

**THE SOCIAL AND POLITICAL
DETERMINANTS IN THE FORMATION
AND IMPLEMENTATION OF HABITAT
CONSERVATION POLICY: THE WILDLIFE
AND COUNTRYSIDE ACT 1981**

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TABLE OF CONTENTS

VOLUME II

Page Number

CHAPTER 10	
<u>EFFICACY OF THE VOLUNTARY APPROACH</u>	
1) EFFICACY: THE ORIGINAL PURPOSE OF THE SYSTEM	360
2) HAS IT MATCHED UP TO THE PREDICTED PROBLEMS?	364
2)a) Problems Solved Since 1981	364
2)a)i) <u>3 Month Pre-Notification Loophole</u>	364
2)a)ii) <u>No Procedure For Proving Service of Notification</u>	365
2)a)iii) <u>Reciprocal Notification For S. 28 Applying To S. 29</u>	365
2)a)iv) <u>Management Agreements Not Available For Neighbours</u>	366
2)b) Continuing and New Problems	367
2)b)i) <u>Insufficient Resources</u>	367
2)b)i)1) <u>Lack Of Money For Management Agreements</u>	367
2)b)i)2) <u>Lack Of Money To Use Powers</u>	369
2)b)i)3) <u>Lack Of Administrative Resources</u>	370
2)b)ii) <u>Conflict With Other Systems</u>	371
2)b)iii) <u>Agricultural Conflict</u>	373
2)b)iv) <u>Management Agreements Rely On Voluntary Co-operation</u>	375
2)b)v) <u>Management Agreements Are Unenforceable</u>	377
2)b)vi) <u>Compensation Levels</u>	378
2)b)vii) <u>Inadequate Protection Through Land Use Planning Control</u>	380
2)b)viii) <u>Level Of Fines Too Low</u>	381

2)b)xi) <u>Restoration Provision Of Limited Use</u>	381
2)b)xii) <u>Lack Of Back Up Powers</u>	381
2)b)xiii) <u>Non-Use Of Back Up Powers</u>	382
2)b)xiv) <u>Only The Landowner Is Restricted</u>	383
2)b)xv) <u>Code Of Guidance Useless</u>	384
2)b)xvi) <u>Delay In Implementation Of NCOs</u>	385
2)b)xvii) <u>Notification Of PDOs Gives Over Strict Impression To Landowners</u>	385
2)b)xviii) <u>1981 Act Not Applicable Before Notification</u>	386
2)b)xix) <u>SSSI Designation Does Not Apply Below The Low Water Mark</u>	386
2)b)xx) <u>Management Agreements Are Negative In Nature</u>	387
2)b)xxi) <u>Landowners Proposing Operations For The Compensation Payments</u>	389
2)b)xxii) <u>Evidential Difficulties</u>	389
2)b)xxiii) <u>'Occupier' Is Not Fully Defined</u>	390
2)b)xxiv) <u>The Nature Of PDOs</u>	391
2)b)xxv) <u>NC Has No Power Of Entry To SSSIs</u>	391
2)b)xxvi) <u>No Time Limit On Reciprocal Notification</u>	392
2)b)xxvii) <u>4 Month Negotiation Period Is Too Short</u>	392
2)b)xxviii) <u>SSSI System Is Not Applicable To Offsite Problems</u>	393
3) CONCLUSION	394
4) EFFICACY & THE NEW REQUIREMENTS OF HABITAT PROTECTION	397
5) THE HABITATS DIRECTIVE	397
6) CONSERVATION (NATURAL HABITATS) REGULATIONS 1994	401
6)a) General Provisions	402
6)b) Special Nature Conservation Orders	404

6)c) Amendments to planning control	405
7) PLANNING POLICY GUIDANCE: NATURE CONSERVATION (PPG9)	408
8) THE AGRI-ENVIRONMENT PACKAGE AND OTHER INITIATIVES	412
8)a) Initiatives	412
8)a)i) <u>Farm Woodland Premium Scheme</u>	412
8)a)ii) <u>Woodland Grant Scheme</u>	413
8)a)iii) <u>Countryside Stewardship</u>	413
8)a)iv) <u>Rural Action</u>	413
8)a)v) <u>Project Grants</u>	414
8)a)vi) <u>Habitat Scheme - Former 5 year Set Aside & Saltmarsh</u>	414
8)a)vii) <u>Moorland Scheme</u>	415
8)b) Designated Areas	415
8)b)i) <u>Environmentally Sensitive Areas (ESAs)</u>	415
8)b)ii) <u>Nitrate Sensitive Areas (NSAs)</u>	416
8)b)iii) <u>Habitat Scheme - Water Fringes</u>	417
9) HAS THE UK GOVERNMENT IMPLEMENTED THE DIRECTIVE?	417
10) ASSESSMENT OF EFFICACY	418
10)a) Positive Features	419
10)b) Negative Features	419
11) CONCLUSION	425

CHAPTER 11	
<u>THE WAY FORWARD</u>	427
1) PROPOSALS FOR LEGISLATIVE CHANGE	430
2) THE GOVERNMENT'S SOLUTION - THE RURAL WHITE PAPER	432
3) THE PROBLEM	434
3)a) The European Dimension	435
3)b) The National Dimension	436
4) AN ANSWER?	443

APPENDIX 1	446
COMMITTEE STAGE IN THE LORDS	447
REPORT STAGE IN THE LORDS	480
THIRD READING IN THE LORDS	501
STANDING COMMITTEE D	514
REPORT STAGE IN THE COMMONS	563
COMMONS AMENDMENTS IN THE LORDS	604
LORDS AMENDMENTS IN THE COMMONS	628
TABLE 1	647

BIBLIOGRAPHY

BOOKS & ARTICLES	649
NEWSPAPER ARTICLES	667
PRESS RELEASES	667
ARCHIVE MATERIAL	668
OFFICIAL PUBLICATIONS	670
TABLE OF CASES	677
TABLE OF STATUTES	678

CHAPTER 10

EFFICACY OF THE VOLUNTARY APPROACH

1) EFFICACY: THE ORIGINAL PURPOSE OF THE SYSTEM

There are two types of efficacy, instrumental and symbolic. In relation to instrumental efficacy, a statutory provision will be efficacious if the impact realises the purposes for which it was enacted. In order to ascertain whether or not the Act is efficacious it is necessary to know what its purposes were. These purposes give "an objective standard against which actual impact can be measured" (Beerworth,1980:69). This is problematic because "legislation is typically enacted to serve a number of purposes which may be formulated at varying levels of generality, be short or long term in conception, be more or less clearly stated, or in the case of older legislation, difficult to ascertain" (Miers & Page,1982:217). As the NC pointed out, "objectives for nature conservation have been rather loosely and qualitatively set in the past, so that measures of attainment or shortfall are not easily made" (NCC,1984:41). These purposes were discussed in detail in Chapter 4, but as was noted there, section 28 control is rather lacking in purpose having been introduced at such a late stage. However, the NCC equate success with maintaining the status quo because "conservation is a largely defensive process, reducing the scale of human impact" (NCC,1984:41).

The purposes¹ of the SSSI provisions generally were to implement the Birds Directive and the Bonn, Berne and Ramsar Conventions, to provide a scientific network of sites² and to control damage by agriculture³. It was also directed towards a particular type of agricultural damage, positive operations. Thus damage through insufficient management was never foreseen. So in order to be considered efficacious the Act must implement the Directive and Conventions, provide a network of sites and control positive agricultural damage.

However, efficacy is not a black and white concept. Efficacy will depend upon "what is considered to be an acceptable balance between the realisation of its purposes on the one hand and the quantity and quality of unintended consequences on the other" (Miers & Page,1982:219). There were some unintended consequences of the Act, the destruction of sites by a number of landowners in the three month period for consultation before designation⁴. As for realising its purposes, damage overall has fallen. However, as a proportion of that damage agriculture has remained fairly constant, indicating that the levels of agricultural damage may well have fallen anyway. The amount of long term damage has also fallen. On this basis it would seem that the Act is partly efficacious, although according to the NC "it was generally assumed that the NCC would do what was

¹ In 1981.

² This is the purpose than came through from the NPACA 1949 provisions.

³ It is of course arguable that these 'purposes' do not apply to Section 28 as this was not intended to be part of the Act and only came in late in the parliamentary phase. However, Section 28 was based on the protection in Section 29 which was *intended to control damage by agriculture and it would be anomalous for Section 28 to have a different purpose from Section 29.*

⁴ This has of course been removed by the 1985 Amendment Act.

feasible and should be satisfied ... if habitat loss could be contained within reasonable limits" (NCC,1984:41). Whether a loss and damage rate running at about 6% per year currently is reasonable is purely subjective. "Even when conservation gains and losses are measurable, or at least identifiable, their significance as successes or failures must inevitably be a matter for subjective judgement" (NCC,1984:41).

Another approach is to look at the positive side of the WACA and see how many sites are now subject to management agreements, the process intended to actually 'protect' the site⁵. The number of sites protected has risen greatly, however, the actual area protected is not much greater. "The approach through persuasion is ... difficult to measure and, despite many successes, it must also admit to numerous shortfalls, if not outright failures" (NCC,1984:43). "Most management agreements merely prevent an intentional damaging operation. Few data are collected to show whether these agreements maintain interest on SSSIs, so it is difficult to show positive benefits for the several million pounds spent annually servicing them" (Rowell,1992:2).

There is thus a great difficulty in evaluating the efficacy of the WACA provisions. However, "the fact that it may not be possible to evaluate the efficacy of legislation exactly does not prevent us from identifying either the principal variables that influence the impact of legislation on behaviour and attitudes, or the gross outcome patterns that may be generally characterised as success or failure"

⁵ Unlike the prohibitions which merely temporarily prevent damage.

(Miers & Page,1982:220). Those principal variables have been discussed in Chapter 9 and the outcome does seem to be an improvement on the pre-Act situation.

Even if instrumental efficacy cannot be shown there is the possibility that the provisions could be symbolically efficacious. By the provisions of offences⁶ the Act indicates that it accepts that damage to habitats is not acceptable. The use of a consensus based system also shows willing to the farming community not to impose extensive controls over their activities. The NC obviously see this symbolic value as important: "there has been criticism that the Wildlife and Countryside Act does not go far enough. But we believe that it has gone far enough to convince the majority of landowners and farmers that they are not being victimised but rather encouraged to make reasonable concessions for wildlife and fulfil their traditional role of protecting and enhancing the beauty and diversity of the countryside. It is harder to say whether it will satisfy wider public opinion, as so few people can yet penetrate its complexity and so really appreciate its strengths or its weaknesses. But the crucial question is whether it will conserve Britain's priceless natural heritage. Only time will tell, but this is the only Wildlife and Countryside Act that there is likely to be for some years to come, so it is up to everyone concerned to try to make it work - conservationists, land managers and government alike. Anyone who abandons hope of its working or does not seize the opportunities it presents is putting the future of Britain's wildlife

⁶ Even though they are not enforced.

in jeopardy. Future generations are likely to judge this one harshly if it robs them of their birthright or tarnishes it beyond repair" (NCC,1982:6).

Because of the inherent difficulty in assessing the efficacy of the provisions, it will be considered whether they have performed better or worse than was predicted⁷. Thus the defects discussed in Chapter 2 will be reconsidered in the context of the operation of the system. Any defects that have arisen since the introduction of the system will also be considered. However, it must be remembered that any improvement on the predicted outcomes does not necessarily mean that the system is efficacious. This is because some of the criticisms made of the Act were based on different conceptions of what the purpose of the controls should be. Despite this, a general indication of the efficacy of the Act should be gained by this means. This will also highlight areas in need of reform.

2) HAS IT MATCHED UP TO THE PREDICTED PROBLEMS?

2)a) Problems Solved Since 1981

2)a)i) 3 Month Pre-Notification Loophole

This was removed by the WACAA 1985⁸. It proved to be a very important loophole as a large number of sites were intentionally damaged during this

⁷ See Chapter 2.

⁸ See Chapter 9 section 1a.

period⁹. The removal of this loophole helped to reduce damage to non-notified sites, thus making the impact of the Act less negative and more efficacious.

2)a)ii) No Procedure For Proving Service of Notification

This was removed by the WACSONA 1985. This was also an important loophole with a number of prosecutions taken by the NC being dismissed because there was no proof of service of notification.¹⁰

2)a)iii) Reciprocal Notification For Section 28 Applying To Section 29

This was a problem which related to unclear drafting and the interpretation adopted by the NC. "Notice of an operation under section 28 has been regarded, for practical purposes, as valid for section 29 even though it may have been given months before the section 29 Order was made. The twelve month safeguard period under section 29 may therefore have been considerably eroded by the time the Order is made, and the anomalous situation could arise of a section 29 hearing (following an objection to the making of the order) being held at a time when the owner or occupier has become legally free to proceed" (NCC, Annual Report 1984:6). An example of this happening is the case of *North Uist Fisheries v Secretary of State for Scotland* [1991] SLT 333 which led to the section 29 Order being revoked.

⁹ See Chapter 9 Figure 2.

¹⁰ See Withrington & Jones (1992:100) for details of the individual cases.

The NC practice of accepting a section 28 notice for the purposes of section 29 was an incorrect interpretation. This is because section 29(4)(a) refers to the 'commencement date'. The sensible interpretation of this is the date of the order, particularly as the definition was changed in section 28 in the Amendment Act. Such an approach by the NC is of course sensible because it is a process of continual negotiation but technically it is incorrect and they are depriving themselves of valuable negotiation time. If the NC were correct in their interpretation and additional notification was not required by the Act section 29 would be rendered practically useless. The problem is time. When the Amendment Act increased the period of negotiation in section 28 to four months, a corresponding alteration was not made for section 29. Therefore, under section 29 the NC have three months in which to offer a management agreement so that the additional protection applies. If they accept a section 28 notice they have four months of negotiation. If at the end of this four month period they have failed to conclude an agreement they may apply for a section 29 Order. However, this will be pointless, and the additional protection can never apply unless they offered a management agreement to the landowner before three months was up. Because of the ambiguity of the provision, the EPA 1990 replaced 'commencement date' with 'making of the order' which solves this particular problem.

2)a)iv) Management Agreements Not Available For Neighbours

This particular problem was also remedied by the EPA 1990 which gave the NC the ability to enter into agreements on land outwith or adjacent to SSSIs.

According to P Stuttard of CCW they "certainly use that facility so it's fully welcome" (Pers.comm.). In addition, there is the ability to identify consultation areas around SSSIs which are notified to the LPA. This was welcomed by P Stuttard as "something we probably would use more had we the capacity to do the work. There are so many other pressures that we barely use that facility" (Pers.comm). However, even without its use protection is strengthened "because there now is a requirement if the local planning authority thinks it may affect a neighbouring SSSI they must consult. Whereas it was just a discretionary thing, now it is an obligatory thing. In a way the consultation area almost becomes a belt and braces because the planning authority already has a requirement to consult if anything is likely to affect an SSSI so all we are doing is strengthening that and actually putting a line on a map and saying if it goes within that area you really must consult irrespective of whether you think it is going to affect the interests of the SSSI" (P Stuttard, pers. comm.).

Through these amendments a number of important loopholes have been closed and an attempt has been made to tackle offsite damage. The effect is to make the Act more efficacious.

2)b) Continuing and New Problems

2)b)i) Insufficient Resources

2)b)i)1) Lack Of Money For Management Agreements

Commentators argued that compensation levels would be so high and the NC's budget so small that it would not be able to conclude management agreements on

threatened sites. The issue of resources is linked to the financial guidelines which have been subjected to extensive criticism and are discussed below¹¹. However, this has not proved to be so much of a problem as was originally predicted. Compensation for management agreements was paid out of central funds from 1983 onwards. The issue of resources has diminished greatly, such that in 1994-95 EN spent £5.6 million on management agreements. This is likely to reduce according to EN because of an emphasis on positive agreements rather than profit forgone cases. In 1994-95 £3.9 million was on profit forgone agreements and the remainder under the WES and RES

However, in deciding to enter a management agreement, according to P Stuttard of CCW, "increasingly we're having to say, is this the best use of taxpayers' money? Is his claim reasonable and there is certainly an example in Wales where the landowner is prepared to enter into an agreement but it's so unreasonable, his claim is so huge it couldn't possibly be justified. We are miles apart and neither party is prepared to move. So we have said with the approval of council that we will walk away from this and we do not believe that it's in the best interests of nature conservation and taxpayers' money" (P Stuttard, pers. comm.).

One issue which was not considered at the time of the enactment of the WACA was that sites could be a source of money. This is particularly true for NNRs owned or leased by the NC. P Stuttard of CCW noted that "there obviously are sites where money actually comes out of that site and can be used to support

¹¹ At 2bvi.

others. Some coastal grazing marshes where large numbers of stock can be supported, and that is a central part of the management for the nature conservation point of view, generate quite a considerable income which can either be used to further manage that site or if there is a surplus beyond that can obviously be used to manage other sites" (pers.comm)

2)b)i)2) Lack Of Money To Use Powers

The criticism made was that there would not be enough resources to save all sites and that this would discourage the use of the section 29 Order and compulsory purchase. "The Act is at present backed by a resource base insufficient to deal effectively with even the administrative requirements for SSSI notification, which have produced an undesirable distortion of the NCC's balance of effort" (NCC,1984b:49). The NCC failed to save 140 ha of the 6,747 ha Walland Marsh SSSI in Romney Marsh in 1982, withdrawing objections to a MAFF drainage grant when "it was concluded that funds were not available to purchase the area" (NCC 1983 p 32). In contrast, in the debates on the Amendment Act, Sir Hector Monro claimed that "no Site of Special Scientific Interest has been damaged through lack of money" (Hansard:HC72,1246). Only 41 NCOs have been made (Withrington & Jones,1992) which may well indicate that such a theory is correct¹².

¹² Alternatively, it may be due to the fact that Section 29 Orders can only apply to sites of national interest. If few of these sites have been threatened, then the Orders will not have been made.

2)b)i3) Lack Of Administrative Resources

Part of the problem of administrative resources is related to the requirement of re-notification for all sites previously designated under the NPACA 1949. According to Adams (1985:11), "administrative resources are too small for the task they [the NC] face: first, renotification of existing SSSIs and notification of new sites; second, casework arising out of the renotification as owners and occupiers seek management agreements; third, monitoring of sites". Even by 31 March 1995 renotification had not been completed. According to RSNC (1989:15) pressure on resources is leading to many proposed SSSIs not being notified.

In addition to renotification, there are also resource issues involved with the enforcement of the provisions. "The prevention of damage to SSSIs has been shown to require more than just the goodwill of landowners and the inducement of generous management agreements. Enforcement is important. It is beyond the current resources of the NCC, and demands legal and investigative skills beyond those possessed by NCC regional staff" (Adams,1985:12). This has been tackled to a limited degree with the use of investigating officers (Withrington & Jones,1992). However, even discovering that an offence has been committed is often difficult. The NC does not have the resources to visit every site. An example of this was given by W Jones of EN when a golf fairway was put straight through an SSSI and staff did not find out until much later.

2)b)ii) Conflict With Other Systems

This problem is well illustrated by the Cardiff Bay Barrage Act 1993 which will damage the Taff/Ely SSSI. The RSPB complained to the EC Commission about an alleged failure to comply with the Birds Directive but the Commission has accepted that the project fulfils the criteria of overriding public interest. Another example is the proposed Channel Tunnel rail link which, according to W Jones of EN, goes through every woodland in north Kent because it is the cheapest land¹³. As RSNC (1989:8) point out "notification of SSSIs reduces the speculation value of land therefore routing of roads through 'protected sites' can be a cheap option".

The problem tends to be that nature conservation is accorded quite a low priority in deciding planning applications. This is clearly illustrated in the work of the RSPB on development plans (Bain Dodd & Pritchard,1990). As P Stuttard of CCW points out, "it becomes very difficult for a local authority if the proposal is significant in terms of jobs. A case in point is the public inquiry which is coming up on the Dee over at Mostyn Dock where there are proposals to extend the dock. Now that proposal affects an internationally important estuary, obviously it's an SSSI, but it's considered potentially very important for the local job market and the local economy is not as healthy as it might be. So there is a real problem in that sort of situation of jobs versus birds and in that case they'll plump for jobs" (pers. comm.).

¹³ According to RSNC (1989) two SSSIs are threatened by the link.

This is not unusual. In 1990 Havering DC granted outline planning permission on Rainham Marshes, the largest SSSI in Greater London, and the Secretary of State did not call in the application. Poole BC granted itself planning permission for housing on Canford Heath. This was challenged in the High Court in *R v Poole Borough Council ex parte Beebee* [1991] JPL 643 and was unsuccessful. However, in this case the Secretary of State did step in and revoked the permission under TCPA 1990, section 100. Similarly in *R v SOS for Transport and SOS for the Environment ex parte BBONT, FOE, WT, WWF UK* (Unreported) the application for leave to seek judicial review of the decision to build the Newbury Bypass through a proposed Special Area of Conservation (SAC)¹⁴ was dismissed.

According to a FOE press release of 21 March 1996 a number of Ramsar sites are under threat because "sites have not been designated for economic reasons. Some sites and parts of sites have been excluded from designations because they are earmarked for development. For example Cardiff Bay was excluded from the Lower Severn Estuary Ramsar site, despite its international importance for birds".

However, in the case of Red Moss SSSI¹⁵, the Secretary of State for the Environment has stepped in to prevent Bolton MBC using it as a waste disposal site (FOE,19-5-95). In addition, the Amey Roadstone Corporation has been persuaded to surrender a quarrying permission on Asham Woods SSSI (FOE,17-3-95).

¹⁴ Explained below: section 5. The route goes through three SSSIs (FOE,27-11-95).

¹⁵ The site which was the subject of *R v NCC ex parte Bolton MBC* [1996] JPL 203 discussed in chapter 9.

2)b)iii) Agricultural Conflict

This was a major criticism of the provisions when they were first enacted. Typical of these criticisms are the comments of Ball (1985:17), "the widening rift that has developed between policies for agricultural development and those for the protection of the environment has placed the individual landowners in an impossible position. They have been expected to head in two opposing directions at the same time".

The production oriented policies of agriculture conflict in many ways with the objectives of nature conservation (Commission Communication,1988). This is typified by MAFF agricultural grants. "In all but the most remote parts of Britain, the features of value for nature conservation are the result of low-intensity use, usually characterised by traditional management systems. The financial structures of modern agriculture and forestry are geared, however, towards increased production, not towards low-intensity management and the conservation of wildlife. At the same time, most SSSIs are on private land whose owners wish to take advantage of the same grants and tax incentives available to them as their neighbours" (NCC,Annual Report 1985:12). This problem was discussed in depth by the House of Commons Select Committee on the Environment (1985:ch3,para45), "By the offer of capital grants and the working of the price support mechanism farmers are, in effect, actively encouraged by MAFF policy to damage the environment. DOE, NCC or a local planning authority then enter the arena and have to fight against that pressure by compensating them ... The

illogicality of one part of government (MAFF) offering financial inducement to someone to do something which another part of government (DOE and related bodies) then has to pay him not to do is clear ... To prevent the conflict the farmer should not be encouraged to damage the environment in the first place".

The problem is particularly acute in the Highlands and Islands where nature reserves and SSSIs have been attacked as 'sterilisation of land', with loss of potential revenue and job opportunities. Rural socio-economic problems have reinforced this pressure. In particular, "EEC support for development of marginal agriculture is viewed as a valuable social subsidy to counter depopulation of remote areas, and conservationists' anxieties are regarded as unacceptable interference by people who do not have to live in these problem areas and whose contact with them is at best only seasonal. Nature conservation becomes equated with anti-development attitudes held by people who mostly belong to better-off parts of the country" (NCC,1984:78).

However, the grants have changed in their focus¹⁶ and as Phillips (1985:2) notes, "Many conservation organisations, as well as the National Farmers Union and the Country Landowners Association, recognised ... that there is a need for changes in the agricultural policy to create the right climate for the longer term protection of wildlife". Agricultural policy is now seen as less of a threat to conservation. "The grants scheme has changed so significantly so the climate generally has changed. There clearly has been a dramatic change because when the first

¹⁶ See chapter 9.

agreements and the first notifications under section 28, and coming through to us the notifications of PDOs, most things were potentially at least supportable by some sort of grant from the agricultural department whereas now very few are. So this is a very different situation than that we now find ourselves in, and what that means is, whereas most agreements in the early days were compensatory, profits foregone type of agreements, now they're either entirely positive, in other words we're paying for works which will actually enhance or improve the nature conservation value of that site, or at least in some way depart from a compensatory which is a relatively small part" (P Stuttard, pers.comm).

When this is combined with the duties of the Agriculture Minister in the Agriculture Act 1986, which takes account of conservation, the threat from agriculture seems to be diminishing. The effect of much of this has yet to be seen in the loss and damage statistics but there is no doubt that the feeling from those working with the system is that agriculture is no longer the devil it was once considered to be.

2)b)iv Management Agreements Rely On Voluntary Co-operation

"The 1981 Wildlife & Countryside Act remains the cornerstone of the government's policies for landscape and wildlife conservation. Its emphasis on the 'voluntary approach' ... remains extremely controversial" (Secrett & Porritt,1989:21). A fundamental criticism of the use of management agreements was that landowners would not enter into them. This was pointed out by Adams (1984b:45) "There is no requirement in law for the owner or occupier to accept a

management agreement offered by the NCC in response to his request to carry out a PDO". However, the alternative that he suggests "to try to forestall the owner's formal request to carry out a PDO by stressing the bureaucracy of the Act and offering a S.15 agreement (under the Countryside Act 1968) at an earlier stage when there is less pressure on negotiations", is unrealistic. The NC are unlikely to undertake the cost of an agreement on a site that isn't threatened when it may need those funds to save one which is. In addition, the negotiation of such an agreement is costly in terms of staff time. Of course it is impossible to force a landowner to enter an agreement, however, a large number have obviously been willing to do so as nearly 50% of all sites are now protected by such agreements.

Barney Holbeche of the NFU believes that farmers are willing to enter agreements because they guarantee security of income, particularly as they take account of individual circumstances. According to Peter Stuttard of CCW, even those landowners who are unwilling are usually persuaded to enter management agreements. "It may take a long time in some cases but usually most people are persuaded. That persuasion may involve the threat of a section 29 order, but, particularly if they are advised by a solicitor or the NFU, with the threat of a section 29 order they'll say 'OK I think my best course of action is to talk money with you'. You can't guarantee that that mechanism will deliver, but it is there, and it is one which the NCC and the new agencies have used" (P Stuttard, pers. comm.).

Despite this there are limitations on the voluntary approach. According to the FOE press release of 11 September 1996, the delisting of "one of Britain's finest

National Nature reserves highlights a serious flaw in the UK's wildlife protection laws. The Branton Burrows NNR¹⁷ will be lost because the owner cannot agree with the official wildlife agency, English Nature, on how the area should be looked after". EN is unable to renew its lease and the NNR status will be lost. The reason for this limitation is that "conservation by consensus gives the wrong message. There is no sense that sites are protected. It is all about amelioration and restoration" (W Jones, pers. comm).

2)b)v) Management Agreements Are Unenforceable

Another of the criticisms made was that management agreements are unenforceable. This is of course true, however, P Stuttard of CCW claims that such breaches are rare. "There are cases where someone has clearly breached the terms of an agreement, not many maybe but there are instances and in a way the law of averages would suggest it's almost bound to happen, either deliberately or through unfamiliarity with what was actually agreed to on the day. He signs on the dotted line and three years later he's forgotten all about the detail of the agreement and inadvertently does something and is embarrassed. Whereas some I suspect probably say 'oh they won't find out about that'" (P Stuttard, pers. comm).

A breach of the agreement would not be in the landowner's best interest because the agreement could be terminated and he would lose the money. Although such an approach is unlikely, "Following the voluntary principle one would work try

¹⁷ The area is also listed as a UNESCO Biosphere Reserve.

and work closely with the individual and bring it back on track. Most activities probably don't do any serious damage to a site so the situation is retrievable. In terms of maintaining the rapport with that individual, although he's done something he shouldn't have done, in the best interests of the site, it's rap him on the knuckles you shouldn't have done this and with work we can put it right. In some situations I think they would be very concerned if we did pull out money wise" (P Stuttard, pers. comm).

2)b)vi) Compensation Levels

According to the House of Commons Environment Committee Report (1985:ch3,para48), the generous nature of the financial guidelines encourages co-operation. However, this generosity has received the most criticism. "There has been particularly severe criticism of the decision to give owners and occupiers automatic entitlement to payment from the NCC or relevant planning authority where an agricultural grant has been refused by Ministers on conservation grounds" (NCC,1982:2). According to Adams (1984:68), "The principle of full compensation for profit forgone in the national interest is one which no other industry or social group in Britain enjoys. It is an anachronism that country landowners and farmers should be rewarded in this way for usually minor constraints on their activities in the national interest". Wyn Jones called the financial guidelines a millstone around the neck of EN. He gave an example of an Essex landowner who is receiving payments of one million pounds per year.

One problem with the guidelines is their complexity. In their report of 1986/1987, the NCC called for a more simplified system. This complexity is because the guidelines "require the calculation, in detail, of future levels of profit in existing and proposed forms of land use. The calculation involves estimates based on regional data collection, MAFF's crude land classification, or else the farmer's own statements, to base them on. It also involves estimates of the prices received by the farmer as well as variable costs (seed, fertiliser, sprays, labour, feedstuffs) and fixed costs (e.g. machinery, capital repayments or drainage investments or new roads) ... calculations like these are based on expert and sophisticated guesswork" (Adams,1984b:54). Because of their complexity, in many cases negotiations are handed over to official land management advisers. If agreement is reached, their fees are payable by the NC. "The correspondence and as a result, the staff time and cost, borne by the NCC fulfilling their side of the negotiations is considerable" (Adams,1984b:32).

The size of such payments is inflated also by the CAP. "A large proportion of the compensation money represents subsidies given to the farmer through high consumer food prices set by the EEC" (Adams,1984b:56). The grant element in compensation payments has of course been excluded for afforestation grant but remains for other agricultural grants. However, unless the proposed operation is ineligible for grant, or the operation is begun unilaterally, the amount of grant which *might* have been paid to the landowner is added to the calculation of profit forgone by not developing the area. No assessment is made as to whether the operation proposed is even sensible. Even unrealistic schemes will still benefit from this calculation. The effect of this is that the NC must pay the farmer "not

just for profit foregone on his own investment, but that on a MAFF grant he never even received" (Adams,1984b:55). "It is particularly unreasonable that this money is seen to be going 'to conservation' when it in fact reflects the Alice-in-Wonderland economic world of British agriculture" (Adams,1985:14). In this way, the Financial Guidelines totally eliminate risk for the farmer. However, according to Bell their inclusion is necessary, "should the grant be removed automatically from the calculations then the scales would be weighted against an owner choosing the conservation option, thereby reducing the element of genuine choice" (Bell,1985:17). This is echoed by the NFU (1984): "to exclude such considerations from the payment would be inequitable".

However, the NC are moving away from the emphasis on profit forgone agreements towards positive agreements such as those under the WES. The Financial Guidelines do not apply to these agreements and payments are banded thus reducing complexity.

2)b)vii) Inadequate Protection Through Land Use Planning Control

Much of this criticism has centred on those activities which fall outside of development control such as activities exempted under the general development order. The application of the protection when it does apply is dependent on the individual local planning authorities which vary in their approaches¹⁸.

¹⁸ Examples of some particular cases are given above: section 2bi.

2)b)viii) Level Of Fines Too Low

The penalties have been raised since the introduction of the Act but still are relatively low when compared to profits that can be made by carrying out certain operations. As discussed in Chapter 9, they provide little or no deterrent effect and because prosecution is so rare are relevant in very few situations. "I suspect that in most situations the level of fines available is probably sufficient but it is what fine is actually imposed within that constraint which is often very minimal" (P Stuttard, pers. comm). In eight successful prosecutions detailed by Withrington & Jones (1992), the average fine was £606 with costs of £576.

2)b)xi) Restoration Provision Of Limited Use

This problem is summed up by Peter Stuttard of CCW, "Once a field is ploughed it's ploughed we can't do anything about that. If someone has pulled the plug out on the water level usually you can put that back. Clearly some are retrievable others are not" (P Stuttard, pers. comm).

2)b)xii) Lack Of Back Up Powers

The fact that there was no real stick to back up the carrot was a central criticism of the SSSI system. Mechanisms are available for preventing damage to certain SSSIs (NCOs, prosecutions and CPOs) however, they have been used very sparingly, particularly when you consider the volume of damage. Weak as these mechanisms are, their use would be better than nothing. However, the lack of

compulsion in the Act was viewed differently by the House of Commons Environment Committee Report (1985:ch2,para10): "this is not negative, but positive, as it is the only way to develop good will towards conservation in the farming community and a stable system of consent and common purpose in the long term". The NC has explored the use of other mechanisms for SSSI protection. According to Withrington and Jones (1992:96), "injunctions have proved successful on the small number of occasions they have been sought".

2)b)xiii) Non-Use Of Back Up Powers

When they are used, the back up powers can work. "Nature Conservation Orders have been generally effective in getting owners and occupiers to negotiate management agreements with the NCC. In only one case, on the Somerset Levels, has the NCC resorted to making a compulsory purchase order" (Withrington & Jones,1992:96)¹⁹. However, according to Adams (1984b:46), "The threat of a CPO has sometimes been enough to persuade reluctant owners to sell. This was certainly the case in the Ribble Estuary, where 2000 hectares were purchased in March 1978 for £1.7 million, the owner agreeing to sell after the NCC instituted CPO procedures".

CCW has made one CPO. When they were acquiring a reserve there was a small portion in the middle of the area for which they could not find the owner. "Rather

¹⁹ Although it was never actually implemented. Mr Sweet signed an agreement over his land holdings in the SSSI after the judge made a Tomlin order.

than leave it and not manage this part of the system, we actually compulsorily purchased it and put the money into a bank account until somebody came to claim it. The mechanism was available to us so we were able to acquire the whole site and not have a hole in the middle" (P Stuttard, pers. comm).

2)b)xiv) Only The Landowner Is Restricted

When the Act was conceived, the focus was on positive agricultural damage performed by the landholder. Thus the controls were directed at reducing this sort of damage²⁰. Since the passage of the Act a number of other sources of damage have become apparent and these are not covered by the provisions of the Act. Figure 3 in Chapter 9 shows the high levels of recreational damage. "The majority of the recreation incidents involved off-road vehicles. Their users are usually third parties operating without the permission of the landholders and, therefore, are not covered by the provisions of the 1981 Act" (Rowell,1992:49). There is also damage by walkers and horse riders. Staunton Harold Reservoir lost its SSSI status because increases in recreational use "resulted in such a reduction in its use by birds that it no longer merited designation" (RSNC,1989:12).

This sort of problem, although outside the provisions of the WACA, is tackled by the NC. "Many of the problems are possibly within the National Park or National Trust land. Snowdonia is a good example. Through liaison with the National Trust and the National Park one can positively manage to try and reduce the

²⁰ Although Section 29 WACA provides for damage by parties other than the landowner.

amount of damage that is recreational" (P Stuttard, pers. comm.). However such an approach will not work for all types of damage. An example of this is damage caused by activities outside of a site such as the release of slurry or fertiliser upstream of a SSSI²¹. "The most difficult area of all is fly tipping, they are here one day gone the next. We haven't a clue who it was, where they came from. That's usually only a small scale problem on sites but it's a continuing one. You can usually retrieve the situation to a degree but it's a bit problematic" (P Stuttard, pers. comm.).

2)b)xv) Code Of Guidance Useless

The reason for this is partly because the code of guidance was originally intended to be the only protection for the majority of sites²². When protection was extended by the introduction of what became section 28, the code of guidance no longer served any real function. It was used to try and persuade landowners to voluntarily comply with the provisions of the WACA before they actually applied. For example on sites designated under the NPACA 1949 which had not yet been notified under the WACA. However, this was an abject failure. A large number of sites were intentionally damaged by the landowners before notification.

²¹ Although the ability to enter management agreements with adjacent land can help with this.

²² See chapter 6.

2)b)xvi) Delay In Implementation Of NCOs

According to Adams (1985) NCOs have been taking an average of 2-3 weeks to process. The effect of this has been ameliorated by the extension of the negotiating period in section 28 provided by the section 2(7) WACAA 1985. However, this has to be by agreement. Sites may still be lost if the four month moratorium is up and the NCO cannot be processed in time. The NFU, in their evidence to the House of Lords Environment Committee (1985), stressed that "the Government should endeavour to ensure that section 29 Orders are speedily available to prevent damage where management agreements cannot immediately be concluded" (NFU,1984).

2)b)xvii) Notification Of PDOs Gives Over Strict Impression To Landowners

Wyn Jones of English Nature is unhappy with the PDO list. He refers to it as "a standard list which is extensive and a catch all. It is not a very helpful indication of areas for consultation" (W. Jones, pers. comm). Writing from the point of view of the landowner, Bell (1985:16) considers that "the list of potentially damaging operations (PDOs) that confront SSSI owners can be truly formidable. Everything is included about which there could be any doubt and a blanket list is sent to all owners of the same site, so in some cases the PDOs can be quite inappropriate for a particular part of a site within one ownership. Arrangements can be agreed to provide exemptions from notification on particular operations or levels of operation but all this takes time. A growing number of owners are also complaining that activities that have been undertaken on sites for many years are

being curtailed without a plausible explanation". This is partly related to the problem of sites in multiple ownership / occupation. The PDO list covers the whole site. Activities that may damage one part of the site may be perfectly acceptable on another. In addition, because the PDO list cannot be altered there is naturally a tendency to include everything that is or may in the future be a possible threat to the site.

2)b)xviii) 1981 Act Not Applicable Before Notification

The process of notification is a lengthy one. Every owner and occupier must be notified in relation to the whole of each site and there are on average over five landowners per site. Until a site is notified under the WACA, its protections do not apply. According to the National Audit Office (1994:11), "preparation of the case for notification through to Council approval took between 10 months and 3 years, depending on the amount of supporting scientific work required, the extent to which the site is threatened, the number of objections and the workload of the region".

2)b)xix) SSSI Designation Does Not Apply Below The Low Water Mark

SSSI designation does not provide any protection for a number of important habitats such as sand banks and shallow estuarine waters. This is because SSSI designation is limited by the boundaries of local authority jurisdiction and of private ownership. SSSIs are based on the notification of LPAs and landowners. The effect of this is that controls can only apply over land down to the mean low

water mark. Although NC practice is to designate below in such areas as the Wash. This means that "many parts of Ramsar sites are unprotected" (Ball,1990:77).

"These areas are some of the most vulnerable to development, with a recent NCC report showing that 56 out of 136 estuarine SSSIs had suffered damage between 1986 and 1989. The lack of protection for these areas calls into question the Government's ability to satisfy the Ramsar Convention on Wetlands of International Importance, 1971 and the EC Birds Directive 79/409 in relation to protected sites" (Ball,1991:83). There is of course the provision for Marine Nature Reserves (MNRs) in section 36 WACA. However, only two MNRs have been declared and there are a number of difficulties in their operation (Warren,1996).

2)b)xx) Management Agreements Are Negative In Nature

The House of Commons Environment Committee Report (1985:ch3,para43) criticised management agreements as being unduly negative in nature. "The most common criticism of management agreements is that they are too negative and preventative in character". The reason for this is that payment is for not damaging the environment rather than for positively conserving the environment²³.

²³ This can be contrasted with the agreements under the Wildlife Enhancement Scheme which are designed around positive action.

This negative view of management agreements was not held by the NCC who believed that "management agreements offer a positive means of achieving nature conservation and should not be seen simply as compensation payments. Unfortunately the notion has gained currency that conservation equals inaction. The 1981 provisions, if interpreted negatively, reinforce this view. But whilst it is true that in most cases the status quo is preferable to any intensification of land use, our aim as conservationists is not merely to maintain but, wherever practicable, to enhance the wildlife interest of SSSIs. The mechanisms in the Act present the opportunity to build positive elements into management agreements. These can also provide the farmer with a sense of achievement - different in kind from, but no less satisfying than that to be gained by improving the efficiency of his farming operation" (NCC,Annual Report 1983:4). This is also the view of Bell (1985:17): "In concept, management agreements are entirely positive but too often they are seen to arise out of conflict when they are triggered by a proposal to develop which is objected to by the conservation agency. This emphasises the restrictive rather than the positive aspect of the agreement".

Such a view is not, however, shared by Rowell (1992:32 who commented, "whatever the extent and apparent achievements of management agreements, the vast majority are preventative. They pay landholders for not doing something. It could be argued that they actually achieve nothing, as conservation is not advanced by them, but merely prevented from regressing".

2)b)xxi) Landowners Proposing Operations For The Compensation Payments

This fear is expressed by Rowell (1992:31): "some landholders will submit a PDO notice which there is no intention of implementing, so that a compensatory agreement can be obtained. This remains a particular problem with the negative type of agreement prescribed by the Act". According to Wyn Jones of EN this happens quite often, particularly in Scotland where many of the estates are huge and have many SSSIs on them because much of the land is marginal. This possibility was also recognised by P Stuttard of CCW: "you never know at the end of the day whether it's all a bluff. In most cases if somebody says they are going to do something you've got to take it at face value. There may be agreements that have been entered into when, at the end of the day, if we'd walked away from that agreement nothing would have happened, it was a way of supplementing his or her income" (pers. comm.). This problem is likely to reduce in importance with the emphasis moving away from compensatory agreements to positive ones under the WES.

2)b)xxii) Evidential Difficulties

There is a big problem in discovering that damage has occurred on a site. Because NC resources are not such that every site can be visited, damage is often not discovered as part of routine monitoring of sites. Instead, the NC has to rely on a number of other sources. "The obvious ones are interested neighbours of whatever description, interested members of voluntary conservation organisations but also of course our own staff, either as part of a planned programme of visits, or

because they're travelling from A to B and literally just see it as they are travelling past" (P Stuttard, pers. comm.).

Even when damage has been discovered, there are difficulties in proving when it occurred. "That can be very difficult. Sometimes you can't even say to the nearest year when it might have happened. The problem is, that we clearly don't have, and I don't think that we would ever expect to have, sufficient manpower or other resources to enable us to visit sites at least once every six months which is what the system would ideally require. That is not a realistic option. I'm sure we never thought that it would be and it's a fact of life and we've got to determine what the priorities are and identify the sites which we believe are under the greatest threat from whichever source that might be" (P Stuttard, pers. comm.).

2)b)xxiii) 'Occupier' Is Not Fully Defined

This particular problem of definition was highlighted in *Southern Water Authority v NCC* [1992] 3 All ER 481. A large proportion of damage is short term and agricultural and is caused by overgrazing, particularly of moorland. "This damage could be remedied by reducing stocking levels, but much of the area affected is subject to rights of common grazing and this hampers management efforts" (NCC,1990:21). The NC can "negotiate management agreements to alter the intensity of grazing with most farmers, but have no statutory power to come to similar agreements with commoners" (NCC,Annual Report 1989:14). This is particularly important as a quarter of SSSI land in England and Wales is common land. The question of commoners was not addressed in *Southern Water Authority*

v NCC when Lord Mustill considered the definition of occupier. It is NC practice to treat them as occupiers, relying on a statement by a government minister during the debates on the Environmental Protection Bill. However, the situation is in need of clarification.

2)b)xxiv) The Nature Of PDOs

Much of the reported damage, particularly short term damage, is a consequence of inappropriate management. This cannot be listed as a PDO because it involves doing nothing. Insufficient management has become a serious problem, accounting for the largest area suffering long term damage²⁴ in 1993/94. When you consider that these are only figures from England the scale of the problem becomes apparent. "This type of problem is particularly acute on heathland and lowland grassland where lack of appropriate management can lead to scrub encroachment or bracken invasion. While NCC can offer a management agreement in such cases of insufficient management, if this is declined it cannot be insisted upon" (NCC,1990:22).

2)b)xxv) NC Has No Power Of Entry To SSSIs

There is a power of entry under section 51 to see if a NCO should be made or if an offence under section 29 has been committed. However, there is no such power

²⁴ 816.7 hectares which was 42.6% of the area suffering long term damage (EN, Annual Report 1994, SNH, Annual Report 1994, CCW, Annual Report 1994).

with respect to section 28. Thus the NC may be unable to ascertain whether a site merits designation or if an offence has been committed.

2)b)xxvi) No Time Limit On Reciprocal Notification

If the NC give consent they cannot put a time limit on it. According to Wyn Jones of EN, this is avoided by EN officials writing the notification for the landowner which includes time limits. However, this is "a bluff because we haven't got a leg to stand on" (W. Jones, pers. comm.)

2)b)xxvii) 4 Month Negotiation Period Is Too Short

The other problem with the use of management agreements is their complexity and the length of time taken to negotiate them. The NFU believes that this certainly puts some farmers off (B. Holbeche, pers. comm.). The problems are recognised by the NCC. "While some agreements are relatively simple and readily concluded, others can be highly complex, involving not only landlords and tenants, but trustees, charities, partnerships and other forms of tenure. They may require an appraisal by the agriculture departments and the involvement of the District Valuers and the Treasury solicitor. Many parties may therefore be involved in negotiations and the implementation of present procedures has proved cumbersome and extremely time-consuming" (NCC, Annual Report 1986). In addition, "difficulties have arisen over situations in which management agreement negotiations are conducted with agricultural tenants who have contractual responsibilities with landlords under the provisions of the Agricultural Holdings

Act" (NCC,Annual Report 1986)²⁵. This point was particularly stressed by the House of Commons Environment Committee Report (1985).

This problem has been helped by WACAA 1985 which provided for an extension to the negotiation period by mutual agreement. "If such an extension is agreed but no resolution of differences is possible, there is a provision for the protection of the site for an additional month beyond the break-off of negotiations, thereby enabling NCC to seek a S.29 Order from the SOS before the proposed work can proceed" (NCC,Annual Report 1985:16). According to the National Audit Office (1994:23), the move towards shorter positive agreements has reduced the negotiation time to an average of 18 months.

2)b)xxviii) The SSSI System Is Not Applicable To Offsite Problems

According to The Times, 5 September 1996, off-site water extraction is presenting a big problem, "Up to 89 sites of special scientific interest ... are being ruined by over-abstraction". Particular examples are Redgrave and Lopham fen in Suffolk where over-abstraction at a borehole by Essex & Suffolk Water has led to the pools totally drying up. Southport Dune in Merseyside is drying out because of drainage from the site by a golf course. The problem is linked to abstraction licences issued by the Environment Agency²⁶.

²⁵ For details of these problems see Cardwell (1996).

²⁶ Details of those at risk are given in (FOE,4-9-96).

3) CONCLUSION

According to FOE (23-11-95) "the most thorough survey ever on threats faced by the country's best wildlife areas ... reveals how more than one sixth (838) of the 4824 Sites of Special Scientific Interest in England and Wales are at risk from or suffering some form of damage". Many of the problems with the Act relate to the fact that "S.28 is particularly badly thought out and drafted. Many difficulties owe their existence to the way in which it came into existence in 1981" because the changes "were drafted very hurriedly and this shows in the final form of the section" (Ball,1991:82). According to Wyn Jones of EN the Act is "impractical to implement" (pers. comm.).

A number of the obvious loopholes have been closed and there has been an attempt to address the structural problems of the system, which are not specific to the voluntary system. As the NFU (1984) point out, "whatever the law, the notification procedure would have to be completed so that the owners and occupiers are aware of their SSSIs. The failure of the Act .. to 'bite' on many SSSIs would be common to any legislation". However, the issues proving to be of most importance in the operation of the system are those that relate to the design of the system, the choice of the voluntary approach.

Despite this, the impact of the Act is positive, damage levels having fallen since its introduction. However, when one compares the impact with the purpose of reducing positive agricultural damage it is difficult to categorise the provisions as efficacious. When the obligations under the EC Birds Directive and the Bonn,

Berne and Ramsar Conventions are taken account of, the Act is most certainly not instrumentally efficacious (Hockin et al,1992). As Churchill (1991:169) comments, "the major problems have come in relation to the Convention's obligations concerning habitat protection". This is confirmed by the RSPB (1987), "It is difficult to see how the Act can provide the protection of coastal wetlands required by the Ramsar Convention and the EC Directive on the Conservation of Wild Birds". According to FOE (25-9-95), 42 of 80 UK wetlands designated as Ramsar sites have suffered damage or are under threat. "Part II of the Act fails to implement fully either the provisions of the Berne Convention or, most importantly, the European Community Directive of the Conservation of Wild Birds" (RSPB,1987). The effect of this is that "roughly 20% of candidate and designated SPAs suffer threat from recreational pressures" (RSPB,1992:15) and "over 20% of candidate and designated SPAs suffer from inappropriate management" (RSPB,1992:17). The SSSI system may be symbolically rather than instrumentally efficacious, but this is not enough to satisfy international obligations. The UK may thus be the subject of Commission enforcement proceedings. According to Freestone (1991) the UK has been forced to abandon proposals on designated sites after a visit from members of the Commission.

The inadequacy of the Act was recognised by the NC at an early point in its operation: "we recognise that the Act is not perfect" (NCC,Annual Report 1982:2). The emphasis on consensus is sensible, however, some form of stronger control is obviously necessary. Unfortunately it is not being provided by the current system. The NC is "striving both to make the Act work, and more importantly in the long run, to be seen to be doing all in its power to make it work.

If the Act fails, it must be clear that it is not the NCC's fault" (Adams,1984b:71). There is no doubt that the provisions are an improvement on the 1949 system. They "allow account to be taken of their features of special importance for nature conservation and of the interests of their owners and occupiers when land-use changes on them are contemplated" (NCC,Annual Report 1982:2). At least the NC should know what activities landowners intend to carry out that may be damaging to features of special interest. However, "the 1981 Act contains inadequate provisions for site protection. The reciprocal notification of the nature of potentially damaging operations and of intention to carry them out is a step forward, but it is a cumbersome and bureaucratic procedure. It does little to constrain the maverick farmer, who can afford to ignore the trivial penalties for destroying renotified sites, while tying a milestone of paperwork around the neck of the ARO" (Adams,1984b:67).

The House of Commons Environment Committee (1985:ch2,para7) may have been "convinced that the voluntary approach is the right one", and that "there is a climate of change in the farming world". However, it is not proving to be enough; "the countrywide balance of agricultural effects on nature is ... adverse, and it is this overall trend which is causing increasing tension with wildlife interests. The goodwill of those who own and work on the land towards nature and its conservation is thus in danger of becoming a diminishing asset" (NCC,1984:79). With large proportions of damage being totally outside the control of the system it is not fulfilling its purpose.

4) EFFICACY & THE NEW REQUIREMENTS OF HABITAT PROTECTION

The issue of efficacy has been raised to a higher level of importance due to obligations under the new Habitats Directive²⁷. The implementation of this has also been based on the SSSI system and the philosophy of voluntariness. There are specific requirements under the Directive relating to special sites and more general habitat obligations. With regard to special sites the system in place has been shown to be inefficacious. The Directive therefore required extensive changes to the system, however, this did not happen.

5) THE HABITATS DIRECTIVE

The purpose of the Directive as stated in Article 2 is "to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the treaty applies". This is to be achieved through the establishment of a European network of sites known as Natura 2000. This will consist of SPA's classified under the Birds Directive and sites designated as SAC's under the habitats directive.

The directive provides for two types of site to be designated: sites hosting the natural habitat types listed in Annex I, and habitats of the species listed in Annex II. Each Member State must, proportionally to the representation within its

²⁷ Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora 21-5-92

territory of the sites mentioned, designate in accordance with Article 4. Under article 4, Member States are required to propose a list of sites, identifying which category they are in. The list must be drawn up by reference to the criteria in Annex III (Stage I)²⁸. This list, together with information about each site, must be sent to the Commission by 5th June 1995²⁹.

The Commission must then draft a list of Sites of Community Importance (SCIs) by 5th June 1998. This must take account of the criteria in Annex III (Stage 2)³⁰ so not all sites proposed by Member states will make it onto the Commission's draft list³¹. In order to adopt this list of sites, the procedure laid down in article 21 must be followed. This entails the Commission submitting the list for consideration by a committee of representatives of the Member States. If there is

²⁸ The criteria for Annex I sites include: the degree of representativity of the natural habitat type on the site; the area covered in relation to the total area covered by the habitat type within the national territory; the degree of conservation of the structure and functions of the habitat type; and the global value of the site for conserving the habitat type concerned. For Annex II sites, the criteria include: size and density of the population of the species on the site in relation to the population within the national territory; degree of conservation of features of the habitat important for the species concerned; degree of isolation of population on site in relation to natural range of the species; and the global value of the site for conservation of the species concerned.

²⁹ The UK's draft list has been drawn up with 280 sites identified as complying with the categories provided. However, this is to be updated.

³⁰ According to these criteria, all sites which contain priority natural habitat types and/or species will be regarded as sites of community importance. For all other sites, account must be taken of: their relative value at a national level; their geographical situation in relation to migration routes of species in Annex II; the total area of the site; the number of natural habitat types in Annex I and species in Annex II present on the site; and the global ecological value of the site for the biogeographical regions concerned and/or for the whole of the territory.

³¹ A member state which has priority sites covering more than 5% of their national territory may request the commission to apply the criteria more flexibly when selecting the sites of community importance.

disagreement between the committee and the Commission, the EC council will arbitrate³².

Once the sites have been adopted, the Member States are required to designate the site as a special area of conservation (SAC) as soon as possible (and within six years at the most). The Member States must establish "priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000". This concept of favourable conservation status is a novel one, and shifts the focus of habitat conservation from restrictions to positive requirements.

Once the sites have been designated, the most important provisions are those relating to protection of the sites, because designation as a SAC alone does nothing. The protection provided is detailed in Article 6. Under art 6(1), once a SAC has been designated, Member States must "establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the site". This only applies to SACs and not SPAs. Under

³² If a site hosting a priority natural habitat type or priority species has been left off the national list, Article 5 provides for a bilateral consultation procedure between the Member state and the Commission. If the dispute is unresolved, the Commission must forward a proposal to the Council. The Council must then take a decision but must act unanimously and the selection of the site can therefore be vetoed by the Member State concerned.

art 6(2) Member States must take appropriate steps to avoid the deterioration of sites³³ or significant disturbance of the species for which the areas have been designated.

Under art 6(3) environmental assessment is required of any project proposed on the site which is not directly concerned with the management of the site but likely to have 'a significant effect'. The competent national authorities may only agree to the project 'after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public'. There is an exception to this provided by art 6(4). If there is no alternative solution, a project which would have a negative impact on the site may proceed for 'imperative reasons of overriding public interest, including those of a social or economic nature'³⁴. However, if the site is a priority habitat type or hosts a priority species the exception is limited to: considerations relating to human health or public safety; beneficial consequences of primary importance for the environment; or other imperative reasons of overriding public interest (if accepted by the Commission). If the Member State relies on art 6(4) in any case they must take compensatory measures 'necessary to ensure that the overall coherence of Natura 200 is protected' and the Commission must be informed of these measures.

³³ This protection also extends to SPAs under the Birds Directive and SCIs, as does the protection in article 6(3).

³⁴ This effectively reverses the decision in the Case C-57/89 *Commission v Germany (Leybucht Dykes)*.

Under Article 10 Member states must "endeavour, where they consider it necessary" to encourage the management of features of the landscape of major importance to wild fauna and flora³⁵ through their land use planning and development policies. This is providing protection for 'wildlife corridors', arguably one of the most important provisions of the Directive as it has long been recognised that isolated reserves cannot sustain bio-diversity and that species need to be able to move between habitats. In addition, under article 11 Member States must monitor the conservation status of the natural habitats and species³⁶.

6) CONSERVATION (NATURAL HABITATS) REGULATIONS 1994³⁷

The Habitats Directive was implemented primarily through the Conservation (Natural Habitats &c) Regulations 1994. These are made under section 2(2) of the European Communities Act 1972. The regulations can do no more than implement the Directive and must be interpreted in the light of the Directive. In order to avoid problems inherent in transposing the Directive into domestic law, the words of the Directive are often simply repeated in the provisions. This has the effect of putting responsibility for interpretation on the courts.

³⁵ These features include 'those which by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species. This is to avoid isolated pockets of species.

³⁶ This should improve site monitoring so that it is known what is happening to them thus eliminating some of the difficulties in evaluating the current system because of lack of comprehensive information.

³⁷ SI NO. 2716.

The regulations have relied heavily on the provisions of the WACA. They have been described by Phillips & Hatton (1994:21) as "a missed opportunity of minimalist and rearguard proposals". As Ball (1996:102) points out, "although there are some additional controls and restrictions, there is a continuing reliance on the twin systems of SSSI protection and planning control".

6)a) General Provisions

Regulations 7 to 10 provide for the selection of eligible sites to be submitted to the Commission, the consultation process, and adoption of the list. These reproduce almost identically the provisions of the Directive.

The Secretary of State must draw up a register of European sites³⁸ and notify them to English Nature³⁹. English Nature must then notify the owner/occupier of the site, the LPA and any other persons/bodies the SoS may decide upon⁴⁰. As with SSSI status, designation as an SAC is registrable as a local land charge⁴¹.

Regulations 16 & 17 provide for management agreements on European sites or land adjacent to them. The terms of Regulation 16 are identical to section 16,

³⁸ Regulation 11.

³⁹ Regulation 12.

⁴⁰ Regulation 13.

⁴¹ Regulation 14.

1949 Act, providing for nature reserve agreements, and they present the same problems as regards enforceability as against third parties⁴².

Under Regulation 18 EN may amend the list of PDO's for the site (from those notified when the site was designated as a SSSI). However, designation of a European site means that the existing PDOs apply and this remains the bedrock of protection unless they are amended. Regulation 19 provides the same restrictions as section 28, WACA, as to the carrying out of PDO's. The fines for contravention are not to exceed level 4 on the standard scale. As with SSSIs, provision is made for the extension of the four month period by mutual agreement under Regulation 87.

Regulation 20 concerns the procedure for granting consent to operations and relates to Article 6(3) of the directive. If the project is not directly connected with or necessary to the management of the site and is likely to have a significant effect on the site, EN must make an assessment of the implications of the project. They may only give consent for the project if it will not adversely affect the site. If EN do not give consent but fear that the owner/occupier may proceed with the operation EN must inform the Secretary of State before the expiry of the four month moratorium. This is to give the Secretary of State the opportunity to make a special nature conservation order. Under Regulation 21, consents to operations which had already been given under section 28(5) must be reviewed and may be modified or withdrawn.

⁴² See discussion in part 10b.

Under Regulation 28, EN is given the power to make bylaws on terrestrial sites as if they were nature reserves and on adjoining sites. However, as with PDO's on the site the bylaws are purely restrictive in nature⁴³. Under Regulation 32 compulsory purchase powers are provided where EN are unable to conclude a management agreement on reasonable terms or where breach of an agreement has taken place.

Regulation 88 concerns the duties of agriculture ministers when an application for farm capital grant has been made in respect of a European site. This is identical to the requirements under section 32 WACA in respect of SSSIs. As all SAC's and SPA's will already be SSSIs this provision adds nothing to the protection afforded.

6)b) Special Nature Conservation Orders

Under Regulation 22, the Secretary of State may make a 'special nature conservation order'. This is *similar to a nature conservation order under section 29 of the WACA*. However, there is one important difference, provided by Regulation 23, that the restriction on carrying out PDO's is permanent. They can only be carried out with consent or under a management agreement. Despite this the exception for planning permission still exists.

⁴³ Regulations 29 to 31 provide for the effect of bylaws and compensation.

The procedure for consent differs from that for SAC's in Regulation 20. Regulation 24 provides that EN can only give consent if the project will NOT have any adverse consequences for the site. When EN have refused consent in such a situation, they must give the reasons for their decision. The owner/occupier may then apply for the matter to be referred to the Secretary of State. The Secretary of State may then direct EN to grant consent, but only if there are no alternative solutions and the project must be carried out for imperative reasons of overriding public interest⁴⁴. As with a NCO, compensation is payable by EN⁴⁵ and provision is made in Regulation 26 for restoration of sites.

6)c) Amendments to planning control⁴⁶

Regulation 37 deals with wildlife corridors. It states that planning policies concerning conservation⁴⁷ shall include policies "encouraging the management of features of the landscape which are of major importance for wild flora and fauna". These areas include rivers, hedges, small ponds and woods. they are areas that limit the negative effect of habitat fragmentation, providing 'stepping stones' for the "migration, dispersal and genetic exchange of wild species". Under Regulation 48, before giving permission for a plan or project likely to have a significant effect on a European site, the authority must make 'an appropriate

⁴⁴ The definition for this is given in the Directive and the test for priority sites is more restrictive.

⁴⁵ Regulation 25.

⁴⁶ Changes to guidance on planning is in PPG9 discussed below.

⁴⁷ Unitary development plans, structure plans and local plans.

assessment of the implications for the site' and consult with EN, giving regard to their opinion. After this process, the authority should only agree to the plan if it has been ascertained that it will not adversely affect the site. Regulations 48 and 49 reproduce the provisions of Article 6(4) of the Directive as to considerations of overriding public interest. If the authority proposes agreeing to the plan under Regulation 49, notwithstanding a negative assessment, they must notify the Secretary of State and wait 21 days before agreeing to the plan. The Secretary of State is able to give directions to the authority *preventing them from agreeing to* the plan. The application of Regulations 48 and 49 is detailed in Regulation 54.

Previous permissions must be reviewed under Regulation 50 with an assessment made of the implications for the site. The same considerations as apply in Regulations 48 and 49 apply to this process⁴⁸. The permission may then be affirmed⁴⁹, modified or revoked⁵⁰. The application of Regulations 50 and 51 are detailed in Regulation 55, the main exceptions being planning permission granted by a General Development Order, simplified planning zones, *enterprise zones or* public general Acts of Parliament. Thus the Cardiff Bay Barrage and the Channel Tunnel are exempted. However, this provision has been welcomed by Phillips and Hatton (1994:21) as "one concession to a largely uninspiring approach".

⁴⁸ Regulation 51(2).

⁴⁹ If it appears that other action taken by them or by another authority will ensure that *the project* does not adversely affect the site.

⁵⁰ The problem raised by revocation is of course liability to compensation.

If a project is agreed to, or a consent is affirmed, notwithstanding a negative assessment of its implications for the site, compensatory measures must be taken by the Secretary of State to ensure the coherence of Natura 2000⁵¹.

The exception from Regulation 55 of permissions granted by a GDO are dealt with in Regulations 60 to 63 which provide that a planning permission granted by a GDO cannot be commenced until the developer has received written notification of approval by the LPA⁵². The developer must apply to EN in writing for their opinion as to whether the development would have a *significant effect on the site*, and they must write to the LPA for approval. If EN have concluded that the development would have a significant effect on the site, the LPA must take account of this and make an 'appropriate assessment of the implications of the development', and may only approve the development if it will not affect the integrity of the site⁵³.

Simplified planning zones and enterprise zones are dealt with in Regulations 65 and 66 respectively. If the schemes are put in place after the commencement of the Regulations, they will not have effect to grant planning permission where this is likely to have a significant effect on a European site and is not directly connected with its management.

⁵¹ Regulation 53.

⁵² See Town & Country Planning (General Permitted Development) Order 1995, SI no 418, for the list of activities granted planning permission to which these provisions apply.

⁵³ Although they are not likely to be able to approve the development if EN has indicated that it would have a significant effect because this may be considered to be unreasonable under the test laid down in *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223.

The requirements of Regulations 48 and 49, in respect of considering implications for a European site, and Regulations 50 & 51, in respect of reviewing consents, are applied by Regulations 69 to 85 to construction of highways, consents under the Electricity Act 1989, authorisations under the Pipe-Lines Act 1962, orders under the Transport and Works Act 1992, authorisations under Part I and licences under Part II of the Environmental Protection Act 1990, and discharge consents under water pollution legislation⁵⁴.

7) PLANNING POLICY GUIDANCE: NATURE CONSERVATION (PPG9)

The amendments to planning control in the regulations are reinforced by the guidance in PPG9⁵⁵. The relevant part of PPG9 is Annex C which deals with development on SPAs and SACs. PPG9 lays down a general presumption in favour of protecting European sites. However, it also lays down a hierarchy of protection⁵⁶, meaning that non-European sites will not benefit from the same level of protection. Warren and Murray (1995:574) comment that "although the publication of the PPG was broadly welcomed by conservationists, there was also some disappointment at the emphasis placed on Habitats Directive sites rather than nature conservation in general". These policies only apply as planning

⁵⁴ The first three listed would also probably come within the requirements of environmental assessment for applications for new permissions.

⁵⁵ Which only applies to England.

⁵⁶ International, national, SSSI, local and wider countryside.

policies, but they do accept as a matter of planning policy that proposed sites should be treated as if classified already.

C1 provides that when considering sites as possible SACs, when LPAs are consulted they should consider all extant planning permissions⁵⁷ which may affect the proposed area. If the implementation of the permission would have a significant effect on the ecological value of the area they should mention this in their response to the consultation. This seems to be directed towards identifying those sites which are potentially at risk, however, it may be used to avoid the designation of these sites so that the LPA is not burdened with heavy compensation claims if it may have to revoke the planning permission⁵⁸.

C3 provides for LPAs to review all planning permissions (the relevant ones should have been identified during the consultation phase). The purpose of the review is to 'ascertain whether implementation of any permission which is likely to have a significant effect on the site, and is not directly connected with or necessary to its management, would adversely affect its integrity'. If the integrity of the site would be adversely affected, and the permission does not fulfil conditions under which a new proposal would be approved, the authority must take 'appropriate steps' to remove the potential for harm⁵⁹. The question thus raised is, what

⁵⁷ Those permissions which have not been implemented at all and those which have not been completely implemented.

⁵⁸ This possible revocation may occur as a result of the LPAs duty to review extant planning permissions under regulations 50,51,55 & 56.

⁵⁹ Unless there is no likelihood of the development being carried out or continued.

constitutes 'appropriate action'? Would failure to revoke a planning permission be appropriate if the compensation payable was prohibitively expensive? The possible courses of action laid down in C4 are planning obligations, modification, revocation or a discontinuance order. This indicates that one of the courses should be taken despite the cost. The cheapest option would probably be planning obligations and the LPA may use these if it considers they would safeguard the integrity of the site. It is of course open to the LPA to argue that in their opinion this is all that is necessary to safeguard the site.

C7 applies the restrictions on granting planning permission on SPAs and SACs to all sites agreed with the Commission as a site of *community importance* even though not yet designated. The restrictions do not apply to potential sites not yet agreed with the Commission but 'as a matter of policy the Government wishes development proposals affecting them to be considered in the same way as if they had already been classified or designated'.

C10 lays down the procedure for considering development proposals affecting SPAs or SACs. The first step is to ascertain whether the proposed development is directly connected with or necessary to the management of the site and whether it is likely to have a significant effect. This is to be determined taking account of advice from EN. The question that must be asked is 'whether the effect of the proposal on the site, either individually or in combination with other proposals, is likely to be significant in terms of the ecological objectives for which the site was classified or designated'. If it is concluded that the development is likely to have a significant impact, the implications of the development must be assessed in view

of the site's conservation objectives in order to ascertain whether it will adversely affect the integrity of the site⁶⁰. If the proposal will adversely affect the integrity of the site, and this cannot be removed by conditions, planning permission MUST NOT be granted except in the following circumstances. There must be no alternative solutions⁶¹ and there must be⁶² imperative reasons of overriding public interest⁶³. If the site hosts a priority habitat or species the only reasons capable of justifying the grant of planning permission are those relating to human health, public safety or beneficial consequences of primary importance to the environment⁶⁴.

C12 - C16 deal with permitted development rights and in which circumstances planning permission is required. Permitted development rights are removed under Regulations 60 -63 unless the LPA decide, after consulting EN, that it will not adversely affect the integrity of the site. If there will be an adverse effect on the site, planning permission must be applied for.

⁶⁰ The integrity of the site is defined as the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified.

⁶¹ The decision-maker must consider whether there are or are likely to be suitable and available sites for the proposed development, or different, practicable approaches which would have a lesser impact. This is very wide and allows a lot of leeway. Alternatives can easily be classified as unsuitable. Different approaches seem to be allowable even though they have an impact so long as they are less than the original proposals.

⁶² If the site does not host a priority natural habitat type or species.

⁶³ Including those of a social or economic nature - removing the protection afforded by *Commission v Germany (Leybucht Dykes)* Case C-57/89 [1991].

⁶⁴ If planning permission is granted for a development which would adversely affect the integrity of the site, the SOS is required by regulation 53 to secure any necessary compensatory measures to ensure the coherence of Natura 2000.

C17 points out the need for LPAs to introduce specific procedures to deal with alleged breaches of planning control which have, or are likely to have a significant effect on a SPA or SAC.

8) THE AGRI-ENVIRONMENT PACKAGE AND OTHER INITIATIVES

Article 10 of the Directive provided for the wider countryside, outside of designated areas. According to Phillips and Hatton (1994) the Government claims that this part of the Directive can be implemented through a number of schemes, designated areas and other initiatives⁶⁵.

8)a) Initiatives

8)a)i) Farm Woodland Premium Scheme (FWPS)

This is a MAFF scheme which was enabled by the Farm Land & Rural Development Act 1988. Its aim is to encourage the planting of new woods on land currently in productive agriculture⁶⁶. Payments are made for 15 years for broad-leaved woodland⁶⁷, or 10 years for coniferous woodland.

⁶⁵ For a detailed discussion of the agri-environment scheme see Rodgers (1996).

⁶⁶ Farmers must have approval for establishment grants under the woodland grant scheme before they can apply.

⁶⁷ Which must not be returned to agriculture for 30 years, 20 years for coniferous woodland.

8)a)ii) Woodland Grant Scheme

This Forestry Authority (FA) scheme, linked to the FWPS, provides grants to encourage the creation of new woodlands. There are also grants for existing woodlands and annual management grants can be obtained to support management operations needed to conserve or improve the environmental value of woodland.

8)a)iii) Countryside Stewardship

This is a MAFF scheme whose target areas are chalk and limestone grassland, lowland heath, watersides, coasts, uplands, historic landscapes, traditional orchards, old meadows, and pasture (in Hereford and Worcester, and the culm of Devon and Cornwall), Community Forests, the countryside around towns and the restoration of hedgerows. The scheme involves 10 year management agreements with annual payments and standard costs for capital works. The rural White Paper has proposed an extension of countryside stewardship with extra funding and targeting new habitats and landscape features.

8)a)iv) Rural Action

Grants are provided by the CC for local people to tackle a range of environmental projects. Funding is given to local groups through support networks in each county. Grants are available for private land if public access is assured⁶⁸.

⁶⁸ For example: restoring ponds, planting trees, creating wildlife habitats, curbing traffic flow through villages, drawing up parish maps and promoting "green tourism".

8)a)v) Project Grants

These are provided by EN and are mainly given to conservation bodies for specific costs in relation to projects of nature conservation value. They are also available to landowners on SSSIs for specific projects. They are discretionary and there is no standard rate but it may be up to 50% of the cost. The recipient must guarantee the future management of the land for nature conservation purposes in order to qualify.

8)a)vi) Habitat Scheme - Former 5 year Set Aside & Saltmarsh

Set aside schemes started in 1988 and were designed to reduce surpluses in European intervention stores. Although 5 year set aside can no longer be entered into, it has been replaced by the habitat scheme. This involves annual grants from MAFF and is not restricted to specific areas. *There are two options to give incentives to manage land to create or improve wildlife habitats.* If farmers are coming out of the now closed voluntary 5 year set aside scheme they are eligible for annual payments. The second option involves annual payments for conversion into saltmarsh where this is consistent with the provision of effective and sustainable coastal defence. Both options involve 20 year agreements to keep the land out of agricultural production.

8)a)vii) Moorland Scheme

Provided by MAFF, this is available to upland farmers outside Environmentally Sensitive Areas⁶⁹ willing to reduce stocking densities and manage their land in order to improve the condition of the heather or other shrubby moorland. It involves 5 year agreements with annual payments and there must be a reduction of at least 10 animals.

8)b) Designated Areas

8)b)i) Environmentally Sensitive Areas (ESAs)

The concept of ESAs was introduced by the EC in March 1985⁷⁰. The aim is to encourage agricultural practices compatible with nature conservation. They were adopted in the Agriculture Act 1986, section 18, as amended by EPA 1990, schedule 9, paragraph 13.

There are 22 ESAs in England covering over 1 million hectares of agricultural land⁷¹. They are designated by agriculture ministers after consultation with the Secretary of State for the Environment and EN. The designation criteria are set

⁶⁹ Discussed below: 8bi.

⁷⁰ EC Regulation 797/85, Article 19. Now in Regulation 2328 91, Articles 21-24.

⁷¹ Breckland; the Broads; North Peak; the Pennine Dales; Clun; the Somerset Levels and Moors; the South Downs; Suffolk River Valleys; the Test Valley; West Penwith; the Avon Valley; Exmoor; the Lake District; the North Kent Marshes; the South Wessex Downs; the South West Peak; the Blackdown Hills; the Cotswold Hills; Dartmoor; the Essex Coast; the Shropshire Hills; the Upper Thames Tributaries.

out in the Agriculture Act 1986 section 18(1): natural beauty, conservation of flora, fauna or geological or physiographical features, to protect buildings or objects of archaeological, architectural or historic interest. The order is made by statutory instrument which can be annulled in either House of Parliament⁷². Farmers can enter 10 year management agreements with MAFF with an optional break clause after 5 years. The agreement can include an optional conservation plan with grant aid for capital works to improve the landscape, wildlife and historic interest of the area for a two year period as part of the ESA agreement. These agreements are binding on successors in title by virtue of registration as a local land charge. Each ESA has its own environmental objectives specified in the order.

8)b)ii) Nitrate Sensitive Areas (NSAs)

There are 22 NSAs in England⁷³. These are areas covering ground water sources where significant changes in agricultural practices will help to stabilise or reduce nitrate levels. Farmers can enter the scheme for 5 year period. Options include the conversion of arable land to extensive grassland, the extensification of existing intensively managed grassland and low-nitrogen arable cropping. The designation is aimed at improving drinking water but it incidentally helps nature conservation.

⁷² Agriculture Act 1986 Section 18(2).

⁷³ North Lincolnshire Wolds (Lincolnshire); Pollington (Humberside / North Yorkshire); Hatfield (South Yorkshire); Carlton (North Yorkshire); North Newbald (Humberside); Springwells (Humberside); North Nottinghamshire (Nottinghamshire); Amen Corner (Nottinghamshire), Far Baulker (Nottinghamshire); Aswarby (Lincolnshire); Sheriffhales (Shropshire); Grindle Forge (Shropshire); Bednall (Staffordshire); Hopwas (Staffordshire); Oakeley Farm (Shropshire); Kinver (Staffordshire); Hagley (Hereford & Worcester); Bromsberrow (Gloucestershire); Duckall (Devon); Sedgford (Norfolk); Slip End (Hertfordshire); Birchmoor (Bedfordshire).

8)b)iii) Habitat Scheme - Water Fringes

Six pilot sites have been designated by the Minister of Agriculture⁷⁴. The scheme involves 10 and 20 year agreements to manage waterside land extensively or take it out of production so as to benefit wildlife in the water and on the water bankside. There are five management options: (1A) withdrawal of permanent grassland from production, (1B) withdrawal of arable land from production, (2A) extensive grassland management on existing permanent grass, (2B) extensive grassland management on currently arable land, and (3) raised water level supplement.

9) HAS THE UK GOVERNMENT IMPLEMENTED THE DIRECTIVE?

As Ball (1996:107) points out, "it is very difficult to give a definite answer to this question". On paper, there seems to have been full implementation. However, account must be taken of the practical implementation of the provisions. A reluctance has already been seen with SSSI designation to use enforcement powers. The system is not robust enough to ensure implementation in practice.

⁷⁴ The Yorkshire Derwent and Rye system in the Vale of Pickering; Swanside Beck, Ings Beck and their feeder streams, tributaries of the River Ribble in Lancashire; Fenemere, Crosemere, Berrington Pool and Betton Pool in Shropshire; the River Beult in Kent; the Upper Avon, Wylde, Nadder and tributaries in Wiltshire; Slapton Ley and its catchment in Devon.

Difficulties arise with the wider obligations under the Directive. In addition, the provisions of the Habitats Directive require almost absolute protection for SAC's which is patently impossible with a system based on SSSIs and planning control as they are based on compromise and the balancing of interests rather than affording priority to conservation. The requirements of Art 6(2) to avoid the deterioration of habitats does not seem to have not been adequately addressed⁷⁵. The deterioration of habitats through over-grazing and insufficient management presents a considerable problem.

10) ASSESSMENT OF EFFICACY

The implementation of the Directive is essentially SSSI protection with extra procedural knobs on. A number of technical problems with SSSI designation which could have been dealt with by the Regulations have not been addressed⁷⁶. This is important when the SSSI is the base designation for all SAC's. However, the Regulations were implemented through section 2(2), ECA, so the limitations on new bits must be accepted⁷⁷. It is arguable that the Regulations do achieve what they set out to do, even though they do not solve any deeper problems. At the end of the day absolute protection can be guaranteed by a CPO. The true test of protection is whether the Government is prepared to provide the money.

⁷⁵ Ball (1996) argues that this provision is directly effective and thus the failure by the government to secure compliance with the requirements may be actionable by an individual in the national courts.

⁷⁶ As with the EPA 1990 this represents another missed opportunity.

⁷⁷ However one could query why Parliamentary time was not found for new legislation that could have gone further than that allowed by the ECA.

10)a) Positive Features

The activities of statutory undertakers will come under greater scrutiny which will be of great benefit, as much concern has been expressed⁷⁸ at the amount of damage caused by such activities. In addition PPG9 propounds a presumption against development which points towards the stronger protection necessary for European sites.

The law has been strengthened by the possibility of imposition of a SNCO where the prohibition of PDO's is permanent. However, as Hughes (1994:42) points out, "the question will be how often and readily such powers will be used, bearing in mind that only about 40 NCOs have been made for SSSIs to date". In addition, these will still fail to encompass damage through neglect.

10)b) Negative Features

One major failing of the system is the inability to control damage through insufficient management and overgrazing. These can be tackled if a management agreement is entered into but without this there is no means of combating it where there is disagreement. Such activities (or inactivity) will not be on the list of PDOs, therefore not triggering the notification system, and as such the likelihood of a management agreement is slim. This failing of the system is highly relevant

⁷⁸ See annual reports of the NCC and EN.

because of the obligation⁷⁹ to avoid deterioration of habitats. The system imposed may prevent damage from specific actions but does nothing to prevent the deterioration of the habitat through neglect.

"There is an explicit need, if you're going to deliver favourable conservation status to include in a network of designated areas, representation of a range of distribution of species and habitats as well as just picking the best examples. There is an explicit need to deal with restoration to local conservation status where you haven't currently got it; rather than simply looking for where you've currently got it and protecting it. The regulations don't help very much because they just say here's what the habitat directive says, you, you, and you are charged with going away and implementing it. The proof of the pudding will be case by case charges brought by people like the RSPB to try and prove a dereliction of those duties, which is going to be terribly hard to do" (D Pritchard, pers.comm.).

The majority of the changes in respect of SAC's relate to planning control⁸⁰. However, this cannot help with the major sources of damage and the related problem of Crown exemption⁸¹. Agricultural and recreational activity are outside of the planning system. Even the amendments made to the GDO will not assist here. PPG9 is very weak in relation to the wider countryside and there are few links with other PPGs, for example on transport (PPG13) or agriculture (PPG7).

⁷⁹ In Article 6(2).

⁸⁰ The only real change to the SSSI system is the SNCO.

⁸¹ This is recognised in C11 of PPG9 but nothing has been done to address the issue. This is also an outstanding problem in the implementation of the Environmental Impact Assessment Directive.

Another possible problem is that a site may not even benefit from the limited protection provided by the Regulations. The Government may not include a site on the list submitted to the Commission if there is a potential for development. This is not as unlikely as it may seem, for example, the Mersey Barrage where the government refused to decide whether the site should be designated as a SPA before it had decided whether to grant planning permission for the barrage (RSPB,1992)⁸². Of course the Commission can try and add the site to the list if it believes that it satisfies the relevant criteria, however, member states have a veto and can prevent it from being added to the list⁸³. However, the cases of *R v SoS for the Environment ex parte RSPB* Times August 2nd 1996, *Commission v Spain ("Santona Marshes")* [1993] Case C-355/90, *Commission v Germany ("Leybucht Dykes")* [1991] Case C-57/89, have established that economic requirements cannot be taken into account when designating an SPA and defining its boundaries, although they can be taken account of to reduce the area subsequently. Even if a site has been designated as a SAC, when deciding whether to grant permissions or consents in respect of activities on that site, it is up to the member state to decide the 'imperative reasons of overriding public interest'.

As with all other SSSIs, the main protection is provided through management agreements. The provision in the Regulations is phrased identically to those for

⁸² It was eventually classified as an SPA and Ramsar site on 21 December 1995.

⁸³ Article 5 provides that the council must act unanimously to add the site to the list.

Nature Reserve Agreements (NRAs)⁸⁴. This holds no problems for the operation of the agreements, however, it does pose problems for enforceability against third parties. EN practice so far has been to register management agreements on SSSI's as a class D(ii) Land Charge, a restrictive covenant so as to make them binding on successors in title. However, it is envisaged that agreements under the regulations will be more positive in nature. This means that they are positive rather than restrictive covenants and the burden of them cannot run with the land, *Tulk v Moxhay* (1848) 2 Ph 774. It is of course likely that any successors in title would wish to continue the agreement with EN because of the compensation payments available, and that they would have been informed of this lucrative source of income by the vendor, however, this cannot be guaranteed. The problem was circumvented for agreements on ESAs by making them enforceable by the Minister. In this way, they came within the remit of the Local Land Charges Act 1975 and are registrable as a local land charge under section 1(c) or (d) depending on whether they provide for restrictions or positive obligations. This route cannot be used for management agreements on SACs, or indeed for NRAs, because the agreements are enforceable by 'the appropriate nature conservation agency'⁸⁵ which falls outside of the LLCA. This leaves the position that management agreements entered by LPAs under section 39, WACA 1981, and agreements in respect of ESAs are binding on successors in title, whereas the supposedly more important agreements in respect of SACs and NRs may not so protected as only purely restrictive agreements can be registered.

⁸⁴ Under Section 16 NPACA 1949.

⁸⁵ Regulation 16(4).

In addition, a number of more general problems exist with the system. The problem of lack of deterrence still exists, the fines are set at the same level and it has been concluded⁸⁶ that this provided no deterrent effect. Also, it seems likely that the same approach will be taken to prosecution of offences thus adding to the problem of lack of deterrence.

Regulations 18,20 and 22 all use the phrase "likely to" damage/ destroy /affect the site. The phrase has been shown to be seriously deficient in *North Uist Fisheries v S o S for Scotland* [1991] SLT 333. The reliance on the provision for compulsory purchase in Regulation 32 when an agreement cannot be reached is, according to D Pritchard of RSPB, like using "a sledgehammer to crack an egg" (pers.comm.)

The very existence of Natura 2000 implies a downgrading of ordinary SSSIs by putting the emphasis upon European sites. SSSIs are supposed to represent a network of the minimum areas necessary to ensure biodiversity⁸⁷. With the emphasis now on European sites, ordinary SSSIs will seem more disposable. A similar argument was raised against the distinction between ordinary SSSIs and NCOs in the debates on the WACA but it was not entertained by those responsible for the legislation. Warren and Murray (1995:577) argue that this is "a false representation of protected areas" because designation as a SAC "does not

⁸⁶ In chapter 9.

⁸⁷ See the Huxley Report (1947).

necessarily mean that it is the only, or even the best example of a particular habitat nor even that it is considered of supreme importance at a national level". A good example of this is bluebell woods. On a European scale they are of national importance but they are not regarded as particularly critical habitats nationally.

Also, because of the emphasis on management agreements, the perennial problem of resources resurfaces. Will there be enough money to save all the sites? If not, Dogherty has argued that this would put the UK in breach of its obligations because "the European Court of Justice have consistently refused to accept financial constraints as a valid excuse for failing to comply with EC obligations". This could therefore lead to resources being directed only towards European sites and the loss of many 'ordinary' SSSIs.

A final issue is the fact that there is no cross referencing in the Habitats Directive to the Environmental Assessment Directive⁸⁸, so the format of environmental assessment does not apply when assessing implications for a European site⁸⁹.

Examples are already occurring of the Government's reluctance to protect sites. Parts of the route of the Newbury Bypass are through a site which satisfies the criteria for a SAC⁹⁰ (FOE,14-6-96). Another site satisfying the criteria for

⁸⁸ There will of course be some overlap for certain activities.

⁸⁹ This may seem slightly odd, although there is a possibility that it may be cost related with £35,000 being the average cost for an EA according to John Zetter, Dept of Environment, at Conference on EC Environmental Law, November 1995, UCL.

⁹⁰ It contains colonies of the rare Desmoulin's Whorl Snail.

designation as a SAC near Peterborough⁹¹ is to be developed (Independent,14-7-95). In order to limit the damage EN has struck a deal with Hanson whereby the newts will be caught and removed from the area that is to be destroyed⁹².

11) CONCLUSION

The implementation of the Directive has been based on the SSSI⁹³ and planning systems, with relatively minor additions to the protection available. Even for European sites there is still only a four month moratorium on activities and the activities causing most concern for damage to SSSIs⁹⁴ have not been dealt with. Planning permission still takes precedence and despite PPG9 is likely to continue to present problems⁹⁵. The RSPB made a number of proposals as to how to implement the Directive and the regulations fall far short of these. Examples include: a power for statutory agencies to require or carry out management, extension of the scope of SSSI notification over tidal areas and stop-orders on SSSIs. The system is not capable of fulfilling its purpose. Thus even before it has come into operation it can be shown to be inefficient.

⁹¹ It is the world's largest colony of great crested newts.

⁹² Which will be approximately half of the SSSI.

⁹³ according to Dave Pritchard of the RSPB the validity of the policy that international sites have to be based on domestic designations is being pushed to the limits under the birds directive for sites where the interest is only transient.

⁹⁴ Insufficient management, damage by third parties and from offsite sources.

⁹⁵ Particularly when considering the approach taken so far on SPAs. Lappel Bank being a prime example.

Despite the inadequacies of these systems, the philosophy of voluntariness had maintained its stranglehold on conservation legislation and the regulations adopt a now very familiar minimalist approach which has failed to fully implement the Directive. As long as the voluntary approach remains the primary means of protection there will never be the absolute protection of habitats as required by the Directive. The use of the voluntary approach is likely to continue as long as the factors which influenced the development of the SSSI system continue to hold sway. Even if these factors were to diminish in importance, the voluntary approach may not disappear. There is a tendency for governments, once they have a system in place, to continue with it rather than *design a wholly new approach*. "Instead of approaching problems methodically or through a comprehensive reform programme, policy makers often make small or incremental changes to existing policies" (McCormick,1993:269). Practically this may be very sensible, given the length of time it took EN to even renotify sites under the 1981 Act. However, it is very short-sighted and minor tinkering with a system that is fundamentally incapable of affording protection to habitats is a futile process.

CHAPTER 11

THE WAY FORWARD

It has been shown that the voluntary philosophy has impregnated all elements of habitat conservation. All the schemes pivot around this article of faith for the landowning community. Yet, despite continued assurances of the necessity of a voluntary approach, the system is failing. Sites are being damaged at an alarming rate and yet it seems that the voluntary approach is here to stay. Chapter 10 concluded that the SSSI system is inefficacious and that, even in its amended form, it will not fully implement the requirements of the Habitats Directive. However, before any proposals can be made, a number of factors must be considered.

One of the most important factors is the determinants in the introduction of the voluntary system in 1981. It is *arguable that trends towards using treasure and contractual regulation* are even more entrenched since 1981. When this is combined with the completion of the policy of de-regulating planning and the continuing influence of the NFU¹, the use of a system based on authority seems highly unlikely. This is confirmed by the reliance on the voluntary system in the implementation of the Habitats Directive.

¹ Particularly when one considers the enormous effort that the NFU has put in to making the system work. Indeed it is arguable that the influence of the NFU in the framing of the legislation has had a great influence on the impact of the Act. The NFU were concerned to make the system work as they had lobbied for it so vehemently. Thus they have positively contributed towards the impact of the system.

Another factor that must be considered is that it is often difficult to assess the impact of any system for habitat protection in the abstract. Until it is operating, little can be predicted. This can be illustrated by the extensive criticism of the WACA at the time of its enactment. As Chapter 10 indicated, although not efficacious, the Act has performed substantially better than was predicted. In addition, many of the issues that have proved to be the most difficult to deal with in practice were not even considered when the system was introduced. The predicted negative impact of the NFUs influence turned out to be positive. Thus one must be wary of assuming that certain approaches will have predetermined effects.

However, the Act is inefficacious, and some changes are necessary despite these problems. In order to tackle the problem of efficacy two things must be considered. Firstly, what the purpose of any new approach is to be, and secondly why the voluntary approach failed. The primary purpose must be to ensure that the obligations of the Habitats Directive are complied with so that favourable conservation status can be maintained on sites and provision is made for the wider countryside.

The reasons for the failure of the voluntary approach are twofold. The first reason is linked to the structural problems, the second to the design of the system and in particular the choice of the voluntary approach. The structural problems have been addressed to a limited degree but remain the foundation of criticism of the system. Design problems resolve around the exclusion from the system of the most damaging types of activity. Because it is a voluntary system it is only

feasible to restrict the actions of the landowner. However, this does not cope with third party damage and off-site problems. This is not a criticism of the voluntary system per se, because in what it set out to do it has been successful. That is not to say that it has worked in all cases, no system is 100% effective. The problem is that, by the very nature of the system, its application cannot be extended beyond that which it already covers. Many of the reasons why damage is still occurring at such a high level are not purely because of an intrinsic fault in the voluntary system, they are also to do with institutional inconsistencies. Thus development, although controlled to a degree by planning permission, is not adequately provided for in the system and cases such as the Cardiff Bay Barrage and the Newbury Bypass will continue to occur. Statutory undertakers will continue to be a great source of damage and recreational damage will probably continue to rise. In among all this is the perennial problem of the conflict with agricultural policy. Until these have been tackled, no system will work satisfactorily. The only way to ensure the protection of habitats in the long term is to tackle the source of the problem rather than tinkering with a system that cannot work effectively in the current climate.

1) PROPOSALS FOR LEGISLATIVE CHANGE

It has been suggested that it may be possible to introduce criminal sanctions for all actions on a site². However, this raises the problem of people not knowing about the restrictions in place on a site and EN may not want to advertise the existence of some sites³. The sanctions already available under the WACA are not currently providing any deterrence⁴ so this may not be any more efficacious. The addition of sanctions is unlikely to change the NC's attitude to prosecution. So even if the sanctions were increased there would be no deterrent effect because deterrence is linked to the likelihood of detection and punishment. Issues of resources mean that detection is unlikely and the NC will generally not prosecute. So, even if an approach based on criminal sanctions is adopted it may not work any better than the current system. Given the reluctance to impose restrictions on people's property rights and that the debates on the WACA removed the possibility of imprisonment as a penalty for contravention, it seems highly unlikely that such an approach would ever be taken. Indeed, when such an approach was first introduced for species protection it was seen as only a short term solution with education being the long term answer.

² As under the Protection of Badgers Act 1992. Under this Act, specific areas are protected by criminal sanctions. Section 3 makes it an offence to interfere with a badger set either intentionally or recklessly. However, this can be distinguished from SSSIs. Badger sets cover very limited areas and as such do not substantially interfere with what can be done on the land. In addition, with respect to making people other than the landowner liable it is obvious where a badger set is, a SSSI is not marked as being such.

³ Knowledge of the existence of the site may be counter-productive e.g. the site of the lady slipper orchid.

⁴ However, this may be because they are operating below their threshold level.

FOE have promoted a Wildlife Bill to alter aspects of the legislation⁵. Clause 2 proposes to extend the possibility of a section 29 order to all SSSIs not just those of national importance. Clause 3 provides the ability to make bylaws on all sites - this is directed towards controlling third party damage. Clause 6 provides that no compensation should be paid to a landowner for a management agreement unless positive obligations are undertaken. Clause 7 extends section 31 restoration orders to all sites. Clause 8 provides powers of entry for all sites so that it can be ascertained if an offence has been committed. Clauses 9 - 11 deal with planning permission and duties of statutory undertakers. The Bill attempts to deal with some of the drafting defects that are still proving to be problematic. While these are important and need to be dealt with, the Bill does not address the wider problems. and alone will not save habitats despite FOE's belief that "key amendments to existing legislation ... would best deliver the protection and care needed to conserve the remnants of our wildlife heritage" (FOE,1995:3).

Another proposal that has often been made is the extension of planning control to agricultural activity. Comparison is often made with the approach to listed buildings. In the Committee stage in the Lords considering the WACA, Lord Underhill pointed out that "there is absolutely no reason whatever why this country should not give the same consideration to the heritage of our wildlife as we do to the heritage of our buildings" (Hansard:HL417,296). This has, however,

⁵ This is currently being debated and there has already been one attempt to talk it out by the government (FOE,15-5-96).

been continually resisted⁶, often because the proposals were verging on the ridiculous. It would not be feasible for a farmer to apply for planning permission for everything he had to do on his land. Even if planning controls were extended they still would not cope with damage caused by third parties or through insufficient management. Given that the planning system does not even adequately protect SSSIs from development the auguries for such an approach are not promising. There are limited occasions where planning control can prove useful⁷, but it would not solve the problems of habitat protection.

2) THE GOVERNMENT'S SOLUTION - THE RURAL WHITE PAPER

The Government is continuing to rely on others to conserve nature. "We rely on them [farmers] to act as stewards of England's countryside, using best environmental practice to nurture its quality and wealth of wildlife". It sees its role as providing "the legislative and policy framework within which the market operates" and will only intervene "where an unconstrained market fails to deliver the range of public benefits which we all expect of the countryside". This

⁶ "We are convinced that an extension of planning controls into agricultural development would conflict seriously with the voluntary approach and would harm the new spirit of co-operation which is now building up. Far more is to be achieved by the farming community being convinced by and willingly espousing the conservation cause rather than by their being placed in a position of looking for ways of circumventing resented restrictions and bureaucratic red tape" (House of Commons Environment Committee Report, 1985:ch 2 para 17). In the Government's response to the report they stated that "the government agrees with the Committee that wide ranging statutory controls over the countryside, together with the bureaucracy needed to administer them, should be kept to the unavoidable minimum" (Govt response, 1985:1.3). "Any extension of planning control would need strong justification in view of the extra burden it would impose on both developers and the planning system itself" (Govt response, 1985:2.10).

⁷ For example where the Secretary of State used an Article 4 direction to prevent drainage on part of Halvergate Marshes.

intervention is to be in the form of "advice, information and training" and by using "incentives as a targeted and efficient mechanism to achieve public benefits in the countryside" (Rural White Paper,1995:104). All of which means they intend to do nothing, the voluntary approach will continue as before.

Even with regard to the current approach of designated sites the Government sees a minimalist use of such designations; "the touch must be as light as is consistent with effective protection" (Rural White Paper,1995:105). The White Paper does recognise that designations alone are not enough to protect wildlife but makes no real suggestions as to how to proceed⁸. The only suggestion is that this will be achieved by "providing improved information and advice and by making incentive schemes more widely available" (Rural White Paper,1995:109) effectively by continuing to rely on the voluntary approach.

The conflict with transport policy is dealt with by providing for a debate on the issue. Apparently it is not possible for the Government to judge how to reconcile the objectives of environmental protection and improvement of transport. If the Government is not in a position to do so then who is? They are avoiding the issue as they are with all of the proposals. They provide for review, discussion and maintaining the status quo but not for actually doing anything. The only positive is the new role for the Cabinet Committee dealing with environmental issues so that it can consider the rural dimension of policies across Government.

⁸ Although it categorically states that there will be no new types of designation.

3) THE PROBLEM

Part of the problem is the perceived reversibility of damage to habitats. Because many habitats are a result of human influence it seems to some that they are easily recreated; it is hardly the same as killing a bird or demolishing a listed building. The existence of section 31 restoration orders fosters this myth yet they are of use in only a limited number of situations.

A change of attitude is needed at all levels. The long term future depends on a change of attitude about conservation. "Conservation cannot be achieved by elitist groups, however powerful" (Moore,1987:252). Institutional inconsistencies and resistance to conservation need to change along with landowner attitudes. There is evidence that the attitude of many landowners has changed: as Moore points out, "the strategy of education and research is already bearing fruit, but it would be foolhardy to expect dramatic results in the short term" (Moore,1987:239). The institutional issues remain to be tackled. Meanwhile the SSSI system is acting as a holding operation.

It must be remembered that legislation alone will not protect habitats; "biodiversity conservation also necessitates the sustainable use of biological resources and the control of processes which lead to the deterioration of the natural environment. In short, conservation can only be achieved through a cocktail of complementary measures" (De Klemm & Shine,1993:xvi). The institutional attitude to conservation must change and the inconsistencies in policies must be resolved. As the FOE have pointed out, "the government itself

has sanctioned the complete destruction of an internationally important SSSI at Cardiff Bay, where it is constructing a barrage - for cosmetic purposes only" (FOE,1995:3). The necessary changes must take place at two levels - European and national.

3)a) The European Dimension

The conflict created by the European CAP has already been discussed⁹. It has abated somewhat with the reform in 1992 and the consequent introduction of the FCGS, however, conservation is still on the periphery of the CAP. The focus on production efficiency propounds a set of priorities taken up by individual landowners and it also represents the institutional approach to conservation - minimalist. The emphasis on production income has led many farmers to consider conservation as a luxury and others who do undertake environmental improvements hold a "strongly materialist orientation towards conservation work" (Eldon,1988:17), they do it because it puts value on their land. The institutional approach thus shapes the attitude of individual landowners and must be tackled first. Integration of policy is particularly necessary at a European level given the importance of the EC in policy making.

An attempt at integration was announced in July 1995 when the European Parliament called for governments to "endeavour to obtain better integration of environment related aspects of the decision making of the IMF, World Bank and

⁹ Chapter 10. See also Bowers & Cheshire (1983) and Body (1982).

EBRD and asks that the European Environmental Agency create for Europe as a whole a system of information exchange concerning environmental legislation and policy" (Europe N°6525,19/7/95).

3)b) The National Dimension

At a national level "it has become clear that the aims of other land and resource use interests are nowadays often incompatible and therefore in competition with those of nature protection" (NCC,Annual Report 1984:49). This issue has been recognised by the government in the Rural White Paper (1995:101): "sustainable development not only places on us all a responsibility to manage the countryside in ways that meet present needs without compromising the ability of future generations to meet theirs, it also requires us to reconcile the many competing priorities". It was also recognised by Lord Melchett in the debates on the WACA (Hansard:HL415,989). However, many of these conflicts are of the Government's own making. They include agriculture, forestry, industry, housing, recreation, transport and planning¹⁰. These are currently dealt with by different Government departments and co-operation between various departments is difficult to achieve¹¹. As Moore (1987:244) points out, "our machinery of government is particularly ill-adapted to deal with conservation". The practical, every day difficulties of co-ordinating conservation with these other interests are

¹⁰ The government sees some of the overlap as beneficial. "Wealth creation and environmental quality are increasingly interconnected. In the 21st century environmental quality will offer more economic opportunities than constraints" (Rural White Paper,1995:101)

¹¹ See Hughes (1994) for examples of the conflicts.

"compounded by the machinery of government which has allowed great gulfs to be fixed between the departments most concerned with land use" (Moore,1987:245). As Lord Beaumont of Whitley pointed out during the debate on the WACA, it is a great shame "that countryside matters are split between MAFF and the Department of the Environment. It is a great pity that we do not have, as so many European countries have, a department of rural affairs" (Hansard:HL415,1008). "Different official resource agencies concerned with the countryside have their own conflicting objectives, powers and programmes. On the one hand, the Nature Conservancy Council and the Countryside Commission work to conserve the wildlife and amenity interest of the countryside; and on the other, MAFF carries out policies to expand agricultural output" (Goyder & Lowe,1982:72).

The individual departments are protecting their territory. There is always competition for land between different users and departments are unlikely to compromise. "Competition or conflict with other interests will not go away of their own accord, but their overall seriousness could be substantially reduced if the priorities for nature conservation received more sympathetic recognition" (NCC,1984:80)¹². This is only possible if the Government changes its approach. In this respect, transport policy has received a great deal of media attention. Proposals such as the Newbury bypass illustrate the scant regard given to

¹² Ward Samways & Benton (1990) argue that environmental issues will only take precedence in limited circumstances. They give the example of the channel tunnel link. The proposals were only modified after intense local opposition in Tory-held constituencies. They argue that opposition to roads programmes are by the electorally insignificant (who probably would not vote Tory anyway) and that many are bought off by cosmetic measures.

conservation by the Government when proposals for roads are made¹³. "Confrontation could be reduced by persuading government to modify some of its land use policies, especially for agriculture and forestry, in such ways that the social objectives underlying these policies are maintained acceptably whilst taking greater account of environmental needs" (NCC,1984:81)¹⁴.

The one department with responsibility for conservation issues, the DOE, does not even give prominence to conservation. Environmental policy is a very small part of DoE's responsibilities. According to McCormick, "only 10 per cent of the staff of the department actually deal with environmental issues, and the department routinely gives most of its attention to its responsibilities in local government and housing" (McCormick,1993:270).

McCormick argues that MAFF plays a more central role in British environmental policy than the DOE; however, it is MAFF that has been subjected to the greatest criticism in this respect, probably because the impact of its policies is most obvious. The Environment Committee Report of 1985 was highly critical of MAFF's attitude towards conservation. "We do not consider that the gestures towards conservation listed by MAFF, such as the Farming and Wildlife Advisory groups, the Environmental Co-ordination Unit, changes in ADAS, grants for hedging, tree stump removal, prior notification in National Parks and so on go far

¹³ The proposed route will damage 5 nationally designated sites, 1 AONB, 3 SSSIs and a registered civil war battlefield.

¹⁴ The possibility of doing this is limited by the influence of the landowning community and businesses who have a stake in developments. They are unlikely to go quietly.

enough" (House of Commons Environment Committee Report,1985:para31)¹⁵. The Committee also considered it "absurd that departments of the Crown should not be pursuing policies and applying public monies in a manner which is consistent and complementary with one another" (House of Commons Environment Committee Report,1985:para30). "Without fundamental changes in the structure of agricultural finance, conservation will continue to be set in weak opposition to the forces of intensive and, paradoxically, frequently unwanted production, instead of being an integral part of good husbandry, as it should be. MAFF must reappraise its attitudes" (House of Commons Environment Committee Report,1985:para73). This was of course written before reform of the CAP. However, given the limited changes made in favour of conservation in the new scheme, it seems unlikely that the situation will have changed very much. The central problem for MAFF in trying to present itself as conservation conscious is the limitations imposed by its corporatist relationships with the farming industry and competition with the DOE. As Winter points out, "despite important advances that have been made in this direction, the Ministry's future is still far from clear and environmental policies for agriculture remain fragmented" (Winter,1991:61). According to Dave Pritchard of the RSPB the relationships with the farming unions have not precluded a conservationists stance, in fact "the farming unions and the RSPB were frequently on the same side pressing for MAFF to do the same thing and MAFF was the slow colleague....MAFF is much more of a dinosaur" (pers. comm.).

¹⁵ As the committee pointed out, "all our witnesses, except MAFF, recognise the need for a serious change in direction".

To ameliorate this, the FWAG was created in 1969 by a number of landowning and conservation groups¹⁶ to provide conservation advice to farmers. As well as this very practical role FWAG also has a symbolic role; "its very existence enabled it to function as a sort of talisman, ritualistically invoked as the mechanism through which farmer and conservationist might engage in constructive dialogue" (Cox et al,1990b:175). This led to the current prominence of FWAG. During the passage of the WACA. "when pressed to justify their claim that voluntary co-operation would be sufficient to safeguard rural habitats and landscapes in the face of widespread evidence that these were being destroyed by modern farming practices, agricultural leaders and ministers publicly associated themselves ever more closely with FWAG as a tangible expression of the principle of voluntary co-operation" (Cox et al,1990b:43). This expression of the voluntary principle is double sided. Firstly, and positively, the FWAG aims to "stimulate and broadcast amongst farmers and landowners a social ethic concerning stewardship of the countryside, including the protection and enhancement of natural diversity and beauty within the context of modern farming practice and estate management"; secondly, it represents an "ideological defence of the autonomy of farmers and landowners from statutory controls, through an emphasis on the paramount need to retain their goodwill and voluntary co-operation" (Cox et al,1990b:2).

¹⁶ NFU, CLA, MAFF, RSPB, RSNC, BTO and NCC

The formation of FWAG has also been utilised in maintaining the corporatist relationships present in the agricultural community. "Increasingly the farming and landowning lobbies used FWAG to demonstrate a commitment to conservation and have sought thereby to further their strategies of resisting the imposition of external controls on the industry" (Cox et al,1990b:4). FWAG was a primary means used by the NFU and CLA in their pressure to maintain the voluntary approach by making sure that it worked. "The main vehicle they chose in their efforts to highlight and reinforce a conservation ethic and co-operative spirit amongst farmers and landowners was FWAG. They ... sought to give FWAG a more effective operational role in the self-regulation of the agricultural community" (Cox et al,1990b:47). FWAG has tended to be associated with the creation rather than the protection of habitats, the cosmetic side of conservation. In addition, the effectiveness of their advice has been questioned¹⁷ because of their agricultural bias. However, FWAG does perform a legitimacy role as a tangible expression of the voluntary principle and from the perspective of the farmer represents action rather than words (Potter,1985). The agricultural community is therefore likely to ensure that FWAG succeeds in its task otherwise the voluntary approach may be called into question.

The use of FWAG also represents the continued emphasis on education as the key to long term conservation. Huxley saw the importance of education, as have many commentators since, and FWAG is currently the only expression of this.

¹⁷ See Cox, Lowe & Winter (1990b). For a detailed discussion of the quality of advice see Winter et al (1995) who have conducted an extensive assessment of advice from FWAG.

However, another blow to integration is the possibility, proposed by Cox et al (1990), of competition between ADAS and FWAG. ADAS has always concentrated on giving advice in relation to SSSIs and NPs and FWAG has concentrated on the wider countryside. With changes in the Agriculture Act, conservation has become more central to ADAS activity, thus putting it in competition with FWAG. As FWAG is portrayed as the flagship of integration of agriculture and conservation, to challenge it thus shows the inconsistency of approach adopted by the government. The diminishing responsibilities of FWAG are all the more worrying given that the ability of ADAS to provide the advice has been questioned¹⁸. FWAG has been criticised for biased advice but given that most ADAS advice so far has concentrated on production efficiency, their ability to remedy this seems highly unlikely and a decline in the quality of advice seems more of a possibility. The emphasis on production efficiency has led, particularly since section 1 of the Agriculture Act 1986 enabled ADAS to charge for the majority of its services and advice¹⁹, to a shift in favour of advice available from the private sector which does not take account of conservation issues at all²⁰.

¹⁸ See Cox, Lowe & Winter (1990b), chapter 8.

¹⁹ Initial advice on farm conservation is free but any follow up or more detailed assistance is charged for.

²⁰ See Eldon (1988) for details of this shift and of its effect on take up of conservation grants and landscape changes.

4) AN ANSWER?

There is no easy solution to the problem of habitat protection. However, in order to tackle the underlying reasons for the failure of the voluntary system two approaches can be recommended. These are education and an integrated policy approach²¹. The need for an integrated policy approach has been recognised by Wynne et al: "Biodiversity conservation must be an integral part of all Government programmes, policy and action at national and local levels. Conservation cannot be achieved if it is treated as the responsibility of a single section or tier of government, particularly if it is divorced from major land use and other economic decisions" (Wynne et al,1995:33). The Government are under an obligation to ensure that biodiversity objectives are taken into account when developing policies and programmes under Article 10(a) of the Convention on Biological Diversity (1992) ²².

Political as well as legal commitment is needed. Legislative changes seem an attractive prospect at the moment but will not work in the long term and will be subject to the same limitations as those currently in operation. However, certain changes are necessary to strengthen the 'holding operation' that the system performs, to ensure compliance with the requirements of the Habitats Directive. "Measures to manage biological assets or processes are insufficient alone to

²¹ See Hawke (1991) for proposals that attempt this. Although the proposals tend to be limited in their application.

²² Article 10(a) provides that "each contracting party shall, as far as possible and as appropriate: (a) integrate consideration of the conservation and sustainable use of biological resources into national decision-making".

achieve conservation objectives, especially if such measures run counter to more powerful economic forces and policies" (Wynne et al,1995:43). It must be made easier for landowners to comply by eliminating the inconsistencies in the CAP so that there is no financial advantage in destroying habitats. A united approach must be presented to landowners by the Government rather than the divided one we currently have, advice must reflect conservation issues not just production ones.

As well as changes to the structure of MAFF, DOE and the CAP in order to help landowners to conserve habitats, changes must be made to prevent the Government taking over as the primary source of habitat destruction. The Government must co-ordinate its policies with conservation so that conservation is given an equal voice. Conservation will not be given priority every time but there must be an opportunity for conservation issues to be considered in a balanced way rather than the current development bias that can be seen with the Cardiff Bay barrage and the roads programme. There are currently requirements for certain decision makers to take account of conservation considerations²³, but, as Wynne et al point out, "in the absence of clear objectives and targets for biodiversity, this is a difficult and sometimes fruitless exercise" (Wynne et al,1995:44). Clear objectives need to be enunciated and greater weight needs to be afforded to conservation issues. Goode and Tydesley (1995) propose a role for local authorities in this process.

²³ See PPG 9.

However, education is the fundamental part of the process of reform: "the reforms to legislation and policy needed will come about as part of wider changes of attitudes and values, fundamental to which is education and public awareness" (Wynne et al,1995:45). The importance of education in the conservation of nature has been recognised for almost as long as the need to conserve it. According to Huxley we should rely "above all on education" (Huxley, 1947:256)²⁴.

Given that the likelihood of a departmental restructuring under the current Government is slim²⁵ we must rely on education and the shoring up of the holding operation to save habitats. We can only hope that the European commitment to integrating conservation into other policies will filter down to a national level.

²⁴ A number of different strategies for education are discussed by Jacobson (1995) and there are proposals in Wynne (1995:73).

²⁵ Although not impossible. See Kennet (1974) for details of changes in the 1960s.

APPENDIX

COMMITTEE STAGE IN THE LORDS

(Bill no 1 - 25-11-80)

CLAUSE 26 (SECTION 29)

**(376)*

(1) Where in the case of any land **(378)* which **(379)* in the opinion of the Secretary of State is of special interest by reason of its flora, fauna, **(380)* or geological or physiographical features it appears to the Secretary of State expedient to do so -

(a) for the purpose of **(381)*securing the survival of those flora, fauna **(382)* or physiographical features; or

(b) for the purpose of complying with an international obligation;

or

(c) **(383)* in the national interest

**(376A)* he may, **(375)* after consultation with the NCC by order **(384)* apply subsection (2) to that land **(385)(385A)*; **(377)* and the provisions of schedule 10 shall have effect as to the making, confirmation and coming into operation of orders under this section.

**(386)* An order made under this section may be amended or revoked by a subsequent order so made. **(387)*

(2) **(387A)* The owner or occupier of any land **(390)* to which this subsection applies shall not **(388)* carry out on it **(389)* any operation **(391)* **(392)* appearing to the Secretary of State to be likely to destroy or damage its flora, fauna **(393)* or geological or physiographical features **(394)* and **(395)* specified

in **(395A)* the order applying this subsection to the land or cause, or permit the carrying out of such an operation, unless-

(a) one of them **(396)* has, **(397)* after the commencement date, given the Council notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions in subsection (3) is fulfilled.

(3) The said conditions are -

(a) That the operation is carried out with the Council's written consent

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and

(c) **(398)* subject to subsections (4) and (5) that **(399)(400)* three months have expired from the giving of the notice under subsection (2). **(401)*

(4) **(402)* If before the expiration of the period mentioned in paragraph (c) of subsection (3) the Council offer to enter into a management agreement with the person who gave the notice under subsection (2) **(402A)* either for the acquisition of his interest or under section 16 of the 1949 Act or section 15 of the 1968 Act, that paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection of the offer to enter into the agreement, whichever period last expires.

(5) ~~*(403)~~~~(404)~~ If before the expiration of the period mentioned in paragraph (c) of subsection (3), or that paragraph as it has effect by virtue of subsection (4), ~~*(405)~~ an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (2) ~~*(405A)~~, that paragraph shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter on the land

(b) in any other case, on the day on which the order is withdrawn or the Secretary of state decides not to confirm it. ~~*(406)~~

(6) A person who, without reasonable excuse, contravenes ~~*(407)~~ subsection (2) ~~*(408)~~ shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum ~~*(409)~~

(b) on conviction on indictment, to ~~*(410)~~ imprisonment for a term not exceeding two years or a fine or both. ~~*(411)~~

(7) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation. *(412)

*(413) *(414) *Duke of Atholl -leave out Clause 26*

LIST OF AMENDMENTS FOR CLAUSE 26

375 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Leave out from beginning & insert - (1) In the case of any land which is designated by the Nature Conservancy Council as a site of special scientific interest under section 23 of the National Parks and Access to the Countryside Act 1949 the Secretary of State shall

Effect - increase protection to all SSSIs

Debates - Hansard Vol. 417, 12-2-81, col. 292.

Speakers for: Lord Melchett

Speakers against: Viscount Thurso, Earl of Avon

Amendment withdrawn.

376 - Lord Buxton Of Alsa & Lord Craigton

Insert - (A1) The Nature Conservancy Council shall serve on every owner and occupier of any land which in the opinion of the Council is of special interest by

reason of its flora, fauna, or geological or physiographical features a notice specifying-

(a) the nature of that special interest; and

(b) any operations appearing to the Council to be likely to destroy or damage such interest;

and the notice shall have effect as from the day on which it is served.

Effect - notification requirement, and application to all sites

Debates - Hansard, Vol. 417, 12-2-81, col. 292 - 322 (also considered amendments 379, 384, 386, 390, 391, 394, 397, 399, 404, 407, 413, 415, 417, 418, 419, 420, 423).

Speakers for: Lord Craigton, Lord Middleton (notification - against all other amendments), Lord Renton, Baroness White, Lord Gibson, Viscount Masserene & Ferrard, Lord Donaldson of Kingsbridge, Earl of Onslow, Lord Melchett, Lord Foot, Lord Sandford, Earl of Avon (notification)

Speakers against: Lord Stanley of Alderly, Earl of Caithness, Lord Burton, Viscount Thurso (changed mind later), Earl de la Warr

Amendment withdrawn (Earl of Avon promised Government amendments)

376A - Lord Bellwin

Leave out from beginning of section & insert -

(1) Where it appears to the Secretary of State expedient to do so -

(a) in the case of land to which this paragraph applies, for the purpose of securing the survival in Great Britain of any kind of animal or plant or of complying with an international obligation; or

(b) in the case of any land to which this paragraph applies, for the purpose of conserving any of its flora, fauna, or geological or physiographical features,

Effect - restrict conditions of making order

Debates - Hansard Vol. 417, 12-2-81, col. 322 - 326 (also considered amendments 387A, 402A, 405A).

Speakers for: Earl of Avon, Lord Middleton, Lord Stanley of Alderley

Speakers against: Baroness David, Lord Underhill, Lord Melchett, Lord Winstanley

Amendment agreed to (contents 96, not-contents 70)

377 - Lord Underhill, Lord Melchett & Lord Beaumont Of Whitley

Leave out from beginning and insert -

(1) The provisions of subsection (2) shall apply to any land which is designated by the Nature Conservancy Council as a Site of Special Scientific Interest under section 23 of the 1949 Act and to any land declared by the Nature Conservancy Council to be a nature reserve under section 15 of the 1949 Act:

Provided that the Secretary of State may, after consultation with the Nature Conservancy Council, by order exclude the application of subsection (2) to the whole or any specified part of any such land where he is of the opinion that its application is not necessary-

- (a) for the purpose of securing the survival of the land's flora, fauna, or geological or physiographical features; or
- (b) for the purpose of complying with an international obligation;
- (c) in the national interest;

Effect - protection for all sites, including NNRs

Debates, Hansard Vol. 417 12-2-81 col. 296 -

Speakers for: Lord Underhill, Baroness White, Viscount Masserene & Ferrard,

Lord Foot

Amendment not moved because 376A agreed to

378 - Lord Craigton

Insert - not more than three miles outside the low water mark

Amendment not moved because 376A agreed to

379 - Lord Buxton Of Alsa & Lord Craigton

Leave out - in the opinion of the Secretary of State

Amendment not moved because 376A agreed to

380 - Lord Craigton

Insert - or other living thing

Amendment not moved because 376A agreed to

**381 - Lord Middleton, Lord Stanley Of Alderly, Earl De La Warr & Earl Of
Caithness**

Leave out - securing the survival of those flora, fauna, or - Insert - preventing the
extinction of a species or preserving unique

Amendment not moved because 376A agreed to

382 - Lord Craigton

Insert - or other living thing

Amendment not moved because 376A agreed to

**383 - Lord Middleton, Lord Stanley Of Alderly, Earl De La Warr & Earl Of
Caithness**

Leave out - in the national interest - Insert - where the conservation value of the
site is of national importance

Amendment not moved because 376A agreed to

384 - Lord Buxton Of Alsa & Lord Craigton

Leave out - apply subsection (2) to that land - Insert - prohibit the carrying out on that land of any operation specified in the order, subject to such conditions as he may thereby impose.

Amendment not moved

385 - Lord Renton

Insert - and such areas shall be known as "sites of special scientific interest"

Effect - terminology

Debates, Hansard Vol. 417 12-2-81 col. 328.

Speakers for: Lord Renton

Speakers against: Earl of Avon

Amendment withdrawn

385A - Lord Melchett & Baroness David

Leave out - sites of special scientific interest - Insert - wildlife conservation areas

Effect - terminology (Amendment to amendment 385)

Debates, Hansard Vol. 417 12-2-81 col. 328 - 330

Speakers for: Lord Melchett

Speakers against: Baroness White, Earl of Avon

Amendment withdrawn

386 - Lord Buxton Of Alsa & Lord Craigton

Leave out sentence and insert - A notice served under subsection (A1) or an order made under subsection (1) of this section may be amended or revoked by a subsequent notice or order

Amendment not moved

387 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Insert - In the case of any land which in the opinion of the Council is of special interest by reason of its flora, fauna, or geological or physiographical features the Council shall notify the owner or occupier of the scientific criteria used for selecting such areas of special interest.

Amendment not moved because 376 agreed to.

387A - Lord Bellwin

Leave out paragraph up to subsection (a) & insert -

(1A) Paragraphs (a) & (b) of subsection (1) apply to any land which in the opinion of the Secretary of State is -

(a) of special interest; and

(b) in the case of paragraph (b) of that subsection, of national importance, by reason of any of its flora, fauna or geological or physiographical features.

(2) Subject to subsection (2A), no person shall carry out on any land to which this subsection applies any operation which -

(a) appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is land to which paragraph (a) or, as the case may be, paragraph (b) of subsection (1) applies; and

(b) is specified in the order applying this subsection to the land.

(2A) Subsection (2) shall not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if -

Effect - liability for damage extended beyond just owner/occupiers

Debates, Hansard Vol. 417 12-2-81 col. 330 - 332

Speakers for: Earl of Avon

Amendment agreed to

***388 - Lord Middleton, Lord Stanley Of Alderly, Earl De La Warr & Earl Of
Caithness***

Leave out from beginning of subsection and insert - In respect of any land to
which this subsection applies no person shall

Amendment not moved

389 - Lord Melchett & Baroness David

Leave out from beginning of subsection and insert - No person shall carry out on
or near any land to which this subsection applies

Effect - liability on any person including nearby land

Debates, Hansard Vol. 417 12-2-81 col. 331 - 332

Speakers for; Lord Melchett

Amendment not moved but Earl of Avon accepted it in principle

390 - Lord Buxton Of Alsa & Lord Craigton

Leave out - to which this subsection applies - Insert - specified in a notice under
subsection (A1)

Amendment not moved because 387A agreed to

391 - Lord Buxton Of Alsa & Lord Craigton

Leave out - appearing to the Secretary of State to be - Insert - specified in the notice as being

Amendment not moved because 387A agreed to

392 - Lord Middleton, Lord Stanley Of Alderley, Earl De La Warr & Earl Of Caithness

Leave out - appearing to the Secretary of State to be likely to - Insert - which would

Amendment not moved because 387A agreed to

393 - Lord Craigton

Insert - or other living thing

Amendment not moved because 387A agreed to

394 - Lord Buxton Of Alsa & Lord Craigton

Leave out - and specified in the order applying this subsection to the land

Amendment not moved because 387A agreed to

**395 - Lord Middleton, Lord Stanley Of Alderley, Earl De La Warr & Earl Of
Caithness**

Insert - such operation, flora, fauna or geological or physiographical features
being

Amendment not moved because 387A agreed to

395A - Lord Underhill

Leave out - the order applying this subsection to the land - Insert - regulations

Amendment not moved because 387A agreed to

**396 - Lord Middleton, Lord Stanley Of Alderley, Earl De La Warr & Earl Of
Caithness**

Leave out - one of them - Insert - the owner or occupier of the land

Amendment not moved - discussed with 376

397 - Lord Buxton Of Alsa & Lord Craigton

Leave out - after the commencement date

Amendment not moved - discussed with 376

398 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Leave out - subsection (3)(c)

Amendment not moved - discussed with 376

399 - Lord Buxton Of Alsa & Lord Craigton

Leave out - three months - Insert - twenty eight days

Amendment not moved - discussed with 376

400 - Duke Of Atholl

Leave out - three months - Insert - one month

Amendment not moved - discussed with 376

401 - Lord Underhill, Lord Melchett & Lord Beaumont Of Whitley

Insert - Where the council receives notice of a proposal to carry out an operation and paragraph (b) of the previous subsection does not apply, the Council shall -

- (a) publish notice of the proposal in two successive weeks in a newspaper or newspapers circulating in the area in which the land is situated on which it is proposed in the notice to carry out the operation, and, not earlier than the day following that on which the first publication of the notice is completed in pursuance of the preceding provisions of this paragraph, to publish such a notice in the London Gazette; and

(b) consider any written representations relating to the proposal which are made to the Council by any persons within the period of three weeks beginning with the date on which notice of the proposal is published in the London Gazette, and the Council shall not give consent in pursuance of paragraph (a) of the previous subsection before expiration of such period.

Effect - publicity of proposed operations on sites

Debates, Hansard Vol. 417 12-2-81 col. 332 - 335

Speakers for: Lord Underhill, Lord Melchett

Speakers against: Earl of Avon

Amendment withdrawn

402 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Leave out - subsection (4)

Amendment not moved

402A - Lord Bellwin

Leave out - (2) and insert (2A) (Consequential amendment to 387A)

Debates, Hansard Vol. 417 12-2-81 col. 335

Amendment agreed to

403 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Leave out - subsection (5)

Amendment not moved

404 - Lord Buxton Of Alsa & Lord Craigton

Leave out - subsection (5). Insert - (5) If it appears to the Council that any agreement specified in subsection (4) is unlikely to be reached before the expiration of the period mentioned in paragraph (c) of subsection (3), or that paragraph as it has effect by virtue of subsection (4), the Council may make application to the Secretary of State for an order under subsection (1) to be made on the day upon which that period expires which may prohibit the operations specified in the notice under subsection (2).

Effect - prohibit work to allow negotiation after time period

Debates, Hansard Vol. 417 12-2-81 col. 335

Speakers for: Lord Craigton

Amendment withdrawn - Earl of Avon said government would consider

405 - Lord Craigton & Lord Beaumont Of Whitley

Insert - and only in relation to land more than 10 acres in extent

Effect - with 406 - prohibition of activities on sites less than 10 acres rather than compulsory purchase

Debates, Hansard Vol. 417 12-2-81 col. 335 - 340 (also 406, 408, 461)

Speakers for: Lord Craigton, Lord Melchett (but only because govt reluctance on other areas)

Speakers against: Viscount Thurso, Earl of Avon

Amendment disagreed to (Contents 55, not-contents 84)

405A - Lord Bellwin

Leave out - (2) and insert (2A)

Effect - consequential amendment (387A)

Debates, Hansard Vol. 417 12-2-81 col. 351

Amendment agreed to

406 - Lord Craigton & Lord Beaumont Of Whitley

Insert - (5A) In relation to any land 10 acres or less in extent to which subsection (2) has been applied the Secretary of State may serve on the owner or occupier a notice in the prescribed form stating that the provisions of subsections (2) and (3) are to be complied with.

Amendment not moved because 405 defeated

407 - Lord Craigton

Leave out from beginning of subsection and insert - Any person who, without reasonable excuse, contravenes any order made under subsection (1) or the provisions of

Amendment not moved

408 - Lord Craigton & Lord Beaumont Of Whitley

Leave out (2) and insert (2A)

Amendment not moved

409 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Insert - for each hectare or part hectare affected by the operation

Effect - extension of fines

Debates, Hansard Vol. 417 12-2-81 col. 351 - 352

Speakers for: Baroness David, Lord Melchett

Speakers against: Earl of Avon

Amendment withdrawn

410 - Lord Middleton, Lord Stanley Of Alderley, Earl De La Warr & Earl

Caithness

Leave out - to end of subsection (b) and insert - a fine

Effect - remove imprisonment as a penalty

Debates, Hansard Vol. 417 12-2-81 col. 352 - 353

Speakers for: Earl de la Warr, Lord Middleton, Lord Donaldson of Kingsbridge

Amendment withdrawn (Earl of Avon promised govt action)

411 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Insert - (c) on conviction to be ordered by the court to reinstate the land covered by the order and damaged by the operation by any means that the court may direct so as to return the land to the state that it was in before the operation was carried

out, or that approximates as closely as possible to the state of the land before the operation was carried out.

Effect - restoration of sites

Debates, Hansard Vol. 417 12-2-81 col. 353 - 356

Speakers for: Lord Melchett, Baroness White, Lord Hunt, Lord Foot

Speakers against: Earl of Avon

Amendment withdrawn (Earl of Avon promised government would consider it)

412 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Insert - and only if no possible means of meeting the emergency without damaging the land to which subsection (2) applies was available.

Effect - restriction of reasonable excuse

Debates, Hansard Vol. 417 12-2-81 col. 356 - 358

Speakers for: Lord Melchett

Speakers against: Earl of Avon

Amendment withdrawn

413 - Lord Buxton Of Alsa & Lord Craigton

Insert - A notice under subsection (A1) and an order under subsection (1) shall be a local land charge.

Amendment not moved - previously discussed col. 304 & 319, and government action promised by Earl of Avon

414 - Lord Middleton, Lord Stanley Of Alderley, Earl De La Warr & Earl Of Caithness

Insert - An order under this section is a local land charge.

Debates, Hansard Vol. 417 12-2-81 col. 358 - 360

Speakers for: Lord Middleton, Lord Donaldson of Kingsbridge, Lord Melchett

Speakers against: Earl of Avon (because would automatically be Local Land Charge)

Amendment withdrawn

DUKE OF ATHOLL-

Leave out clause 26

Debates, Hansard Vol. 417 12-2-81 col. 360 - 365

Speakers for: Lord Melchett (if no improvement to clause 26)

Speakers against: Lord Monk Bretton, Earl of Avon

Clause 26, as amended, agreed to

Successful amendments = 376A (402A, 405A), 387A

Amendments withdrawn on promise of government action = 376, 389, 404, 410,
411, 413

CLAUSE 27 (SECTION 30)

(1) This section applies **(415)* where -

(a) notice of a proposal to carry out an operation is duly given to the Nature Conservancy Council under subsection (2) of section 26 **(416)* , and

(b) paragraph (c) of subsection (3) of that section has effect as modified by subsection (4) or (5) of that section.

(2) The Council shall pay compensation to any person having at the time of the **(417)* giving of the notice, an interest in land to which the **(418)* relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that -

(a) he has reasonably incurred expenditure which has been rendered abortive, **(419)* or expenditure in carrying out work which has been rendered abortive, **(420)* by the making of the order; **(421)* or

(b) he has incurred loss or damage **(422)* which is directly attributable to the **(423)* making of the order;

**(424)* (425)* but nothing in this subsection shall entitle any person to compensation in respect of any reduction in the value of his interest in the land.

**(426)*

(3) Compensation under this section shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

(4) Except in so far as may be provided by regulations under this section, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal **(427)*.

(5) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provision of any regulations under this section.

(6) Regulations under this section **(427A)* shall be made by the Secretary of State and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Duke of Atholl - leave out clause 27, *(427B)*(427C)*

LIST OF AMENDMENTS FOR CLAUSE 27

415 - Lord Craigton

Insert - in any case where an order is made under subsection (1) or

Amendment not moved

416 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Leave out - paragraph (b)

Amendment not moved

417 - Lord Craigton

Leave out - giving of notice - Insert - making of the order under subsection (1) or the giving of the notice under subsection (2)

Amendment not moved

418 - Lord Craigton

Leave out - notice - Insert - order under subsection (1) or the notice under subsection (2)

Amendment not moved

419 - Lord Craigton

Leave out - expenditure in carrying out work which has been rendered abortive

Amendment not moved

420 - Lord Craigton

Leave out - making of the order - Insert - reason of the notice under subsection (1A) or the order under subsection (1)

Amendment not moved

421 - Viscount Massereene And Ferrard & Baroness Elliot Of Harwood

Leave out - or (drafting amendment linked to 425)

Amendment withdrawn

422 - Lord Middleton, Lord Stanley Of Alderly, Earl De La Warr & Earl Of Caithness

Insert - or any reduction in the value of his interest in the land

Amendment not moved

423 - Lord Craigton

Leave out - making of the order - Insert - service of the notice under subsection (1A) or the order under subsection (1)

Amendment not moved

***424 - Lord Stanley Of Alderly, Lord Middleton, Earl De La Warr & Earl Of
Caithness***

Leave out - to end of subsection (2)

Effect - remove prohibition on compensation for land value

Debates, Hansard Vol. 417 12-2-81 col. 367 - 370

Speakers for: Earl of Caithness, Lord Swinton, Baroness Elliot of Harwood,

Viscount Thurso

Speakers against: Earl of Avon, Lord Houghton of Sowerby, Baroness White

Amendment withdrawn

***425 - Duke Of Atholl, Viscount Massereene And Ferrard & Baroness Elliot Of
Harwood***

Leave out - to end of subsection (2) - Insert -

(c) he has been unable to sell the land for what it would have been worth if
no order had been made; or

(d) he has been unable to sell the land as a result of the making of the
order.

Effect - extension of compensation

Debates, Hansard Vol. 417 12-2-81 col. 366 - 367

Speakers for: Baroness Elliot of Harwood, Viscount Masserene and Ferrard, Lord
Craigton

Speakers against: Earl of Avon

Amendment withdrawn

426 - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Insert - or in respect of any potential loss of revenue from any activity not carried out on such land in the previous twenty years and that is prevented by the making of the order.

Effect - restriction of compensation

Debates, Hansard Vol. 417 12-2-81 col. 370 - 371

Speakers for: Lord Melchett

Speakers against: Earl of Avon

Amendment withdrawn (Earl of Avon promised to consider it)

427 - Lord Bellwin

Insert - or the Lands Tribunal for Scotland.

Debates, Hansard Vol. 417 12-2-81 col. 371

Amendment agreed to

427A - Lord Underhill

Insert - and the preceding section

Amendment not moved

Duke Of Atholl

Leave out clause 27

Debates, Hansard Vol. 417 12-2-81 col. 371 - 373

Speakers against: Earl of Avon

Clause 27, as amended, agreed to

Successful amendment - 427

Amendment withdrawn on promise of govt action - 426

PROPOSED NEW CLAUSES

428 - Lord Stanley Of Alderly, Lord Middleton, Earl De La Warr & Earl Of Caithness

Where any person disposes of his interest in any land affected by an order under section 26 of this Act on the open market he shall be entitled to compensation in respect of any reduction in the value of his interest reasonably attributable to the making of the order.

Amendment not moved

428A - Lord Winstanley

(1) The local planning authority may make bylaws for the prevention of damage to the land, or any features on or in the land, within any area designated under section 23 of the National Parks and Access to the Countryside Act 1949 as an area of special scientific interest.

(2) Without prejudice to the generality of subsection (1) above, bylaws under this section relating to any area may prohibit, restrict or regulate -

- (a) the riding of any bicycle, tricycle or similar machine,
- (b) the driving, riding, exercising or breaking in of horses, and
- (c) the use of metal detectors;

in the area, or any part thereof, except in the exercise of any lawful right.

Effect - bylaws to prevent damage

Debates, Hansard Vol. 417 12-2-81 col. 373 - 375

Speakers for: Lord Winstanley, Lord Inglewood

Speakers against: Lord Sandys (other controls already exist)

Amendment withdrawn

444B - Viscount Thurso

For section 23 of the 1949 Act there is substituted the following section -

23 - (1) Subject to the provisions of this section, where the Nature Conservancy Council are of opinion that any area of land, not being land for the time being managed as a nature reserve, is of special interest by reason of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact to the local planning authority in whose area the land is situated.

(2) The Council shall give particulars of an intended notification under subsection (1) to every owner and occupier of any land included in the area to which a notification is to be made, stating that objections to the notification may be made by notice in writing to the Secretary of State within the period of three months from the giving of the particulars.

(3) If before the end of the period of three months referred to in subsection (2) notice in writing of an objection is received by the Secretary of State from any person to whom particulars are required to be given under this section, and the objection is not withdrawn, the secretary of State shall, before authorising the Council to give notice under subsection (1), either -

(a) cause a local inquiry to be held; or

(b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for that purpose.

(4) On considering any representations or objections duly made and the report of any person appointed to hold the inquiry or to hear representations or objections, the Secretary of State may authorise the Council to notify the area of land with or without modifications; but if he proposes to alter the area of land, the Council shall give such additional particulars to every owner and occupier as he may require.

Effect - appeals procedure for notification of SSSIs

Debates, Hansard Vol. 417 13-2-81 col. 420 - 424

Speakers for: Lord Beaumont of Whitley, Earl of Radnor

Speakers against: Lord Chelwood, Lord Melchett, Lord Sandys

Amendment withdrawn

No successful new clauses

REPORT STAGE IN THE LORDS

(Bill no 107, 19-2-81)

CLAUSE 27 (SECTION 29)

27. - (1) Where it appears to the Secretary of State expedient to do so -

- (a) in the case of any land to which this paragraph applies, for the purpose of securing the survival in Great Britain of any kind of animal or plant or of complying with an international obligation; or
- (b) in the case of any land to which this paragraph applies for the purpose of conserving any of its flora, fauna, or geological or physiological features,

he may, after consultation with the Nature Conservancy Council, by order apply subsection (3) to that land; and the provisions of Schedule 10 shall have effect as to the making, confirmation and coming into operation of orders under this section.

An order made under this section may be amended or revoked by a subsequent order so made.

(2) Paragraphs (a) and (b) of subsection (1) apply to any land which in the opinion of the Secretary of State is -

- (a) of special interest; and
- (b) in the case of paragraph (b) of that subsection, of national importance,

by reason of any of its flora, fauna, or geological or physiographical features. **(167BA)*

(3) Subject to subsection (4), no person shall carry out on any land to which this subsection applies any operation which -

(a) appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is land to which paragraph (a) or, as the case may be, paragraph (b) of subsection (1) applies; and

(b) is specified in the order applying this subsection to the land.

(4) Subsection (3) shall not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if -

(a) one of them has, after the commencement date, given the Council notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions specified in subsection (5) is fulfilled.

(5) The said conditions are -

(a) that the operation is carried out with the Council's written consent;

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and

(c) subject to subsections (6) and (7) that three months have expired from the giving of the notice under subsection (3).

***(167BB)**

(6) If before the expiration of the period mentioned in paragraph (c) of subsection (5) the Council offer to enter into an agreement with the person who gave the notice under subsection (4) either for the acquisition of his interest or under

section 16 of the 1949 Act or section 15 of the 1968 Act, that paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection of the offer to enter into the agreement, whichever period last expires.

(7) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4), that paragraph shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(8) A person who without reasonable excuse, contravenes subsection (3) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, **(167BC)* to imprisonment to a term not exceeding two years or a fine or both. **(167C)*

(9) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation. **(167D)(167F)*

LIST OF AMENDMENTS FOR CLAUSE 27

167BA - Lord Melchett & Baroness David

Insert - or in the case of land that joins land to which subsection (1) applies, any land on which any operation covered by subsection (3) might destroy or damage the flora, fauna, or geological or physiographical features of land to which subsection (1) applies.

Effect - liability for damage if action on adjoining land (redraft of amendment government said it would consider but nothing happened)

Debates, Hansard Vol. 418 12-3-81 col. 425 - 426

Speakers for: Lord Melchett

Speakers against: Earl Ferrers (govt decided not to act)

Amendment withdrawn

167BB - Lord Melchett & Baroness David

Insert - Where the Council receives notice of a proposal to carry out an operation and paragraph (b) of the previous subsection does not apply, the Council shall -

(a) publish notice of the proposal in two successive weeks in a newspaper or newspapers circulating in the area in which the land is situated on which it is proposed in the notice to carry out the operation, and, not earlier than the day following that on which the first publication of the notice is completed in pursuance of the preceding provisions of this paragraph, to publish such a notice in the London Gazette; and

(b) consider any written representations relating to the proposal which are made to the Council by any person within the period of three weeks beginning with the date on which the notice of the proposal is published in the London Gazette, and the Council shall not give consent in pursuance of paragraph (a) of the previous subsection before expiration of such period.

Effect - publication of proposed operations (401 in Cmte)

Debates, Hansard Vol. 418 12-3-81 col. 426 - 427

Speakers for: Lord Melchett

Speakers against: Earl Ferrers (NCC would maintain register)

Amendment withdrawn

167BC - Lord Bellwin

Leave out to end of line and insert - a fine.

Effect - removal of imprisonment as a penalty

Debates, Hansard Vol. 418 12-3-81 col. 427

Moved by Earl Ferrers

Amendment agreed to

167C - Lord Melchett & Baroness David

Insert - A court before which a person is convicted of an offence under subsection (8) may, on application by the Nature Conservancy Council, make an order requiring that person to carry out to the satisfaction of the Council such operations as may be specified in the order for the purpose of restoring the special interest of the land, so far as is reasonably practicable to do so, to the state in which it was before the offence was committed.

Effect - restoration of site (411 at Cmte)

Debates, Hansard Vol. 418 12-3-81 col. 428 - 430

Speakers for: Lord Melchett

Speakers against: Earl Ferrers

Amendment withdrawn (Earl Ferrers promised government would consider)

167D - Lord Melchett & Baroness David

Insert - and only if no reasonable means of meeting the emergency without damaging the land to which subsection (3) applies was available.

Effect - limit reasonable excuse (based on 412 at Cmte - govt said would consider)

Debates, Hansard Vol. 418 12-3-81 col. 430 - 432

Speakers for: Lord Melchett

Speakers against: Earl Ferrers

Amendment withdrawn

167F - Lord Craigton, Lord Melchett, Lord Beaumont Of Whitley & Lord

Buxton Of Als

Leave out clause 27 (goes with proposed new clause 167A)

Amendment not moved

Successful amendment - 167BC

Amendment withdrawn on promise of action -167C
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CLAUSE 28 (SECTION 30)

(1) This section applies where -

(a) notice of a proposal to carry out an operation is duly given to the Nature Conservancy Council under subsection (4) of section 27; and

(b) paragraph (c) of subsection (5) of that section has effect as modified by subsection (6) or (7) of that section.

(2) The Council shall pay compensation to any person having at the time of the giving of the notice, an interest in land to which the notice relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that

(a) he has reasonably incurred expenditure which has been rendered abortive, or expenditure in carrying out work which has been rendered abortive, by the making of the order; or

(b) he has incurred loss or damage which is directly attributable to the making of the order;

**(168A)* but nothing in this subsection shall entitle any person to compensation in respect of any reduction in the value of his interest in the land. **(167E)*

(3) Compensation under this section shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

(4) Except in so far as may be provided by regulations under this section, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(5) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provision of any regulations under this section.

(6) Regulations under this section shall be made by the Secretary of State and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

LIST OF AMENDMENTS FOR CLAUSE 28

167E - Lord Melchett, Baroness David & Lord Beaumont Of Whitley

Insert - or in respect of any potential loss of revenue from any activity not carried out on such land in the previous twenty years and that is prevented by the making of the order.

Effect - limit on compensation (based on 426 at Cmte - govt said would consider)

Debates, Hansard Vol. 418 12-3-81 col. 439 - 441

Speakers for: Lord Melchett

Speakers against: Earl Ferrers

Amendment withdrawn

*168A - Earl Of Caithness, Lord Stanley Of Alderley, Lord Middleton & Earl De
La Warr*

Leave out - to end of subsection.

Effect - extend compensation

Debates, Hansard Vol. 418 12-3-81 col. 434 - 439 (also considered amendment
169A - new clause)

Speakers for: Earl of Caithness, Lord Middleton, Lord Wise, Viscount Masserene
& Ferrard

Speakers against: Earl Ferrers, Lord Melchett

Amendment withdrawn

No successful amendments

MISCELLANEOUS AMENDMENTS

177A - Lord Bellwin

Amendment to clause 55(6) (minor amendments) which finished as section 72.

Leave out - subsection (6) and Insert - (6) Section 22 of the Water Act 1973

(duties with regard to nature conservation and amenity) is amended as follows -

(a) in subsection (3) the words "not being land for the time being managed as a nature reserve" shall be omitted; and

(b) after subsection (3) there shall be inserted the following subsections -

(4) In the performance of its functions under this or any other enactment a water authority shall consult the Nature Conservancy Council before undertaking, or giving permission to others to undertake, any schemes, operations or activities which might affect the special interest of any area of land to which subsection (3) applies.

(5) Subsection (4) shall not apply to any emergency operation particulars of which (including details of the emergency) are notified to the Council as soon as practicable after the commencement of that operation.

(6) references in this section to water authorities shall include references to internal drainage boards and the reference in subsection (3) above to the water authority in whose area the land is situated shall include reference to the internal drainage board in whose district the land is situated.

Debates, Hansard Vol. 418 col. 639-641

Amendment withdrawn

PROPOSED NEW CLAUSES

167ZA - Lord Bellwin

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

- (a) to the local planning authority in whose area the land is situated; and
- (b) to every owner and occupier of any of that land.

(2) A notification under subsection (1)(b) shall specify -

- (a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and
- (b) any operations appearing to the Council to be likely to damage that flora or fauna or those features.

(3) The Ministers shall from time to time, after consultation with such persons appearing to them to represent any interests concerned as they consider appropriate -

- (a) prepare codes containing such recommendations with respect to the management of areas notified under subsection (1)(b) as they consider proper for the guidance of owners and occupiers of those areas; and
- (b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(4) A code prepared in pursuance of subsection (3) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or the proposed alterations have been approved by both Houses.

(5) Subject to subsection (4), the Ministers shall cause every code prepared or revised in pursuance of subsection (3) to be printed, and may cause copies of it to be put on sale to the public at such a price as the Ministers may determine.

(6) Section 23 of the 1949 Act (which is superseded by this section) shall cease to have effect; but this section shall have effect as if any notification given to a local planning authority under that section has been so given under subsection (1)(a).

Effect - notification of all SSSIs & voluntary code

Debates, Hansard Vol. 418 12-3-81 col. 393 - 421 (discussed with 167A)

Speakers for: Earl Ferrers, Lord Middleton, Viscount Masserene & Ferrard, Lord Stanley of Alderley, Viscount Thurso, Lord Burton, Lord Monk Bretton

Speakers against: Lord Melchett & Baroness White & Lord Buxton of Alsa, Lord Hunt, Lord Sandford, Baroness David, Lord Donaldson of Kingsbridge, Lord Gibson, Lord Craigton, Lord Renton, (all preferred 167A)

Amendment agreed to

167A - Lord Craigton, Lord Melchett, Lord Beaumont Of Whitley & Lord Buxton Of Alsa

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

(a) to the local planning authority in whose area the land is situated; and

(b) to every owner or occupier of any of that land,

and the notice shall take effect as from the day on which it is served.

(2) A notification under subsection (1)(b) shall specify -

(a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features and the notice shall have effect as from the day on which it is served.

(3) Section 23 of the 1949 Act (which is superseded by this section) shall cease to have effect.

(4) The owner or occupier of any land specified in a notice under subsection (1) shall not carry out on it any operation specified in the notice as being likely to destroy or damage its flora, fauna, or geological or physiographical features or cause or permit the carrying out of such an operation, unless -

(a) one of them has given notice to the Council of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions specified in subsection 95) is fulfilled.

(5) The said conditions are -

(a) that the operation is carried out with the Council's written consent;

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 act; and

(c) subject to subsections (6), (7) & (8), that two months have expired from the giving of the notice under subsection (2).

(6) If before the expiration of the period mentioned in paragraph (c) of subsection (5) the Council offer to enter into an agreement with the person who gave the notice under subsection (4) either for the acquisition of his interest or under section 16 of the 1949 Act or section 15 of the 1968 Act, that paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection of the offer to enter into the agreement, whichever period last expires.

(7) If it appears to the Council that any agreement specified in subsection (6) is unlikely to be reached before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), the Council may, before the expiration of that period: -

(a) make an order for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4);
or

(b) make application to the Secretary of State for an order under subsection (9) to be made on the day upon which that period expires.

Where in the opinion of the Council it is necessary to exercise the powers under this subsection, the owner or occupier may require the Council to take action either under paragraph (a) or (b) above.

(8) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), the Council make an order for the compulsory acquisition of the interest of the person who gave the notice under subsection (4), the said paragraph (c) shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(9) An order made by the Secretary of State under this subsection may prohibit the carrying out without the Council's written consent on the land to which the order relates of any operation specified in the order as being likely to destroy or damage the flora, fauna, or geological or physiographical features of the land, subject to such conditions as may be specified in the order; and the provisions of Schedule 10 shall have effect as to the making, confirmation and coming into operation of an order made under this subsection.

(10) Any person who, without reasonable excuse, contravenes subsection (4) or the provisions of any order under subsection (9) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or both. ***obviously a drafting error***

(11) It is a reasonable excuse in any event for a person to carry out an operation if

-

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town & Country Planning Act 1971 or Part III of the Town & Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

(12) A notice under subsection (1) and an order under subsection (9) shall be a local land charge.

(13) A notice served under subsection (1) or an order made under subsection (9) of this section may be amended or revoked by a subsequent notice or order.

Effect - full protection to all SSSIs

Debates, Hansard Vol. 418 12-3-81 cols. as for 167ZA & 422 - 425

Speakers: As for 167ZA

Amendment disagreed to (contents 100, not-contents 109)

169 - Lord Winstanley & Lord Inglewood

(1) The local planning authority may make bylaws for the prevention of damage to the land, or any features on or in the land, within any area designated under section 23 of the National Parks and Access to the Countryside Act 1949 as an area of special scientific interest.

(2) Without prejudice to the generality of subsection (1) above, bylaws under this section relating to any area may prohibit, restrict or regulate -

- (a) the riding of any bicycle, tricycle or similar machine,
- (b) the driving, riding, exercising or breaking in of horses, and
- (c) the use of metal detectors;

in the area, or any part thereof, except in the exercise of any lawful right.

Effect - bylaws for protection of all SSSIs (428A at Cmte)

Debates, Hansard Vol. 418 12-3-81 col. 441 - 445

Speakers for: Lord Winstanley, Lord Inglewood, Viscount Masserene & Ferrard,
Lord Melchett

Speakers against: Lord Sandys

Amendment withdrawn

169A - Lord Stanley Of Alderly, Lord Middleton, Earl De La Warr & Earl Of Caithness

Where any person disposes of his interest in any land affected by an order under section 27 above he shall be entitled to compensation in respect of any reduction in the value of his interest reasonably attributable to the making of the order.

Amendment not moved

173ZB - Lord Sandford

(1) Any scheme made under section 29 of the Agriculture Act 1970 shall, in respect of National Parks in England & Wales and other such areas as may be specified in the scheme, seek to provide in respect of the parks and other such areas as may be specified for conserving and enhancing their natural beauty and the public enjoyment thereof; for maintaining a minimum level of population; for developing tourist and craft industries and such other measures as may be for the benefit of the rural economy.

(2) Any scheme made under section 29 of the Agriculture Act 1970 shall provide that, in relation to an application made under that scheme, where representations are made by the relevant authority for the area to which the application relates that the work or operations for which grant is sought would be likely to affect adversely the character or amenity of the area and those representations are not withdrawn the application shall be finally determined jointly by the ministers.

(3) Where, in accordance with the provisions of subsection (2) of this section, an application is refused the relevant authority shall seek to enter into a management agreement with the person who made the application in respect of that land. The

financial consideration in respect of that agreement shall be determined in accordance with a scheme which shall be determined by the Ministers.

(4) In this section "relevant authority" means, as respects land in a National Park, the county planning authority and, as respects any other land, the local planning authority.

Effect - grants for preservation of countryside

Debates, Hansard Vol. 418 12-3-81 col. 480 - 494 (also considered 173FA)

Speakers for: Lord Sandford, Lord Hunt, Earl Peel, Baroness White, Lord Winstanley, Lord Melchett, Lord Donaldson of Kingsbridge, Earl of Onslow

Speakers against: Earl of Caithness, Earl Ferrers, Lord Underhill (preferred 167FA)

amendment agreed to (contents 48, not-contents 47)

173FA - Lord Underhill, Lord Melchett & Lord Beaumont Of Whitley

After subsection 3 of section 29 of the Agriculture Act 1970 there shall be inserted the following subsection -

(3A) Before making any grant under such a scheme the appropriate Minister shall consider the effects or likely effects of the works in respect of expenditure of which application for approval is made on the flora, fauna, geological and physiographical features of any land affected or likely to be affected by the works, and, where he considers that the works have destroyed or damaged or are likely to damage such features to an appreciable extent, the appropriate Minister shall not make any grant unless he is satisfied that

- (a) the works were or are essential having regard to the needs of the person by whom the application is made; and
- (b) there was or is no reasonably practicable alternative to the works.

Not moved because 173ZB agreed to

Successful new clauses - 167ZA, 173ZB

THIRD READING IN THE LORDS

CLAUSE 28 (Lord Bellwin's amendment 167ZA at report -Lords)

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

(a) to the local planning authority in whose area the land is situated; and

(b) to every owner and occupier of any of that land.

(2) A notification under subsection (1)(b) shall specify -

(a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features.

(3) The Ministers shall from time to time, after consultation with such persons appearing to them to represent any interests concerned as they consider appropriate -

(a) prepare codes containing such recommendations with respect to the management of areas notified under subsection (1)(b) as they consider proper for the guidance of owners and occupiers of those areas; and

(b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(4) A code prepared in pursuance of subsection (3) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or the proposed alterations have been approved by both Houses.

(5) Subject to subsection (4), the Ministers shall cause every code prepared or revised in pursuance of subsection (3) to be printed, and may cause copies of it to be put on sale to the public at such a price as the Ministers may determine.

(6) Section 23 of the 1949 Act (which is superseded by this section) shall cease to have effect; but this section shall have effect as if any notification given to a local planning authority under that section has been so given under subsection (1)(a).

No amendments proposed

CLAUSE 29

(1) Where it appears to the Secretary of State expedient to do so -

(a) in the case of any land to which this paragraph applies, for the purpose of securing the survival in Great Britain of any kind of animal or plant or of complying with an international obligation; or

(b) in the case of any land to which this paragraph applies for the purpose of conserving any of its flora, fauna, or geological or physiological features,

he may, after consultation with the Nature Conservancy Council, by order apply subsection (3) to that land; and the provisions of Schedule 11 shall have effect as to the making, confirmation and coming into operation of orders under this section.

An order made under this section may be amended or revoked by a subsequent order so made.

(2) Paragraphs (a) and (b) of subsection (1) apply to any land which in the opinion of the Secretary of State is -

(a) of special interest; and

(b) in the case of paragraph (b) of that subsection, of national importance,

by reason of any of its flora, fauna, or geological or physiographical features.

(3) Subject to subsection (4), no person shall carry out on any land to which this subsection applies any operation which -

(a) appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features

by reason of which the land is land to which paragraph (a) or, as the case may be, paragraph (b) of subsection (1) applies; and
(b) is specified in the order applying this subsection to the land.

(4) Subsection (3) shall not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if -

- (a) one of them has, after the commencement date, given the Council notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and
- (b) one of the conditions specified in subsection (5) is fulfilled.

(5) The said conditions are -

- (a) that the operation is carried out with the Council's written consent;
- (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and
- (c) subject to subsections (6) and (7) that three months have expired from the giving of the notice under subsection (3).

(6) If before the expiration of the period mentioned in paragraph (c) of subsection (5) the Council offer to enter into an agreement with the person who gave the notice under subsection (4) either for the acquisition of his interest or under section 16 of the 1949 Act or section 15 of the 1968 Act, that paragraph shall have effect as if for the said period there were substituted -

- (a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection of the offer to enter into the agreement, whichever period last expires.

(7) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4), that paragraph shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(8) A person who without reasonable excuse, contravenes subsection (3) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(9) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

No amendments proposed

CLAUSE 31 (SECTION 30)

(1) This section applies where -

(a) notice of a proposal to carry out an operation is duly given to the Nature Conservancy Council under subsection (4) of section 29; and

(b) paragraph (c) of subsection (5) of that section has effect as modified by subsection (6) or (7) of that section.

(2) The Council shall pay compensation to any person having at the time of the giving of the notice, an interest in land to which the notice relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that

(a) he has reasonably incurred expenditure which has been rendered abortive, or expenditure in carrying out work which has been rendered abortive, by the making of the order; or

(b) he has incurred loss or damage which is directly attributable to the making of the order;

but nothing in this subsection shall entitle any person to compensation in respect of any reduction in the value of his interest in the land.

(3) Compensation under this section shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

(4) Except in so far as may be provided by regulations under this section, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(5) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provision of any regulations under this section.

(6) Regulations under this section shall be made by the Secretary of State and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

No amendments proposed

CLAUSE 35 Sandford amendment 173ZB from Report

(1) Any scheme made under section 29 of the Agriculture Act 1970 shall, in respect of National Parks in England & Wales and other such areas as may be specified in the scheme, seek to provide in respect of the parks and other such areas as may be specified for conserving and enhancing their natural beauty and the public enjoyment thereof; for maintaining a minimum level of population; for developing tourist and craft industries and such other measures as may be for the benefit of the rural economy.

(2) Any scheme made under section 29 of the Agriculture Act 1970 shall provide that, in relation to an application made under that scheme, where representations are made by the relevant authority for the area to which the application relates that the work or operations for which grant is sought would be likely to affect adversely the character or amenity of the area and those representations are not withdrawn the application shall be finally determined jointly by the ministers.

(3) Where, in accordance with the provisions of subsection (2) of this section, an application is refused the relevant authority shall seek to enter into a management agreement with the person who made the application in respect of that land. The financial consideration in respect of that agreement shall be determined in accordance with a scheme which shall be determined by the Ministers.

(4) In this section "relevant authority" means, as respects land in a National Park, the county planning authority and, as respects any other land, the local planning authority.

No amendments proposed

PROPOSED NEW CLAUSES

77 - Lord Bellwin

(1) Where the operation in respect of which a person is convicted of an offence under section 29 has destroyed or damaged any of the flora, fauna, or geological or physiographical features by reason of which the land on which it was carried out is of special interest, the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) In determining whether to make an order under this section against any person, the court shall have regard to his means so far as they appear or are known to the court.

(3) An order under this section made on conviction on indictment shall be treated for the purposes of sections 30 and 42(1) and (2) of the Criminal Appeal Act 1968 (effect of appeals on orders for the restitution of property) as an order for the restitution of property; and where by reason of the quashing by the court of appeal of a person's conviction any such order does not take effect; and on appeal to the House of Lords the conviction is restored by that House, the House may make any order under this section which could be made on his conviction by the court which convicted him.

(4) In the case of an order under this section made by a magistrates court the period specified in the order shall not begin to run -

(a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates court;

(b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(5) At any time before an order under this section has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(6) Any person who, without reasonable excuse, fails to comply with an order under this section within the period specified in the order shall be liable on summary conviction -

(a) to a fine not exceeding £500

(b) in the case of a continuing offence, to a further fine not exceeding £50 for each day during which the offence continues after conviction.

(7) In the application of this section to Scotland -

(a) subsections (3) & (4) shall not apply; and

(b) for the purposes of any appeal or review, an order under this section is a sentence.

Effect - restoration of damaged site

Debates, Hansard Vol. 419 30-3-81 col. 36 - 39

Speakers for: Earl Ferrers, Lord Renton, Lord Melchett

Amendment agreed to

82 - Lord Bellwin

(1) In subsection (3) of section 22 of the Water Act 1973 (areas of special scientific interest) the words "not being land managed as a nature reserve" shall be omitted.

(2) After that subsection there shall be inserted the following subsections -

(4) Where any land has been notified to a water authority under subsection (3) above, the authority shall consult with the Council before executing or carrying out any works or operations appearing to them to be likely to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(5) Subsection (4) above shall not apply in relation to any emergency operation particulars of which (including details of the emergency) are notified to the Council as soon as practicable after the commencement of the operation.

(6) References in this section to water authorities shall include references to internal drainage boards and the reference in subsection (3) above to the water authority in whose area the land is situated shall include a reference to the internal drainage board in whose district the land is situated.

Effect - (amendment 177A - report)

Debates, Hansard Vol. 418 col. 639 - 641)

Debates, Hansard Vol. 419 30-3-81 col. 42 - 45

Speakers for: Earl of Avon, Lord Renton, Lord Melchett

Amendment agreed to

Successful new clauses - 77, 82

STANDING COMMITTEE D IN THE COMMONS

(Bill no 112, 6-4-81)

CLAUSE 28

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

(a) to the local planning authority in whose area the land is situated; and

(b) to every owner and occupier of any of that land.

(2) A notification under subsection (1)(b) shall specify -

(a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features. **(201)(354/337)(367)*

(3) The Ministers shall from time to time, after consultation with such persons appearing to them to represent any interests concerned as they consider appropriate -

(a) prepare codes containing such recommendations with respect to the management of areas notified under subsection (1)(b) as they consider proper for the guidance of owners and occupiers of those areas; and

(b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(4) A code prepared in pursuance of subsection (3) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or the proposed alterations have been approved by both Houses.

(5) Subject to subsection (4), the Ministers shall cause every code prepared or revised in pursuance of subsection (3) to be printed, and may cause copies of it to be put on sale to the public at such a price as the Ministers may determine.

(6) Section 23 of the 1949 Act (which is superseded by this section) shall cease to have effect; but this section shall have effect as if any notification given to a local planning authority under that section has been so given under subsection (1)(a).

**(355/338)*

LIST OF AMENDMENTS FOR CLAUSE 28

201 - John Mackay, Delwyn Williams, Colin Shepherd

Insert - (2A) A notification made under subsection (1) above, if not withdrawn under the provisions of subsection (2C) below before the expiration of a period of 6 months after the date upon which it was made, shall be registerable as a local land charge (in England and Wales) and shall be recorded in the register of sasines (in Scotland).

(2B) It shall be the duty of the Council to consider any representation made to it by the local planning authority in whose area the land in respect of which the notification was made is situated or by any owner or occupier of that land, before the expiration of the period of 6 months referred to above in respect of any notification made under subsection (1)

(2C) The Council may upon consideration of any representation under subsection (2B) above withdraw or modify any notification under subsection (1).

Debates Debates HC Standing Committee D, 4-6-81, col. 419-500

Amendment negatived

354/337- Dennis Howell, Ted Graham, Tam Dalyell

Insert - (2A) The owner or occupier of any land notified under subsection (1)(b) shall not carry out on it any operation specified in the notification as being likely to destroy or damage its flora, fauna or geological or physiographical features or cause or permit the carrying out of such an operation unless

(a) one of them has given notice to the Council of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions in subsection (2B) is fulfilled

(2B) The said conditions are -

(a) that the operation is carried out with the Councils written consent

(b) that three months have expired from the giving of the notice under subsection (2A)(a)

(c) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act.

(2C) A person who, without reasonable excuse, contravenes subsection (3) shall be liable on summary conviction to a fine not exceeding £500.

(2D) It is a reasonable excuse in any event for a person to carry out an operation if

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation, particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

Debates HC Standing Committee D, 4-6-81, col. 419-500

Amendment not called

367 - Andrew Bennett

Insert - (2A) Where the Nature Conservancy Council decide that in their opinion a site shall be designated as a site of special scientific interest they shall provide for the public access to all the evidence which they used in forming that opinion.

Debates HC Standing Committee D 4-6-81 col. 419-500

Amendment withdrawn

355/ 338 - Dennis Howell, Ted Graham, Tam Dalyell

Insert - a notification made under subsection (1) shall be a local land charge (in England and Wales) and shall be recorded on the register of Sasines (in Scotland).

Debates HC Standing Committee D 4-6-81 col. 419-500

Amendment not called

no successful amendments

CLAUSE 29

(1) **(280)* Where it appears to the Secretary of State expedient to do so -

(a) in the case of any land to which this paragraph applies, for the purpose of securing the survival in Great Britain of any kind of animal or plant or of complying with an international obligation; or

(b) in the case of any land to which this paragraph applies for the purpose of conserving any of its flora, fauna, or geological or physiological features,

he may, after consultation with the Nature Conservancy Council, by order apply subsection (3) to that land; and the provisions of Schedule 11 shall have effect as to the making, confirmation and coming into operation of orders under this section.

An order made under this section may be amended or revoked by a subsequent order so made.

(2) Paragraphs (a) and (b) of subsection (1) apply to any land which in the opinion of the Secretary of State is -

(a) of special **(70)* interest; and

(b) in the case of paragraph (b) of that subsection, of national **(71)* importance,

by reason of any of its flora, fauna, or geological or physiographical features.

(3) Subject to subsection (4), no person shall carry out on any land to which this subsection applies any operation which -

(a) appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features

by reason of which the land is land to which paragraph (a) or, as the case may be, paragraph (b) of subsection (1) applies; and
(b) is specified in the order applying this subsection to the land.

(4) Subsection (3) shall not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if -

- (a) one of them has, after the commencement date, given the Council notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and
- (b) one of the conditions specified in subsection (5) is fulfilled.

*(277)

(5) The said conditions are -

- (a) that the operation is carried out with the Council's written consent;
- (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and
- (c) subject to subsections (6) and (7) that three months have expired from the giving of the notice under subsection (3).

(6) If before the expiration of the period mentioned in paragraph (c) of subsection (5) the Council offer to enter into an agreement with the person who gave the notice under subsection (4) either for the acquisition of his interest or under section 16 of the 1949 Act or section 15 of the 1968 Act, that paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection of the offer to enter into the agreement, whichever period last expires.

(7) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4), that paragraph shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(8) A person who without reasonable excuse, contravenes subsection (3) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine *(278).

(9) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

**(202)(365)(368)*

LIST OF AMENDMENTS FOR CLAUSE 29

280 - Dennis Howell, Ted Graham, Tam Dalyell

Insert - The Nature Conservancy Council shall serve on every owner and occupier of any land which is in the opinion of the Council is of special interest by reason of its flora, fauna, or geological or physiographical features a notice specifying -

- (a) the nature of the special interest; and
- (b) any operations appearing to the Council to be likely to destroy or damage such interest,

and the notice shall have effect as from the day on which it is served.

Amendment not called

70 - Peter Hardy

Insert - or local

Debates HC Standing Committee D 4-6-81 col. 500-505

Amendment negatived

71 - Peter Hardy

Insert - or local

Debates HC Standing Committee D 4-6-81 col. 500-505

Amendment not called

277 - Dennis Howell, Ted Graham, Tam Dalyell

Insert - (5A) Where the Council receives notice of a proposal to carry out an operation and paragraph (b) of the previous subsection does not apply, the Council shall -

(a) publish notice of the proposal in a newspaper or newspapers circulating in the area in which the land is situated on which it is proposed in the notice to carry out the operation, and, not earlier than the day following that on which the first publication of the notice is completed in pursuance of the preceding provisions of this paragraph, to publish such a notice in the London Gazette; and

(b) consider any written representations relating to the proposal which are made to the Council by any person within the period of three weeks beginning with the date on which the notice of the proposal is published in the London Gazette; and the Council shall not give consent in pursuance of paragraph (a) of the previous subsection before expiration of such period.

Debates HC Standing Committee D 4-6-81 col. 500-505

Amendment negatived

278 - Dennis Howell, Ted Graham, Tam Dalyell

Insert - for each hectare or part hectare affected by the operation.

Amendment not called

202 - John Mackay, Delwyn Williams, Colin Shepherd

Insert - (10) An order under this section shall be registerable as a local land charge (in England and Wales) and shall be recorded on the register of Sasines (in Scotland).

Debates HC Standing Committee D 4-6-81 col. 506

Amendment not called (same as 365)

365 - Tom King

Insert - (10) An order made under this section in relation to land in Scotland shall be registered either-

- (a) in a case where the land affected by the order is registered in that register, in the land Register of Scotland; or
- (b) in any other case, in the appropriate Division of the General register of Sasines.

Debates HC Standing Committee D 4-6-81 col. 506

Amendment Agreed to

368 - Andrew Bennett

Insert - (10) The Secretary of State shall lay before Parliament an annual report, beginning a year after the commencement of the Act stating the number of orders he has made under this section.

Debates HC Standing Committee D 4-6-81 col. 507

Amendment withdrawn

.....

Successful amendments - 365

CLAUSE 30

(1) This section applies where -

(a) notice of a proposal to carry out an operation is duly given to the Nature Conservancy Council under subsection (4) of section 29; and

(b) paragraph (c) of subsection (5) of that section has effect as modified by subsection (6) or (7) of that section.

(2) The Council shall pay compensation to any person having at the time of the giving of the notice, an interest in land to which the notice relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that

(a) he has reasonably incurred expenditure which has been rendered abortive, or expenditure in carrying out work which has been rendered abortive, by the making of the order; or

(b) he has incurred loss or damage which is directly attributable to the making of the order;

~~*(149)(203)(397)(398)(399)~~ but nothing in this subsection shall entitle any person to compensation in respect of any reduction in the value of his interest in the land ~~*(369)~~.

(3) Compensation under this section shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

(4) Except in so far as may be provided by regulations under this section, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(5) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provision of any regulations under this section.

(6) Regulations under this section shall be made by the Secretary of State and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

LIST OF AMENDMENTS TO CLAUSE 30

149 - Delwyn Williams

Leave out to end of subsection and insert - (c) he has suffered any reduction in the value of his interest in the land.

Debates HC Standing Committee D 9-6-81 col. 528-538

Amendment not called

203 - John Mackay, Delwyn Williams, Colin Shepherd

Leave out to end of subsection - insert -

(2A) Where any person disposes of his interest in any land affected by an order under section 29 above he shall be entitled to compensation in respect of any reduction in the value of his interest in the land reasonably attributable to the making of the order.

Debates HC Standing Committee D 9-6-81 col. 528-538

Amendment not called

397 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out to end of subsection - insert - this subsection shall cover compensation to any such person for loss of rent or any other dues in respect of his land.

Debates HC Standing Committee D 9-6-81 col. 528-538

Amendment withdrawn

398 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out to end of subsection

Debates HC Standing Committee D 9-6-81 col. 528-538

Amendment not called

399 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out "but nothing in"

Debates HC Standing Committee D 9-6-81 col. 528-538

Amendment not called

369 - Andrew Bennet

Insert - except that any land on which an order is in force shall be exempt from capital transfer tax.

Debates HC Standing Committee D 9-6-81 538-552

Amendment withdrawn

No successful amendments

CLAUSE 31 (New clause - 77 at 3rd reading)

(1) Where the operation in respect of which a person is convicted of an offence under section 29 has destroyed or damaged any of the flora, fauna, or geological or physiographical features by reason of which the land on which it was carried out is of special interest, the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) ***(389)** In determining whether to make an order under this section against any person, the court shall have regard to his means so far as they appear or are known to the court.

(3) An order under this section made on conviction on indictment shall be treated for the purposes of sections 30 and 42(1) and (2) of the Criminal Appeal Act 1968 (effect of appeals on orders for the restitution of property) as an order for the restitution of property; and where by reason of the quashing by the court of appeal of a person's conviction any such order does not take effect; and on appeal to the House of Lords the conviction is restored by that House, the House may make any order under this section which could be made on his conviction by the court which convicted him.

(4) In the case of an order under this section made by a magistrates court the period specified in the order shall not begin to run -

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates court;

(b) where notice of appeal is given within the period so prescribed,
until determination of the appeal.

(5) At any time before an order under this section has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

**(372)*

(6) Any person who, without reasonable excuse, fails to comply with an order under this section within the period specified in the order shall be liable on summary conviction -

(a) to a fine not exceeding **(390)(391)(392)(393)* £500

(b) in the case of a continuing offence, to a further fine not exceeding **(394)(395)(396)* £50 for each day during which the offence continues after conviction.

(7) In the application of this section to Scotland -

(a) subsections (3) & (4) shall not apply; and

(b) for the purposes of any appeal or review, an order under this section is a sentence.

LIST OF AMENDMENTS FOR CLAUSE 31

389 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out to end of subsection

Debates HC Standing Committee D 9-6-81 col. 552-554

Amendment withdrawn

372 - Andrew Bennett

Insert (6A) If the work is not carried out within 12 months of an order made by a magistrates court, the Nature Conservancy Council may carry out the work and charge the person against whom the order was made with the cost of such works.

Debates HC Standing Committee D 9-6-81 col. 558-561

Amendment withdrawn

390 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out £500 - insert £5,000

Debates HC Standing Committee D 9-6-81 col. 554-557

Amendment withdrawn

391 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out £500 - insert £1,000

Debates HC Standing Committee D 9-6-81 col. 554-557

Amendment not called

392 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out £500 - insert - £2,500

Debates HC Standing Committee D 9-6-81 col. 554-557

Amendment not called

393 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out £500 - insert £50,000

Debates HC Standing Committee D 9-6-81 col. 554-557

Amendment not called

394 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out £50 - insert - £100

Debates HC Standing Committee D 9-6-81 col. 554-557

Amendment not called

395 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out £50 - insert £500

Debates HC Standing Committee D 9-6-81 col. 554-557

Amendment not called

396 - Dennis Howell, Tam Dalyell, Ted Graham

Leave out £50- insert -£5,000

Debates HC Standing Committee D 9-6-81 col. 554-557

Amendment not called

No successful amendments

CLAUSE 36 (section 48) New clause from 82 at 3rd reading

(1) In subsection (3) of section 22 of the Water Act 1973 (areas of special scientific interest) the words "not being land managed as a nature reserve" shall be omitted.

(2) After that subsection there shall be inserted the following subsections -

(4) Where any land has been notified to a water authority under subsection (3) above, the authority shall consult with the Council before executing or carrying out any works or operations appearing to them to be likely to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(5) **(150)(205)* Subsection (4) above shall not apply in relation to any emergency operation particulars of which (including details of the emergency) are notified to the Council as soon as practicable after the commencement of the operation.

(6) References in this section to water authorities shall include references to internal drainage boards and the reference in subsection (3) above to the water authority in whose area the land is situated shall include a reference to the internal drainage board in whose district the land is situated.

Debates HC Standing Committee D 10-6-81 col. 638-655

LIST OF AMENDMENTS TO CLAUSE 36

150 - Colin Shepherd

Leave out to end of subsection (5) and insert - subsection (4) above shall not apply in relation to the following -

- (a) any emergency operation, particulars of which are notified to the Council as soon as practicable after the commencement of the operations
- (b) any maintenance operation

Debates HC Standing Committee D 10-6-81 col. 638-643

Amendment withdrawn

205 - John Mackay, Delwyn Williams, Colin Shepherd

Leave out to end of subsection - insert - Subsection (4) above shall not apply in relation to the following -

- (a) any emergency operation, particulars of which are notified to the Council as soon as practicable after the commencement of the operations
- (b) any operation to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or drainage work.

Debates HC Standing Committee D 10-6-81 col. 638-643

Amendment not called

No successful amendments

CLAUSE 39(was clause 35 - Sandford amendment)

(1) Any scheme made under section 29 of the Agriculture Act 1970 shall, in respect of National Parks in England & Wales and other such areas as may be specified in the scheme, seek to provide in respect of the parks and other such areas as may be specified for conserving and enhancing their natural beauty and the public enjoyment thereof; for maintaining a minimum level of population; for developing tourist and craft industries and such other measures as may be for the benefit of the rural economy.

(2) Any scheme made under section 29 of the Agriculture Act 1970 shall provide that, in relation to an application made under that scheme, where representations are made by the relevant authority for the area to which the application relates that the work or operations for which grant is sought would be likely to affect adversely the character or amenity of the area and those representations are not withdrawn the application shall be finally determined jointly by the ministers.

***(340)**

(3) Where, in accordance with the provisions of subsection (2) of this section, an application is refused the relevant authority shall seek to enter into a management agreement with the person who made the application in respect of that land. The financial consideration in respect of that agreement shall be determined in accordance with a scheme which shall be determined by the Ministers. ***(341)**

(4) In this section "relevant authority" means, as respects land in a National Park, the county planning authority and, as respects any other land, the local planning authority.

***(409)**

Debates HC Standing Committee D 9-6-81 col. 509-528, 17-6-81 col. 886-932,
18-6-81 935-962

LIST OF AMENDMENTS FOR CLAUSE 39

340 - Dennis Howell, Ted Graham, Tam Dalyell

Insert - who shall require representations to be submitted to them in writing by all interested parties including the relevancy authorities including the National Parks Authority, the Nature Conservancy Council and the Countryside Commission, before any such determination.

Debates HC Standing Committee D 18-6-81 935-962, 17-6-81 col. 886-932

Amendment withdrawn

341 - Dennis Howell, Ted Graham, Tam Dalyell

Insert - but which shall have as its principal purpose the preservation and conservation of the land in its present state and the payment of an appropriate subsidy to the applicant commensurate to his provable loss resulting from the failure of his application.

Debates HC Standing Committee D 18-6-81 935-962, 17-6-81 col. 886-932

Amendment not called

409 - Tom King

Leave out clause 39.

Debates HC Standing Committee D 18-6-81 935-962

Amendment agreed to

.....

Clause 39 removed - successful amendment 409

PROPOSED NEW CLAUSES

NC2 - Peter Hardy, Andrew Bennett

After subsection 3 of section 29 of the Agriculture Act 1970 there shall be inserted the following subsection -

(3A) Before making any grant under such a scheme the appropriate Minister shall consider the effects or likely effects of the works in respect of expenditure of which application for approval is made on the flora, fauna, geological or physiographical features of any land affected or likely to be affected by the works, and, where he considers that the works have destroyed or damaged or are likely to destroy or damage such features to an appreciable extent, the appropriate Minister shall not make any grant unless he is satisfied that -

- (a) the works were or are essential having regard to the needs of the person by whom the application is made; and
- (b) there was or is no reasonably practicable alternative to the works

Debates HC Standing Committee D 17-6-81 887-932, 18-6-81 col. 935-964

Amendment negatived on division -(Ayes 8, Noes 10)

NC5/384 - Dennis Howell, Tam Dalyell, Ted Graham

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

- (a) to the local planning authority in whose area the land is situated; and

(b) to every owner and occupier of any of that land.

and the notice shall take effect as from the day on which it is served.

(2) A notification under subsection 1.(b) shall specify -

(a) the flora, fauna or geological or physiographical features by reason of which the land is of special interest; and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features;

(3) Section 23 of the 1949 Act (which is superseded by this section) shall cease to have effect.

(4) The owner or occupier of any land specified in a notice under subsection 1 shall not carry out on it any operation specified in the notice as being likely to destroy or damage its flora, fauna or geological or physiographical features or cause or permit the carrying out of such an operation, unless -

(a) one of them has given notice to the Council of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions specified in subsection 5 is fulfilled.

(5) the said conditions are -

(a) that the operation is carried out with the Council's written consent;

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and

(c) subject to subsections (6), (7) and (8), that two months have expired from the giving of the notice under subsection (2).

(6) If before the expiration of the period mentioned in paragraph (c) of subsection 5 the Council offer to enter into an agreement with the person who gave the notice under subsection (4) either for the acquisition of his interest or under section 16 of the 1949 Act or section 15 of the 1968 Act, that paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from the rejection of the offer to enter into the agreement, whichever period last expires.

(7) If it appears to the Council that any agreement specified in subsection (6) is unlikely to be reached before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), the Council may, before the expiration of that period -

(a) make an order for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4); or

(b) make application to the Secretary of State for an order under subsection

(9) to be made on the day upon which that period expires;

Where in the opinion of the Council it is necessary to exercise the powers under this subsection the owner or occupier may require the Council to take action under paragraph (a) or (b) above.

(8) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), the Council make an order for the compulsory acquisition of the interest of the person who gave the

notice under subsection (4), the said paragraph (c) shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(9) An order made by the Secretary of State under this subsection may prohibit the carrying out without the Council's written consent on the land to which the order relates of any operation specified in the order as being likely to destroy or damage the flora, fauna or geological or physiographical features of the land, subject to such conditions as may be specified in the order; and the provisions of Schedule 11 shall have effect as to the making, confirmation and coming into operation of an order made under this subsection.

(10) Any person who, without reasonable excuse, contravenes subsection (4) or the provisions of any order under subsection (9) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(11) It is reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on application under part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the council as soon as practicable after the commencement of the operation.

(12) A notice under subsection (1) or an order under subsection (9) shall be a local land charge.

(13) A notice served under subsection (1) or any order under subsection (9) may be amended or revoked by a subsequent notice or order.

Debates HC Standing Committee D 4-6-81 col. 423-500

Amendment not called

NC8 - Dennis Howell, Ted Graham, Tam Dalyell

(1) In the case of land which is designated by the Nature Conservancy Council as a Site of Special Scientific Interest under section 23 of the National Parks and Access to the Countryside Act 1949 the Secretary of State shall, after consultation with the Nature Conservancy Council, by order apply subsection (2) to that land; and the provisions of Schedule 10 shall have effect as to the making, confirmation and coming into operation of orders under this section. An order made under this section may be amended or revoked by a subsequent order so made.

(2) The owner or occupier of any land to which this subsection applies shall not carry out on it any operation appearing to the Secretary of State to be likely to destroy or damage its flora, fauna or geological or physiographical features and specified in the order applying this subsection to the land, or cause or permit the carrying out of such an operation, unless -

- a) one of them has given notice to the Council of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions specified in subsection (3) is fulfilled.

(3) the said conditions are -

(a) that the operation is carried out with the Councils written consent;

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act

(4) A person who, without reasonable excuse, contravenes subsection (2) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

(5) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on application under part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the council as soon as practicable after the commencement of the operation.

Debates HC Standing Committee D 4-6-81 col. 420-500

Amendment not called

NC10 - Dennis Howell, Tam Dalyell, Ted Graham

Amendment to the Town & Country Planning Act 1971 (no2).

(1) After section 22(3)(b) insert -

(c) the planting of coniferous trees on, or the carrying out of drainage works affecting the water table of wetlands or marshes or bogs, involves a material change in the use thereof;

(d) the piping underground of a stream, dyke or natural watercourse involves a material change in the use thereof;

(e) the conversion to agricultural land, by ploughing or otherwise, of, or that planting of coniferous trees on, moor or heath or down or permanent pasture which has nor been agricultural land at any time within the preceding 20 years involves a material change in the use thereof;

(f) the felling or uprooting of a hedgerow, or a tree growing in a hedgerow or wood, involves a material change in the use thereof;

(g) the conversion to agricultural land of a pond involves a material change in the use thereof;

(2) After section 22(5) insert -

(6) In this section 'agricultural land' does not include land which affords rough grazing for livestock but is not otherwise used as agricultural land.

(3) In section 59(a) after the word 'trees' insert the words 'or hedgerows'.

(4) In section 60(1) after the word 'amenity' insert the words 'or wildlife or historic preservation' and after the word 'woodlands' in both places where it occurs, insert the words 'or hedgerows or hedgerow systems'; in subsection (1)(a) after the word 'trees' insert the words 'or cutting down, uprooting or wilful destruction or neglect

of hedgerows'; in subsection (3) after the word 'trees', in both places where it occurs' insert the words 'or hedgerows'.

(5) in section 62(1), after the word 'tree' where it first occurs and in the penultimate line of the subsection, insert the words 'or hedgerow' and in section 62(2) , after the word 'tree' where it first and last occurs, insert the words 'or hedgerow'.

Amendment not called

NC20 - Dennis Howell, Ted Graham, Tam Dalyell

The Water Act 1973 is amended as follows - After subsection (3) of section 3 the following subsection shall be inserted -

() members appointed by the Secretary of State shall be persons who appear to him to be familiar with the need to conserve the natural beauty and wildlife of the authority's area.

Debates HC Standing Committee D 18-6-81 967-997

Amendment negatived

NC23 - Dennis Howell, Ted Graham, Tam Dalyell

The Secretaries of State shall submit to Parliament each year a report on the way they have fulfilled their obligations under section 11 of the Countryside Act 1968 to have regard to the desirability of conserving the natural beauty, amenity, wild

flora, fauna, geological and physiographical features of the countryside and steps which have been taken to modify their actions as a result.

Amendment not called

NC27 - Dennis Howell, Tam Dalyell, Ted Graham

(1) If after two years from the date upon which sections 28 and 29 are brought into force (or, if they are not brought into force on the same date, from the date upon which they are both in force) it appears to the Secretary of State expedient to do so, he may by order bring into force the provisions of Schedule (areas of special scientific interest).

(2) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) On the coming into operation of an order under this section, sections 28 and 29 shall cease to have effect subject to the transitional and saving provisions of paragraphs 13 and 14 of schedule (Areas of special scientific interest).

Debates HC Standing Committee D 4-6-81 col. 424-500

Amendment Not called

356 - Dennis Howell, Tam Dalyell, Ted Graham

Insert the following schedule -

1. where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

(a) to the local planning authority in whose area the land is situated; and

(b) to every owner and occupier of any of that land.

2. A notification under paragraph 1.(b) shall specify -

(a) the flora, fauna or geological or physiographical features by reason of which the land is of special interest; and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features;

and the notification shall have effect from the day on which it was served.

3. The owner or occupier of any land specified in a notification under paragraph 1(b) shall not carry out on it any operation specified in the notification as being likely to destroy or damage its flora, fauna or geological or physiographical features or cause or permit the carrying out of such an operation, unless -

(a) one of them has given notice to the Council of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions specified in paragraph 4 is fulfilled.

4. the said conditions are -

(a) that the operation is carried out with the Councils written consent;

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and

(c) subject to paragraphs 5,6 and 7, that two months have expired from the giving of the notice under paragraph 3.

5. If before the expiration of the period mentioned in sub-paragraph (c) of paragraph 4 the Council offer to enter into an agreement with the person who gave the notice under paragraph 3 either for the acquisition of his interest or under section 16 of the 1949 Act or section 15 of the 1968 Act, that sub-paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from the rejection of the offer to enter into the agreement, whichever period last expires.

6. If it appears to the Council that any agreement specified in paragraph 5 is unlikely to be reached before the expiration of the period mentioned in sub-paragraph (c) of paragraph 4, or that sub- paragraph as it has effect by virtue of paragraph 5, the Council may, before the expiration of that period -

(a) make an order for the compulsory acquisition by the Council of the interest of the person who gave the notice under paragraph 3; or

(b) make application to the Secretary of State for an order under paragraph 8 to be made on the day upon which that period expires;

but, where in the opinion of the Council it is necessary to exercise the powers under this paragraph, the owner or occupier may require the Council to take action under sub-paragraph (a) or (b) of this paragraph.

7. If before the expiration of the period mentioned in sub-paragraph (c) of paragraph 4, or that sub-paragraph as it has effect by virtue of paragraph 5, an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under paragraph 3, subparagraph 4 shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

8. An order made by the Secretary of State under this paragraph may prohibit the carrying out without the Council's written consent on the land to which the order relates of any operation specified in the order as being likely to destroy or damage the flora, fauna or geological or physiographical features of the land, subject to such conditions as may be specified in the order; and the provisions of Schedule 11 shall have effect as to the making, confirmation and coming into operation of an order made under this paragraph.

9. Any person who, without reasonable excuse, contravenes paragraph 3 or the provisions of any order under paragraph 8 shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

10. It is reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on application under part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the council as soon as practicable after the commencement of the operation.

11. Any notification under sub-paragraph 1(b) or any order under paragraph 8 shall be a local land charge.

12. Any notification under paragraph 1 or any order under paragraph 8 may be amended or revoked by a subsequent notification or order.

13. On the coming into operation of an order under section (provisions for repeal of sections 28 and 29) -

(a) any notification given to a local planning authority under section 23 of the 1949 Act or under paragraph (a) of subsection (1) of section 28 shall have effect as if given under sub-paragraph (a) of paragraph 1 of schedule (areas of special scientific interest)

(b) any notification given to the owner and occupier of any land under paragraph (b) of subsection (1) of section 28 shall have effect as if given under sub-paragraph (b) of paragraph 1 of schedule (areas of special scientific interest)

(c) any written consent given by the Council under paragraph (a) of subsection 5 of section 29 shall continue to have effect.

14. Where, before the coming into operation of an order under section (provisions for repeal of sections 28 and 29) an owner or occupier has given the Council notice under subsection (4) of section 29 in relation to any land-

(a) section 29 shall continue to apply to that land until the expiry of the period mentioned in paragraph (c) of subsection (5) of section 29 or that period as it has effect by virtue of subsection (6) or (7) of section 29; and

(b) Schedule (areas of special scientific interest) shall not apply to the land until the expiry of that period, or of that period as so extended, as the case may be.

15. On the coming into operation of an order under section (provisions or repeal of section 28 and 29) section 30 shall have effect subject to the following amendments -

(a) in paragraph (a) of subsection (1) for the words "subsection 4 of section 29" there shall be substituted the words "paragraph 3 of schedule 11A"

(b) for paragraph 9b) of subsection (1) there shall be substituted the following -

(b) sub-paragraph (c) of paragraph 4 of schedule (area of special scientific interest) has effect as modified by paragraph 5 or 7 of that schedule.

(c) in subsection (2), for the words "making of the order", in both places where they occur, there shall be substituted the words "giving of the notification under paragraph 1(b) of schedule (Areas of special scientific interest); and

(c) at the end of subsection (2) there shall be inserted the words "other than in any case where an order is made under paragraph 8 of schedule (areas of special scientific interest).

Debates HC Standing Committee D 4-6-81 col. 421-500

Amendment not called

NC35/NC34 - Dennis Howell, Ted Graham, Tam Dalyell

After subsection (7) of section 91 of the Land Drainage Act 1976 there shall be added the following subsection:

(8) Before making grants towards expenditure incurred by drainage bodies payable under subsection (1) above, the Minister shall consult any local authority whose area is wholly or partly included in the area of the drainage scheme for which grant is sought and shall take into account the authority's views on the effect which the drainage works would have on the natural beauty of the countryside or any such flora, fauna and geological or physiographical features of special interest.

Debates HC Standing Committee D 18-6-81 967-997

Amendment not called

NC36 - Dennis Howell, Ted Graham, Tam Dalyell

The Water Act 1973 is amended in section 20 by the deletion of subsection (1) and by the substitution of a new subsection as follows.

(1) Every water authority and all other statutory water undertakers may take steps to secure the use of water and land associated with water for the purposes of -

- (a) recreation
- (b) the preservation of natural beauty, the conservation of flora, fauna and geological or physiographical features or
- (c) protecting buildings and other subjects of architectural, archaeological or historic interest;

and it shall be the duty of all such undertakers to take such steps as are reasonably practicable for putting their rights to the use of water and of any land associated with water to the best use for these purposes.

Debates HC Standing Committee D 18-6-81 967-997

Amendment not called

NC37 - Dennis Howell, Tam Dalyell, Ted Graham

The Land Drainage Act 1976 is amended in section 15 by the deletion of subsection (1) and by the substitution of a new subsection as follows -

A water authority may give such general and special directions as they consider reasonable for the guidance of internal drainage boards with respect to the exercise and performance by those boards of their powers and duties as such for the purpose of -

- (a) securing the efficient working and maintenance of existing drainage works within the water authority area and the construction of such new drainage works as may be necessary; and
- (b) aiding the use of water and land associated with water for the purposes of recreation, the preservation of natural beauty, the conservation of flora, fauna and geological or physiographical features of special interest, and of protecting buildings and other objects of architectural, archaeological or historic interest.

Debates HC Standing Committee D 18-6-81 967-997

Amendment not called

NC38 - Dennis Howell, Tam Dalyell, Ted Graham

(1) Where the Nature Conservancy Council are of the opinion that all or any of the hedges or hedgerows in any area of land are of special natural importance, by reason of all or any of -

- (a) the flora and fauna supported by them;
 - (b) their local ecological significance as habitats for flora and fauna; or
 - (c) their importance in preserving or protecting particular micro-climates,
- it shall be the duty of the Council to notify that fact-

- (i) to the local planning authority in whose area that land is situated; and
- (ii) to every owner and occupier of any of that land.

(2) An area of land for which the Council issue notifications under subsection (1) shall be known as a hedgerow area.

(3) A notification under subsection (1)(ii) shall specify -

- (a) which of paragraphs (a) to (c) of subsection (1) apply as reasons by which the area is a hedgerow conservation area; and
- (b) any operations appearing to the Council to be likely to damage or destroy those hedgerows.

(4) The Ministers shall from time to time, after consultation with such persons appearing to them to represent any interest concerned as they consider appropriate

- (a) prepare codes containing such recommendations with respect to the management of areas notified under subsection (1)(ii) as they consider proper for the guidance of owners and occupiers of those areas; and
- (b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(5) A code prepared in pursuance of subsection (4) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or proposed alterations have been approved by both Houses.

(6) Subject to subsection (5), the Ministers shall cause every code prepared or revised in pursuance of subsection (4) to be printed, and may cause copies of it to be put on sale to the public at such price as the Ministers may determine.

Debates HC Standing Committee D 18-6-81 998-1014

Amendment negatived

NC39 - Dennis Howell, Tam Dalyell, Ted Graham

(1) In section 59, 60 (except subsection (6)), 61, 61A (except subsection (1)), 102 and 103 of the Town and Country Planning Act 1971, references to trees shall include hedges and hedgerows.

(2) Nothing in those provisions shall prevent the reasonable thinning, maintenance and repair of hedges and hedgerows subject to a preservation order.

(3) A tree preservation order applied to a hedge or hedgerow shall be referred to as a hedgerow preservation order.

Debates HC Standing Committee D 18-6-81 998-1014

Amendment not called

NC40 - Dennis Howell, Tam Dalyell, Ted Graham

(1) Where any hedge or hedgerow is more than thirty years old, it shall be an offence for any person to destroy or significantly to damage, other than in the course of normal maintenance or repair, such a hedge or hedgerow without having obtained previous permission in writing from, as respects a hedge or hedgerow in a National Park, the county planning authority, and as respects any other hedge or hedgerow, the local planning authority.

(2) If a person, without reasonable excuse, commits an offence under subsection

(1) he shall be liable

(a) on summary conviction, to a fine not exceeding £500;

(b) on conviction on indictment, to a fine.

Debates HC Standing Committee D 18-6-81 998-1014

Amendment not called

NC49 - Tom King

(1) The advice for the giving of which free of charge the Minister of Agriculture Fisheries and Food and the Secretary of State are required by section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1944 to make provision through such organisation as they consider appropriate shall include -

(a) advice to persons carrying on agricultural businesses on the conservation and enhancement of the natural beauty and amenity of the countryside.

(b) advice to such persons of diversification into other enterprises of benefit to the rural economy; and

(c) advice to government departments and other bodies exercising statutory functions on the promotion and furtherance of such diversification as is mentioned in paragraph (b).

(2) Where an application for a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grants) is made as respects expenditure incurred or to be incurred for the purposes of activities on land to which this subsection applies, the appropriate Minister -

(a) shall, **(b)* so far as may be consistent with the purposes of the scheme and the said section 29, so *(#)* exercise his functions thereunder as to further the conservation and enhancement of the natural beauty and amenity of the countryside and to promote its enjoyment by the public; and

(b) where the relevant authority have objected to the making of the grant on the ground that the activities in question have had or will have an adverse effect on the natural beauty or amenity of the countryside or its enjoyment by the public, shall not make the grant except after considering the objection and, in the case of land in England, **(c)* after consulting with the Secretary of State.

and this subsection applies to any land which is in a National Park **(d)(e)* or in an area specified for the purposes of this subsection by the Ministers.

(3) Where, in consequence of an objection by the relevant authority, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in subsection 2(b), the relevant authority shall, within three months of their receiving

notice of the appropriate Minister's decision, offer to make, in the terms of the draft submitted to the applicant, a management agreement -

(a) imposing restrictions as respect those activities; and

(b) providing for the making by the relevant authority to the applicant of payments calculated in accordance with guidance given by Ministers.

(4) In this section -

"agricultural business" and the "appropriate Minister" have the same meanings as in the said section 29;

"management agreement" means an agreement under section 37;

"relevant authority" **(a)* means, as respects land in a National Park, the county planning authority and, as respects any other land, the local planning authority.

Debates HC Standing Committee D 17-6-81 886-932, 18-6-81 col. 935-963

clause added

NC49b - Dennis Howell, Ram Dalyell, Ted Graham

leave out to (#)

Debates HC Standing Committee D 18-6-81 col. 935-962

Amendment negatived Ayes 8 Noes 10

NC49c - Dennis Howell, Ram Dalyell, Ted Graham

Leave out - after consulting with the Secretary of State - and insert - with the provision that if the objection is not withdrawn the application shall be determined by the Minister

Debates HC Standing Committee D 18-681 col. 935-962

Amendment not called

NC49d - Dennis Howell, Ram Dalyell, Ted Graham

Insert - or an area of outstanding natural beauty

Debates HC Standing Committee D 18-6-81 col. 935-962

Amendment not called

NC49e - Dennis Howell, Ram Dalyell, Ted Graham

Insert - or a site of special scientific interest.

Debates HC Standing Committee D 18-6-81 col. 935-962

Amendment not called

NC49a - Dennis Howell, Ram Dalyell, Ted Graham

Leave out to end of subsection - insert - means as respects land in a National Park, the county planning authority or the Countryside Commission; as respects a site of special scientific interest the county planning authority or the Nature Conservancy Council and, as respects any other land the local planning authority or the Countryside Commission.

Debates HC Standing Committee D 18-6-81 col. 935-962

Amendment not called

Successful new clauses - NC49

REPORT IN THE COMMONS

(Bill no 168 - 29-6-81)

CLAUSE 28 (SECTION 28)

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

(a) to the local planning authority in whose area the land is situated; and

(b) to every owner and occupier of any of that land **(232)*.

**(214)*

(2) A notification under subsection (1)(b) shall specify -

(a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features **(233)(68)(69/70)*.

(3) **(215)* The Ministers shall from time to time, after consultation with such persons appearing to them to represent any interests concerned as they consider appropriate -

(a) prepare codes containing such recommendations with respect to the management of areas notified under subsection (1)(b) as they consider proper for the guidance of owners and occupiers of those areas; and

(b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(4) A code prepared in pursuance of subsection (3) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or the proposed alterations have been approved by both Houses.

(5) Subject to subsection (4), the Ministers shall cause every code prepared or revised in pursuance of subsection (3) to be printed, and may cause copies of it to be put on sale to the public at such a price as the Ministers may determine.

(6) Section 23 of the 1949 Act (which is superseded by this section) shall cease to have effect; but this section shall have effect as if any notification given to a local planning authority under that section has been so given under subsection (1)(a).

LIST OF AMENDMENTS TO CLAUSE 28

232 - Andrew Bennett

Insert - and (c) to the Secretary of State.

Debates - Hansard Vol. 8, 13-7-81 col. 897, 900-924 Vol. 9, 30-7-81 col. 1248

Amendment agreed to

214 - Secretary Heseltine

Insert - (1A) Before giving a notification under subsection (1), the Council shall give notice to the persons mentioned in that subsection -

(a) setting out the proposed notification; and

(b) specifying the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect thereto may be made,

and shall consider any representations or objections duly made. ***(b)(c)(d)**

(1B) If, after reasonable inquiry has been made, the Council are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land a notification or notice required to be served on him may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

Debates - HC Vol. 8 13-7-81 col. 897 - 898, 900 - 924, Vol. 9 30-7-81 col. 1248

Amendment agreed to

**214b - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell,
Andrew Bennett**

Insert - subsection (1A) shall not apply to sites notified to Local Authorities prior to the passing of this Act.

Debates - HC Vol. 8 13-7-81 col. 897 - 898, 900 - 924

Amendment withdrawn

*214c - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell,
Andrew Bennett*

Insert - A notification under subsection (1A) shall be deemed to have been a notification made under subsection (1) unless amended or revoked following representations or objections made to the council.

Debates - HC Vol. 8 13-7-81 col. 897 - 898, 900 - 924

Amendment withdrawn

214d - Andrew Bennett

Insert (1AA) Objections under subsection (1A)(b) cannot be made relating to sites designated before the commencement of this Act,

Debates - HC Vol. 8 13-7-81 col. 897 - 898, 900 - 924

Amendment withdrawn

233 - Andrew Bennett

Insert - or any activity that would disturb or harm any fauna listed under Schedule 5 or flora listed under Schedule 8.

Debates - HC Vol. 8 13-7-81 col. 898, 900 - 924

Amendment withdrawn

68 - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell, Bob Cryer

Insert - (c) A notification made under subsection (1) above, if not withdrawn before the expiration of a period of six months after the date upon which it was made, shall be registerable as a local land charge (in England and Wales) and shall be recorded in the registry of sasines (in Scotland).

Debates - HC Vol. 8 13-7-81 col. 898, 900 - 924

Amendment withdrawn

69/70 - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell, Bob Cryer

70 - Kenneth Carlisle, Jocelyn Cadbury, William Waldegrave, Nicholas Lyell

Insert - (A) The owner or occupier of any land notified under subsection (1)(b) shall not carry out on it any operation specified in the notification as being likely to destroy or damage its flora, fauna or geological or physiographical features or cause or permit the carrying out of such an operation, unless -

(a) one of them has given notice to the Council of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out: and

(b) one of the conditions specified in subsection (2B) is fulfilled.

(2B) The said conditions are -

(a) that the operation is carried out with the Council's written consent.

(b) that three months have expired from the giving of the notice under subsection (2A)(a).

(c) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act.

(2C) A person who, without reasonable excuse, contravenes subsection (2A) shall be liable on summary conviction to a fine not exceeding £500.

(2D) It is a reasonable excuse in any event for a person to carry out an operation if

(a) the operation was authorised by a planning permission granted on application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

Debates - HC Vol. 8 13-7-81 col. 898, 900 -924

Amendment withdrawn (same as 215)

215 - Secretary Heseltine, Andrew Bennett

Leave out to end of section and insert - (3) The owner or occupier of any land notified under subsection (1)(b) shall not carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless -

(a) one of them has, after the commencement date, given the Council notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out: and

(b) one of the conditions specified in subsection (4) is fulfilled.

(4) The said conditions are -

- (a) that the operation is carried out with the Council's written consent.
 - (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and
 - (c) that three months have expired from the giving of the notice under subsection (3).
- (5) A person who, without reasonable excuse, contravenes subsection (3) shall be liable on summary conviction to a fine not exceeding £500.
- (6) It is a reasonable excuse in any event for a person to carry out an operation if -
- (a) the operation was authorised by a planning permission granted on application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or
 - (b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation. **(a)(b)*
- (7) The Council shall have the power to enforce the provisions of this section; but nothing in this subsection shall be construed as authorising the Council to institute proceedings in Scotland for an offence.
- (8) Proceedings in England and Wales for an offence under subsection (5) shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the Council.
- (9) A notification under subsection (1)(b) of land in England and Wales shall be a local land charge.
- (10) A notification under subsection (1)(b) of land in Scotland shall be registered with -

(a) in a case where the land is registered in that Register, in the Land Register of Scotland; or

(b) in any other case, in the appropriate Division of the General Register of Sasines.

(11) Section 23 of the 1949 Act (which is superseded by the section) shall cease to have effect; but any notification given under that section shall have effect as if given under subsection (1)(a). **(c)*

(12) Subsection (1A) shall not apply in relation to a notification of any land under subsection (1)(b) where a notification of that land under the said section 23 has effect as if given under subsection (1)(a).

Debates - HC Vol. 8 13-7-81 col. 898 - 899, 900 - 924, VOL. 9 30-7-81 col. 1248

Amendment agreed to

215(a) - Colin Shepherd, Delwyn Williams, John Mackay

Insert - or (c) the operation did not materially damage the special interest of the area for which it was notified under subsection (1)

Debates - HC Vol. 8 13-7-81 col. 898 - 899, 900 - 924,

Amendment withdrawn

215(b) - Colin Shepherd

Insert -

(c) the operation did not materially damage the special interest of the area for which it was notified under subsection (1); or

(d) the area was not, or was no longer, of such special interest as to warrant notification under subsection (1).

Debates - HC Vol. 8 13-7-81 col. 898 - 899, 900 - 924,

Amendment withdrawn

215(c) - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell,

Andrew Bennett

Insert - a notification made under subsection (1) shall be deemed to have been made for the purposes of this section unless amended or revoked following representations or objections made to the council under subsection (1A).

Debates - HC Vol. 8 13-7-81 col. 898 - 899, 900 - 924,

Amendment withdrawn

Successful amendments - 232, 214, 215

CLAUSE 29

(1) Where it appears to the Secretary of State expedient to do so -

(a) in the case of any land to which this paragraph applies, for the purpose of securing the survival in Great Britain of any kind of animal or plant or of complying with an international obligation; or

(b) in the case of any land to which this paragraph applies for the purpose of conserving any of its flora, fauna, or geological or physiological features,

he may, after consultation with the Nature Conservancy Council, by order apply subsection (3) to that land; and the provisions of Schedule 11 shall have effect as to the making, confirmation and coming into operation of orders under this section.

An order made under this section may be amended or revoked by a subsequent order so made.

(2) Paragraphs (a) and (b) of subsection (1) apply to any land which in the opinion of the Secretary of State is -

(a) of special interest; and

(b) in the case of paragraph (b) of that subsection, of national importance,

by reason of any of its flora, fauna, or geological or physiographical features.

(3) Subject to subsection (4), no person shall carry out on any land to which this subsection applies any operation **(234)* which -

(a) appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features

by reason of which the land is land to which paragraph (a) or, as the case may be, paragraph (b) of subsection (1) applies; and
(b) is specified in the order applying this subsection to the land.

(4) Subsection (3) shall not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if -

- (a) one of them has, after the commencement date, given the Council notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and
- (b) one of the conditions specified in subsection (5) is fulfilled.

(5) The said conditions are -

- (a) that the operation is carried out with the Council's written consent;
- (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and
- (c) subject to subsections (6) and (7) that three months have expired from the giving of the notice under subsection (4).

(6) If before the expiration of the period mentioned in paragraph (c) of subsection (5) the Council offer to enter into an agreement **(217)* with the person who gave the notice under subsection (4) either for the acquisition of his interest or *(#)* under section 16 of the 1949 Act or section 15 of the 1968 Act **(218)*, that paragraph shall have effect as if for the said period there were substituted -

- (a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection **(219)* of the offer to enter into the agreement, whichever period last expires.

(7) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4), that paragraph shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(8) A person who without reasonable excuse, contravenes subsection (3) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(9) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

(10) An order made under this section in relation to land in Scotland shall be registered either -

(a) in a case where the land affected by the order is registered in that Register, in the Land Register of Scotland; or

(b) in any other case, in the appropriate Division of the General Register of Sasines.

**(71)*

LIST OF AMENDMENTS TO CLAUSE 29

234 - Andrew Bennett

Insert - or bloodsport

Debates - HC Vol. 8 13-7-81 col. 899, 900 - 924

Amendment withdrawn

217 - Secretary Heseltine

Leave out to (#) and insert - for the acquisition of the interest of the person who gave the notice under subsection (4) or an agreement.

Debates - HC Vol. 8 13-7-81 col. 900 - 924, VOL. 9 30-7-81 col. 1249

Amendment agreed to

218 - Secretary Heseltine

Insert - providing for the making by them of payments to that person.

Debates - HC Vol. 8 13-7-81 col. 900 - 924, VOL. 9 30-7-81 col. 1249

Amendment agreed to

219 - Secretary Heseltine

Insert - or withdrawl.

Debates - HC Vol. 8 13-7-81 col. 900 - 924, VOL. 9 30-7-81 col. 1249

Amendment agreed to

71 - Secretary Heseltine

Insert - (11) A report made under section 17(1) of Schedule 3 to the Nature Conservancy Council Act 1973 for any year shall set out particulars of any areas of land as respects which orders under this section have come into operation during that year.

Debates - HC Vol. 9 13-7-81 947-949, 30-7-81 col. 1249

amendment agreed to

Successful amendments - 217, 218, 219, 71

CLAUSE 30

(1) **(147)* This section applies where -

(a) notice of a proposal to carry out an operation is duly given to the Nature Conservancy Council under subsection (4) of **(148)* section 29; and

(b) paragraph (c) of subsection (5) of that section has effect as modified by subsection (6) or (7) of that section.

**(149)*

(2) The Council shall pay compensation to any person having at the time of the giving of the notice, an interest in land to which the notice relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that

(a) he has reasonably incurred expenditure which has been rendered abortive, or expenditure in carrying out work which has been rendered abortive, by **(150)* the making of the order; or

(b) he has incurred loss or damage which is directly attributable to **(151)* the making of the order;

but nothing in this subsection shall entitle any person to compensation in respect of any reduction in the value of his interest in the land.

**(152)*

(3) Compensation under this section shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

(4) Except in so far as may be provided by regulations under this section, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(5) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provision of any regulations under this section.

(6) Regulations under this section shall be made by the Secretary of State and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

**(154)*

LIST OF AMENDMENTS TO CLAUSE 30

147 - Secretary Heseltine

Leave out - this section - insert - subsection (1A) applies when an order is made under section 29 and subsection (2)

Debates - HC Vol. 9 30-7-81 col. 1249

Amendment agreed to

148 - Secretary Heseltine

Leave out - section 29 - insert - that section

Debates - HC Vol. 9 30-7-81 col. 1249

Amendment agreed to

149 - Secretary Heseltine

Insert - (1A) The Council shall pay compensation to any person having at the time of the making of the order an interest in land comprised in an agricultural unit comprising land to which the order relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that the value of his interest is less than what it would have been if the order had not been made; and the amount of compensation shall be equal to the difference between the two values.

Debates - HC Vol. 9 30-7-81 col. 1249

Amendment agreed to

150 - Secretary Heseltine

Leave out - the making of the order - insert - reason of paragraph (c) of subsection (5) of section 29 having effect as modified by subsection (6) or (7) of that section.

Debates - HC Vol. 9 30-7-81 col. 1249

Amendment agreed to

151 - Secretary Heseltine

Leave out - the making of the order - insert - that paragraph having effect as so modified.

Debates - HC Vol. 9 30-7-81 col. 1249

Amendment agreed to

152 - Secretary Heseltine

Insert - (2A) For the purposes of subsection (1A) -

(a) an interest in land shall be valued as at the time when the order is made;

(b) where a person, by reason of his having more than one interest in land, makes more than one claim under that subsection in respect of the same order, his various interests shall be valued together;

(c) section 10 of the Land Compensation Act 1973 (mortgages, trusts for sale and settlements) or section 10 of the Land Compensation (Scotland) Act 1973 (restricted interests in land) shall apply in relation to compensation under that subsection as it applies in relation to compensation under Part I of that Act.

(2B) For the purposes of assessing any compensation payable under subsection (1A), the rules set out in section 5 of the Land Compensation Act 1961 or section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2C) No claim shall be made under subsection (1A) in respect of any order under section 29 unless the Secretary of State has given notice under paragraph 6(1) or (2) of Schedule 11 of his decision in respect of the order; and, without prejudice to subsection (2A)(a), that decision will be taken into account in assessing the compensation payable in respect of the order.

Debates - HC Vol. 9 30-7-81 col. 1249

Amendment agreed to

154 - Secretary Heseltine

Insert - (7) In this section "agricultural unit" means land which is occupied as a unit for agricultural purposes, including any dwelling-house or other building occupied by the same person for the purpose of farming the land.

Debates - HC Vol. 9 30-7-81 col. 1249

Amendment agreed to

.....

Successful amendments - 147, 148, 149, 150, 151, 152, 154

CLAUSE 31

(1) Where the operation in respect of which a person is convicted of an offence under section 29 has destroyed or damaged any of the flora, fauna, or geological or physiographical features by reason of which the land on which it was carried out is of special interest, the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) **(187)* In determining whether to make an order under this section against any person, the court shall have regard to his means so far as they appear or are known to the court.

(3) An order under this section made on conviction on indictment shall be treated for the purposes of sections 30 and 42(1) and (2) of the Criminal Appeal Act 1968 (effect of appeals on orders for the restitution of property) as an order for the restitution of property; and where by reason of the quashing by the court of appeal of a person's conviction any such order does not take effect; and on appeal to the House of Lords the conviction is restored by that House, the House may make any order under this section which could be made on his conviction by the court which convicted him.

(4) In the case of an order under this section made by a magistrates court the period specified in the order shall not begin to run -

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates court;

(b) where notice of appeal is given within the period so prescribed,
until determination of the appeal.

(5) At any time before an order under this section has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(6) **(190)* Any person who, without reasonable excuse, fails to comply with an order under this section within the period specified in the order shall be liable on summary conviction -

(a) to a fine not exceeding **(188)* £500

(b) in the case of a continuing offence, to a further fine not exceeding **(189)* £50 for each day during which the offence continues after conviction.

**(191)*

(7) In the application of this section to Scotland -

(a) subsections (3) & (4) shall not apply; and

(b) for the purposes of any appeal or review, an order under this section is a sentence.

LIST OF AMENDMENTS TO CLAUSE 31

187 - Secretary Heseltine

Leave out subsection

Debates - HC Vol. 9 30-7-81 col. 1250

Amendment agreed to

190 - Secretary Heseltine

Leave out to 'shall' - insert - if within the period specified in an order under this section, the person against whom it was made fails, without reasonable excuse, to comply with it, he.

Debates - HC Vol. 9 30-7-81 col. 1250

Amendment agreed to

188 - Secretary Heseltine

Leave out - £500 - insert - £1000

Debates - HC Vol. 9 30-7-81 col. 1250

Amendment agreed to

189 - Secretary Heseltine

Leave out - £50 - insert - £100

Debates - HC Vol. 9 30-7-81 col. 1250

Amendment agreed to

191 - Secretary Heseltine

Insert - (6A) If, within the period specified in an order under this section, any operations specified in the order have not been carried out, the Nature Conservancy Council may enter the land and carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by them in doing so.

Debates - HC Vol. 9 30-7-81 col. 1250

Amendment agreed to

successful amendments - 187, 190, 188, 189, 191

CLAUSE 36

(1) In subsection (3) of section 22 of the Water Act 1973 (areas of special scientific interest) the words "not being land managed as a nature reserve" shall be omitted.

(2) After that subsection there shall be inserted the following subsections -

(4) Where any land has been notified to a water authority under subsection (3) above, the authority shall consult with the Council before executing or carrying out any works or operations appearing to them to be likely to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(5) Subsection (4) above shall not apply in relation to any emergency operation particulars of which (including details of the emergency) are notified to the Council as soon as practicable after the commencement of the operation.

(6) References in this section to water authorities shall include references to internal drainage boards and the reference in subsection (3) above to the water authority in whose area the land is situated shall include a reference to the internal drainage board in whose district the land is situated.

LIST OF AMENDMENTS FOR CLAUSE 36

162 - Secretary Heseltine

Leave out clause 36

clause removed (but was included in NC30)

CLAUSE 39 (SECTION 41) New clause 49 from Standing Committee D which got rid of old clause 39)

(1) The advice for the giving of which free of charge the Minister of Agriculture, Fisheries and Food and the Secretary of State are required by section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1944 to make provision through such organisation as they consider appropriate shall include -

(a) advice to persons carrying on agricultural business on the conservation and enhancement of the natural beauty and amenity of the countryside;

(b) advice to such persons on diversification into other enterprises of benefit to the rural economy; and

(c) advice to government departments and other bodies exercising statutory functions on the promotion and furtherance of such diversification as is mentioned in paragraph (b).

**(155)*

(2) Where an application for a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grants) is made as respects expenditure incurred or to be incurred for the purposes of activities on land **(156)* to which this subsection applies, the appropriate Minister -

(a) shall so far as may be consistent with the purposes of the scheme and the said section 29, so exercise his functions thereunder as to further the conservation and enhancement of the

natural beauty and amenity of the countryside and to promote its enjoyment by the public; and

(b) where the relevant authority have objected to the making of the grant on the ground that the activities in question have had or will have an adverse effect on the natural beauty or amenity of the countryside or its enjoyment by the public, shall not make the grant except after considering the objection and, in the case of land in England, **(72)* after consulting with the Secretary of State; **(145)*

and this **(157)* subsection applies to any land which is in a National Park **(73)(142)* or in an area specified for the purposes of this subsection by the Ministers.

(3) Where, in consequence of an objection by the relevant authority, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in subsection 2(b), the relevant authority shall, within three months of their receiving notice of the appropriate Minister's decision, offer to **(158)* make, in the terms of the draft submitted to the applicant, a management agreement -

(a) imposing restrictions as respect those activities; and

(b) providing for the making by the **(159)* relevant authority to the applicant **(160)* of payments calculated in accordance with guidance given by Ministers.

(4) In this section -

"agricultural business" and the "appropriate Minister" have the same meanings as in the said section 29;

"management agreement" **(161)* means an agreement under section 37;

"relevant authority" means, as respects land in a National Park, the county planning authority *(74) and, as respects any other land, the local planning authority.

LIST OF AMENDMENTS TO CLAUSE 39

155 - Secretary Heseltine

Insert - (1A) In the exercise of his general duty under section 4(2) of the Small Landholders (Scotland) Act 1911 of promoting the interests of agriculture and other rural industries, and without prejudice to the generality of that duty, the Secretary of State shall make provision, through such organisation as he considers appropriate, for the giving of such advice as in mentioned in paragraphs (a), (b) and (c) of subsection (1).

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment agreed to

156 - Secretary Heseltine

Leave out - to which this subsection applies - insert - which is on a National Park or an area specified for the purposes of this subsection by the Ministers.

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment agreed to

72 - Peter Hardy, Andrew Bennett, Bob Cryer

Leave out - after consulting with the Secretary of State - Insert - with the provision that if the objection is not withdrawn the application shall be determined by the Ministers.

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment negatived - VOTE - Ayes 38 Noes 108

145 - Peter Hardy, Andrew Bennett

Insert - (c) where the relevant authority recommend that a farmer shall carry out an operation in a manner involving greater expenditure the farmer shall be compensated by a grant equal to the difference between the cost of the two operations in addition to the grant payable for the operation he proposed to carry out.

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment withdrawn

157 - Secretary Heseltine

Leave out to end of subsection - Insert - shall have effect, in its application to Scotland, as if references to the amenity of the countryside were omitted.

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment agreed to

73 - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell, Andrew Bennett

Insert - Site of Special Scientific Interest

Debates - HC Vol. 8 13-7-81 col. 900

Amendment withdrawn (covered by NC31)

142 - Andrew Bennett, Peter Hardy

Insert - or Area of Outstanding Natural Beauty

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment withdrawn

158 - Secretary Heseltine

Leave out - make. Insert - enter into

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment agreed to

159 - Secretary Heseltine

Leave out - the relevant authority . Insert - them of payments

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment agreed to

160 - leave out - to end of line

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment agreed to

161 - Secretary Heseltine

Leave out - rest of subsection - insert -

(a) in relation to England and Wales, means an agreement under section 37

(b) in relation to Scotland, means an agreement under section 49A of the Countryside (Scotland) Act 1967;

"the relevant authority" -

(a) in relation to England and Wales, has the same meaning as in section 37;

(b) in relation to Scotland, means the authority exercising district planning functions.

(5) Subsection (1) extends only to England and Wales and subsection (1A) extends only to Scotland.

Debates - HC Vol. 9 30-7-81 col. 1252-1260

Amendment agreed to

74 - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell, Andrew Bennett

Insert - as respects land being a Site of Special Scientific Interest, the Nature Conservancy Council or the County Planning Authority.

Debates - HC Vol. 8 13-7-81 col. 900

Amendment withdrawn (covered by NC31)

Successful amendments - 155, 156, 157, 158, 159, 160, 161

PROPOSED NEW CLAUSES

NC30 - Secretary Heseltine

(1) For subsection (1) of section 22 of the Water Act 1973 (duties with respect to nature conservation and amenity) there shall be substituted the following subsection -

(1) In formulating or considering any proposals relating to the discharge of any of the functions of water authorities, those authorities and the appropriate Minister or Ministers -

(a) shall, so far as may be consistent with the purposes of this Act and of the Land Drainage Act 1976 **(c)*, so exercise their functions with respect to the proposals as to further *(#)* the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) shall have regard to the desirability of protecting buildings or other objects of archaeological, architectural or historic interest; and

(c) shall take into account any effect which the proposals would have on the beauty of, or amenity in, any rural or urban area or on any such flora, fauna, features, buildings or objects.

(2) In subsection (3) of that section the words "not being land managed as a nature reserve" shall be omitted.

(3) After that subsection there shall be inserted the following subsections -

(4) Where any land has been notified to a water authority under subsection (3) above, the authority shall consult with the Council before executing or carrying out any works or operations **(a)* appearing to them to be likely to

destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(5) Subsection (4) above shall not apply in relation to any emergency operation particulars of which (including details of the emergency) are notified to the Council as soon as practicable after the commencement of the operation. **(b)*

(6) References in this section to water authorities shall include references to internal drainage boards and the reference in subsection (3) above to water authority in whose area the land is situated shall include a reference to the internal drainage board in whose district the land is situated.

Debates - HC Vol. 9 col. 1186 - 1198

Amendment agreed to

NC30(c) Colin Shepherd

Leave out to (#) and insert - in exercising their functions with respect to the proposals have regard to the desirability of furthering

Debates - HC Vol. 9 col. 1186 - 1198

Amendment withdrawn

*NC30(a) Gerald Kaufman, Dennis Howell, Tam Dalyell, Ted Graham,
Andrew Bennett*

Leave out - appearing to them to be

Debates - HC Vol. 9 col. 1186 - 1198

Amendment withdrawn

NC30(b) Colin Shepherd

Insert - or any operation to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing water course or drainage work, but excluding any operation to improve existing works, that is to say to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses or raise or widen or otherwise improve any existing drainage works.

Debates - HC Vol. 9 col. 1186 - 1198

Amendment withdrawn

NC31 - Secretary Heseltine

(1) Where an application for a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grant) is made as respects expenditure incurred or to be incurred for the purpose of activities on land notified under section 28(1) or land to which section 29(3) applies, the appropriate Minister -

(a) shall, so far as may be consistent with the purposes of the scheme and section 29 of the said Act of 1970, so exercise his functions thereunder as to further the conservation of the flora, fauna, or geological or physiological features by reason of which the land is of special interest; and

(b) where the Nature Conservancy Council have objected to the making of the grant on the ground that the activities in question have destroyed or damaged or will destroy or damage that flora or fauna or those features, shall not make the grant except after considering the objection and, in the case of land in England, after consulting with the Secretary of State.

(2) Where, in consequence of an objection by the Council, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in subsection (1)(b), the Council **(a)* shall, within three months of their receiving notice of the appropriate Minister's decision, offer to enter into, in the terms of a draft submitted to the applicant, an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act -

(a) imposing restrictions as respects those activities; and

(b) providing for the making by them of payments to the applicant.

(3) In this section "the appropriate Minister" has the same meaning as in section 29 of the said Act of 1970.

Debates - HC Vol. 8 13-7-81 col. 897, 900 - 924, VOL. 9 30-7-81 col. 1198

Amendment agreed to

***NC31(a) - Gerald Kaufman, Dennis Howell, Tam Dalyell, Ted Graham,
Andrew Bennett***

Leave out - shall, insert - may.

Amendment withdrawn

NC32 - Secretary Heseltine

(1) The Ministers shall from time to time, after consultation with the Nature Conservancy Council and such persons appearing to them to represent other interests concerned as they consider appropriate -

(a) prepare codes containing such recommendations, advice and information as they consider proper for the guidance of -

(i) persons exercising their functions under sections 28 to 31 and (duties of agriculture Ministers with respect to areas of special scientific interest); and

(ii) persons affected or likely to be affected by the exercise of any of those functions; and

(b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(2) A code prepared in pursuance of subsection (1) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or the proposed alterations have been approved by both Houses.

(3) Subject to subsection (2), the Ministers shall cause every code prepared or revised in pursuance of subsection (1) to be printed, and may cause copies of it to be put on sale to the public at such price as the Ministers may determine.

Debates - HC Vol. 8 13-7-81 col. 897, 900 - 924, VOL. 9 30-7-81 col. 1198

Amendment agreed to

.....

NC33 - Secretary Heseltine

(1) This section applies where -

(a) the Nature Conservancy Council offer to enter into an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act providing for the making by them of payments to-

- (i) a person who has given notice under section 28(3) or 29(4); or
- (ii) a person whose application for farm capital grant has been refused in consequence of an objection by the Council; or

(b) the relevant authority offer to enter into a management agreement providing for the making by them of payments to a person whose

application for farm capital grant has been refused in consequence of an objection by the Council.

(2) Subject to subsection (3), the said payments shall be of such amounts as may be determined by the offeror in accordance with guidance given by the Ministers.

(3) If the offeree so requires within one month of receiving the offer, the determination of those amounts shall be referred to an arbitrator to be appointed, in default of agreement, by the Secretary of State; and where the amounts determined by the arbitrator exceed those determined by the offeror, the offeror shall -

(a) amend the offer so as to give effect to the arbitrator's determination; or

(b) except in the case of an offer made to a person whose application for a farm capital grant has been refused in consequence of an objection by the offeror, withdraw the offer.

(4) In this section -

"farm capital grant" means a grant under a scheme made under section 29 of the Agriculture Act 1970;

"management agreement" and "the relevant authority" have the same meanings as in section 39.

Debates - HC 30-7-81 col. 1199

Amendment agreed to

NC12 - John Farr, Allen Mckay, Peter Hardy, Bob Cryer, Andrew Bennett

The Secretary of State shall provide each local authority with a list of all areas of special scientific interest in that authority's area and shall ensure that such lists are regularly updated by supplementary lists.

Debates - HC Vol. 8 13-7-81 col. 897

Amendment withdrawn

NC13 - Peter Hardy, Andrew Bennett, Bob Cryer

Where an application has been made under section 29 of the Agriculture Act 1970 which will affect a site of special scientific interest the Minister of Agriculture, Fisheries and Food or the Secretary of State for Scotland shall be required to provide the Nature Conservancy Council with all relevant financial information on the scheme whilst the Nature Conservancy Council may make representations to the relevant Minister for the alternative use of such public funds as may be provided under that section so as to better integrate the aims of conservation and agriculture.

Debates - HC Vol. 8 13-7-81 col. 897

Amendment withdrawn

NC14 - Gerald Kaufman, Dennis Howell, Ted Graham, Tam Dalyell

The Water Act 1973 is amended in section 20 by the deletion of subsection (1) and by the substitution of a new subsection as follows -

(1) Each water authority and all other statutory water undertakers may take steps to secure the use of water and land associated with water for the purposes of -

(a) recreation

(b) the protection of natural beauty, the conservation of flora, fauna and geological or physiographical features;

and it shall be the duty of all such undertakers to take such steps as are reasonably practicable for putting their rights to the use of water and of any land associated with water to the best use for these purposes.

Debates - HC Vol. 8 13-7-81 col. 897, 900 - 924, VOL. 9 1186 - 1187

Not moved (covered by NC30)

.....

Successful new clauses - NC30, NC31, NC32, NC33

COMMONS AMENDMENTS IN THE LORDS

All commons amendments were agreed to by the Lords see Debates, Hansard Vol. 424 col. 479 - 490, 518 - 520, 533-536, 602-603

CLAUSE 28

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

(a) to the local planning authority in whose area the land is situated; and

(b) to every owner and occupier of any of that land; and

(c) to the Secretary of State

(1A) Before giving a notification under subsection (1), the Council shall give notice to the persons mentioned in that subsection -

(a) setting out the proposed notification; and

(b) specifying the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect thereto may be made,

and shall consider any representations or objections duly made.

(1B) If, after reasonable inquiry has been made, the Council are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land a notification or notice required to be served on him may be served by addressing it to him by the

description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(2) A notification under subsection (1)(b) shall specify -

- (a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and
- (b) any operations appearing to the Council to be likely to damage that flora or fauna or those features.

(3) The owner or occupier of any land ***(58A)** notified under subsection (1)(b) shall not carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless -

- (a) one of them has, after the commencement date, given the Council ***(58B)** notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out: and
- (b) one of the conditions specified in subsection (4) is fulfilled.

(4) The said conditions are -

- (a) that the operation is carried out with the Council's written consent.
- (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and
- (c) that three months have expired from the giving of the notice under subsection (3).

(5) A person who, without reasonable excuse, contravenes subsection (3) shall be liable on summary conviction to a fine not exceeding £500.

(6) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

(7) The Council shall have the power to enforce the provisions of this section; but nothing in this subsection shall be construed as authorising the Council to institute proceedings in Scotland for an offence.

(8) Proceedings in England and Wales for an offence under subsection (5) shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the Council.

(9) A notification under subsection (1)(b) of land in England and Wales shall be a local land charge.

(10) A notification under subsection (1)(b) of land in Scotland shall be registered with -

(a) in a case where the land is registered in that Register, in the Land Register of Scotland; or

(b) in any other case, in the appropriate Division of the General Register of Sasines.

(11) Section 23 of the 1949 Act (which is superseded by the section) shall cease to have effect; but any notification given under that section shall have effect as if given under subsection (1)(a).

(12) Subsection (1A) shall not apply in relation to a notification of any land under subsection (1)(b) where a notification of that land under the said section 23 has effect as if given under subsection (1)(a).

AMENDMENTS TO CLAUSE 28

58A - Lord Bellwin

Insert - which has been

Debates- Hansard Vol. 424 15-10-81 col. 481-482

Amendment agreed

.....

58B - Lord Bellwin

Insert - written

Debates - Hansard Vol. 424 15-10-81 col. 481-482

Amendment agreed

.....

Successful amendments - 58A, 58B

CLAUSE 29

(1) Where it appears to the Secretary of State expedient to do so -

(a) in the case of any land to which this paragraph applies, for the purpose of securing the survival in Great Britain of any kind of animal or plant or of complying with an international obligation; or

(b) in the case of any land to which this paragraph applies for the purpose of conserving any of its flora, fauna, or geological or physiological features,

he may, after consultation with the Nature Conservancy Council, by order apply subsection (3) to that land; and the provisions of Schedule 11 shall have effect as to the making, confirmation and coming into operation of orders under this section.

An order made under this section may be amended or revoked by a subsequent order so made.

(2) Paragraphs (a) and (b) of subsection (1) apply to any land which in the opinion of the Secretary of State is -

(a) of special interest; and

(b) in the case of paragraph (b) of that subsection, of national importance,

by reason of any of its flora, fauna, or geological or physiographical features.

(3) Subject to subsection (4), no person shall carry out on any land to which this subsection applies any operation which -

(a) appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features

by reason of which the land is land to which paragraph (a) or, as the case may be, paragraph (b) of subsection (1) applies; and
(b) is specified in the order applying this subsection to the land.

(4) Subsection (3) shall not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if -

- (a) one of them has, after the commencement date, given the Council notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and
- (b) one of the conditions specified in subsection (5) is fulfilled.

(5) The said conditions are -

- (a) that the operation is carried out with the Council's written consent;
- (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and
- (c) subject to subsections (6) and (7) that three months have expired from the giving of the notice under subsection (4).

(6) If before the expiration of the period mentioned in paragraph (c) of subsection (5) the Council offer to enter into an agreement for the acquisition of the interest of the person who gave the notice under subsection (4) or an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act providing for the making by them of payments to that person, that paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection or withdrawal of the offer to enter into the agreement, whichever period last expires.

(7) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4), that paragraph shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(8) A person who without reasonable excuse, contravenes subsection (3) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(9) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

(10) An order made under this section in relation to land in Scotland shall be registered either -

(a) in a case where the land affected by the order is registered in that Register, in the Land Register of Scotland; or

(b) in any other case, in the appropriate Division of the General Register of Sasines.

(11) A report **(63A)* made under section 17(1) of Schedule 3 to the Nature Conservancy Council Act 1973 for any year shall set out particulars of any areas of land as respects which orders under this section have come into operation during that year.

AMENDMENTS TO CLAUSE 29

63A - Lord Bellwin

Leave out - made under section 17(1) - insert - submitted by the Council to the Secretary of State under paragraph 17.

Debates - Hansard Vol. 424 15-10-81 COL 485-486

Amendment Agreed to

CLAUSE 30

(1) Subsection (1A) applies when an order is made under section 29 and subsection (2) applies where -

(a) notice of a proposal to carry out an operation is duly given to the Nature Conservancy Council under subsection (4) of that section; and

(b) paragraph (c) of subsection (5) of that section has effect as modified by subsection (6) or (7) of that section.

(1A) The Council shall pay compensation to any person having at the time of the making of the order an interest in land comprised in an agricultural unit comprising land to which the order relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that the value of his interest is less than what it would have been if the order had not been made; and the amount of compensation shall be equal to the difference between the two values.

(2) The Council shall pay compensation to any person having at the time of the giving of the notice, an interest in land to which the notice relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that

(a) he has reasonably incurred expenditure which has been rendered abortive, or expenditure in carrying out work which has been rendered abortive, by reason of paragraph (c) of subsection (5) of section 29 having effect as modified by subsection (6) or (7) of that section.; or

(b) he has incurred loss or damage which is directly attributable to that paragraph having effect as so modified;

but nothing in this subsection shall entitle any person to compensation in respect of any reduction in the value of his interest in the land.

(2A) For the purposes of subsection (1A) -

(a) an interest in land shall be valued as at the time when the order is made;

(b) where a person, by reason of his having more than one interest in land, makes more than one claim under that subsection in respect of the same order, his various interests shall be valued together;

(c) section 10 of the Land Compensation Act 1973 (mortgages, trusts for sale and settlements) or section 10 of the Land Compensation (Scotland) Act 1973 (restricted interests in land) shall apply in relation to compensation under that subsection as it applies in relation to compensation under Part I of that Act.

(2B) For the purposes of assessing any compensation payable under subsection (1A), the rules set out in section 5 of the Land Compensation Act 1961 or section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2C) No claim shall be made under subsection (1A) in respect of any order under section 29 unless the Secretary of State has given notice under paragraph 6(1) or (2) of Schedule 11 of his decision in respect of the order; and, without prejudice to

subsection (2A)(a), that decision will be taken into account in assessing the compensation payable in respect of the order.

(3) Compensation under this section shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

(4) Except in so far as may be provided by regulations under this section, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(5) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provision of any regulations under this section.

(6) Regulations under this section shall be made by the Secretary of State and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section "agricultural unit" means land which is occupied as a unit for agricultural purposes, including any dwelling-house or other building occupied by the same person for the purpose of farming the land.

NO AMENDMENTS PROPOSED

CLAUSE 31

(1) Where the operation in respect of which a person is convicted of an offence under section 29 has destroyed or damaged any of the flora, fauna, or geological or physiographical features by reason of which the land on which it was carried out is of special interest, the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(3) An order under this section made on conviction on indictment shall be treated for the purposes of sections 30 and 42(1) and (2) of the Criminal Appeal Act 1968 (effect of appeals on orders for the restitution of property) as an order for the restitution of property; and where by reason of the quashing by the court of appeal of a person's conviction any such order does not take effect; and on appeal to the House of Lords the conviction is restored by that House, the House may make any order under this section which could be made on his conviction by the court which convicted him.

(4) In the case of an order under this section made by a magistrates court the period specified in the order shall not begin to run -

(a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates court;

(b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(5) At any time before an order under this section has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(6) If within the period specified in an order under this section, the person against whom it was made fails, without reasonable excuse, to comply with it, he shall be liable on summary conviction -

(a) to a fine not exceeding £1000

(b) in the case of a continuing offence, to a further fine not exceeding £100 for each day during which the offence continues after conviction.

(6A) If, within the period specified in an order under this section, any operations specified in the order have not been carried out, the Nature Conservancy Council may enter the land and carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by them in doing so.

(7) In the application of this section to Scotland -

(a) subsections (3) & (4) shall not apply; and

(b) for the purposes of any appeal or review, an order under this section is a sentence.

NO AMENDMENTS PROPOSED

NC31 (section 32)

(1) Where an application for a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grant) is made as respects expenditure incurred or to be incurred for the purpose of activities on land notified under section 28(1) or land to which section 29(3) applies, the appropriate Minister -

(a) shall, so far as may be consistent with the purposes of the scheme and section 29 of the said Act of 1970, so exercise his functions thereunder as to further the conservation of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and

(b) where the Nature Conservancy Council have objected to the making of the grant on the ground that the activities in question have destroyed or damaged or will destroy or damage that flora or fauna or those features, shall not make the grant except after considering the objection and, in the case of land in England, after consulting with the Secretary of State.

(2) Where, in consequence of an objection by the Council, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in subsection (1)(b), the Council **(76A)* shall, within three months of their receiving notice of the appropriate Minister's decision, offer to enter into, in the terms of a draft submitted to the applicant, an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act -

(a) imposing restrictions as respects those activities; and

(b) providing for the making by them of payments to the applicant.

(3) In this section "the appropriate Minister" has the same meaning as in section 29 of the said Act of 1970.

AMENDMENTS TO NC31

76A - Earl Of Onslow, Lord Buxton Of Alsa, Lord Hunt, Baroness White

Leave out - shall - insert - may.

Debates - Hansard Vol. 424 15-10-81 col. 490-581

Amendment disagreed Vote contents 57 not-content 59

(1) The Ministers shall from time to time, after consultation with the Nature Conservancy Council and such persons appearing to them to represent other interests concerned as they consider appropriate -

(a) prepare codes containing such recommendations, advice and information as they consider proper for the guidance of -

(i) persons exercising their functions under sections 28 to 31 and (duties of agriculture Ministers with respect to areas of special scientific interest); and

(ii) persons affected or likely to be affected by the exercise of any of those functions; and

(b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(2) A code prepared in pursuance of subsection (1) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or the proposed alterations have been approved by both Houses.

(3) Subject to subsection 92), the Ministers shall cause every code prepared or revised in pursuance of subsection (1) to be printed, and may cause copies of it to be put on sale to the public at such price as the Ministers may determine.

CLAUSE 39 (SECTION 41)

(1) The advice for the giving of which free of charge the Minister of Agriculture, Fisheries and Food and the Secretary of State are required by section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1944 to make provision through such organisation as they consider appropriate shall include -

- (a) advice to persons carrying on agricultural business on the conservation and enhancement of the natural beauty and amenity of the countryside;
- (b) advice to such persons on diversification into other enterprises of benefit to the rural economy; and
- (c) advice to government departments and other bodies exercising statutory functions on the promotion and furtherance of such diversification as is mentioned in paragraph (b).

(1A) In the exercise of his general duty under section 4(2) of the Small Landholders (Scotland) Act 1911 of promoting the interests of agriculture and other rural industries, and without prejudice to the generality of that duty, the Secretary of State shall make provision, through such organisation as he considers appropriate, for the giving of such advice as is mentioned in paragraphs (a), (b) and (c) of subsection (1).

(2) Where an application for a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grants) is made as respects expenditure incurred or to be incurred for the purposes of activities on land which is on a National Park or an area specified for the purposes of this subsection by the Ministers, the appropriate Minister -

(a) shall so far as may be consistent with the purposes of the scheme and the said section 29, so exercise his functions thereunder as to further the conservation and enhancement of the natural beauty and amenity of the countryside and to promote its enjoyment by the public; and

(b) where the relevant authority have objected to the making of the grant on the ground that the activities in question have had or will have an adverse effect on the natural beauty or amenity of the countryside or its enjoyment by the public, shall not make the grant except after considering the objection and, in the case of land in England, after consulting with the Secretary of State;

and this shall have effect, in its application to Scotland, as if references to the amenity of the countryside were omitted.

(3) Where, in consequence of an objection by the relevant authority, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in subsection 2(b), the relevant authority **(101A)* shall, within three months of their receiving notice of the appropriate Minister's decision, offer to enter into, in the terms of the draft submitted to the applicant, a management agreement -

(a) imposing restrictions as respect those activities; and

(b) providing for the making by them of payments to the applicant.

(4) In this section -

"agricultural business" and the "appropriate Minister" have the same meanings as in the said section 29;

"management agreement"

(a) in relation to England and Wales, means an agreement under section 37

(b) in relation to Scotland, means an agreement under section 49A of the
Countryside (Scotland) Act 1967;

"the relevant authority" -

(a) in relation to England and Wales, has the same meaning as in section
37;

(b) in relation to Scotland, means the authority exercising district planning
functions.

(5) Subsection (1) extends only to England and Wales and subsection (1A)
extends only to Scotland.

AMENDMENTS TO CLAUSE 39

101A - Earl Of Onslow, Lord Buxton Of Alsa, Lord Hunt, Baroness White

Leave out - shall - insert - may

Debates - Hansard Vol. 424 15-10-81 col. 490-581, 536

Amendment withdrawn

NC30 (Section 48 - was old clause 36)

(1) For subsection (1) of section 22 of the Water Act 1973 (duties with respect to nature conservation and amenity) there shall be substituted the following subsection -

(1) In formulating or considering any proposals relating to the discharge of any of the functions of water authorities, those authorities and the appropriate Minister or Ministers -

(a) shall, so far as may be consistent with the purposes of this Act and of the Land Drainage Act 1976, so exercise their functions with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) shall have regard to the desirability of protecting buildings or other objects of archaeological, architectural or historic interest; and

(c) shall take into account any effect which the proposals would have on the beauty of, or amenity in, any rural or urban area or on any such flora, fauna, features, buildings or objects. **(105A)*

(2) In subsection (3) of that section the words "not being land **(105B)* managed as a nature reserve" shall be omitted.

(3) After that subsection there shall be inserted the following subsections -

(4) Where any land has been notified to a water authority under subsection (3) above, the authority shall consult with the Council before executing or carrying out any works or operations appearing to them to be likely to

destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(5) Subsection (4) above shall not apply in relation to any emergency operation particulars of which (including details of the emergency) are notified to the Council as soon as practicable after the commencement of the operation.

(6) References in this section to water authorities shall include references to internal drainage boards and the reference in subsection (3) above to water authority in whose area the land is situated shall include a reference to the internal drainage board in whose district the land is situated.

AMENDMENTS TO NC30

105A - Lord Buxton

Insert - and water authorities shall have power to incur such expenditure as may be necessary to mitigate or eliminate any such effect as may be detrimental thereto; such expenditure shall be eligible for grant under section 90 or section 91 of the Land Drainage Act 1976.

Debates, Hansard Vol. 424 15-10-81 col. 603-621

Amendment withdrawn

105B - Earl Of Avon

Insert for the time being

Debates, Hansard Vol. 424 15-10-81 col. 601-612

Amendment agreed to

.....

Successful amendment - 105B

(1) This section applies where -

(a) the Nature Conservancy Council offer to enter into an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act providing for the making by them of payments to-

(i) a person who has given notice under section 28(3) or 29(4); or

(ii) a person whose application for farm capital grant has been refused in consequence of an objection by the Council; or

(b) the relevant authority offer to enter into a management agreement providing for the making by them of payments to a person whose application for farm capital grant has been refused in consequence of an objection by the Council.

(2) Subject to subsection (3), the said payments shall be of such amounts as may be determined by the offeror in accordance with guidance given by the Ministers.

(3) If the offeree so requires within one month of receiving the offer, the determination of those amounts shall be referred to an arbitrator **(106B)* to be appointed, in default of agreement, by the Secretary of State; and where the amounts determined by the arbitrator exceed those determined by the offeror, the offeror shall -

(a) amend the offer so as to give effect to the arbitrator's **(106C)* determination; or

(b) except in the case of an offer made to a person whose application for a farm capital grant has been refused in consequence of an objection by the offeror, withdraw the offer.

(4) In this section -

"farm capital grant" means a grant under a scheme made under section 29 of the Agriculture Act 1970;

"management agreement" and "the relevant authority" have the same meanings as in section 39.

AMENDMENTS TO NC33

106B - insert - or in Scotland, an arbiter

Debates, Hansard Vol. 424 19-10-81 col. 614-615

Amendment agreed to

106C - insert - or in Scotland, the arbiter's

Debates, Hansard Vol. 424 19-10-81 col. 614-615

Amendment agreed to

Successful amendments 106B, 106C

LORDS AMENDMENTS IN THE COMMONS

All Lords amendments agreed to in the Commons see Debates - HC Vol. 10 29-10-81 col. 1011 - 1023.

FINAL VERSIONS OF SECTIONS -

section 28

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact -

- (a) to the local planning authority in whose area the land is situated; and
- (b) to every owner and occupier of any of that land; and
- (c) to the Secretary of State.

(2) Before giving a notification under subsection (1), the Council shall give notice to the persons mentioned in that subsection -

- (a) setting out the proposed notification; and
- (b) specifying the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect thereto may be made,

and shall consider any representations or objections duly made.

(3) If, after reasonable inquiry has been made, the Council are satisfied that it is not practicable to ascertain the name or address of an owner or

occupier of any land a notification or notice required to be served on him may be served by addressing it to him by the description "owner" or "occupier" of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(4) A notification under subsection (1)(b) shall specify -

(a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features.

(5) The owner or occupier of any land which has been notified under subsection (1)(b) shall not carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless -

(a) one of them has, after the commencement date, given the Council written notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out: and

(b) one of the conditions specified in subsection (6) is fulfilled.

(6) The said conditions are -

(a) that the operation is carried out with the Council's written consent.

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and

(c) that three months have expired from the giving of the notice under subsection (5).

(7) A person who, without reasonable excuse, contravenes subsection (5) shall be liable on summary conviction to a fine not exceeding £500.

- (8) It is a reasonable excuse in any event for a person to carry out an operation if -
- (a) the operation was authorised by a planning permission granted on application under Part III of the Town and Country Planning Act 1971 or Part III of the Town and Country Planning (Scotland) Act 1972; or
 - (b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.
- (9) The Council shall have the power to enforce the provisions of this section; but nothing in this subsection shall be construed as authorising the Council to institutes proceedings in Scotland for an offence.
- (10) Proceeding in England and Wales for an offence under subsection (7) shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the Council.
- (11) A notification under subsection (1)(b) of land in England and Wales shall be a local land charge.
- (12) A notification under subsection (1)(b) of land in Scotland shall be registered wither -
- (a) in a case where the land is registered in that Register, in the Land Register of Scotland; or
 - (b) in any other case, in the appropriate Division of the General Register of Sasines.
- (13) Section 23 of the 1949 Act (which is superseded by the section) shall cease to have effect; but any notification given under that section shall have effect as if given under subsection (1)(a).

(14) Subsection (2) shall not apply in relation to a notification of any land under subsection (1)(b) where a notification of that land under the said section 23 has effect as if given under subsection (1)(a).

Section 29

(1) Where it appears to the Secretary of State expedient to do so -

- (a) in the case of any land to which this paragraph applies, for the purpose of securing the survival in Great Britain of any kind of animal or plant or of complying with an international obligation; or
- (b) in the case of any land to which this paragraph applies for the purpose of conserving any of its flora, fauna, or geological or physiological features,

he may, after consultation with the Nature Conservancy Council, by order apply subsection (3) to that land; and the provisions of Schedule 11 shall have effect as to the making, confirmation and coming into operation of orders under this section.

An order made under this section may be amended or revoked by a subsequent order so made.

(2) Paragraphs (a) and (b) of subsection (1) apply to any land which in the opinion of the Secretary of State is -

- (a) of special interest; and
- (b) in the case of paragraph (b) of that subsection, of national importance,

by reason of any of its flora, fauna, or geological or physiographical features.

(3) Subject to subsection (4), no person shall carry out on any land to which this subsection applies any operation which -

(a) appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is land to which paragraph (a) or, as the case may be, paragraph (b) of subsection (1) applies; and

(b) is specified in the order applying this subsection to the land.

(4) Subsection (3) shall not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if -

(a) one of them has, after the commencement date, given the Council notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out; and

(b) one of the conditions specified in subsection (5) is fulfilled.

(5) The said conditions are -

(a) that the operation is carried out with the Council's written consent;

(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act; and

(c) subject to subsections (6) and (7) that three months have expired from the giving of the notice under subsection (4).

(6) If before the expiration of the period mentioned in paragraph (c) of subsection (5) the Council offer to enter into an agreement for the acquisition of the interest of the person who gave the notice under subsection (4) or an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act providing for the making

by them of payments to that person, that paragraph shall have effect as if for the said period there were substituted -

(a) where the agreement is entered into before the expiration of twelve months from the giving of the notice, the period expiring on the day on which it is entered into;

(b) in any other case, twelve months from the giving of the notice or three months from rejection or withdrawal of the offer to enter into the agreement, whichever period last expires.

(7) If before the expiration of the period mentioned in paragraph (c) of subsection (5), or that paragraph as it has effect by virtue of subsection (6), an order is made for the compulsory acquisition by the Council of the interest of the person who gave the notice under subsection (4), that paragraph shall have effect as if for the said period there were substituted the period expiring -

(a) in the case of an order which is confirmed, on the day on which the Council enter the land;

(b) in any other case, on the day on which the order is withdrawn or the Secretary of State decides not to confirm it.

(8) A person who without reasonable excuse, contravenes subsection (3) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(9) It is a reasonable excuse in any event for a person to carry out an operation if -

(a) the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning

Act 1971 or Part III of the Town and Country Planning (Scotland)

Act 1972; or

(b) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Council as soon as practicable after the commencement of the operation.

(10) An order made under this section in relation to land in Scotland shall be registered either -

(a) in a case where the land affected by the order is registered in that Register, in the Land Register of Scotland; or

(b) in any other case, in the appropriate Division of the General Register of Sasines.

(11) A report submitted by the Council to the Secretary of State under paragraph 17 of Schedule 3 to the Nature Conservancy Council Act 1973 for any year shall set out particulars of any areas of land as respects which orders under this section have come into operation during that year.

Section 30

(1) Subsection (2) applies when an order is made under section 29 and subsection

(3) applies where -

(a) notice of a proposal to carry out an operation is duly given to the Nature Conservancy Council under subsection (4) of that section; and

(b) paragraph (c) of subsection (5) of that section has effect as modified by subsection (6) or (7) of that section.

(2) The Council shall pay compensation to any person having at the time of the making of the order an interest in land comprised in an agricultural unit comprising land to which the order relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that the value of his interest is less than what it would have been if the order had not been made; and the amount of compensation shall be equal to the difference between the two values.

(3) The Council shall pay compensation to any person having at the time of the giving of the notice, an interest in land to which the notice relates who, on a claim made to the Council within the time and in the manner prescribed by regulations under this section, shows that

(a) he has reasonably incurred expenditure which has been rendered abortive, or expenditure in carrying out work which has been rendered abortive, by reason of paragraph (c) of subsection (5) of section 29 having effect as modified by subsection (6) or (7) of that section.; or

(b) he has incurred loss or damage which is directly attributable to that paragraph having effect as so modified;

but nothing in this subsection shall entitle any person to compensation in respect of any reduction in the value of his interest in the land.

(4) For the purposes of subsection (2) -

(a) an interest in land shall be valued as at the time when the order is made;

(b) where a person, by reason of his having more than one interest in land, makes more than one claim under that subsection in respect of the same order, his various interests shall be valued together;

(c) section 10 of the Land Compensation Act 1973 (mortgages, trusts for sale and settlements) or section 10 of the Land Compensation (Scotland) Act 1973 (restricted interests in land) shall apply in relation to compensation under that subsection as it applies in relation to compensation under Part I of that Act.

(5) For the purposes of assessing any compensation payable under subsection (2), the rules set out in section 5 of the Land Compensation Act 1961 or section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(6) No claim shall be made under subsection (2) in respect of any order under section 29 unless the Secretary of State has given notice under paragraph 6(1) or (2) of Schedule 11 of his decision in respect of the order; and, without prejudice to subsection (4)(a), that decision will be taken into account in assessing the compensation payable in respect of the order.

(7) Compensation under this section shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

(8) Except in so far as may be provided by regulations under this section, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(9) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provision of any regulations under this section.

(10) Regulations under this section shall be made by the Secretary of State and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(11) In this section "agricultural unit" means land which is occupied as a unit for agricultural purposes, including any dwelling-house or other building occupied by the same person for the purpose of farming the land.

Section 31

(1) Where the operation in respect of which a person is convicted of an offence under section 29 has destroyed or damaged any of the flora, fauna, or geological or physiographical features by reason of which the land on which it was carried out is of special interest, the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) An order under this section made on conviction on indictment shall be treated for the purposes of sections 30 and 42(1) and (2) of the Criminal Appeal Act 1968 (effect of appeals on orders for the restitution of property) as an order for the restitution of property; and where by reason of the quashing by the court of appeal

of a person's conviction any such order does not take effect; and on appeal to the House of Lords the conviction is restored by that House, the House may make any order under this section which could be made on his conviction by the court which convicted him.

(3) In the case of an order under this section made by a magistrates court the period specified in the order shall not begin to run -

(a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates court;

(b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(4) At any time before an order under this section has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(5) If within the period specified in an order under this section, the person against whom it was made fails, without reasonable excuse, to comply with it, he shall be liable on summary conviction -

(a) to a fine not exceeding £1000

(b) in the case of a continuing offence, to a further fine not exceeding £100 for each day during which the offence continues after conviction.

(6) If, within the period specified in an order under this section, any operations specified in the order have not been carried out, the Nature Conservancy Council

may enter the land and carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by them in doing so.

(7) In the application of this section to Scotland -

(a) subsections (2) & (3) shall not apply; and

(b) for the purposes of any appeal or review, an order under this section is a sentence.

section 32

(1) Where an application for a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grant) is made as respects expenditure incurred or to be incurred for the purpose of activities on land notified under section 28(1) or land to which section 29(3) applies, the appropriate Minister -

(a) shall, so far as may be consistent with the purposes of the scheme and section 29 of the said Act of 1970, so exercise his functions thereunder as to further the conservation of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; and

(b) where the Nature Conservancy Council have objected to the making of the grant on the ground that the activities in question have destroyed or damaged or will destroy or damage that flora or fauna or those features, shall not make the grant except after considering the objection and, in the case of land in England, after consulting with the Secretary of State.

(2) Where, in consequence of an objection by the Council, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in subsection (1)(b), the Council shall, within three months of their receiving notice of the appropriate Minister's decision, offer to enter into, in the terms of a draft submitted to the applicant, an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act -

(a) imposing restrictions as respects those activities; and

(b) providing for the making by them of payments to the applicant.

(3) In this section "the appropriate Minister" has the same meaning as in section 29 of the said Act of 1970.

section 33

(1) The Ministers shall from time to time, after consultation with the Nature Conservancy Council and such persons appearing to them to represent other interests concerned as they consider appropriate -

(a) prepare codes containing such recommendations, advice and information as they consider proper for the guidance of -

(i) persons exercising their functions under sections 28 to 31 and (duties of agriculture Ministers with respect to areas of special scientific interest); and

(ii) persons affected or likely to be affected by the exercise of any of those functions; and

(b) revise any such code by revoking, varying, amending or adding to the provisions of the code in such a manner as the Ministers think fit.

(2) A code prepared in pursuance of subsection (1) and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament forthwith after being prepared; and the code or revised code, as the case may be, shall not be issued until the code or the proposed alterations have been approved by both Houses.

(3) Subject to subsection 92), the Ministers shall cause every code prepared or revised in pursuance of subsection (1) to be printed, and may cause copies of it to be put on sale to the public at such price as the Ministers may determine.

section 41

(1) The advice for the giving of which free of charge the Minister of Agriculture, Fisheries and Food and the Secretary of State are required by section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1944 to make provision through such organisation as they consider appropriate shall include -

(a) advice to persons carrying on agricultural business on the conservation and enhancement of the natural beauty and amenity of the countryside;

(b) advice to such persons on diversification into other enterprises of benefit to the rural economy; and

(c) advice to government departments and other bodies exercising statutory functions on the promotion and furtherance of such diversification as is mentioned in paragraph (b).

(2) In the exercise of his general duty under section 4(2) of the Small Landholders (Scotland) Act 1911 of promoting the interests of agriculture and other rural industries, and without prejudice to the generality of that duty, the Secretary of State shall make provision, through such organisation as he considers appropriate, for the giving of such advice as is mentioned in paragraphs (a), (b) and (c) of subsection (1).

(3) Where an application for a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grants) is made as respects expenditure incurred or to be incurred for the purposes of activities on land which is on a National Park or an area specified for the purposes of this subsection by the Ministers, the appropriate Minister -

(a) shall so far as may be consistent with the purposes of the scheme and the said section 29, so exercise his functions thereunder as to further the conservation and enhancement of the natural beauty and amenity of the countryside and to promote its enjoyment by the public; and

(b) where the relevant authority have objected to the making of the grant on the ground that the activities in question have had or will have an adverse effect on the natural beauty or amenity of the countryside or its enjoyment by the public, shall not make the grant except after considering the objection and, in the case of land in England, after consulting with the Secretary of State;

and this shall have effect, in its application to Scotland, as if references to the amenity of the countryside were omitted.

(4) Where, in consequence of an objection by the relevant authority, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in subsection 3(b), the relevant authority shall, within three months of their receiving notice of the appropriate Minister's decision, offer to enter into, in the terms of the draft submitted to the applicant, a management agreement -

(a) imposing restrictions as respect those activities; and

(b) providing for the making by them of payments to the applicant.

(5) In this section -

"agricultural business" and the "appropriate Minister" have the same meanings as in the said section 29;

"management agreement"

(a) in relation to England and Wales, means an agreement under section 37

(b) in relation to Scotland, means an agreement under section 49A of the Countryside (Scotland) Act 1967;

"the relevant authority" -

(a) in relation to England and Wales, has the same meaning as in section 37;

(b) in relation to Scotland, means the authority exercising district planning functions.

(6) Subsection (1) extends only to England and Wales and subsection (2) extends only to Scotland.

Section 48

(1) For subsection (1) of section 22 of the Water Act 1973 (duties with respect to nature conservation and amenity) there shall be substituted the following subsection -

(1) In formulating or considering any proposals relating to the discharge of any of the functions of water authorities, those authorities and the appropriate Minister or Ministers -

(a) shall, so far as may be consistent with the purposes of this Act and of the Land Drainage Act 1976, so exercise their functions with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) shall have regard to the desirability of protecting buildings or other objects of archaeological, architectural or historic interest; and

(c) shall take into account any effect which the proposals would have on the beauty of, or amenity in, any rural or urban area or on any such flora, fauna, features, buildings or objects.

(2) In subsection (3) of that section the words "not being land for the time being managed as a nature reserve" shall be omitted.

(3) After that subsection there shall be inserted the following subsections -

(4) Where any land has been notified to a water authority under subsection (3) above, the authority shall consult with the Council before executing or carrying out any works or operations appearing to them to be likely to

destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(5) Subsection (4) above shall not apply in relation to any emergency operation particulars of which (including details of the emergency) are notified to the Council as soon as practicable after the commencement of the operation.

(6) References in this section to water authorities shall include references to internal drainage boards and the reference in subsection (3) above to water authority in whose area the land is situated shall include a reference to the internal drainage board in whose district the land is situated.

(Section 50)

(1) This section applies where -

(a) the Nature Conservancy Council offer to enter into an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act providing for the making by them of payments to-

(i) a person who has given notice under section 28(5) or 29(4); or

(ii) a person whose application for farm capital grant has been refused in consequence of an objection by the Council; or

(b) the relevant authority offer to enter into a management agreement providing for the making by them of payments to a person whose application for farm capital grant has been refused in consequence of an objection by the Council.

(2) Subject to subsection (3), the said payments shall be of such amounts as may be determined by the offeror in accordance with guidance given by the Ministers.

(3) If the offeree so requires within one month of receiving the offer, the determination of those amounts shall be referred to an arbitrator (or, in Scotland an arbiter) to be appointed, in default of agreement, by the Secretary of State; and where the amounts determined by the arbitrator exceed those determined by the offeror, the offeror shall -

(a) amend the offer so as to give effect to the arbitrator's (or in Scotland, the arbiter's) determination; or

(b) except in the case of an offer made to a person whose application for a farm capital grant has been refused in consequence of an objection by the offeror, withdraw the offer.

(4) In this section -

"farm capital grant" means a grant under a scheme made under section 29 of the Agriculture Act 1970;

"management agreement" and "the relevant authority" have the same meanings as in section 39.

TABLE 1

**SUCCESSFUL AMENDMENTS TO THE
HABITAT PROVISIONS**

	s.28	s.29	s.30	s.31	s.32	s.33	s.41	s.48	s.50
1. Lords: Committee		cl e 2) 376A, 387A, 402A, 405A	l 31) 427						
2. Lords: Report	167ZA (376@1, 167A@2)	u 2) 167BC (410@1)	()						
3. Lords: 3rd reading	cl e 2)	(u e 2)	l 31)	77 (411@1, 167C@2)			() 35	82 (177A@2)	
4. Commons: Standing Committee D		365 (413@2, 414@2, 202@4)	(u 3)	1)			(c u e 3) 409 - clause 39 removed NC49	c s 6	
5. Commons: Report	214(201@4) 215(69@5, 354/337@4, 335/338@4)	217, 218, 219, 71	149 (149@4, 203@4, 399@4, 398@4, 168@2, 424@1, 425@1) 147, 148, 150, 151, 152 (linked to 149) 154	187 (389@4) 188 (391@4) 189 (394@4) 191 (372@4) 190	NC31 (173ZB@2)	NC32 (from 167ZA@2, which was replaced by 215@5)	155, 156, 157, 158, 159, 160, 161	126 clause 36 removed but included in NC30	NC33
6. Lords: Commons amendments	58A, 58B	63A						105B (in clause 55@1)	106B, 106C

Government amendments

Earlier versions of the same amendment. This includes the number of the parliamentary stage at which they were proposed. The number at that parliamentary stage. This clause number also applies to all stages otherwise specified.

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