appendix IV.

The Explanatory notes to the Convention clearly state that “Article 8 bans the use of large-scale and non-selective ways and means of capture and killing of fauna which may otherwise be captured, killed or exploited, or for which an exception has been made by the Contracting Parties.”

Free running snares are not considered by the Government to be an indiscriminate means of capture or killing. (please see attached letter from DEFRA). Bert Burnett of the Scottish Gamekeepers Association leant great weight to the converse view when he stated in the evidence given to the Committee last week (col 442) that rabbits are caught as non-target species, and that they are ‘usually dead’. This may contravene the Bern Convention’s obligations.

**Bert Burnett:** “Most of the non-target species that we get in snares are rabbits, which, as you can imagine, are quite abundant. They run through the woods using the same tracks as foxes and other animals.”

**Eleanor Scott:** “Of the animals that you catch, what proportion is already dead when they are found?”

**Bert Burnett:** “Very few. Rabbits and hares are usually dead, because the traps take them round the neck. We are taking measures not to catch deer, and I personally set traps in such a way that the deer would have great difficulty getting into the snare, so the problem tends not to arise. If the trap catches a deer by the leg inadvertently, there is obviously damage and you could not possibly let the animal go, you just have to kill it humanely, and that is the end of the deer, unfortunately.”
We are asked to believe that in some cases the snare kills humanely and in some cases it restrains humanely. Our evidence is that the snare is too unsophisticated a device to do both. This is shown effectively by the photographs from Les Stocker I distributed to members of the Committee of animals suffering from pressure necrosis.

We understand from legal advice, that for the use of snares and traps to be illegal it would have to be shown that it was intended that other animals that hare, stoat and weasel would be trapped and killed by the snares, therefore making it extremely difficult to demonstrate.

I would also like to add one further point, a suggestion arose in the meeting that there was a possibility of snares being padded in some way. The attached article, published by the Game Conservancy Trust, is relevant to this. In particular, I would point out that the items in question are considered to be traps rather than snares, and therefore not covered by the provisions of the Nature Conservation (Scotland) Bill.

I hope that this is helpful to you. Please do not hesitate to contact me if you have any further question. I trust that this letter will be forwarded to members of the Committee for their interest.
Nature Conservation (Scotland) Bill – Stage 1
Additional evidence

Following the evidence session at the Environment and Rural Development Committee on 19 November, the following additional information may be helpful.

Alternatives to snaring
Reference was made to a type of padded leghold trap. While the Scottish SPCA has not seen this type of trap in use, it is unlikely that this would be a fully humane alternative. Restraining an animal by a body part could lead to the animal mutilating or injuring itself in an attempt to escape. For example, a deer would probably run round in circles or attempt to leap away, suffering further injury as a result.

The Society advocates: use of humane live traps such as rabbit drop traps, live cage traps etc, followed by humane despatch; or gassing where appropriate and legal. Shooting/lamping continues to be the most common type of control and can be highly effective.

Problems with free-running snares
Figure 1 below shows the extent to which the wire of a free-running snare can be twisted by the struggles of the trapped animal – in this case, a badger.
Figure 2 shows a hare that died in a free-running snare. At post mortem examination it was seen that the eyes were bulging, and the skull and tissues above the line of the wire were suffused with blood, while the area below was pale – indicators of death by slow strangulation.