



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs, Islands and Natural Environment Committee

Wednesday 15 June 2022

Session 6



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RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE

20th Meeting 2022, Session 6

CONVENER

*Finlay Carson (Galloway and West Dumfries) (Con)

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

Karen Adam (Banffshire and Buchan Coast) (SNP)

*Alasdair Allan (Na h-Eileanan an Iar) (SNP)

*Ariane Burgess (Highlands and Islands) (Green)

*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*Jenni Minto (Argyll and Bute) (SNP)

*Mercedes Villalba (North East Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rt Hon Lord Bonomy

Rachel Coutts (Scottish Government)

Chief Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)

Dr Pete Goddard (Scottish Animal Welfare Commission)

Emma Harper (South Scotland) (SNP) (Committee Substitute)

Kirsty Jenkins (OneKind)

Robbie Marsland (League Against Cruel Sports)

Caspian Richards (Scottish Government)

Lorna Slater (Minister for Green Skills, Circular Economy and Biodiversity)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Islands and Natural Environment Committee

Wednesday 15 June 2022

[The Convener opened the meeting at 09:03]

Decision on Taking Business in Private

The Convener (Finlay Carson): Good morning, and welcome to the 20th meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind members to switch any electronic devices to silent.

We have received apologies from Karen Adam. We understand that Emma Harper will join us as a substitute after 10 am.

Our first item of business is a decision to take item 6 in private. Are we agreed?

Members indicated agreement.

Subordinate Legislation

09:04

Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022 [Draft]

Official Controls (Plant Health) (Frequency of Checks) Regulations 2022

The Convener: Our second item of business this morning is consideration of the draft Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022 and the consent notification for the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022. I welcome to the meeting the Minister for Green Skills, Circular Economy and Biodiversity and Scottish Government officials Rachel Coutts and Caspian Richards. I invite the minister to make some opening remarks.

The Minister for Green Skills, Circular Economy and Biodiversity (Lorna Slater): Thank you for making time to consider the Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022, which is a draft Scottish statutory instrument. The regulations are being made to amend Scottish legislation in the field of plant health, particularly as it relates to fees payable by an importer of a consignment originating in a third country in respect of the physical and identity checks of plants and plant products.

The import fees are being amended as a consequence of a new Great Britain-focused risk-based frequency-of-checks regime that is being introduced across GB from 22 July 2022. The new methodology is set out in the statutory instrument PH/038. The revised fees apply to consignments of all high-risk products that are imported from all third countries as well as lower-risk regulated products from all third countries except the European Union, Liechtenstein and Switzerland.

The regulations also amend the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015. The forestry fees regulations contain provisions relating to export certification fees for forestry products under the United Kingdom Government's movement assistance scheme, to provide that such fees are not payable in relation to exports from Scotland to Northern Ireland in certain circumstances. The movement assistance scheme was originally scheduled to end in December 2022, but the UK Government later extended the scheme, which is now due to end in December 2023. The 2022 regulations amend the forestry fees regulations to reflect that

later date. These regulations are therefore necessary and appropriate.

My officials and I are happy to take any questions.

The Convener: Thank you. We have a number of questions. According to the notification, the new approach is based on the EU principles for risk-targeted inspections. Why does the Scottish Government feel that a new approach is required, and what are the deficiencies of the existing approach?

Lorna Slater: I will give my layperson's interpretation, and officials can come in with technical details if I miss anything. Due to Brexit, it is now necessary to do these checks on all high-risk products coming from the EU in addition to those coming from the rest of the world. Therefore, these checks aim to bring how we treat products from the EU into alignment with how we treat products from the rest of the world. Obviously, the Scottish Government did not wish for Brexit to happen or for these checks to be necessary, but it is important that we have alignment between how we handle products from the EU and how we handle products from the rest of the world. England and Wales have already put in place such a risk-based scheme.

The EU scheme, which, of course, is what would have been used to check these products as they came into the EU is also a risk-based scheme. Therefore, it is the same principle and the same structure of scheme, but we must now bring that into Scottish legislation.

The Convener: What are the deficiencies in the current scheme that require you to bring in a new approach?

Lorna Slater: It is not a matter of deficiencies in the existing scheme. The EU scheme was based on risks for the EU. Now, we are bringing in this legislation at a GB level—the fees are related to Scotland, but the SI is at a GB level. Therefore, with regard to the risk assessment, although the methodology is very similar, the risks that we face in GB are different from the risks that are faced by the EU. For example, there are many citrus fruit growers in the EU. We do not grow citrus fruits in the UK, so the risk assessment on those products would be different in GB. It is not a matter of efficiencies; it is a matter of making appropriate checks for the risks that we have here.

Mercedes Villalba (North East Scotland) (Lab): Will the minister explain to us what the EU principles for risk-targeted inspections are and how those are reflected in the proposed new inspection regime?

Lorna Slater: Again, I will give you the layperson's view, and officials can come in with

the details. The new regime involves the same kind of risk profiling as the existing scheme. As plants come in, we have to check that they are the correct plants, as identified, that they are healthy and that they are not bringing in pathogens. Risk assessments will be based on what we grow here, what pathogens might spread in the UK and what might create risks for our crops and commercial interests. My officials might like to add some detail.

Caspian Richards (Scottish Government): That is, basically, the assessment. The European Union approach is based on a frequency of checks at 100 per cent for goods, which can be reduced when those goods are considered a lower risk. The same principle applies to the approach that has been developed on a GB-wide basis, which—as the minister said—reflects the risks of specific goods in a GB context.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Minister, you have set out some of the reasoning, but I wonder whether you could give a practical example of the new process that we are talking about and say how the GB approach would differ from the EU approach. You have given your reasons for taking your own approach, but perhaps you could give us a real-life example.

Lorna Slater: Yes—citrus fruits are a practical example. My officials can give you more examples. We do not grow citrus fruit crops in the UK because we do not have a commercial interest in them, so importing citrus plants, for example, would not present a risk to our commercial agriculture. Those would be considered a lower-risk product, whereas products that we grow here as part of our commercial agriculture would be considered a higher risk. We do not need the same level of checks on citrus plants as a country that grows them as a commercial product.

Alasdair Allan: I want to ask briefly about annex 2 to the notification, which sets out the frequency of checks. It is proposed that there will be checks at a frequency of 30 per cent for some categories. Can you explain why that is the case? What is the reasoning behind that figure?

Lorna Slater: I will need to get my officials to go into the detail of any specific figure, but the principle is that we understand the risks on the basis of where things are coming from. For example, if we were importing from a country that we know has good plant health controls and where crops such as barley are not infected by a particular pathogen, we would not do as many inspections. However, if a plant or plant material was coming from a country that we know contains that pathogen and that does not have the standards of plant health checks and inspection that we would expect, we would need to increase our inspections to ensure our biosecurity.

Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con): The subject is quite complicated, is it not? I am wondering why the frequency rate for checks has been set at 30 per cent rather than at one of the standardised rates, which were 3, 5, 10, 50 and 100 per cent. In addition, can you give some examples of any woody plants that are prohibited from coming into the country and are subject to these checks that may affect agriculture?

Lorna Slater: I will let my officials answer the second question. On the first question, as I said to Alasdair Allan, it depends on where items are coming from. If items are coming from a country that has good plant health security and that is not affected by a known pathogen, we can safely reduce the level of checks. If plant material is coming from a country where we know there is a pathogen and there is a risk to our crops, we will increase the level of checks. That allows us to be flexible and dynamic and to use our resources to prevent those higher risks.

On the second question, perhaps my officials can give some examples.

Caspian Richards: I think that we will have to offer to write to the committee with a specific example of a woody plant in that category. Basically, the principle is that plants for planting are higher-risk goods, because there is soil material involved.

Rachael Hamilton: That is important, because it represents a slight change.

Minister, I am not convinced by your answer to the convener's question that we are taking a like-for-like approach that reflects how it was. I would like some reassurance on that. Do you have examples of what plants are getting into this country? People might bring something into the country in their hand luggage. Are these checks happening on lorries? Are they random checks, or are they checks on planned entries into the country? How does it work?

Lorna Slater: Again, I will give you a general overview and then officials can come in with more detail.

The statutory instrument and the fees relate only to high-risk products that are commercially imported in large quantities for business interests. One plant in a person's hand luggage is not a high-risk product—it is low risk. Checks on low-risk products have been delayed by another 18 months. The legislation is specifically about high-risk products. It is about commercial things—imports that we know about that we can trace through the country. It is about ensuring that they are right. We can, of course, check up to 100 per cent of them; in fact, the default fee is for a 100 per cent check. If, for example, as Caspian

Richards said, there were woody products that posed a very high risk, checks of up to 100 per cent could be done, because such materials can be traced. If there is a lower risk, the number of checks can be lowered on the basis of the risk assessment.

I do not know whether my officials want to add anything to that.

09:15

Rachel Coutts (Scottish Government): How it works is quite complex. Our model for checking sanitary and phytosanitary goods is based on the official controls regulation, which is the EU model. There is the EU model, and we now have the official controls regulation for GB. That was deficiency fixed when we left the EU. As part of the official controls regulation, competent authorities—therefore the Scottish ministers—are required to undertake risk-based checks on specific goods that are listed. There are lists of plants that must undergo checks.

How it works on the ground is that importers are required to give advance notice to the Scottish ministers that they intend to import those goods. At that point, goods will be randomly selected—or, if there is to be a 100 per cent check, all the goods will be selected—and the check will be undertaken by Government officials. That is all done electronically, and fees are paid. The frequency of the checks and the fees that we are putting in place are based on the overarching EU model, which, as the minister has said, has been adapted and tailored to a GB context.

The legislation reflects a lot of what was in the EU legislation, but it goes into a little more detail. For example, it requires the Government to publish frequency rates online. The EU model does not set that out in legislation, but that happens in practice. I am talking about some of the slight differences. It is important to remember that we are still under the EU model, but it has been tailored following requirements under the official controls regulation.

Rachael Hamilton: Okay. Thank you.

I want to follow up what Mr Richards said. You said that you would get back to the committee on a non-native species that is a risk to agriculture. Given all the new competences that we may have for controlling non-native species on the uplands—for example, controlling bracken with Asulam for tick populations—it is important that such products do not affect the spread of ticks, for example.

The Convener: I want to clarify something. The approach is quite straightforward in that importers will notify what they are importing through paperwork and electronically. That might be a lorry

full of bean seeds, which are low risk, so only 3 per cent might be checked, or it could be a lorry full of potatoes, 50 per cent of which might be checked, because they are higher risk. Why is it proposed that 30 per cent of some plant products in annex 2 in the minister's letter will be checked? That is not one of the standard five frequencies, which are 3, 5, 10, 50 and 100 per cent. Why on earth will 30 per cent of some plant products be checked?

Lorna Slater: I will hand over to the officials on that one.

Rachel Coutts: I do not know the answer to that question. That might be an error. We might have to clarify why the figure of 30 per cent is there or whether 30 per cent is a standard inspection frequency. We will clarify that, if that is all right, convener.

The Convener: Certainly. It is strange that there are five set frequencies but some plants do not fit in with those.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): Are there any other ways in which the approach to determining the frequency of checks differs from that of the EU? For example, will the default frequency in GB continue to be 100 per cent unless a commodity qualifies for the lower frequency of checks?

Lorna Slater: It is my understanding that that is the case.

Jim Fairlie: Will the proposed SI continue to prescribe that commodities for which more than 1 per cent of the consignments are found to have harmful organisms are not eligible for a reduced frequency of checks?

Lorna Slater: That is my understanding.

Jim Fairlie: If the GB approach is continuing to prescribe a minimum number of consignments that must have been imported into GB for a product to qualify for a reduced frequency of checks, what is that minimum number of consignments?

Lorna Slater: I do not know the answer to that.

Rachel Coutts: The minimum is 40 consignments. That is a change from what it was in the EU, which was 200, but that is just to reflect the smaller market. A minimum of 40 consignments will be required for eligibility for a reduced frequency of checks.

Jim Fairlie: The requirement in the EU was 200 consignments, but the SI is reducing it to 40 on the basis of the number of products that are coming in.

Rachel Coutts: It is about the size of the consignments, yes.

Jim Fairlie: Okay. Thank you.

The Convener: Beatrice Wishart is next.

Beatrice Wishart (Shetland Islands) (LD): The minister has answered my questions in responding to other questions, convener, so it might be appropriate to move on.

Ariane Burgess (Highlands and Islands) (Green): How does the proposed SI relate to the common framework on plant health? For example, are the decision-making fora and processes established by the common framework being used for import checks on plant products, and will they be used for the annual review of the frequency of checks?

Lorna Slater: I will refer to my officials on that one.

Caspian Richards: The common framework sets out how Administrations across the UK work together on a range of plant health issues. It describes the processes that are in place to identify threats to plant health. Part of that will be the forums through which the risk-based assessments are done and then applied to the fees legislation. It is part of the overall UK-wide framework. Officials from the four Administrations make the assessments on the basis of the risks within the GB context.

Ariane Burgess: The framework work informs how the SIs are designed.

Caspian Richards: It describes the process and how we work together to develop things like the legislation in common and the assessment of the risks within a GB context.

Ariane Burgess: Thank you.

Jenni Minto (Argyll and Bute) (SNP): What is the Scottish Government's role in the annual review of frequency rates? How will the Scottish Parliament be able to scrutinise those decisions, which will impact on imports to Scotland?

Lorna Slater: I am sure that the answer to your first question is in the frameworks that Caspian Richards has just described. Those frameworks describe how the four nations of the UK work together. I am not sure what the instrument is for parliamentary scrutiny.

Rachel Coutts: Again, as the process is based on the EU model, UK plant health services in all the devolved Administrations will work together to establish those frequencies. It is not expected that there will be any parliamentary scrutiny of those frequencies, as that is exactly what happened in the EU previously. The EU had legislation and it would produce an annual notification that set out the frequencies, and the SI does the same. As this is a business-as-usual step, it is not expected that

there will be any parliamentary scrutiny of the fee levels at that point.

The Convener: I want to go back to Mr Richards's response to the question about common frameworks. The notification actually states that the SI is not related to a common framework.

Caspian Richards: I am not sure about that, to be honest. There is a common framework for plant health, and that describes how the Administrations work together across the piece. I suppose that the SI is not derived from the common framework, but the common framework describes the processes through which the Administrations work together. I guess that it is complementary, from that point of view, but it is not that the common framework has produced this legislation.

Rachel Coutts: It is important to say that the plant health framework has not yet been approved or scrutinised. I think that that is why it does not refer to a plant health framework. However, we are using structures that are already in place to make these decisions, which we hope will be part of the framework in the future.

The Convener: That is helpful. Thank you.

Why is a reduced fee per consignment being proposed for those imports that are eligible for a reduced level of physical checks?

Lorna Slater: The fees structure is intended to cover just the costs, and, where reduced inspections are required, that means a reduced cost. The fees are not a money-making mechanism. If we have to use fewer resources doing fewer checks, we do not need to charge as much.

The Convener: But the fee is per consignment—it is not an overall fee. Why would the cost per consignment be less?

Lorna Slater: That is an excellent question. If you were one of the 3 per cent chosen to have your truck full of potatoes checked, it would be unfair if you had to pay the fee, because those checks are done randomly, so the costs are spread around the sector. For each individual consignment, the cost is spread across the whole sector so that the fees are fair and the person whose individual consignment is chosen is not unfairly penalised.

The Convener: Finally, going back to what might be a drafting error, it would be useful to know whether the error relating to the 30 per cent frequency is in the UK draft. Before we give consent, can you let us know how that will be addressed? Ultimately, if the legislation is passed, the 30 per cent figure will stand. How will that be rectified if that is a drafting error?

Rachel Coutts: What is in the notification has been taken from information that we have received from and discussed with our colleagues in the UK Government. I would like to go back and check whether the figure of 30 per cent should be in the paragraph in the notification—I suspect that that is where the error has arisen—or whether it is a typo in the annex, which should read 50 or 100 per cent. I will confirm whether the issue is in the content of the notification or in the annex.

The Convener: As there are no further questions, we will move on to consideration of the instruments. First, do members have any comments on the consent notification? If not, do we agree with the Scottish Government's decision to consent to the provision that is set out in the notification being included in UK rather than Scottish subordinate legislation?

Members indicated agreement.

The Convener: We now move to formal consideration of the motion to approve the instrument. I invite the minister to move motion S6M-04876.

Motion moved,

That the Rural Affairs, Islands and Natural Environment Committee recommends that the Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022 [draft] be approved.—[Lorna Slater]

Motion agreed to.

The Convener: Finally, is the committee content to delegate authority to me to sign off our report on our deliberations on this affirmative SSI?

Members indicated agreement.

The Convener: Thank you. That completes consideration of the subordinate legislation. I thank the minister and her officials for attending today. I will suspend the meeting briefly to allow for a changeover of witnesses.

09:28

Meeting suspended.

09:36

On resuming—

Hunting with Dogs (Scotland) Bill: Stage 1

The Convener: We will now take evidence on the Hunting with Dogs (Scotland) Bill. I welcome our first panel of witnesses, who will focus on animal welfare perspectives. Attending remotely are Pete Goddard from the Scottish Animal Welfare Commission—substituting for Libby Anderson, who is not able to be with us—and Robbie Marsland from the League Against Cruel Sports. In the room, we have Chief Superintendent Mike Flynn from the Scottish Society for the Prevention of Cruelty to Animals, and Kirsty Jenkins from OneKind.

We have a series of questions that will probably take us up to around 11 o'clock. I will kick off. What are the witnesses' overall views on the bill?

Chief Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals): We strongly welcome the bill. It is fair to say that, if everybody had acted in accordance with the intent of the Protection of Wild Mammals (Scotland) Act 2002, we would not be sitting here today.

The purpose of the majority of the bill is to close the loopholes in the act—every badger baiter has said that they were after foxes, and every hare coursing has said that they were after rabbits—so there is a lot that we strongly welcome. However, a lot of things have to be defined better, because much is still open to interpretation when things come to court. In addition, the licensing provisions have to be specified and fleshed out if NatureScot is to have a reasonable chance of doing a good licensing job.

Robbie Marsland (League Against Cruel Sports): I agree with Mike Flynn. We strongly welcome the intent behind the bill. We have some interests and some concerns about exceptions to the licensing scheme in particular, which I am sure we will be exploring during today's session.

Kirsty Jenkins (OneKind): Thank you for inviting us. We, too, support the bill. Its aim is to address some of the discrepancies and close some of the loopholes in the 2002 act, and it achieves that to a large extent. We have concerns about some of the exceptions and the licensing scheme, and I am sure that we will get to the details of that as we go along.

We also question the assumptions behind those exceptions, which are that foxes need routinely to be killed and that the use of dogs is a suitable way of doing that. Several of you represent farmers,

and lamb loss has been a big topic of discussion. Farmers definitely need to be better supported, both financially and in their mental health. That is a big conversation—it is not going to happen today, but it is relevant and I want to acknowledge it.

Farmers also need to be supported when it comes to any changes to wildlife management. I say that because, in any suggestions that I may make for change, I do not imply that the onus should be on any individual; it needs to be Government led, and farmers should be supported. However, if we do not have enough effective and humane methods to control and manage wild animals, that is a problem that needs to be addressed. It does not mean that we should just carry on doing what we are doing.

We strongly support the bill but have concerns about the exceptions. We would prefer there to be no exceptions at all. If they are to remain, there are ways in which they could be strengthened, and I am sure that we will get to the details of that.

Dr Pete Goddard (Scottish Animal Welfare Commission): Good morning. Thank you for the opportunity to attend. As you said, I am standing in for Libby Anderson, who apologises for not being able to be here.

The Scottish Animal Welfare Commission very much welcomes the bill, which introduces much greater clarity in the legislation. There are some small points on which greater clarity and less confusion could be introduced but, in general, it is moving towards questioning practices and looking for solutions that follow international ethical principles for wildlife control, and we are very supportive of it.

As others have said, we may be able to add to some of the detail, as we will pick out later and as we have elucidated in our written contribution.

The Convener: Thank you. We move to questions on sections 1 and 2 of the bill, which cover offences.

Ariane Burgess: I will direct my question to Robbie Marsland, after which others may come in. I ask for clarification. The written evidence that was received by the committee includes many statements that the bill will limit the efficacy of so-called "pest control", but I thought that the main substance of the bill—the offences in sections 1 and 2—relates to hunting with dogs in circumstances that are already illegal. Will you clarify what you believe is the intention of the bill and why it is necessary?

Robbie Marsland: The League Against Cruel Sports has been looking mainly at mounted hunts but also at activities that include encouraging packs of hounds, both mounted and on foot, to

chase and kill foxes. That is where our concern started, because we all thought that fox hunting in that way had been banned in 2002. However, when we started to look carefully at the situation, we found that exceptions in the Protection of Wild Mammals (Scotland) Act 2002—specifically, the exception of flushing to guns—were being used in such a way as to enable the continuation in Scotland of what could be described as traditional hunting.

Interestingly, the main difference between the exceptions of flushing to guns in Scotland and in England and Wales was that, in Scotland, it was possible to use a full pack of hounds to flush to guns. When we filmed the majority of the 10 mounted hunts in Scotland, in the first season—in 2014—we did not see a single gun. We thought that we were looking at traditional hunting, which was happening perhaps beneath the radar.

That caused the league to start talking in public about the issue, which we have been trying to address ever since and which I am pleased the legislation is looking at. As the Minister for Environment and Land Reform said when she introduced the legislation, that is the loophole that we are trying to finally close in order to really ban fox hunting in the way that we thought we had done more than 20 years ago.

I very much see the bill as redressing the fact that it is just too easy to get around the existing law. It will close the loopholes in the existing legislation. As I mentioned earlier—and, again, as I am sure we will be talking about—my worry is that some new loopholes may be introduced in this legislation. That is the area in which I am particularly interested. We know that there are groups of people who are quite determined to use packs of hounds to hunt, chase and kill wild mammals, such as foxes, in Scotland. We must ensure that the bill really does stop that happening. It would be awful if we all had to come back in a year's time and look at more film of that sort of activity. I hope that that will not happen.

09:45

Alasdair Allan: You may have seen that, in our previous meetings, we have discussed at length which wild mammals should be included in the legislation. There has been quite a lot of discussion about rabbits specifically. I am looking at Mike Flynn and Robbie Marsland. What is your opinion about that? Should rabbits be included in the bill, and would that work?

Mike Flynn: The Scottish SPCA welcomes the inclusion of rabbits. As I said in my opening remarks, when the police catch people hare coursing, their usual excuse is that they are after rabbits. I believe that the British Association for

Shooting and Conservation has said that the majority of rabbits are shot and that shooting would always be the preferred method, with that being done by a licensed person who is competent to do it.

Alasdair Allan: Do you think that hare coursing is still a problem in Scotland?

Mike Flynn: It still goes on, without doubt. That is a better question for Police Scotland, which monitors that. As with all rural crime, it is incredibly hard to catch people. We have worked with the rural crime police, led by Alan Dron, and have warned farmers that they should report anyone on their land who is suspicious in any way, whether that is in connection with foxes, rabbits, hares or any other animal. A lot of these people go on to carry out other crimes on farms. I do not know whether Alan Dron has been invited as a witness on police matters, but he would be able to expand on that.

Alasdair Allan: Do any other witnesses wish to come in? I suggested Robbie Marsland, but others may wish to come in, too.

Robbie Marsland: I agree with Mike Flynn. We have policing by consent in Scotland and in the UK. That is always a problem when you come into contact with a group of people who do not consent and who look for excuses and for cover. When I see rabbits being mentioned as an issue in the debate, I, like Mike, wonder whether that is going to be used as an excuse by people who say, "We weren't really chasing foxes or badger baiting—we were looking for rabbits." That is the sort of situation that we face.

I know that our colleagues in Scottish Badgers have lots of concerns about people using false alibis and saying that they are looking for rabbits. That is why I agree with Mike Flynn that it is good that rabbits are included.

The Convener: I have a supplementary question. This is one of the most contentious parts of the bill. It appears as if we are using law to control something in an almost tangential way: we are bringing rabbits into the bill to stop hares being hunted.

There could be a simpler way. Would using the fact that someone who was detained by the police for suspected hare coursing had not been given consent by the landowner to hunt with dogs on that property not be the way to stop it, rather than using another excuse to catch them for hare coursing? That seems a bit contrived. We have seen in the past how, when the law was not particularly precise, it turned out not to be good law. Is there a danger of our creating bad law by making hunting for rabbits an offence when there might be other ways of dealing with the issue? What about landowners not giving consent for

people hunting with dogs to be on their property? Would that not be the most straightforward and easiest way of doing this, instead of using what appears to be a sledgehammer to crack a nut and bringing rabbits into the legislation?

Chief Superintendent Flynn: I take the point and understand where you are coming from, but this legislation does not stop a farmer controlling rabbits on his land. They can still shoot them, go ferreting and all that stuff—that will not be taken away. In fact, one of the biggest benefits of foxes is the amount of rabbits that they take. We therefore welcome that.

If the intention is genuinely to go for rabbits, though, there are more humane ways of dealing with them than setting dogs on them. A lot of people think that, in all these sorts of activities, the dog kills the animal instantly. You might get away with that with mice or rats, but it is definitely not the case with foxes or even rabbits. Not all of them are instantly killed and, in any case, they also experience the fear of being chased.

If the bill actually said that a farmer was not allowed to control a pest on his land, we would be the first to be concerned about it. Farmers have the right to protect their livestock. I know that Emma Harper introduced legislation to strengthen controls on the worrying of livestock—a farmer has to be able to protect his livelihood. The bill does not stop that happening; they can still use legal methods that, in our opinion, are far more humane.

Rachael Hamilton: Chief Superintendent Flynn, you make an interesting point about the livestock worrying legislation that we passed in the Parliament. How many people have been charged with that offence? Moreover, can you give us any detail on whether anyone charged with hare coursing has got away with using rabbits as a defence? How many prosecutions for hare coursing are there in Scotland per annum?

Chief Superintendent Flynn: As I have said, Police Scotland enforces what is classed as wildlife legislation. Strangely enough, though, we deal with badger baiting, because it involves dogs. From what I understand from Police Scotland, those who are caught on suspicion of hare coursing regularly use the excuse that they were after rabbits or some other pest that can be caught legally.

As the consultation that Emma Harper conducted a year or so ago showed, livestock worrying is highly underreported. Indeed, there is a call-out in the Pentlands at the moment after a couple of incidents in which no one was caught. However, as opposed to someone going out to deliberately hunt a wild mammal, a lot of the livestock worrying that happens was not intended

by the people concerned, which brings us back to the access code and encouraging people to be responsible. Once people see livestock, they should ensure that their dog is under control, which I would just note is a phrase that is used in the bill under consideration. Keeping under control a dog that has been trained to go for a scent or to attack an animal is, unless you physically restrain it, damn near impossible.

Rachael Hamilton: Do you therefore believe that domestic offences are different from commercial livestock control offences? How would you define the difference between those offences, given what you have just said?

Chief Superintendent Flynn: It is strange, because the suffering of an animal that is attacked by a dog will always be the same. They are all sentient beings, so they will all suffer. However, the law seems to look at this differently. The livestock protection legislation brought things into the modern day with the penalties that it put in place. Because the previous penalties were woeful, the farmers had no encouragement to report that kind of activity.

The fact is that, if a person does this sort of thing intentionally, it does not matter whether the animal is domestic or otherwise. Someone who sets hounds on a domestic cat or another dog would more than likely be jailed or heavily fined, but it is still acceptable to do it to certain wild animals. The level of suffering is the same: a fox that is caught by dogs will suffer in exactly the same way as a cat would, but there would be a bigger public outcry about the cat. People have different opinions on how wildlife should be treated. I feel that it should be treated with respect. The Scottish SPCA does not have a problem with anybody humanely destroying an animal that is a pest for them, whether that is because it is causing a public health issue or because it is costing farmers money. They should identify the problem and deal with it in the most humane manner possible.

Alasdair Allan: Could other panel members comment on the point that Mike Flynn has just covered, around pest control, and, perhaps more generally, their view of the workability of the bill in that area? With previous panels, we have discussed whether the legislation might have unintended consequences, such as in cases where dogs slip their leads and chase after rabbits. I am keen to get a general view, first, of whether other panel members accept the point that has been made about the need for pest control and, secondly, about the workability of the bill on the issue of rabbits.

The Convener: I think that Robbie Marsland indicated that he wishes to come in on that.

Robbie Marsland: I did not, convener, but I will. The issue of pest control will come up throughout this debate, which, as I have said, to my eyes is about preventing people from encouraging packs of hounds to chase wild animals across the Scottish countryside and kill them.

I have to acknowledge that the bill that we have in front of us provides an opportunity for people to get a licence if it is shown that the only way that they can control animals is by using a pack of hounds to search for them and flush them to waiting guns. Do I agree with that? As I said earlier, I am worried that the bill provides a loophole. That is not because I do not think that there are not situations in which people need to control animals. Perhaps we will hear from my colleague from OneKind that the way in which we make such decisions is one of the most important aspects, but that is a separate debate. Pest control has a role in the debate, but that still takes it away from what the bill is trying to do, which is to prevent people from encouraging packs of hounds to chase and kill wild animals, particularly foxes.

As I said, I am sure that my colleague from OneKind could expand on that much better than I have done.

Kirsty Jenkins: We were very glad to see that the word “pest” was removed from the text of the bill. Unfortunately, it seems to have remained in the discussions that have taken place on it. As Robbie Marsland has just alluded—and as, I think, most committee members will be aware—OneKind supports the introduction of the ethical principles for wildlife control. The final one of those principles is to avoid using labels such as “pest”.

However, we recognise that wild animals need to be managed for the purposes that are laid out in the bill. The ethical principles do not prevent that in any way; all that they do is provide a way to guide decision making as to when and how it should happen. The principles could be used to strengthen the bill.

Alasdair Allan mentioned the possibility of a dog slipping its lead and whether that would mean that people would be breaking the law. I do not see that being a problem, because the wording in the bill is

“hunting a ... mammal using a dog”.

I believe that, in the scenario that he outlined, the person would not be using a dog, so to me there does not seem to be an unintended consequence there.

Dr Goddard: From the perspective of the Scottish Animal Welfare Commission, and as others have said, we would recognise the importance of managing animals that have the negative term “pest” applied to them. We are

equally pleased not to see the word “pest” in the bill.

That is not to say that we do not recognise the need for ethical wildlife management methods. However, those often begin with modifying human practices and then making a justification for using the most appropriate method. As Robbie Marsland has said, we need to have the purpose of the bill in mind when looking at the detail within it.

10:00

Jim Fairlie: I have a question about predator control, and I am looking for clarification from Kirsty Jenkins, Robbie Marsland and, potentially, Pete Goddard on a couple of points. Mike Flynn has already answered my question.

I will use the word “pest”, because if you are an arable farmer and you are getting 10 acres of arable barley eaten by rabbits, rabbits are a pest to you. Do you agree that the ability to farm in this country requires a degree of ethical control of wild animals? I do not need a huge explanation, just an answer. Do you agree with the principle that we should be able to control them?

Kirsty Jenkins: I agree that there is a need for wild animal management. I do not necessarily agree that it needs to continue in the way that it has historically been done and is currently being done. The ethical principles that I have mentioned could help to guide the decision making on whether it is appropriate to continue using the same methods or whether we should be looking for other methods.

Jim Fairlie: Earlier, you talked about how we gauge whether an animal is a “nuisance”—we can use that word if it feels more comfortable for you. Please do not take that in a derogatory way; I do not mean that at all. If you were a sheep farmer, how would you gauge whether a fox is a nuisance to you? How would you gauge that that fox is causing you a problem?

Kirsty Jenkins: On the words used, any animal could be considered to be a “pest” or “nuisance”. It depends on the circumstance that they are in, so—

Jim Fairlie: Yes, but practically, how do you determine whether that fox is going to cause you problems? How do you do that?

Kirsty Jenkins: That is a good question. If we are looking at the ethical principles, evidence would be required, and what that evidence is—

Jim Fairlie: So, what would that evidence be?

Kirsty Jenkins: It would depend. If you are having lamb losses, that would be evidence if you documented that. I have—

Jim Fairlie: Let me clarify, then. Are you saying that the only way that a farmer should get a licence is if they document the losses that they are incurring every morning at lambing time—so they would have to go out and record how many lambs are being killed for an ear or a tail or for feeding a den? Would that be the requirement that you would rather see for a farmer to be able to get a licence to deal with a fox?

Kirsty Jenkins: That is one of the forms of evidence. The other thing, as I said at the beginning, is that all the responsibility does not necessarily have to fall on individuals. In one of your previous panels, landscape-scale wildlife management was mentioned. Equally, some of the evidence base could be broader. Neighbouring farms could have the same foxes affecting them, for example. I do not know whether the evidence should be provided at the level of an individual farmer—that would have to be discussed further.

Jim Fairlie: We want to do this in the best way possible. A farmer will know that lambs are being killed and carried because that fox is feeding a den. Then we are into a whole different ball game of what we call ethical pest control or ethical wild animal control, because we would be taking a fox out while it is feeding cubs.

Surely, we can accept the fact that foxes will kill lambs; we know that they do it. I have had 30 years in sheep farming, and I can assure you that, every year, foxes will kill lambs. We cannot decide which fox in the countryside is coming in to kill lambs, so surely the principle has to be a general understanding that foxes will be a problem for farmers during lambing and that controlling their numbers during the winter would be far more sensible than waiting until the lambs are being killed.

Kirsty Jenkins: I have worked directly with animals for most of my life, and I understand how devastating it is when an animal that is under your care dies. Having said that, as I understand it, the evidence is that lamb loss due to predation is a small number overall.

Jim Fairlie: Having spent 30 years in sheep farming, I dispute that.

Kirsty Jenkins: Again, we are back to needing a better evidence base, because the evidence that I have seen suggests that the number is small. That might not be the case. We need to have a better evidence base.

Jim Fairlie: Let me give you an understanding from a sheep farmer's point of view. If you are lambing—

The Convener: No, Jim. Please desist.

Kirsty Jenkins: Can I make one more point?

The Convener: Certainly.

Kirsty Jenkins: Duncan Orr-Ewing from RSPB Scotland spoke about the fact that it has different practices and that that does not seem to be detrimental to either wild birds or the farmers whose practices are closer to the ethical principles that we are suggesting. I do not claim to have evidence; I am just saying that those principles should be followed.

The Convener: We have those points on record.

We will move on to questions from Jenni Minto on exceptions, which are covered by sections 3, 5, 6 and 7 of the bill.

Jenni Minto: I thank the panel for coming along to the meeting. I represent Argyll and Bute, which, as far as I am aware, does not have any foot packs or hunts. Following on from Jim Fairlie's questions, and comments from Mike Flynn and Kirsty Jenkins, I am interested to hear more about welfare and farmers needing to protect their livelihoods. What are your thoughts on the proposals in the bill that would reduce hunting with dogs to hunting with no more than two dogs and that would bring in a licensing scheme? In your answer, will you speak about why you oppose hunting with dogs—I think that you have already touched on that—and give your thoughts on the two-dog limit and how that might be interpreted by the farmers whom I have described?

Kirsty Jenkins: I have already said that we would prefer there to be no exceptions in the bill. We accept that wild animals need to be managed, but we think that there are different ways to do that.

If there are to be exceptions, the two-dog limit increases the likelihood that dogs will be under control, that there will be less disturbance of other wild animals and that there will be less chance of a wild mammal being killed by dogs. Therefore, we support the two-dog limit.

I have already mentioned the ethical principles, but I will return to them. The principles could be applied to the conditions of any of the exceptions. Equally, they could be applied to any licensing scheme; the difference is just the level of oversight. As I said, they do not prevent anything happening, but they guide the decision making to ensure that it is based on evidence and that animal welfare is prioritised.

Chief Superintendent Flynn: Jenni Minto made some very good points. The bill will not prevent a farmer from dealing with an animal that he perceives to be a pest, although it might change the way in which he does it. It does not matter whether it is through this bill or any legislation, nobody likes being told that they

cannot do what they have been doing for 30, 40, 50, 60 or 70 years.

Jenni Minto raised a point about foot packs and mounted hunts, and there are vast swathes of Scotland that do not have either of those, yet those areas still control foxes. I have not heard screams from people in those areas saying that they need a foot pack, so it can be done. The bill will not prevent someone from dealing with a genuine problem; it is just about the way that they go about it. I guarantee that reducing the number of hounds to two will reduce the chances of them catching and killing the fox, which is what the bill intends. Even with the existing legislation, it was never the intention to let the hounds kill the fox; the intention was that they should chase it into an open area to be shot.

I think that Mr Marsland said earlier that, in the early days of that legislation, there were allegations that there were not even any guns on site. One of the things that I said 20-odd years ago—I have been here long enough—is that you cannot get a fox out of cover or out of a den and say, “Run left 100 yards, because that’s where the gun is.” There are a thousand things that will make foxes go in any direction, so how can the gun safely follow a fox? There is that aspect, but there is also the fact that there are huge areas of Scotland where we do not have the traditional control method using dogs.

The bill’s provisions are designed to stop the use of dogs. Our point is about whether those provisions can prevent any dogs from killing the animal. As I said, if somebody kills an animal that is a pest species with a clean shot, they will have no problem from me or the Scottish SPCA.

Robbie Marsland: I want to remind everyone about what was said by Lord Bonomy and by a witness in the only successful prosecution of a mounted hunt in Scotland. Lord Bonomy estimated that using a pack of hounds resulted in the hounds killing the fox about 20 per cent of the time. If you say that you are shooting foxes but 20 per cent of the time it is actually the dogs that kill the fox—in a fairly horrific way—that is a very high number.

As I said, in the successful prosecution of the Jedforest hunt, one of the defence witnesses, who was said to be the person with a gun, estimated that foxes were killed by the pack 40 per cent of the time, because he was unable to shoot for one reason or another. It is common sense that two dogs will not be as good or as quick at flushing foxes as 36 or more hounds, but, if you have those 36, there is a 20 to 40 per cent chance of the hounds killing the fox. In addition, it is really hard to control hounds, which is what results in the event that we are all trying to stop, and that we thought we had stopped: encouraging packs of

hounds to kill wild animals in the Scottish countryside.

Jenni Minto: Pete Goddard, do you have anything to add?

Dr Goddard: No. I revert to the point that the commission is not saying that the management of foxes should not happen; we are saying that it should happen in the best possible way with regard to the welfare of the fox and achieving the objective. That needs to be the priority.

The Convener: I want to go back to something that Robbie Marsland said. You suggested that the fox will be caught and killed by the pack of dogs up to 40 per cent of the time. Do you have any evidence to compare what happens with a pack of dogs with what happens when you have two, three or four dogs?

Robbie Marsland: No. As I said, Lord Bonomy estimated that the fox is killed by the pack 20 per cent of the time, and the defence witness at the Jedforest hunt trial estimated that it happened 40 per cent of the time. People do not flush to guns with just two dogs in Scotland at the moment, as far as I am aware.

The Convener: Therefore, there is no evidence to show the difference between—

Robbie Marsland: Actually, although proving a negative with a negative is always difficult, I can say this. As you know, the League Against Cruel Sports operates in England and Wales as well as in Scotland, and the Westminster legislation reduced the number of dogs to two from the very beginning. That came a couple of years after the Scottish legislation. It was said that Westminster learned from some of the experiences of the Scottish legislation. Since the reduction of the number of dogs to two in England and Wales, I am not aware of anybody flushing to guns with two dogs in England and Wales. What happened in England and Wales, which we will talk about later, is that a whole new sport was invented overnight, and it was called trail hunting. That enabled people to go out with full packs of hounds, which is what they wanted to do.

10:15

The Convener: I am confused. There is currently no evidence that the number of foxes that would be killed as a result of using dogs to flush to guns would be any higher with a pack than with two dogs. You are suggesting—

Robbie Marsland: That is because it does not happen.

The Convener: It does not happen. Okay.

We will have a short supplementary from Jim Fairlie.

Jim Fairlie: I will ask a question of Robbie Marsland directly, if that is okay. First, I want to put on record that I am glad that everybody in the room accepts that there is a need for land managers to be able to have a method of controlling wildlife. It is great that we have consensus on that.

I also put on record that I would in no way advocate that it is a good idea to allow packs of dogs to go chasing across the country to catch a fox and kill it. I am absolutely opposed to that—

The Convener: Can we have a question, please?

Jim Fairlie: My question is this. Robbie Marsland mentioned that Lord Bonomy gave an estimate of 20 per cent of foxes being killed by the pack. Last week, we had before the committee Ian Duncan Millar, from the highland Perthshire foot hound pack. These guys are not going out hunting; they are trying to control a predator that is damaging to all sorts of wildlife and farm animals. Ian Duncan Millar estimates that up to 95 per cent of the foxes are driven out and shot. A concern that I have always had is that, if you are driving to standing guns, there are not enough guns. The most important thing, when a fox gets driven out, is that there are enough guns outside.

Surely the loophole in the law is that not enough care has been taken about how a fox is dispatched once it has been driven from cover. Surely having enough guns is far more effective than trying to use two dogs. Again, I know from experience that two dogs in a very wide area will not necessarily flush the fox. They will go round in circles, because the fox—which I have huge respect for—is a very clever animal. The point is to get the fox out of cover in order to shoot it, so the number of guns would surely be more important than the number of dogs.

Robbie Marsland: That is a point that I have made. As I said, it seems to me that, in practice or through interpretation, the current legislation means that, if someone has a couple of guns available, that is a defence. They can say, even if the pack of hounds kills the wild animal, that they were flushing to guns, but there may be a question as to whether or not there was a realistic attempt to flush to guns.

As I said, in the Jedforest case, where there was a successful prosecution, there was only one gun. The person involved said that he sat and watched the hole that the fox had gone into. He had to agree that he could have gone over there and shot the fox at any time, rather than waiting for the hunt to come back to release the fox from cover and then have the dogs chase it.

We have consistently been frustrated when we have shown the police film that shows that there

are no guns around. I agree with you that the number of guns is important, but I also think that it is easier for enforcement if the police can see whether there is a pack of hounds there. If there is, the police should be able to go over and say, “Where’s your licence? That is fine.”

I agree that they should also say, “Where’s the effective use of guns?” As you will know, the range of a shotgun is about 30m, and a fox can run in any direction, so my contention is that there should be somebody with a gun about every 60m—so that they do not shoot each other—all around the hole. If the fox leaves cover, as things stand, there is a duty to kill it as soon as possible. However, we are seeing situations in which there are a couple of guns, one gun or no guns, or a gSFSFun on the horizon, or someone saying, “Look at me, I’ve got a gun,” and yet foxes are being chased across the countryside. I hope that the bill will stop that.

Jim Fairlie: Thank you. We are short of time, but I am glad that we agree on that point.

The Convener: There will be a brief supplementary question from Rachael Hamilton before we move to questions from Beatrice Wishart.

Rachael Hamilton: I am worried. The bill is about animal welfare overall, not about one specific type of predator control. It is about a lot of things, but we seem to be focusing on one area. We have heard from Ian Duncan Millar, as Jim Fairlie said, and from the National Working Terrier Federation. There are various ways of controlling predators to protect livestock, but at the end of the day it is about animal welfare. Lord Bonomy’s review and previous evidence to this committee made it clear that the two-dog limit would not work, and the use of two dogs to flush to guns has been described as useless by the League Against Cruel Sports. Can Robbie Marsland comment on that specific point?

Robbie Marsland: Sure. I think that I already have.

There has been a scientific paper about the use of two dogs or more than two dogs. As I said, if you use more dogs, foxes will leave cover earlier than if you use only two dogs, but there is no comment in the scientific paper about animal welfare and, as you rightly say, that is what we are here to talk about. The welfare of foxes is undermined by the use of more than two dogs, because the evidence that I have heard is that, in those circumstances, between 20 and 40 per cent of foxes are killed by those dogs instead of being shot. That is why the number of dogs needs to—

Rachael Hamilton: We need to see some evidence on that, please, Mr Marsland, because we heard differently from practitioners last week.

Robbie Marsland: I can only refer to what Lord Bonyon said and what was quoted in earlier sessions. There is the evidence from the Jedforest trial, but I do not think that it is recorded in a sheriff court.

SF Beatrice Wishart: Good morning, panel.

Last week, we heard from witnesses representing wildlife management interests about situations that they believe require more than two dogs. I am keen to hear your views on the two-dog limit above ground and the exceptions for the management of wild mammals—including falconry, game shooting and deer stalking—and for environmental benefit, including in relation to ground-nesting birds.

Chief Superintendent Flynn: We support the two-dog limit, but there are exceptions in the bill through which a person—a farmer or someone doing so for environmental reasons—can apply for a licence if they have relevant evidence.

This relates to something that Mr Fairlie said about dealing with a problem before it arises. In last week's meeting, Mr Duncan Millar referred to the fixture list. "Fixture list" makes me think of football and rugby, whereby we know that something is going to happen. You cannot tell a fox not to cause a problem until the second week in February. It might be that the area was going to be swept to prevent foxes from causing damage in the future; that is different from dealing with a problem that actually exists.

There can be exceptions through the bill for when someone has a problem and can say genuinely that it will take more than two dogs. I heard the example that was given last week of rocky outcrops and certain areas up in the Highlands and so on. The people at NatureScot are the ideal people to do the licensing. They are all very countryside minded and capable in their jobs. If there was a genuine reason for it, a licence could be granted, so there should be no problem.

As Kirsty Jenkins did, I will refer to the RSPB evidence from last week. The RSPB has interests in the environmental and farming aspects, although the interests might not be as commercial as some. However, the RSPB does not use dogs at all on its swathes of land, which speaks volumes. Many people need to protect livestock, but there are European directives to protect ground-nesting birds and so on, so the RSPB is not using dogs.

Mr Duncan Millar last week mentioned that between 90 and 95 per cent of foxes are shot rather than killed by dogs. That relates to Mr Fairlie's point. I think that the example was given of 20 guns being used. There are still times when the foxes evade the guns and the dogs kill the fox.

The idea is, from my point of view, to ensure as far as possible that dogs are not used to kill foxes, because their doing so is not the intention; rather, the intention is to use hounds to chase, for example. On unintended consequences, if an old lady is walking a Lhasa Apso and the dog gets off the lead, the police will not look twice at her. A young guy in combats with two lurchers in the field of a farmer who petitions will raise a few eyebrows.

It is like the old phrase that is used about theft, which says that a person "went equipped". Badger baiters and hare coursers do not do that on their own doorsteps; they are travelling to places and parking their motor. They have already sussed the place and are going in with dogs that are used for those purposes. All dogs are bred for a purpose. For example, I get really annoyed when a person says that their Jack Russell terrier went for something. That is what Jack Russells do—they are terriers. Hounds are for chasing, and sighthounds are for chasing and grabbing. We are seeing these mutant dogs now, such as the bull lurcher—a cross between a lurcher and a bull terrier. I encourage any farmer who sees one of those on their ground to get on to the police right away, because people who have them are up to no good.

As I said at the beginning of the meeting, if everybody had acted in the spirit of the 2002 act, we would not be sitting here now, but it has been abused time and again. I know that people from countryside organisations were at the committee last week. I know most of them, including Jake Swindells, who is sitting behind me now. They are reputable people. However, they are not the people who are being caught.

I can assure the committee that dogs also get hurt in dealing with foxes. If anyone disagrees with that, I can show them plenty of pictures from courts where people have been found guilty. We are not just making that up: some of the injuries are horrendous. A good terrier man would not allow that, but the terriers that we deal with never see a vet. People are stapling their dogs' cheeks back at home and that kind of thing.

To go back to Mr Carson's point that having rabbits covered by the bill is just to prevent another problem, I suggest that anything that can prevent that kind of stuff has to be for the good.

The Convener: I will touch on a point about the limit on the number of dogs. Last week, the committee heard that, when people use a pack of dogs on foot, between 90 and 95 per cent of the foxes are shot. There is a massive difference between that and the figure of between 20 and 40 per cent. The only difference is whether people are on motorbikes or horses.

The issue is supposed to be exceptions to the rule. I have not heard of an example—not one—in which two dogs is the most appropriate number for controlling or flushing. That suggests that, any time at all, when someone wants to use dogs for flushing, they will have to apply for a licence. That will not be an exception; that will be the rule. That suggests that two dogs is an arbitrary limit that has no scientific basis whatsoever; it is a limit that will prevent the use of packs.

It is more about the League Against Cruel Sports than it is about a league against cruel pest control. We have heard, again and again, that this is not about more effective and less cruel pest control, but about preventing people who are mounted on horseback from hunting with packs. We need to get back to what the bill is all about, which is animal welfare. I cannot understand why the rule would be for two dogs when there is no evidence to suggest that that is the best way to flush foxes to guns.

Chief Superintendent Flynn: I am sorry, convener, but, in my opinion, the only way the committee could get evidence on that would be to look at what is happening in England and Wales, where the limit is two dogs. Nobody in Scotland uses two dogs, because they are not forced to. We need to change people's mindset.

The Convener: Mr Marsland has suggested that there is no evidence that anyone is using two dogs to flush to guns.

Chief Superintendent Flynn: That is the law in England. If they are breaking the law there—

The Convener: No—he said that it does not happen. Unless I misunderstood him, he suggested that there is no evidence that anyone is using two dogs to flush foxes to guns. Perhaps he could clarify that, if I have misunderstood.

Robbie Marsland: May I come in? I have thought of one example in which two dogs are routinely used in England and Wales, which is stag hunting. Again, it is an example of the lengths that people will go to. Stag hunting used to be done by packs of hounds. The stag was chased for considerable distances, then finally shot when it was exhausted. In order for people to continue to do that, if they want to, they have been using relays. They put two dogs on the stag and watch them chase the stag for, in some cases, several miles, then they remove those dogs and replace them with another two dogs. In that way, they have been able to continue what they believe is an entertaining sport. That is the only example that I can remember of the use of two dogs in England and Wales. The mounted hunts found another way of going out with packs of hounds, which is what they wanted to do.

10:30

The Convener: However, you have also suggested that using two dogs to flush is not an effective way of controlling foxes, because, if it was, it would be commonplace.

Robbie Marsland: If you use a full pack of hounds, you are in much more danger of between 20 and 40 per cent of the animals being killed by the hounds. I think that that is what the bill is trying to prevent, which is why we support it.

The Convener: Okay. Thank you.

Ariane Burgess: Mike Flynn started to talk about this issue a little. Last week, we spoke to Barrie Wade from the National Working Terrier Federation, and he stated:

“The point of a terrier being below ground is not to fight with the fox, but to bark at him and discourage him from staying below ground.”—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 8 June 2022; c 16.]

He also explained to my colleague Mercedes Villalba that, in certain circumstances, it would be a welfare issue to send only one dog under ground, because that would not motivate the fox to come up and the dog might stay there too long.

However, that concern for animal welfare does not sit well with other descriptions of terrier work that I have heard. Last week, I was talking to a shepherd, who told me that, when he was returning from work, he encountered a hunt and saw a terrier with half its face torn off after it had been sent down to find the fox. I am also aware of the case in Angus last month in which a gamekeeper was taken to court after his dogs were found to be seriously disfigured from fighting foxes and badgers, although he claimed that the dogs had been injured while carrying out legitimate ridding and foxing duties.

Apart from the impact on the dog, I would like to hear more about the animal welfare implications for foxes and mink. Can the panel give us information on the welfare impacts of terrier work and your views on exception 5? Perhaps Mike Flynn would like to pick that up, because he had started to comment.

Chief Superintendent Flynn: I cannot go into the detail here, but I would be happy to send the committee a briefing paper to explain the court case. It is quite common to see terriers with injuries from foxes and badgers, as you have just described. The people we deal with tend to use dogs for the same kind of thing. The foxes can be a training method for going on to badgers at a later stage.

I have met Barrie Wade on several occasions—he is a lovely man. However, I do not know how you can control a terrier underground. Mr Wade

said that you cannot shout, because hearing a person would stop the fox coming out. You physically cannot do it. Terriers do what terriers do. If they are under the ground and the fox is lucky enough to just bolt and get out, it will get away from the terrier, but, if it stays down there, they will face off. Foxes will bite anywhere they can—they are just defending themselves. If there is something disturbing the fox outside, or if, for whatever reason, it does not come out and the terrier goes down, that is what it will come to.

That is why people put locator collars on the dogs. If your dog is down there, you can hear it and it is engaging with the fox, the idea is that you dig down to it. That can take hours. It is not a quick pastime—you are not just getting one wee shovel in and there is the fox.

The animals suffer. I have grave concerns about dogs underground. I see no reason why you would have to put more than one dog down there. Anybody who has worked with terriers knows that, if you get two terriers in a heightened state, they will bite each other—it is not just the fox that they will go for. I am really pleased to see Mr Fairlie nodding his head at that. I am saying nothing against terriers—they are great wee dogs—but that is what they do. I have grave concerns about using animals underground, because there is no way to control them.

I have grave concerns about use of packs of hounds. If 20 to 40 per cent are killing a fox, where is the element of control? That means that the whistle did not work far too many times. Once the animals are on the scent, they will do what they have been bred and trained to do—you could whistle “Dixie” and they would keep going.

Kirsty Jenkins: I agree. Mike Flynn has succinctly outlined the welfare concerns about sending terriers underground. Any time that two animals are trapped in an enclosed space in a heightened state, it will lead to concerns. We would like the exception to be removed.

Dr Goddard: I agree that having two animals in conflict below ground, with absolutely no chance of controlling the dog, would represent a serious welfare concern.

Robbie Marsland: I agree with what everyone else has said. I offer this thought: encouraging two dogs to fight is entirely illegal and reprehensible, and it would often result in a prison sentence for illegal dogfighting. I cannot see the difference between encouraging two dogs to fight and putting a dog underground where you know there is a fox. It is clear that there is a high chance that there will be a fight. I do not understand why one of those activities is legal and one is illegal.

The Convener: I want to pick up on Mike Flynn’s comments.

One of the issues that Mr Wade suggested about a one-dog limit is that it is when only one dog goes down that problems arise. He said that the terriers are very well trained to flush and not to fight, and that, if there is more than one dog underground, it is more likely that the fox would try to find an exit route rather than stay and fight—because there would be more noise, hustle and bustle, and the fox would be more likely to take fright. In effect, limiting it to one dog would cause more animal welfare problems than using two dogs.

What the whole panel is saying suggests that dogs should not be used underground at all, but, if it were to continue, would the one-dog limit not make the situation worse? I say that on the basis of the evidence of someone who is an expert when it comes to using terriers underground.

Chief Superintendent Flynn: As I said, I get on well with Mr Wade, but I disagree with him. If there are two dogs, you are doubling the chance of the dogs engaging face-on-face with the fox. If there is one dog here and another dog there, the fox could become trapped between the two of them. Every fox earth is different. The expertise of a gamekeeper or a shepherd is needed so that, whether it is a fox den or a rabbit warren, they can tell the extent of it.

By increasing the number of terriers underground, you increase the chances of face-on-face contact. A fox will normally do anything that it can to evade a dog. If it has a dog at its back and there is a clear exit, the fox will take that exit. I do not believe for one second that a fox that has the chance to get out would turn and fight the dog—it will always take its chance to go.

The Convener: Are there any further questions on that?

Mercedes Villalba: I had a supplementary question, but the moment has passed.

The Convener: We will move on to licensing under sections 4, 8 and 9 of the bill.

Rachael Hamilton: We heard evidence that licensing will vary by situation. The Scottish Government cited a stoat eradication project in Orkney, and there are also measures to increase numbers of capercaillie through control of foxes and pine martens. NatureScot is well aware of the facts and is able to be the body that issues the licences. Do you have an opinion on the evidence that we have heard so far on ensuring that the licensing scheme is as practical and workable as possible?

Kirsty Jenkins: As I have already outlined, we would like the licensing scheme to be guided by ethical principles.

I want to go back to Mr Fairlie's point. I agree that deciding how to gather evidence, what that evidence should be and who should gather it are difficult questions. The Scottish Government representative already said that NatureScot will develop a licensing scheme "in conjunction with stakeholders". Farmers should feed into those questions about what evidence they would realistically be able to gather and so on.

I think that there will be an iterative process between NatureScot and stakeholders to make sure that the licensing scheme is workable, as you say. We would also like it to incorporate the ethical wildlife management principles in order to ensure that it is based on evidence that animal welfare is prioritised and that there is a standardised decision-making process throughout.

Rachael Hamilton: You probably followed the debate that we had a couple of weeks ago in the chamber on the seven principles of ethical wildlife management. It was an interesting debate. The minister, Màiri McAllan, said specifically that we are signed up to the shared wildlife management approach, which includes other stakeholders. The committee has heard during evidence that farmers and other stakeholders are also part of the conservation principle. I presume that you agree that the shared approach is a good one. It incorporates some of the principles—including, for example, community values, which would take into account ensuring that farmers could protect their livestock.

Kirsty Jenkins: I definitely agree that collaboration among the range of people who are involved is very important. On the shared approach, I have seen the concordat. It does not go into great detail—it is a statement of intent, as far as I can tell—so I cannot comment in detail on whether it meets the principles. There might in the working practices be more detail that is not publicly available. However, I do not know to what extent the concordat currently meets the ethical principles. I was very encouraged to hear the minister say that she is working with the Wild Animal Welfare Committee on that. That is a really positive thing.

Rachael Hamilton: Thank you. Can I ask the same question of Dr Goddard?

Dr Goddard: I note that, in terms of setting the balance for when a licence might be issued, the ethical principles for wildlife control would be something that NatureScot would need to reflect on in conjunction with others. It would also need to take on board society's expectations overall. We have heard of some individual cases in which there is a significant burden—for example, farmers who might be suffering significant losses, in particular. However, I guess that that is a wider ethical debate and a societal view that NatureScot

would need to reflect when it introduces the licensing scheme.

The Scottish Animal Welfare Commission's perspective is that we would be happy to be involved in that. Equally, as the minister has indicated, we are happy to be involved in the discussions with NatureScot on modernising—I suppose—the view about wildlife welfare in general. We are happy to play a part in that.

Rachael Hamilton: Would you agree, Dr Goddard, that a farmer's ability to control predators to protect livestock and, therefore, animal welfare, is part of an ethical principle?

Dr Goddard: Yes, we would say that. We are not saying that wildlife management should not happen against that backdrop. We are just saying that the conditions for it to happen require overarching ethical scrutiny, if you like.

Rachael Hamilton: Okay. I will bring in Mr Marsland. First, I will expand the question to incorporate the fact that the licence is almost broken down into two parts: predator control and environmental benefit, which includes ensuring that we increase biodiversity and numbers in wading bird species. We have heard loads of evidence about how the RSPB, for example, controls predators—hundreds of foxes per annum—in order to do that. What are your views on licensing and how it could be practical and workable?

Robbie Marsland: I agree that a licensing scheme needs to be practical and workable. I thought that the officials in the first evidence session did a very good job of explaining how that could proceed.

As you know, I feel that a licensing scheme gives us an opportunity to make sure that we understand—as it is understood by the RSPB, as Duncan Orr-Ewing explained—the problem that killing an animal is an attempt to solve and to make sure that it has been worked out how the situation will be improved by killing the animal and how that will continue to be monitored. When the officials outlined the process, I could see licensing happening in a way that would not necessarily stop necessary control of wildlife. It is the "necessary" aspect that is most important. It seems to me that, if we make a decision to kill an animal, we should know why we are doing it and we should know that it will solve the problem. If a licensing scheme could help us to do that, that would be a really good thing.

10:45

Chief Superintendent Flynn: As I said earlier, if NatureScot is to apply the licences properly, it will need proper guidance, either in the bill or in

guidance notes, on the exceptions and how the scheme applies. As long as ground rules are in place, I am pretty sure that NatureScot will be able to cope with the extra demands.

On the ethical side, someone might want to repeat a control that they did the previous year, even though it did not work. The foot pack that was mentioned at last week's evidence session killed 154 foxes over a five-month period and over a very large area. The latest estimate for the fox population in Scotland is that there are around 23,000. That population is pretty stable, although it goes up massively in the summer, then decreases through natural mortality and so on. I would not have thought that the shooting of 154 foxes over such a huge area of prime land would make a great difference. I am not saying that that foot pack should have gone hell for leather and killed more, but, in time, account should be taken—as with the two-dog limit—of how successful licensing on ethical principles has been. People might do it, but it might not make any difference.

Rachael Hamilton: Last week, mention was made of the need to reapply for a licence time after time, particularly during a vulnerable season, such as lambing, but licences for preservation, protection or restoration could be valid for up to two years, because they have the positive consequence of benefiting the land by increasing the biodiversity of species.

Earlier, you mentioned the issue of topography and the difficulty of controlling predators in dense woodland or whatever. From your experience of working with farmers, do you think that the process will be bureaucratic and not very time efficient for them, as they will have to continually apply for licences? Do you think that there should be an option to have a general licence rather than a 14-day licence?

Chief Superintendent Flynn: No farmer likes extra paperwork or extra bureaucracy, but that would be the case only if they wanted to use more than two dogs. They could still do predator control, which might involve the use of snaring. I must admit that I do not agree with the use of snaring—I think that that is another practice that needs to be looked at. The majority of farmers I know shoot when they have a problem. That does not take account of Mr Fairlie's remark about preventing a problem from arising, but that is a different debate.

I do not have great concern about the licensing aspect, but I am concerned about the term "category of person". A licence could be granted to an individual or "a category of person". What does that mean? Does it mean any gamekeeper on the estate, for example? The idea of a licence is that when the police or whoever is doing independent monitoring has a problem, the licence holder is responsible. Who would be in charge of that

"category of person"? There must be a named person who is responsible—someone who can be held accountable if something goes wrong and there is no one there to ensure compliance with the licence.

The Convener: Sadly, we are now coming to the point in the meeting when I have to ask members to keep their supplementary questions very short and direct them to a specific witness.

Mercedes Villalba: The bill allows for a licence to use more than two dogs to be obtained under specific circumstances. Rachael Hamilton reminded us that the committee heard evidence last week from Ian Duncan Miller opposing 14-day licences due to the administrative burden that that would cause as multiple licences would be required to cover the full shooting season and would have to be applied for sequentially.

With that in mind, do the witnesses have any concerns that what is intended to be an exceptional licensing arrangement in the bill will be sought as the default and, in effect, create a loophole for hunting with more than two dogs to continue? If we have time, I would like to hear from as many of the witnesses as possible, perhaps beginning with Kirsty Jenkins and Robbie Marsland.

Kirsty Jenkins: There seems to be a discrepancy in how different people regard the provisions for such a licence. Scottish Government officials described it as an exception to an exception. It would be a serious step, so not something that would be given out routinely. However, last week's panel of witnesses seemed to be saying that it needed to be given out year round.

We agree that it should be an exception to an exception. As Mike Flynn already said, the bill does not prevent people from using other methods to control foxes if necessary. It does not stop people using two dogs; it only says that they need a licence for the use of more than two dogs.

I have already outlined our view that, first of all, mitigation measures should be tried. If people need to resort to lethal control, other methods are preferable. Therefore, we would not want the bill's licensing regime to be relaxed or changed in any way.

Robbie Marsland: I will quote from what Police Scotland said to Lord Bonomy:

"Exceptions to the offence to 'deliberately hunt a wild animal with a dog' are multiple and provide opportunities for exploitation by those who continually and deliberately offend."

I just wanted to remind people that that is the context in which we are operating.

Emma Harper (South Scotland) (SNP) (Committee Substitute): I will direct my question to Mike Flynn. I assume that, when a licence is applied for, it is to ensure responsible predator control. Obviously, there needs to be flexibility. We have heard about capercaillie management; fox management is also needed in, for example, the lambing season. Do you agree that licensing should be flexible and depend on what control is sought so that we can help to manage predators responsibly?

Chief Superintendent Flynn: I totally agree. That is why I said earlier that NatureScot must have clear guidance, which should include turnaround times. If a farmer has severe problems going on, it should not take three weeks to get a licence, because, by then, it would be far too late.

The intention behind using more than two dogs must also be considered and I hope that NatureScot will do that. Is it for an animal that will eventually be killed—that is the hunting aspect—as opposed to, for example, the hedgehogs on Uist, where the intention is to locate the animals so that they can be trapped and moved away?

There are two different threads to the matter. However, if NatureScot has proper guidance, it could turn around any potential licence with evidence—whatever that is—for why someone needs more than two dogs. In relation to rocky outcrops, which I mentioned earlier, or a huge forest plantation, I would like to think that there would be a face-to-face discussion to ask, “Do you honestly think that two dogs could get anything out of that massive forest or cover that rocky outcrop?”

You must remember that NatureScot has a background in the matter. It does all the licensing at the moment anyway and is used to all those different scenarios being thrown at it. However, it needs clear definitions of the exception to the exception and what should and should not apply.

Ariane Burgess: My question is directed, first, at Robbie Marsland and then, if there is time, at Kirsty Jenkins.

The submission from the League Against Cruel Sports states your organisation’s belief that

“the proposed licensing scheme will simply create a new loophole which will still allow for traditional”

fox

“hunting to take place.”

Can you please explain that? Why would being allowed to use more than two dogs allow traditional fox hunts to continue whereas a hard limit of two dogs maximum would effectively end the practice?

Robbie Marsland: As I said at the beginning of the session, using a full pack of hounds out in the middle of the countryside—where the police do not have the resources to follow hunts in the way that my field investigators can—provides an opportunity for exceptions to the offence of killing a fox in such a way to be made and for the people who want to do that sort of thing to continue to do it. That is my main concern about the exceptions.

If the exceptions are rigorously enforced and if using a pack of hounds is the only way of controlling a recognised problem, we will have no problem with that. However, my fear is that people who are determined to use packs of hounds to chase and kill foxes will find ways of getting those licences. If that does not happen, I will be content.

Kirsty Jenkins: I do not have a huge amount to add to that, except to say that our experience of the 2002 act is that any potential loopholes will be exploited. Any of these exceptions could create a loophole, which is why we are encouraging their close scrutiny to see whether they are really necessary.

Chief Superintendent Flynn: It brings us back to the need for clear definitions. Rats and mice are excluded from the bill. As we have suggested in our written submission, an individual with dogs should have to define the place where they are being used. They cannot just say, “I’ve got my dogs out because there’s a rat up in that bit.” Rats are specific to certain places such as food stores; indeed, I have seen them in livery yards and so on. If there is anything in the bill that can be a loophole, the people who want to abuse it will find it. I can just see them saying, “I wasn’t after a fox—I was after a rat that my dog saw.” You would not be chasing or trying to control rats in an open area—you would be controlling them for a purpose in, say, a grain silo.

Again, it is all about having definitions and making sure that everybody is well aware of them so that we can avoid any loopholes. After all, nobody wants to be back here in 10 years’ time, saying, “This has failed.” As I said at the very beginning, I hope—and indeed everyone hopes—that if people follow the intention behind the bill and if things are tightened up properly, we will not have to address the issue again, because such things will happen only for genuine pest control or environmental reasons.

Rachael Hamilton: On Mr Marsland’s point about the police not having enough resources, should that issue be addressed by the Government? Moreover, what is a field investigator?

Robbie Marsland: Gosh. I recognise that police resources are hard pressed, and I am not suggesting that they should be doing what the

league's field investigators do, which is spend their time filming the activities of people who say that they are flushing to guns. It was the video evidence that we gathered over the past five years that convinced Lord Bonomy that traditional hunting was still going on, even though we had banned it more than 20 years ago, and that there was, therefore, a need for this legislation to make sure that we really ban fox hunting in Scotland.

Rachael Hamilton: What do your field investigators do? Do they follow all types of predation control in Scotland, including foot packs and so on?

Robbie Marsland: No. I was asked to look at the activities of mounted hunts in Scotland, so—

Rachael Hamilton: So, there is a gap, and we probably need to get witnesses from Police Scotland in to ensure that they are doing their job. After all, you are insinuating that the police are not doing it, because of resources.

The Convener: Police Scotland is coming in.

Robbie Marsland: I do not think that I am saying that the police are not doing their job. There have been two or three successful prosecutions of people that the police have taken to court as suspected hunters. That sort of thing does happen, but the police are dependent—I think that that is the right word—on the film that we have been able to supply to them.

11:00

The Convener: In the final few minutes, we will go on to talk about the prohibition on trail hunting. Beatrice Wishart is next.

Beatrice Wishart: I will address my question to Mike Flynn first. What is your view on the prohibition of trail hunting and the exception to the trail hunting ban to allow the training of dogs to follow an animal-based scent?

Chief Superintendent Flynn: To my knowledge, training in trail hunting came in down south when the hunting legislation came in, so it was a way of continuing to perform the pastime. If you are using fox urine to train animals to follow an animal scent and you are going one way, and a fox crosses your path going another way, the dogs are likely to engage in a hunt. Exceptions are obviously sensible for environmental purposes. If a dog is to be trained to find hedgehogs on Uist, it has to be trained to follow the smell of a hedgehog. So, for certain exceptions, training to trail hunt is correct.

I want to go back about 20 minutes, Deputy Convener, because I forgot to answer your earlier question about exceptions for falconry, game shooting and sport.

The Scottish SPCA supports the bill and totally accepts necessary pest control and environmental protection. We do not accept the use of dogs for any kind of pastime or sport. To me, falconry is a pastime. Nobody goes out hawking to put food on the family table; it is a pastime. If the purpose is to flush animals out to shoot them as a sport, we do not think that there should be any exceptions. It is not essential, unlike pest control or environmental protection.

The Convener: I will briefly bring in Dr Goddard, then Robbie Marsland, on trail hunting.

Dr Goddard: I agree with the contention that was made about trail hunting, that there could be unintended consequences. As a result, we do not support that continuing. Drag hunting is a different thing, although the two are often confused in people's minds. There is virtually no chance of unintended consequence in that circumstance.

Robbie Marsland: I agree. There has been very little drag hunting in Scotland during the past seven years, but during the past two seasons, the Fife hunt becomes the Kingdom Blazers on Saturdays, following a human scent from a runner who goes off the front. To make sure that that can continue, the best thing to do would be to limit the use of scent to human scent, as opposed to a non-animal scent. In that way, there would be no danger of somebody saying that they were following an aniseed scent when they were actually chasing foxes.

Kirsty Jenkins: I agree with the others. The Scottish Government is wise to pre-emptively ban trail hunting, considering what has happened down south. We are not opposed to exceptions, because those are necessary.

I want to pick up on Mike Flynn's point and say that we agree with him that there is no justification for an exception for sport. I also question the inclusion throughout the bill of a bird of prey as a method of killing. That does not really make sense to me. It is not a necessary and humane method. I know that the Scottish Government has said that it has no wish to ban falconry, but that still does not explain its inclusion as a method of killing in the other exceptions.

There also seems to be a little bit of a discrepancy in relation to the situation in which a wounded deer needs to be tracked by dogs, which has been brought up a couple of times. We concede that that is necessary. If deer are being shot for management purposes and one is wounded, it might need to be tracked by a dog for welfare reasons. However, that does not seem to be covered in the bill—the bill talks about flushing to guns or locating an animal that has been killed, but it does not mention an animal that has been wounded. That should maybe be looked at.

The Convener: Thank you; that is very useful. Finally, we will move on to part 3 of the bill and enforcement.

Alasdair Allan: Dr Goddard, we have had written evidence from the SAWC about the disqualification and deprivation orders. Do you feel that the bill deals with them adequately? There is a provision in the bill about preventing the persons concerned from owning the horse concerned. Does that plug a loophole in the law?

Dr Goddard: Overall, we were happy with the provisions, but it is about being absolutely clear about what the penalties are. That was the point that we were making.

Alasdair Allan: Thank you.

Chief Superintendent Flynn: There is one other thing that I would like to say, but not on that point.

The Convener: We are at the end of the session, but, if you would like to make another contribution, please feel free to do so.

Chief Superintendent Flynn: The legislation that the bill will replace has a provision about the person having to ensure that an animal that is being used is not injured. That is missing from the bill; therefore, we would like to see a provision in the legislation that, if an animal that is being used is injured, it must be rescued—for example, if it is a terrier trapped underground—and receive appropriate veterinary treatment if it is injured in the course of lawful activity.

The Convener: We have a final brief supplementary question from Rachael Hamilton.

Rachael Hamilton: I have raised this issue in all the other evidence sessions. I will put my question to Kirsty Jenkins, because she mentioned the mental health of farmers. Do you think that provision for compensation should be part of the bill, in case there is animal loss due to a deficiency in the licensing scheme or for another reason?

Kirsty Jenkins: I am not sure that I can comment on the specifics of that issue. I think that it is worth considering, but I do not know whether such provision is realistic or whether I am best placed to determine that. As I said at the beginning, the mental health of farmers is a concern; they are under a lot of pressure just now.

I also said that changes in wildlife management are needed, but the onus should not fall on farmers, and it should not increase the pressure on them. If compensation was one way to deal with that, it should be considered, but I am not best placed to say how that would work.

Chief Superintendent Flynn: On that point, if such a concern is raised with us by a farmer, we

work in conjunction with RSABI, which is a fantastic charity that supports farmers and crofters in many different ways. It would be able to help out farmers with that aspect.

The Convener: I see that Robbie Marsland would like to come in. Could you possibly also touch on the compensation question? Is there any indication that the passing of the bill might be to the detriment of certain groups, and should there be compensation?

Robbie Marsland: The compensation issue came up last week for the first time, and it is not something that I have given much thought to in the past. I do not really feel that I can comment just now.

The Convener: Okay. Thank you.

That brings us to the end of this session. I thank all the witnesses for attending either remotely or in person. Your evidence has been very useful.

I will suspend the meeting to allow for a changeover of witnesses.

11:09

Meeting suspended.

11:15

On resuming—

The Convener: I welcome everybody back to the meeting. I welcome to the meeting the Rt Hon Lord Bonomy, whose 2016 report made recommendations to improve the operation of the Protection of Wild Mammals (Scotland) Act 2002. With your permission, Lord Bonomy, we will move straight to questions. What is your overall assessment of the situation around hunting with dogs in Scotland, following your review in 2016?

Rt Hon Lord Bonomy: Good morning. At that time, my assessment was that it was a situation of great uncertainty. As you know, I found it difficult to make findings about the factual position. Obviously, my big idea at the time was not taken up, which was to monitor what was going on, on the basis of a protocol that all interested parties would subscribe to, see how that went—because I thought that that in itself would be a control mechanism—and then look at what the facts actually showed us. I had in mind that we have so many ex-police officers who used to ride horses that there was a cartel of individuals readily available for the role.

However, I cannot comment on how the situation might have changed since. I have seen rough figures that suggest that perhaps more foxes have been killed. Even when I was doing the review, a number of foxes were apparently illegally

killed every year. However, it was difficult to find specific information.

The Convener: There was a sort of unwritten code of conduct. Do you think that it resulted in any improvements in the situation with regard to what constituted illegal hunting?

Lord Bonomy: I thought that the code of conduct was a genuine effort to control what was happening. There is no doubt that there are rogues in hunting, as is the case in most aspects of life, but there are so many genuine individuals involved who were determined to preserve their sport and the social aspects that go with it, and I thought that there was a prospect that that would work. It was not written in legal language. It could have been improved, and I made proposals that that should be done. Therefore, there was an argument at that stage—and there was definitely evidence—that the hunting fraternity was keen to maintain its sport and to comply with the law.

The Convener: What are your initial impressions of the draft bill in relation to your review?

Lord Bonomy: Before I deal with that, may I say that I regard the bill as a very well-crafted piece of legislation? It solves the problems that I identified about the loose and variable use of language. It makes everything much clearer and simpler, which, in itself, should be a great incentive for better enforcement of the law, because the police and the Crown Office and Procurator Fiscal Service were struggling with the effective detection and prosecution of offenders.

You have done something that I wish was done far more often, which is draft a bill that repeals the whole of the previous legislation and puts something new in its place. The criminal procedure act is still the Criminal Procedure (Scotland) Act 1995, as amended, and there are extraordinary difficulties in finding things, so the bill is good from that point of view.

Beyond that, nothing that I particularly commented on has been done. You have not ordered dogs to be muzzled—you seem to have got that right—but I was disappointed in the failure to do anything about the idea of getting everybody to work together.

I can see reasons for not imposing vicarious liability on landowners, but I am a bit disappointed that the bill does not reverse the onus of proof, because there is a strong case for that. I know that that is a difficult and controversial issue, but hunting is an activity that is conducted in a way that is difficult to observe. We know the lengths that the League Against Cruel Sports goes to in order to provide the evidence—but for the league, we would not have much evidence on film to go on.

In Scotland, we are very averse to the notion of reversing the onus of proof, and we are also averse to the notion of vicarious liability—football is a good example of that, because vicarious liability might be a solution to many problems, but nobody is prepared to look in that direction—so I understand the reluctance to accept provisions on that.

I hope that the committee has viewed my report as something that tried to think out of the box to provide solutions for a very difficult problem.

The Convener: We will now look more specifically at the bill. I will bring in Mercedes Villalba.

Mercedes Villalba: Apologies, convener—I am just finding my question.

The Convener: Would you like me to move on to the next question? I will bring in Rachael Hamilton.

Rachael Hamilton: Good morning, Lord Bonomy. You have already touched on this point, but my questions are about the revised language in sections 1 and 2 of the bill, which relate to offences and exceptions—I probably do not have to jog your memory. Could you give your views on use of the word “deliberately” and on the definition of a wild mammal? You said that you feel that the legislation has been improved. Based on the evidence from your review, will the bill in its current form allow for the effective and humane control of predators?

Lord Bonomy: The word “deliberately” was causing a problem, so its removal is a good idea. There are various ways of describing the point at which the shooting should take place—“as soon as possible”, “as soon as reasonably possible” or “when it is safe to do so”. It is a vast improvement to have “as soon as reasonably possible” everywhere. I would take out “reasonably”, but I have no quibble with the fact that it is included, because it is an easy term for a court to deal with in any event, and there might be a good reason for its inclusion. Any degree of clarity will improve the enforcement of legislation. The problem here is in finding the evidence in the first place—as I have said, it is difficult to do so.

On the definition of a wild mammal, my only comment is that it makes sense to protect rabbits for the reason that is given. To me, that is common sense. When I was looking at the changes in the legislation, they all seemed to advance the cause of the protection of the right mammals and to allow for effective enforcement.

Rachael Hamilton: This is really difficult to articulate, but the main issue that we are considering is how to have a workable and practical way of controlling predators that protects

livestock and ensures the highest possible level of animal welfare. Based on the changes that will be made and on what you said previously, could there be any problems relating to the welfare of foxes?

Lord Bonomy: I suspect that foxes will now have a better chance of survival, because even the flushing out will be much more difficult with two dogs than it is with a properly organised pack. In upland areas and scrub, foot packs will find it very difficult to do their job with only two dogs.

I understand that that is the system in England. What I do not know, but what you probably know, is whether it is felt to work. Are Welsh upland and hill farmers content that they are allowed to use only two dogs? I do not know whether they have a licensing system. Evidence of how things have worked in England must be available, and that will tell you whether using only two dogs is effective.

Rachael Hamilton: We will be covering the two-dog question shortly. Would any other changes to sections 1 and 2 improve the bill?

Lord Bonomy: I will just complete what I was saying, because there is another point.

I do not know how it would be done, but there is an argument for attaching to a licence some sort of condition on the number of guns that should be used. If people are out with two dogs and two guns, there is loads of space for escape. In such a situation, it is very difficult to catch the fox. We all know that the fox is not only a pretty active beast in the countryside; it is becoming an urban Teddy boy. Therefore, I thought that it was better to use a pack. I had better not go on to that just now; you can ask me about it later.

Rachael Hamilton: We have been given sight of your review, which mentions an issue with animal welfare if fewer than two dogs are used.

Lord Bonomy: Sections 1 and 2 adequately cover the problem. Offhand, I cannot see any reason for adding anything, and you should certainly avoid unduly complicating things. Although the bill is about twice the length of the 2002 act, it is set out in a far clearer way, and it is divided up in a way that is much easier to the mind. For someone who does not know the activity particularly well, it is much easier to read and interpret.

Rachael Hamilton: Thank you.

The Convener: I am going to jump out of the question order that members are expecting, because, right now, we are focusing on the two-dog limit. Ariane Burgess has a question on that, so I will bring her in now.

Ariane Burgess: Thanks, convener. Good morning, Lord Bonomy. It is good to meet you.

In an Environment, Climate Change and Land Reform Committee evidence session in 2017, you stated that, in general, 20 per cent or more of foxes that are disturbed by hunts through flushing are actually killed by hounds, and you expressed your opinion that

“reducing”

the number of hounds

“to two would ... bring the practice of flushing to guns to an end. That change would, I think, mean the end of hunting as we see it at the moment.”—[*Official Report, Environment, Climate Change and Land Reform Committee*, 28 March 2017; c 12.]

Will you explain why you believe that to be true?

11:30

Lord Bonomy: The activity had already changed its form. Hunting with a chase and a catch was a widely practised sport. The sport tried to adapt and, as I saw it, the way that it found of adapting was to become a pest control agency. People advised me that, with the dogs that they had, they were pretty effective in that activity, and they were widely invited by landowners to carry out pest control for them at appropriate times.

However, it was the pack of hounds that the sportsmen and sportswomen loved to be associated with; controlling the hounds in open spaces was what they enjoyed. The number of packs had not changed very much, but I got the impression that there was a lack of enthusiasm for the change that had taken place. In the end, I felt that the change to two hounds might be a step too far for the body. However, people will now have had to face up to that, and they will have to answer what will happen to them if it looks likely that the bill will succeed.

Ariane Burgess: Can you clarify what you mean when you say that two hounds would be “a step too far for the body”?

Lord Bonomy: I mean that those people enjoy the sport of riding out with hounds, controlling them and directing them. In their view, the way of using hounds for pest control was working well. What they expressed to me—they were, of course, bound to express this to me, because they were arguing their cause—was that they thought that the whole social and sporting aspect of hunting was being gradually reduced by the legislative change that had already been made. They saw themselves as fighting a rearguard action at that point.

Beatrice Wishart: Good morning, Lord Bonomy. What are your views on the introduction of the two-dog limit and the proposed licensing scheme?

Lord Bonomy: The licensing scheme is, I think, what makes it viable to have the two-dog limit. There must be circumstances in which people can justify that it is appropriate to have more dogs, and licensing will allow for that. Maybe that is the saviour for the hunting fraternity. I do not know, but I did not get the impression that that would be readily granted in an area where these hunts are active. I may be wrong about that—the situation may be different.

The idea of keeping licences restricted is also a good one. Whether that will evolve from experience, I do not know. I have observed some comments being made that 14 days is not long enough for the activities that the licence might relate to and that, in those circumstances, there must be changes. I do not know anything about the way that things work on that front. However, I think that the idea of limiting licences, as with liquor licences, is a good one. I do not think that giving somebody a licence just because he has applied for one, meaning that he can do what he pleases, is the answer. I think that licences have to be restricted in some way, timewise.

The Convener: Someone having a licence is supposed to be the exception, if you like. Is there a danger that decisions on the number of dogs will be arbitrary? As you said, there is an argument that the two-dog limit is being brought in just to stop mounted packs. We want to stop the groups that go out and hunt for pleasure, and the way to do that is to reduce the number of dogs to two. That appears to be what has happened south of the border. We have heard today that there are very few, if any, occasions on which two dogs are used to flush foxes to guns.

In your review, you note Lord Burns's observation regarding the death of foxes, the crux of which is that the precise cause of death is less important than the speed at which the death occurs. Death by dogs takes a matter of seconds, so it is the pursuit that is the main source of welfare concerns. Naylor and Knott's research showed that using two dogs rather than a pack can actually result in an increased period of pursuit, so it would not seem logical in most cases.

I am still to find anybody who can tell me where using two dogs would be the most appropriate and animal welfare-minded way to flush foxes. Why should there be an arbitrary two-dog limit when there is no evidence to suggest that that is the most appropriate number of dogs for any work?

Lord Bonomy: My impression is that what the public find most distasteful is the dog actually killing the fox, and that there is an ignorance about how effectively the dog can kill the fox. A lot of the debate previously focused on the length of the chase that can result. I suppose that using two dogs could reduce that. I do not know whether

they have a pace dog and then he drops off. It depends how it is done.

Going back to my experience at the time, I note that there was a distinct difference in approach between the mounted hunts and the foot packs. It was much easier to accept what the foot packs told us was going on, probably because there was no argument against them. I do not think that the League Against Cruel Sports bothered much with what they were doing. The foot packs were very anxious to make the point that the most important factor is actually the number of guns that you take.

Traditionally, foot packs always used guns, whereas guns became commonplace in mounted packs only following the 2002 act. That is why it was seen as yet another challenge to the way in which they conducted their activity. They had to take guns with them, which they did not particularly want to do. It is beyond prayer now—it is an obvious necessity.

The Convener: Mercedes Villalba has a supplementary question, but I will bring in Jim Fairlie first, because he has a particular view on guns being part of the legislation.

Jim Fairlie: Good morning, Lord Bonomy. Thank you for coming along. I really liked your description of urban foxes being the new Teddy boys—without being denigrating to Teddy boys. That was brilliant.

I am trying to piece together all the stuff that you have been talking about, but I have asked this question from day 1. Is the problem with the legislation not the number of dogs but the number of guns? At the start of your evidence, you asked how the hunters can maintain their sport and allow the fox to be chased while they stay within the law. I cannot understand how they can do that, because, from what I can see, the sport is that the fox gets flushed and then chased so that the riders can ride after it. Pest control is the fox being flushed and shot immediately on sight.

I can see a loophole in the law in that, if there is a 200m distance from the wood or whatever is being flushed, there may be a gun at one end and a gun at the other. The fox may go straight through the middle and everybody else will come in behind it. Surely the law should look at the immediate death of the fox on flushing, rather than the number of dogs that chase it.

Lord Bonomy: Yes. That is what the bill says, but that is not necessarily how it is going to work. I take your point. If we take

“as soon as reasonably possible”

to mean that the fox is to be killed as soon as it has been flushed, then, once we have got to the end of the flushing exercise, it should be killed, but—

Jim Fairlie: In that case, how can hunters maintain their sport while staying within the law?

Lord Bonomy: They cannot maintain that part unless the law simply recognises that, as long as they are trying to kill the fox, they are doing their best. If they have two guns in the way that you describe, the argument will be, "I did my best."

Jim Fairlie: We have an acceptance across all the groups that a certain amount of wildlife control or predator control is a necessity for land managers, farmers and conservationists. We all accept that. If we are going to use dogs, all the evidence has shown us that the most effective way is to use an appropriate number of dogs, which is a full pack. Walked up, unmounted packs are a very effective way of getting foxes out of woodland and dense cover. To me, the number of guns seems to be the most important bit, as opposed to the number of dogs.

Lord Bonomy: I think that the number of guns is vital. As I have said, the different way that the foot packs went about it did not seem to me to involve a chase—

Jim Fairlie: It was just a flush to get a shot.

Lord Bonomy: Yes. On the hunts that I have observed, the pack of dogs could find it difficult to flush the fox out. The huntsmen might be with them for quite some time while they are flushing, and they are enjoying a form of sport in doing that. That might be a different form of riding from the gallop that they get on to after that, but I could see the manoeuvring and controlling of the dogs going on in a difficult flush.

Jim Fairlie: Okay. I have a quick question about licensing. We have had various conversations this morning about the necessity of control. I do not think that there is any dispute—we have all agreed—that foxes, in particular, can be a pest to lambs and various other things. You spoke about exceptions to the exception, but is there not an argument for people having a seasonal ability to control fox numbers, rather than their having to say, "I have a particular problem right now and I need a licence to deal with it"? Is there not an argument for seasonal control rather than the issuing of one-off licences?

Lord Bonomy: I think that there must be, assuming that the evidence shows that, for a certain part of the year, foxes are a nuisance that needs to be addressed. However, that does not change the principle that there should be some limitation on an exception of that nature.

Jim Fairlie: On the determination of whether there is a nuisance, if we accept that a fox will predate lambs and chicks during a particular season, would it not be more advantageous to

deal with that before it becomes a problem rather than in the event of it becoming a problem?

Lord Bonomy: I can see that argument. It is not for me to decide, in the end.

Jim Fairlie: Okay. Thank you.

The Convener: Rachael Hamilton will be next, to be followed by Mercedes Villalba.

Rachael Hamilton: I will go back to the review, because that is the interesting part here. Did you observe foot packs and quad bike packs?

Lord Bonomy: I did not observe foot packs. I saw a hunt with quad bikes being used. It looks ridiculous, but that is a personal view. You have to remember how far back my life goes. I see it as a social thing, and that just looked very odd. However, the issue is whether it is effective, or more effective. The man on horseback will not normally be carrying a gun to shoot the fox. Where a quad bike is used, it is the vehicle that the individual uses to get to a point where he should be,

"as soon as reasonably possible",

able to kill the fox. I saw that happen.

11:45

Rachael Hamilton: I asked the question because we are hearing evidence from all sorts of people who are going to be affected by the bill, and we heard last week about some of its possible unintended consequences. It might be useful to look at that evidence if you have time, because it was interesting.

I will press you on a specific area. You say in your report that, if there are fewer than two dogs when flushing, that

"could seriously compromise effective pest control"

in the countryside. How might that observation, which you made in your review of the 2002 act, have a bearing on or lend weight to the argument about the two-dog limit in the bill?

Lord Bonomy: I cannot answer that, because I do not know what the evidence is of what has been going on since 2016. I just do not know.

Rachael Hamilton: I will ask the question in a different way. What made you come to that conclusion in your review of the 2002 act?

Lord Bonomy: I thought that the flushing of the fox would be more difficult, for a start. I then doubted whether the sport of hunting would continue as it was. I considered whether hunting as a pest control activity might end. No doubt, someone else would appear on the scene with a more distasteful form of execution. It could be a rapid form of extermination in itself, but whether it

would become publicly distasteful would depend on what it was.

I can see the method of pest control moving away from the use of mounted packs. I do not think that it will move away from the use of foot packs if the exceptions to the licensing provisions allow people to carry out pest control with a larger number of dogs over a material period of a year.

Rachael Hamilton: It is good for the committee to understand the difference between various methods of control with dogs. Are you saying that, from a scientific or evidence-based stance, you still agree with what you concluded about the compromising of effective pest control? At last week's meeting, Ian Duncan Millar spoke about his experience of foot packs. I cannot remember how many dogs he said that he used, but it might have been 30.

Lord Bonomy: Yes. That is right, but the point is that those people are on foot. They do not jump on to a quad bike after they get the fox flushed, and they cannot shoot it unless it is right there in front of them when it has been flushed. It is difficult to see that that breaches the 2002 act or that it will breach the provisions in the bill, except in respect of the number of dogs. It seems to me that foot packs will have a problem with the two-dog, limit because it will be much more difficult for them to nail the fox in the first place before they shoot it.

Mercedes Villalba: Good morning. I have a supplementary question that relates to Jim Fairlie's question about an approach to fox management that involves pre-emptively killing foxes on the basis of a belief or understanding that foxes in general have been known to harm livestock. That is one approach, but another would be to look at specific instances where livestock have been harmed and gather evidence about the cause. If it was found that a fox was responsible, it would be located and killed. Can you share a view on which of those two approaches is the more ethical?

Lord Bonomy: No. I do not think that that is for me to say. That is a matter for the licensing authority that will eventually be entrusted with the task. It will be the one to judge whether a pre-emptive strike is a legitimate way of going about it. I do not have the knowledge and background in farming or pest control to say whether either approach—or both—fits neatly into acceptable practice.

Mercedes Villalba: Would you like to give a view on the ethics of either approach?

Lord Bonomy: I do not know that it is really an ethical matter. When I hear that substantial numbers of lambs are killed on farms by predators such as the fox and it is known that that will happen each year, I can see the argument for a

pre-emptive strike. Equally, however, I can understand the argument that, in a given instance where someone turns to sheep farming for the first time and there is no evidence that the particular flock has been affected in the past, that might not be an appropriate way to go. I think that it is for the licensing authority to make that decision on the basis of all the facts that it is presented with.

Ariane Burgess: Last week, I had a conversation with a shepherd who works in the Borders. He said that he loses lambs, so I asked him what he did when he starts to lose them. He said that he monitors the fields where it is happening, and he noted that the fox tends to take one lamb from a pair of twins. He described the method that he uses if predation is frequent. He said that mounted hunts are not an effective form of fox control. I asked what he did instead, and he said that they bring in a marksman who does lamping and sits out on the land overnight. That tackles the situation.

It was illuminating to hear what you said at the beginning of the evidence session about the shift from mounted hunts being a sport to their being a form of pest control. The shepherd told me that he knows people who participate in mounted hunts on quad bikes and, from talking to them as well as people who do mounted hunts on horseback, he said that it is a day out for the lads; it is not really about pest control.

Why are we going down the road of saying that people can use dogs when those who work in the sector say that that is not an effective form of control? They say that using a marksman and sitting out is an effective and humane form of control. What are your thoughts on that?

Lord Bonomy: The statistics at the time demonstrated the number of successful kills by, for example, lamping and mounted hunts; I cannot now remember what the figures were.

Some people would say that, in our society, if something can be justified, it should be permitted; we should not necessarily be stuck with only one way of doing everything that we do. If the argument is strong enough that hunts are using pest control only as a cover for their general hunting activities, and if the public demand that hunting is outlawed, which they have done, in effect, since 2002, so be it.

My concern, however, is that I never had reliable evidence. People tell you about what has happened in hunts, but you can get reliable evidence only if you monitor hunts. If it is felt that that is not worth doing because only a handful of hunts have survived and they do not do much—I cannot remember the figures—we will never know much more about the number of beasts that are

killed by dogs. I do not think that there is much reliable evidence about that.

Ariane Burgess: I have a question that follows on from Jim Fairlie's question. I find myself quite confused every time that he brings up the issue of flushing to guns and says that the issue is not the number of dogs but the number of guns. However, I do not think that there is a legal limit on the number of guns—at this point, you can have as many guns as you want. That is not—

Lord Bonomy: I think that that is Mr Fairlie's point. He is suggesting that the licensing authority ought to concentrate on the number of guns that are used.

Ariane Burgess: At the moment, is it legal to have more than two guns? Could you have 10 guns?

Lord Bonomy: As far as I am aware, there is no restriction on the number of licensed shotguns that could be in the hands of gamekeepers and farmers in the course of a foot pack outing to exterminate as many foxes as they can.

Ariane Burgess: So, it is not really part of the legislation that we are considering, but it could be handled in some way, regardless of what happens with the bill.

Lord Bonomy: Yes, I think so.

Rachael Hamilton: I would like to clarify something, too. Lord Bonomy, you said that alternative forms of predator control should be available. One alternative form, which is relevant to Ariane Burgess's point, is shooting combined with the use of dogs—lamping, in other words. That can have welfare implications because, if there is not a good line of sight and there is good cover at night time, there is a chance that a fox could be wounded. I am not sure whether I can ask you this but, from your point of view, is one method better than another in terms of welfare?

Lord Bonomy: I cannot answer that, I am afraid, because I really do not know enough about it. Lamping has been described to me, but I have not seen it done. Of course, those who advocate it will tell you firmly that it enables the fox to be eliminated painlessly. I cannot remember whether there was other evidence about that.

You are well served on this committee by the staff. I had a look at one of your earlier sessions and was impressed by the competence of the answers. Of course, Mr Dignon worked on my review and was an important element of it. There are a lot of questions that he is far better placed to answer than I am.

The Convener: We are, indeed, lucky. We have a wealth of information on which to base our decisions.

Jim Fairlie: I would like to offer a brief clarification on the point that Ariane Burgess made about a shepherd monitoring a field after losing a lamb. As a former shepherd-farmer, I can say that we would call that passing trade. If you get one lamb lifted, you can live with that; two, and it starts to become a problem; three, and there is an issue.

On alternative forms of control, I keep coming back to the pre-emptive strike of catching the problem before it occurs. There is lamping, snaring, den poisoning and the use of terriers and other dogs. Do you agree that every tool in the box should be available to ensure that there is the most welfare-efficient management of problem animals?

Lord Bonomy: That would be my general approach, but that is not a fact-based or knowledge-based answer; it is just a view that there is more than one way to skin a cat and that, unless there is a good reason for not allowing a particular method, it should be allowed.

Emma Harper: Good morning. I have a separate line of questioning, which is about the code of practice that should be developed for hunt activities. Your report says that that should involve things such as notifying the police of how many guns there are and who has them, and a requirement to notify the police in advance of a hunt. Does that mean on the morning of the hunt? In the previous session of Parliament, when the Environment, Climate Change and Land Reform Committee looked into the issue, I was concerned about the kind of notification that there should be and how it should be done. I wanted it to be more factual and trackable. Would you support that?

12:00

Lord Bonomy: Yes. I am not saying that this is the case for everyone, but packs gave me information about how they liaised with the police when they were going to have a hunt, and the police confirmed that that happened. There was recognised practice in that respect, whether or not it was effectively followed.

The police gave me the clear impression that they were not too concerned about how little notice they got of changes. The person responsible for the hunt, for example, can change, and it is vital that you know who that is, given that the person who will be prosecuted following a hunting incident is likely to be the person who controlled the hunt. Nevertheless, the police were content, as long as they were told.

Timing was not a big issue. If there is to be such a system, I would expect there to be a period of notification so that the general points that need to be notified can be, subject to their being changed at a later stage. The period would not need to be

lengthy; it could be, say, 14 days or even less, because it is something that could be decided at short notice. In any case, I have no doubt that such a scheme can be worked out—there was certainly good will at that time to do it—but it will require the police to be entirely on board.

Emma Harper: I have a final quick question. I am aware of some mounted packs that go out every Saturday or Tuesday, so a code of practice could encompass that set of rides. I suppose that they could be followed and traced so that, if a change were made, we would still know exactly how many guns were being used, who was using them and who was in charge.

Lord Bonomy: Details such as the number of guns will inevitably be notified at short notice, but they should still be notified. Guns are implements that no one should have without having the authority, and no one should be out in a public place with a gun without notifying the police significantly in advance to ensure that checks can be carried out. You would expect the police to have a day or so, at least, to carry out any checks that they want to carry out on the personnel who will be using guns. That said, I have absolutely no doubt that the detail of that can be worked out.

Emma Harper: Thank you.

Alasdair Allan: Lord Bonomy, one of the many issues that you have touched on is vicarious liability. I think that you described Scots law makers as being reluctant to go down that route, but can you briefly set out the concept and tell us how unusual it is in Scots law?

Lord Bonomy: It mainly applies in damages claims for industrial accidents and areas of reparation with regard to injuries that are caused as a result of work done by, say, a workman, where the employer is liable for his negligence. I suppose that what I am talking about could be viewed as strict liability, but it is not quite that. You are not liable just because something happens; you are liable because you have given authority to someone else to do something. If they do something wrong in the course of that, you will be held responsible.

Such a provision requires work, but I think that it can be achieved. The rationale for it is that, if somebody knows that they could be at risk of prosecution, they will likely take extra care in deciding whether to authorise the use of their land for a particular purpose.

Alasdair Allan: Finally, you said that you thought that the bill was already clear in its meaning. Do you feel that the concept of vicarious liability needs to be in it?

Lord Bonomy: If it is not there, you will not be able to look to the person who authorises

someone else to use his land for a hunt. If you put it in, it will not directly affect anything else; it is something that allows you to hold liable the person who authorises another to use his land for this purpose. He might be the most peace-loving and anti-weapon individual in the world, but he will still be liable for the activities of others if they are in breach of the law or, more important, in breach of any condition of a licence.

Alasdair Allan: Thank you.

The Convener: We have no further questions, Lord Bonomy. Do you have any closing comments?

Lord Bonomy: I think that I have spoken enough, convener. I hope that I have helped in some way. I am sorry that my memory is not as clear as it might have been a bit closer to the time, but it is good to know that, at the end of the day, action is being taken.

The Convener: We very much appreciate your insights and the work that you carried out way back in 2016. Thank you very much for joining us.

As that concludes our business in public, we will move into private session.

12:06

Meeting continued in private until 12:25.

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