



OFFICIAL REPORT
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Rural Affairs, Islands and Natural Environment Committee

Wednesday 29 June 2022

Session 6



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CONTENTS

	Col.
HUNTING WITH DOGS (SCOTLAND) BILL: STAGE 1	1
SUBORDINATE LEGISLATION	37
Seed (Fees) (Scotland) Amendment Regulations 2022 (SSI 2022/186)	37
Meat Preparations (Import Conditions) (Scotland) Amendment Regulations 2022 (SSI 2022/193).....	37
Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2022 (SSI 2022/203)	37
Aquatic Animal Health (Amendment) Regulations 2022	37
Animals, Food and Feed, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc) Regulations 2022	37

RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE
22nd 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 (Etrick, Roxburgh and Berwickshire) (Con)

*Jenni Minto (Argyll and Bute) (SNP)

*Mercedes Villalba (North East Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hugh Dignon (Scottish Government)

Màiri McAllan (Minister for Environment and Land Reform)

Edward Mountain (Highlands and Islands) (Con)

Hazel Reilly (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Islands and Natural Environment Committee

Wednesday 29 June 2022

[The Convener opened the meeting at 10:00]

Hunting with Dogs (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning. Welcome to the 22nd meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind everyone using electronic devices to switch them to silent. I welcome Edward Mountain to the committee.

Our first item of business is our concluding evidence session on the Hunting with Dogs (Scotland) Bill at stage 1. I am pleased to welcome to the meeting the Minister for Environment and Land Reform and her Scottish Government officials: Hugh Dignon, head of wildlife and flood management; Leia Fitzgerald, team leader of the wildlife legislation team; and Hazel Reilly, lawyer.

I invite the minister to make some opening remarks.

The Minister for Environment and Land Reform (Màiri McAllan): I thank the committee for having us today.

Although it has been unlawful for 20 years, we know that mammals continue to be chased and killed by packs of dogs in Scotland, whether inadvertently when people undertake management or deliberately when people participate in illegal activities such as hare coursing. My intention is to ensure that what has been unlawful for 20 years cannot persist and to deliver legislation that clearly sets out the purposes for which dogs can be used and the conditions that must be adhered to when they are used.

In his review, Lord Bonomy noted that the existing legislation lacks clarity and is unduly complicated and that that has resulted in difficulties in bringing prosecutions under the Protection of Wild Mammals (Scotland) Act 2002. I was pleased to hear his comments to the committee that he considers the bill to be

“a very well-crafted piece of legislation”

and that it

“should be a great incentive for better enforcement of the law”.—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 15 June 2022; c 41.]

As well as clarifying the legal position, the bill introduces a two-dog limit for searching for, stalking and flushing wild mammals. That is an important additional safeguard to reduce the risk of foxes and other wild mammals being chased and killed by packs of dogs. It will significantly reduce the risk that, if dogs are not under control, whether inadvertently or deliberately, it will lead, as it has done, to their chasing and killing mammals.

The vast majority of foxes in Scotland are controlled without the use of dogs. The bill allows for the use without licences of two dogs to protect livestock. However, I recognise, as Lord Bonomy did, that there are circumstances in which two dogs will not be sufficient to undertake the lawful activity of flushing a mammal to waiting guns. That can be because of terrain in thick forest or on hill ground, for example. Because of that, the bill includes provision for more than two dogs to be used via a licensing scheme if it can be demonstrated that there is no other solution.

I will be clear on two points. First, applying for a licence should be the exception. NatureScot, as the licensing authority, would need to scrutinise applications. Secondly, where a licence is merited for use, we are determined that it will be workable, reasonable and available.

We will get into more detail on it in the discussion, but the other main policy provision in the bill is the banning of trail hunting. The reasons for that are twofold. First, trail hunting poses a significant risk to wild mammals. Dogs can be diverted from a laid trail on to a natural trail and start chasing and killing wild mammals. Secondly, we know from evidence down south that trail hunting is used as a cover for unlawful hunting. Therefore, we want to take the opportunity not just to close historical loopholes but to rise to the opportunity of preventing others from opening.

I have been following the committee sessions, and I am aware of some of the discussions that have arisen with regard to the bill. It is very helpful for me to hear those discussions, and I am glad to have the opportunity to hear more of them today.

I understand that the control of wild mammals is a controversial issue, and I know that the committee has heard strong views on either side of the debate. The bill is principally about pursuing the highest possible animal welfare standards in Scotland, but on the understanding that we are a rural nation and access to legitimate control must be possible.

I will leave it there, convener. Thank you.

The Convener: Thank you very much. We have about 90 minutes for questions. My first question was going to be about the bill's overall purpose,

but you have covered most of that in your opening statement.

Is the bill a sledgehammer to crack a nut? Given that you have said that the vast majority of fox control is not with dogs, what level of deliberate or unintentional law breaking is there under the existing legislation? Taking that into consideration, is the new bill not based on the principle of evidence, and is it more to do with prejudice and stopping mounted packs?

Màiri McAllan: I will take those questions in reverse order.

There is absolutely no prejudice whatsoever in the pursuit of our aims. As I have set out, the Government is pursuing the highest possible animal welfare standards, but it is necessarily seeking to find a balance, because we recognise that farmers, land managers and conservationists, in certain circumstances, have to be able to control wild mammals.

A very simple basis underlies what can be a complicated bill or a controversial issue—that is, that what has been happening has already been unlawful for 20 years. On the back of the Lord Bonomy review and concerns from the public, our intention now is to make what ought to have happened 20 years ago work.

You asked about the extent to which the bill is a sledgehammer to crack a nut. I think—my officials will correct me if I am wrong—that Lord Bonomy identified in his report that about 20 per cent of all foxes that are killed using dogs in Scotland are killed unlawfully. Hugh Dignon is nodding. That is a substantial proportion. I accept that other methods of fox or mammal control that do not necessarily involve dogs are used, but I think that we would all agree that, where dogs are used, we ought to pursue the highest possible standards of welfare.

The Convener: Perhaps you could clarify something. Twenty per cent seems to be a huge number. Given the evidence that we have heard about foot packs and that the vast number of foxes are not controlled using dogs, the figure of 20 per cent that are unlawfully killed seems to be very high.

Màiri McAllan: Twenty per cent is the figure that I recall, convener, but I will certainly check it.

The Convener: Okay. Thanks very much.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning, minister.

In the early stages of the bill, the purpose was to address any inconsistencies in the language of the 2002 act, and to make it a lot easier to understand and enforce. Do you think that there are any gaps that now require further clarification, or are there

any aims or objectives that have changed during the course of our scrutiny? If so, in what way?

Màiri McAllan: My officials and I have listened carefully to the discussion as it has played out. A range of issues have been brought up. Some of those have pertained to terms that are defined and terms that are not defined. I know that points have also been raised about whether we should have an additional offence of reckless conduct. I am listening to all of that, and I am happy to discuss any issues in particular.

The reckless conduct point was one that I thought about particularly closely because it went right to the core of what the offence is. Right now, we are proposing the offence of hunting and a second offence of knowingly permitting, and I understand that there were some calls for there to be an additional offence of reckless conduct. For me, the principal aim is to have clarity of expression and understanding, not only for those who would seek to use dogs in pursuit of legitimate activities but for law enforcement. When we add a degree of subjectivity with something such as reckless conduct, we are getting back into the ambiguities that were the problem in the 2002 act.

I place a lot of emphasis on the phrase “under control” in the bill, because that will be a key provision—it is central to the bill. When the bill is passed, it should be very clear to any observer or to anyone who wants to undertake control of wild mammals when they have the dogs under control and when they do not. That is what we were lacking before, and that is what I want to maintain in the bill. Those are just some examples, but if specific issues have been raised with the committee that you would like to speak to me about, I am more than happy to talk about them.

I also mentioned the issue of defining terms and not defining terms. Where the natural meaning of a term is quite straightforward, we have tried not to unnecessarily enclose it in a definition, because we know that when we try to do exhaustive definitions, things will naturally be missed. That will allow those who would seek to circumvent the provisions to say, “Well, I was undertaking an activity that was outwith your definition”. It just makes it more complicated, so we have tried to avoid doing that where we can.

Karen Adam: Thank you.

The Convener: We have a supplementary question from Mercedes Villalba.

Mercedes Villalba (North East Scotland) (Lab): Good morning, witnesses. Thank you for coming.

Are you satisfied with the definition of hunting? We have heard calls for it to be clarified with an

expanded list of related terms such as “stalking”, “flushing” or “pursuing”. What is your view on that?

Màiri McAllan: I am trying to remind myself of the definition. We refer to it as

“searching for, stalking or flushing”.

That is relevant to one of the examples that I mentioned to Karen Adam. If we tried to provide an exhaustive definition of hunting, we would eventually find ourselves in a circumstance in which someone could say, “I wasn’t undertaking any of those activities; I was doing something else”. They would find themselves outside the scope of the offence.

With regard to expanding a non-exhaustive list of what could constitute hunting, I do not disagree. That could be helpful.

Mercedes Villalba: Thank you. There has been a suggestion that there should be strict liability under section 2 of the bill, whereby a landowner, occupier or dog owner would be liable—

The Convener: That issue will come up in later questions.

We touched on the definition of hunting. The bill says that hunting includes “searching for and coursing”, and then, in brackets, it says:

“and related expressions are to be construed accordingly”.

Does not that allow a huge amount of uncertainty about what the definition might be, and how would that be interpreted in law?

Màiri McAllan: That is a good question. There is always a balance to be struck. I have been talking to Mercedes Villalba and Karen Adam about the risks of having a definition and then finding that we are outwith it. There is also the risk of having so many terms that the definition could become broader than we anticipated. I do not think that that is the case with what we have set out, and I think that “searching for”, “stalking” and “flushing” are terms that people readily understand and will understand as being part of the intentional act of hunting.

The Convener: Does the addition at the end of the definition not mean that it is not only what you have set out, and that it is open for individuals to construe it as they want? Does that not make it far more woolly?

Màiri McAllan: I do not think that it is “woolly”; I think that it is deliberately not closing off what could constitute hunting. That all comes back to the fact that we found ourselves, with the 2002 act, with interpretations being taken outside the bill and prosecution and behaviour not following what was expected under the bill. The definition is deliberately non-exhaustive.

The Convener: Jim Fairlie has a brief question.

10:15

Jim Fairlie (Perthshire South and Kinrossshire) (SNP): Good morning. A point was raised about hunting and flushing last week, I think, although I cannot remember, because the weeks are running into one another. One of the issues that was raised was the potential situation in which people are shooting pheasants and game birds, and their dogs flush a rabbit out, which is perceived to be a criminal offence. However, if a dog flushes a rabbit but does not chase that rabbit and kill it, is that an offence or is it not? We need to get clarity on what the offence is.

Màiri McAllan: That would not apply to game birds.

Jim Fairlie: No—but if, in the process of dogs flushing game birds, a rabbit or fox comes out and the dog does not chase that rabbit or fox in order to kill it, is it correct that no offence is being committed?

Màiri McAllan: Hugh Dignon is telling me that that is correct, so I will let him come in and expand on that.

Hugh Dignon (Scottish Government): The key point is around intent, and there is clearly no intent in that situation. There is no breach of the law if the dog just flushes the rabbit but does not chase it. I would say that there is clearly no offence.

Màiri McAllan: That links to the discussion that I understand the committee has had about a situation in which someone is walking their dog in the countryside. Exactly as Hugh described, hunting is an intentional act. If someone is walking their dog, and it chases a rabbit, hare or fox and kills it, the person has not committed a crime under the legislation, because they were not undertaking intentional hunting. That is not to say that if they repeatedly actively allowed their dog to do that, it could not eventually constitute something more, but if someone is walking their dog and it breaks free and chases and kills a mammal, that is not a crime under the bill.

Jim Fairlie: My specific concern was about a situation in which people are shooting game birds and their dogs flush out animals other than game birds. Last week, we heard concern from one of the witnesses about whether that would constitute an offence, but we are now saying that that would not constitute an offence.

Màiri McAllan: Yes—because there would not be intent behind the activity.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Can I get some clarity on that, convener?

The Convener: I have real problems with that. Across the country, there are rough shoots which, at the moment, are perfectly legal. There might be half a dozen people with two or three Labradors that will flush pheasants. However, there are also rabbits, and the intention is to flush, which is defined as hunting in the bill. If a fox or rabbit is flushed, and that fox or rabbit is shot, or the dogs continue to flush, there is a problem, and that has a potential impact on rough shooting. Last week, Police Scotland said:

“That is a difficult one. That is where intent would come into it, and it might be difficult to differentiate. That opportunity is always going to be there, if dogs are flushing game legally but encounter a mammal and chase it. That risk is there. I do not know whether that is necessarily addressed by the bill.”—[*Official Report, Rural Affairs, Islands and Natural Environment Committee, 22 June 2022; c 14.*]

That is my concern. At the weekends, it is probably very common for there to be rough shoots in mixed gorse, where there will be pheasants but also rabbits. If there are three dogs in the gorse bushes, people could say that they do not intend that their dogs will chase rabbits, but they will flush them, and that is hunting. Where in the bill would that point be clarified? Police Scotland and, if I remember rightly, the Crown Office and Procurator Fiscal Service had issues about how that would be determined.

Màiri McAllan: I will explain my understanding of that, and I can bring in my team if need be.

To go back to the point about intent, if someone sets out with the purpose of pursuing a combination of game shooting and control of wild mammals, the bill will apply. The two-dog limit will apply and the person will have to comply with the terms of the bill. If they go out only for game shooting—therefore, not in pursuit of a wild mammal and with no intention of pursuing a wild mammal—the bill will not apply. In those circumstances, I expect that, if the dogs that the person was using went after a wild mammal, and that was not the person’s intention, they would not be caught by the bill. However, I appreciate that that needs clarity and I will see whether my colleagues have anything to add to what I have said. Hazel Reilly, from our legal department, will come in.

Hazel Reilly (Scottish Government): Just to clarify, I note that, as the minister has explained, the definition of hunting in the bill is not exhaustive. It includes “searching for and coursing”. Flushing is an exception to that practice, but the reason why we have not included flushing in the definition of hunting is that there could be scenarios in which flushing takes place but is not part of hunting. In the example that you gave, if two dogs were being used to flush game birds, a rabbit darted out and the person who

intended to shoot game birds left that rabbit alone, that would not be an offence under the bill.

The Convener: In effect, that means that mixed shoots will become illegal, despite the fact that there is no evidence to suggest that any animal welfare issues relate to them.

Màiri McAllan: Our intention is that anyone who sets out to control wildlife in the Scottish countryside should abide by the bill. That means that people who take part in a joint shoot that involves game, which is not caught by the bill, and wild mammals, which is caught by the bill, will be caught by the bill.

The Convener: It is not necessarily about “control”. People do not go out to shoot pheasants in order to control pheasants, but as a consequence—

Màiri McAllan: Pheasants are not covered by the bill.

The Convener: I understand that. However, if someone goes out on a rough or mixed shoot—which is not necessarily about controlling wild mammals; it includes pheasants and game, but rabbits may be flushed—that would be illegal under the bill.

Màiri McAllan: If someone is pursuing an activity and the dogs that they are using flush a rabbit, the bill will apply because it is a wild mammal. The bill is about protection of wild mammals in Scotland. I ask Hugh Dignon to come in.

Hugh Dignon: The bill will apply only if there are more than two dogs. If someone is involved in a rough shoot and thinks that they might be shooting rabbits as well as game birds, they need to limit themselves to two dogs. Certainly, if there are more than two dogs, the provisions of the bill will apply.

The Convener: Okay. Thanks.

Rachael Hamilton: We need to make the bill workable and practical, minister. I know that that is one of your intentions.

You used the term “loopholes”. A loophole can be defined as one person’s perspective of a reasonable defence. That brings in the argument about proving a defence of hare coursing.

Hundreds of people go out on rough shoots, not intending to shoot rabbits, and take more than two dogs. It is slightly strange that we would want to limit the number of dogs for people who are not intending to shoot rabbits.

In addition, there could be a spurious allegation. In such a situation, would that rough shoot be stopped?

Could it be workable to include an exception that covered permission to be on the land? By doing that, if someone has three well-controlled spaniels but something happens and a dog runs off after a rabbit—unintended, of course—we would not have to look at that individual; they would be able to prove their defence. Could we consider an exception in the bill to cover that?

Màiri McAllan: There are two points in that. The first is about our clarifying the application of the bill to the various types of shooting activity that people might undertake. It will apply not to game but to wild mammals. Perhaps we need clarity on that. That is what this process is all about.

The second point was about rabbits. I have to be clear that one of our policy decisions is that rabbits should be afforded the same protection as hares. The reason for including rabbits in the bill is twofold. First, we accept that there are significant welfare issues when dogs chase and kill hares. We see no reason why that ought not also apply to rabbits, so we want to bring those within the definition of “wild mammal”.

Secondly, we know that, when people are caught hare coursing, they often say that they were shooting rabbits. We do not want to create that opportunity. On the point that Rachael Hamilton made, permission to be on land might eliminate the opportunity for people to say that they were shooting rabbits when, in fact, they were undertaking hare coursing, but it does not touch on our welfare concerns about rabbits being chased and ripped apart.

That is why rabbits have been included in the bill, and why I do not think that permission is enough to negate the need to bring rabbits within its scope.

Rachael Hamilton: I am just very concerned. My gut instinct is that we should have had a separate piece of legislation on hare coursing. As somebody who has been a witness to it, with people getting away, I feel very passionately about the fact that they are not being caught. Police Scotland talked about that last week. We are taking other activities in the countryside that are very acceptable rural pursuits, bringing hare coursing into that and trying to make a system work that can ensure that we prosecute more of the people who do that awful thing but are not getting caught. Wrapping it all together means that there is a very difficult line to tread.

Màiri McAllan: Okay. I take your point. As I said, I have been watching quite closely what other people have said. I have seen a lot of support for the inclusion of rabbits within the definition of wild mammal. For the record, I know that Detective Sergeant Telford said:

“Police Scotland welcomes the inclusion of rabbits”—*[Official Report, Rural Affairs, Islands and Natural Environment Committee, 22 June 2022; c 6.]*

Chief Superintendent Mike Flynn said that the Scottish Society for the Prevention of Cruelty to Animals

“welcomes the inclusion of rabbits”;

and Lord Bonomy said:

“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.”—*[Official Report, Rural Affairs, Islands and Natural Environment Committee, 15 June 2022; c 13, 42.]*

Rachael Hamilton: Just for the record, I say that I also support that, but I think that we need to find a workable and practical solution to ensure that the bill is not just a catch-all, if you know what I mean.

The Convener: We will move on. That will probably come up in later questions.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): I have questions on the next couple of themes, convener. Do you want me to run them together or come back to you?

The Convener: Just ask your first question, for now. Thank you.

Alasdair Allan: I will return to the process, as it were, by which the Government developed the bill. We have heard from Lord Bonomy, who said fairly positive things about the bill. Although it does not include everything that was in his report, he seems to think that it is well drafted. What was the thinking about how to get from the Bonomy report to the bill and what alternatives were considered on the way?

Màiri McAllan: The Bonomy review was a really important part of our development of the terms of the bill, as were two public consultations and, of course, the extensive and deliberately wide-ranging stakeholder consultation that we undertook. We have implemented a lot of what Bonomy recommended, but we decided not to pursue his recommendations on vicarious liability or on the reverse burden of proof. I am happy to go into more detail on that, if the committee would like, but I think that you have already discussed that quite a bit.

I suppose that the two-dog limit was not explicitly recommended by Bonomy, but he said that there was evidence that foxes were being unlawfully chased and killed, and I think that he has subsequently said that the combination of the two-dog limit and the licensing scheme is a workable and proper approach.

In terms of alternative approaches, probably one of the main ones that we considered was whether

to seek to amend the 2002 act or to redo it. Some of the feedback that we have had about the clarity that we have achieved via the bill and the way in which it is drafted—albeit that we are at the beginning of the parliamentary process—has justified our approach.

Alasdair Allan: Thank you.

The Convener: We move on to section 1 and 2 offences.

Ariane Burgess (Highlands and Islands) (Green): I thank the minister and her team for being here to provide evidence. A 2019 poll found that 77 per cent of the Scottish public felt that legislation to protect wild animals from hunting with dogs needed to be strengthened, and much of the evidence that the committee has received backs that up. Police Scotland, Lord Bonyon and Chief Superintendent Mike Flynn of the SSPCA have all talked about the challenges of convicting and proving offences under the existing Protection of Wild Mammals (Scotland) Act 2002.

Do you believe that the bill will fully resolve those difficulties or is there scope for amendments to further clarify and define the offences to ensure that, as you previously stated,

“chasing and killing a mammal with a dog, for sport or otherwise, has no place in modern Scotland”?

10:30

Màiri McAllan: In response to your question on whether I think that the bill rises to the challenge of what we are pursuing—which is to have the highest possible animal welfare standards, acknowledge the need for control in rural Scotland and rectify what was supposed to have been done 20 years ago—the answer is that I do. However, we are at the beginning of the parliamentary scrutiny process, and I value the input of that process and am open minded on ways in which the committee and its witnesses think that the bill could be improved. I look forward to having discussions about that as we progress, and I also look forward to your stage 1 report.

Alasdair Allan: You touched on the definition of certain words, particularly in section 1 and 2 offences. Others have discussed the use of words such as “reckless”, “stalking” and “flushing”, so I will not cover that old ground. However, in the evidence that we have received, people have asked what it would mean if a person “reasonably believed” that they were acting under an exception. That is mentioned in section 2(4). Is the term “reasonably believed” defined well enough?

Màiri McAllan: That is an interesting point. As with some of the other points on definitions that we have discussed, the team, the drafters and I thought carefully about the words that are used.

I am comfortable with the word “reasonably” because the judicial system—the process from start to finish—is well acquainted with the idea of reasonableness and with making assessments based on that. The wording allows us to take the circumstances into account, which those who interpret the law must be able to do. We have therefore used the term “reasonably believed”, and the bill mentions people having to take “reasonable” measures to prevent two dogs from joining another pack to form a larger group. The wording is quite standard, and the judicial system is well acquainted with reasonableness.

Alasdair Allan: My other question is about rabbits. You have touched on some of the issues to do with hare coursing, but I want to ask about pest control in more general terms. Some of our previous witnesses do not like the term “pest control” as they feel that it might cause offence in relation to some species, but I am going to use it. Are you satisfied that the inclusion in the bill of measures for rabbits leaves adequate room for legitimate pest control?

Màiri McAllan: I am. That is another good question. During my discussion with Rachael Hamilton, I explained the reasons why we have included the welfare of rabbits, one of which is to bring them into line with welfare concerns about hares. The second reason is that people use rabbits as a cover for hare coursing, which we want to avoid. Of course, the bill will not prevent the control of rabbits and it will not stop the use of two dogs to help to flush rabbits from cover to waiting guns.

I am comfortable that there will still be scope for control under the bill, but it will be done more humanely, and the bill will protect other wild animals in the countryside and allow us to have clarity about when hare coursing is undertaken.

The Convener: On that topic, the British Association for Shooting and Conservation has raised concern that the inclusion of rabbits will affect how a significant number of people go about their work. Section 3 restricts people to killing the wild mammal by means of shooting or with a bird of prey. That will rule out, for example, people being employed to use, or voluntarily using, dogs to flush rabbits to nets and then dispatching them by hand. It will also rule out the use of more than two dogs in a spaniel field trial in which rabbits are part of the quarry for the day, even though the rabbits are shot. Will you consider further exemptions to ensure that those activities are not covered by the bill?

Màiri McAllan: I am sorry, convener, but will you describe the first scenario again? You talked about the use of nets.

The Convener: The bill will restrict people to using two dogs to flush rabbits into a net, and section 3 suggests that they will need to be shot or killed by a bird of prey. It will not allow someone to dispatch them by hand.

Màiri McAllan: I should probably go away and think about that, but my instinctive response is that I would not want to do anything that stopped the transplanting of animals. I would not want to say that they must be killed at the point of flushing if, on occasion, they can be netted and moved.

The Convener: It is all about animal welfare and ensuring that mammals are dispatched appropriately. Limiting the way that they may be dispatched could remove some methods of pest control.

Màiri McAllan: Yes.

The Convener: We will now consider the exceptions in sections 3, 5, 6 and 7.

Mercedes Villalba: I thought that we were somewhere else earlier, so I apologise if my previous supplementary questions were off topic.

Will the minister outline the different circumstances in which the Scottish Government considers it appropriate to hunt a wild mammal using a dog under the exceptions and when it would be inappropriate?

Màiri McAllan: That is understood.

To recap, the bill contains two offences: to hunt a mammal with a dog and to knowingly permit someone to hunt a mammal with a dog. However, there are exceptions to that, as Mercedes Villalba said.

The first exception is the management of wild mammals above ground. That will require two dogs, which will have to be under control, and the person will have to take reasonable steps to ensure that the dogs do not join others. What is envisaged with those provisions is farmers, land managers and others having to undertake control to protect lambs, poultry and ground-nesting birds, for example. Basically, that refers to the use of dogs above ground.

The second exception relates to the hunting of wild mammals below ground. I know that there has been extensive discussion about that and that the committee has heard very opposing views on it. That exception provides for the use of one dog that is under control, with the permission of the landowner. That is about controlling species such as foxes and mink underground.

There is also an exception for game shooting, deer stalking and falconry, which involves using a dog to, for example, flush a wild animal to be killed by the falcon or, as I understand it, be shot and fed to the falcon.

The fourth exception is for environmental benefit. That allows for projects to tackle invasive non-native species, for example. There have been a couple of examples of that, such as the projects to tackle stoats on Orkney and hedgehogs on Uist.

There are a few circumstances in which we envisage that dogs may be used in the pursuit of different activities, and those are laid out in exceptions in the bill.

Mercedes Villalba: There is some concern among wildlife campaigners that the exceptions are broad and cover a lot of circumstances. Will you take this opportunity to confirm that the intention of the bill is to prohibit all use of dogs to hunt wild animals and that any exceptions will be applied narrowly and subject to rigorous scrutiny?

Màiri McAllan: Yes. The Government considers carefully and scrutinises closely every law that it passes. The exceptions in the bill reflect what is required in rural Scotland as we understand it and as stakeholders tell us. The reasons why dogs are used are mixed. RSPB Scotland has welcomed the fact that there is an exception for environmental use because we must understand that, although we want to pursue the highest possible animal welfare standards for our wildlife, there are circumstances in which humans have to control wildlife.

Mercedes Villalba: One witness said that they would have to apply for licences repeatedly throughout a given season. There is a concern that a few loopholes remain. I accept the Government's intention, but I am not sure that the bill will achieve it.

Màiri McAllan: I understand your point, but I do not consider them to be loopholes. The basis of the bill is that the chasing and the killing are unlawful, not the flushing of an animal to a waiting gun. The provisions will make sure that that unlawful activity—the chasing and killing and, in essence, the suffering that is caused—will not be able to take place. The provisions will do that while being cognisant of life in rural Scotland.

The Convener: Rachael Hamilton has a supplementary question.

Rachael Hamilton: The bill distinguishes between environmental and livestock protection, but how does one differ from the other in relation to animal welfare?

Màiri McAllan: They are so vast that it is difficult to say. The protection of a lamb may be required in different circumstances—for example, some farmers lamb indoors and some lamb on the hill. Those are different circumstances. It is virtually impossible for me to say how that compares with invasive non-native species on an island.

Rachael Hamilton: Yes, but how can you prove that animal welfare can be improved by using dogs to flush one animal for an environmental reason or a predation reason?

Màiri McAllan: They are pursued for different reasons, so I cannot—

Rachael Hamilton: How does the animal welfare improve when you roll in the environmental benefit and the livestock predation at the same time?

Màiri McAllan: I am sorry, but I am not sure what you mean. I am pursuing all the reasons for which a dog may be used. I come to the issue from the basis that we cannot allow an animal in any of those circumstances to be chased and killed. That is where the animal welfare concern is. As long as we seek to avoid that, whether the dogs are used to kill a fox, protect lambs or help to eradicate a non-native species, the welfare element lies in not allowing the chasing and the killing.

The Convener: With due respect, I am trying to understand the question. Are you suggesting that there are different policies on whether the hunting is to control—

Rachael Hamilton: I am. I did not want to go into licensing, convener, because it will come up later. I did not want to take somebody else's questions. The issue could be developed in those questions.

The Convener: That is fine. If you do not get a response to the question that you are trying to ask, I will bring you in at the end.

Jim Fairlie: My question is about the reasons for the two-dog limit above ground and the Scottish Government's assessment of the different impacts that it might have on the ability to control wildlife, animal welfare, wild animal disturbances and the groups that carry out hunting with dogs and so on. What consideration did you give to the two-dog limit above ground? What were the assessments of the impacts of using two dogs as opposed to a pack?

Màiri McAllan: The most important point of consideration was the control element. There is a problem under the 2002 act to do with determining whether something was a flagrant breach of what was intended—that people should not chase and kill a mammal—or whether control was lost and the situation was not deliberate. I want people to be able to tell whether the law is being complied with in a given scenario, and that is much more readily clear when there are two dogs rather than three, four, five, six, seven or eight.

Equally, as I have said, the basis of the bill is about protecting wild mammals, and it is far less likely that a wild mammal will be chased and killed

by a dog when there are only two dogs—because the person who is taking them should be able to keep them under control—than it is if there are five, six, seven or eight dogs, which can be lost control of more easily. It is much less easy to tell when those numbers of dogs are chasing and killing.

It is about reducing the opportunity for packs of dogs to chase and kill wild mammals. England and Wales have a two-dog limit, which they have found works successfully.

Taking all those things into account, the two-dog limit was, for us, a reasonable baseline from which to start. As members know, we have, in two circumstances, supplemented it with a licensing scheme where no other methods are available.

10:45

Jim Fairlie: If we consider the assessment from the point of view of an environmental group or a farming body, we heard throughout our evidence sessions that the use of more than two dogs as walked-up hounds will be essential for the welfare of not only the dogs but the fox that is being flushed, so that it is not going round in circles all day. Did you consider the welfare of the dogs and the fox when you put that number in the bill? Is it an arbitrary figure? How did you come to the conclusion that using two dogs is okay but using 12 dogs is not? There will be circumstances in which there is no other way of getting foxes out of particular cover but it will be essential to get them out because there is no other way of controlling them. Did you consider that? Where did the number come from?

Màiri McAllan: The limit is based on, first, the fact that it will substantially reduce the ability to chase and kill and, secondly, an assessment of what is possible with two dogs versus what people are seeking to use them for.

As I said in my opening remarks, Lord Bonomy recognised that there would be circumstances in which two dogs would not be sufficient. He pointed directly to terrain such as thick forest or hill ground. That is why a two-dog limit, bearing in mind that it helps to keep dogs under control and that England and Wales have successfully introduced such a limit, is a reasonable baseline, to be supplemented with a licensing scheme where necessary. Lord Bonomy has commented that the two together form a workable approach that he could support.

Jim Fairlie: Okay. I will come back to my other point later.

Beatrice Wishart (Shetland Islands) (LD): Good morning. What is the Government's understanding of the most common methods of

fox control in Scotland? Do you have data on the prevalence of different methods and whether they change throughout the year? If so, based on the evidence, will restricting the use of dogs affect a smaller or larger proportion of fox control in Scotland?

Màiri McAllan: First, I highlight that the bill is not just about foxes. We have to remember that the aims that we are pursuing are about all wild mammals and not just foxes.

A number of ways to control foxes are used in Scotland. We know that lamping is used, along with the use of dogs to flush to guns or—unlawfully—to chase and kill foxes. We know that some farmers and land managers adopt the use of traps, snares and things like that.

However, the bill is not about making an assessment of the different ways in which Scotland manages foxes. It is about saying that the attempt that was made 20 years ago to not allow chasing and killing as a form of control has not worked, and that we really ought to revise the legislation so that that one specific part works as it was intended to. There will be debates about all the different types of control, but that is not what the bill looks at. It is very much about how one aspect of the 20-year-old legislation is working, and whether it is working as the public thought that it should.

Jenni Minto (Argyll and Bute) (SNP): Thank you for coming along, minister. Beatrice Wishart has covered most of the questions that I had in this area. However, to follow on from the comments of Karen Adam and Alasdair Allan, we have had some evidence from the RSPB and the Law Society of Scotland about how “non-native species” is defined in the bill. Would you like to comment on that?

Màiri McAllan: My understanding is that the definition that has been used is one that is used across the piece in legislation; I understand that it is derived from European Union retained law. I am pleased about the fact that we have the ability to amend and add to the list. If there are specific issues with regard to the definition, I am happy to address them, but those were the main points that came up. The fact that we have the flexibility to add and remove things from the list is important.

The Convener: I will bring in Ariane Burgess—

Màiri McAllan: Sorry, convener—I did not realise that Hugh Dignon was trying to come in there.

The Convener: I beg your pardon, Hugh.

Hugh Dignon: I will just add that it is not only species included on the list that are eligible for control as nominated species. There is also section 7(4)(b), which covers species that are

“not native to the area in which the activity ... takes place”, and species that are

“likely to have a significant adverse impact on biodiversity”

and so on. Species such as hedgehogs on Uist, to which the minister referred earlier, and stoats on Orkney would fall under those categories for control, rather than being included on the list.

Jenni Minto: Thank you for confirming that.

Ariane Burgess: In a previous evidence session, Robbie Kernahan from NatureScot made the point that when there are too many exceptions, they become unexceptional.

Some stakeholders, including the League Against Cruel Sports and Scottish Badgers, are concerned that the bill may be in danger of having too many exceptions to enable it to fulfil the Scottish Government’s original intentions. What are your thoughts on that, minister?

Màiri McAllan: It is a good point. We are working with two core offences and a suite of exceptions, and then we are working with two exceptions to the exceptions. Regarding the four original exceptions—this is where I get tongue-tied—I think that they are right and reflect the realities that exist when people are required to undertake control of wild mammals.

As I mentioned earlier, the RSPB has welcomed one of the exceptions—the environmental benefit exception—because that was not part of the 2002 act. I do not have the quote in front of me, so I do not want to misquote the RSPB, but I think that it said that the exception was a welcome addition to its range of tools for the landscape-scale management of our land that it undertakes.

With regard to the licensing scheme, I very much come from the position that it is correct. I think that it would be wrong for the Government to see what the Bonomy review had said—that there will be circumstances in which two dogs are not sufficient to undertake a legal activity of flushing, because of terrain—and then not to act on that. It is correct that the Government does so.

I want the licensing scheme to be workable; I do not want people who ought to be entitled to use it to feel that they cannot do so, or to feel frustrated by the process. Equally, however, a licence has to be construed as the option that is available when there are no other options. That is how we will seek to design the scheme with stakeholders.

Ariane Burgess: Thank you for that. I think that we will come to licensing in a bit more detail next.

Jim Fairlie: Regarding the Scottish Government’s reasons for a one-dog limit below ground, there is an argument that any dog below ground is a welfare risk, but there is also an

argument that there are circumstances in which two dogs are needed. I know from my own experience that anyone who puts two dogs down the same hole should not have terriers in the first place.

However, we have been told in evidence that there are circumstances in which using two dogs below ground is far better from a welfare point of view. Did you consider the National Working Terrier Federation's code of conduct in coming to the conclusion that one dog below ground should be the maximum?

Màiri McAllan: I thank Jim Fairlie for that question. That is probably one of the most vexed issues, because we are presented with something that is between a rock and a hard place. Jim Fairlie defined that pretty well in drawing on his own experience.

From what I can gauge from the committee's evidence sessions and from my discussions with stakeholders, some people view the practice as a necessary part of control and management, as Jim Fairlie characterised it. I do not think that there are any obvious alternatives that would be any more palatable.

On the other hand, we have very real concerns, which Jim Fairlie expressed, about the animal welfare implications of putting dogs under ground—implications for not only the wild mammal that the dogs are pursuing, but the terriers themselves.

I have the quote here. Mike Flynn from the SSPCA said:

"I have grave concerns about dogs underground. I see no reason why you would have to put more than one dog down there ... 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 have grave concerns about using animals underground, because there is no way to control them."—*[Official Report, Rural Affairs, Islands and Natural Environment Committee, 15 June 2022; c 29.]*

That is really concerning.

The one-dog limit that we have proposed aims to strike a balance, but I am open-minded about where we go with that and how people think the matter should be dealt with.

Jim Fairlie: It is clear that a balance will need to be struck across the entire bill. I understand that that is what you are trying to do.

I will leave it there, because I know that we are short of time.

Alasdair Allan: Could you say a little about how you think that hunts could or should be monitored in future? Previous witnesses have told us about how the police and others have relied on video evidence of how hunts behave. How do you see that being done in future? What sort of evidence

do you think that the police would be able to use? Would that be based on any form of monitoring?

Màiri McAllan: Hunt monitoring was set up in 2018—before my time—in the wake of Lord Bonomy's report. I understand that the individual who was undertaking that work could not continue with it. Because of Covid and other complications, no one else was found to do the work and, by that point, we were pursuing primary legislation.

My position is that it would be best to get the bill through and then to consider what monitoring is required. I hope that we will have reached a point where the law and its application and enforcement are clear enough that we may have negated the need for monitoring, but that remains to be seen. We will know that once we get to the other side of the bill.

Alasdair Allan: On a slightly but not completely different point, the police told us that they would find it difficult to give an opinion on some aspects of the bill until they had seen the licence. When will we hear more detail about what the licensing scheme will look like?

Màiri McAllan: I have tried to say as clearly as possible that I am very keen not to rush the licensing scheme. I want it to be developed in consultation with stakeholders, including with those who will have to use it.

In due course, we will update Parliament on the timescale for all aspects of the bill to come into force. Hugh Dignon might want to say something about whether there is a formal point at which we might start developing the terms of the licensing scheme. We are already talking to stakeholders about that.

Hugh Dignon: NatureScot is well aware that the requirement is coming down the road and is thinking about how that might work. The legislation sets out the bones and the framework for what a licence must include, but there is clearly a lot of detail around that. There is no reason why we cannot start to develop that and provide more detail as we move through the various stages of the bill. It would be possible to do that.

Màiri McAllan: That would be good.

Rachael Hamilton: I have managed to get some words down to help us both understand what I am trying to say about sections 7 and 8 on exceptions before we leave this particular area.

The section 7 exemption and the consequential section 8 licence for environmental benefit are limited to where the activity is part of a scheme. I would like to know what constitutes a scheme for those purposes and why that limitation has been included. Land managers manage foxes for a variety of purposes, including to protect vulnerable species. Would that activity count as a scheme?

11:00

Màiri McAllan: What is in the bill reflects our understanding of how people are operating right now. I mentioned what we might call environmental schemes, whereby, for example, invasive non-native species are being controlled on the islands. The way that we have expressed it in the bill tries to reflect how people are using dogs now. There is a difference between people who might set out on a year-long activity of eradicating an invasive non-native species on an island and, for example, a farmer who finds evidence that there is a fox in his or her fields and has to call on support in order to control that. I would not refer to the latter as a scheme; I would refer to that as the on-going workings of the farm.

I do not think that I am trying to draw a great distinction here. I do not disagree with you that there will be times when what someone is undertaking in order to protect lambs could be referred to as a scheme, but the bill seeks to reflect how people are using dogs in real life.

Rachael Hamilton: There are new requirements to protect the environment and ground-nesting birds, and to increase the biodiversity of species within Scotland. Making an exception, in sections 7 and 8, to the offences when a scheme has “environmental benefit”—rather than considering predation control as part of that—does not consider the fact that, depending on how they decide to do it, land managers might inadvertently protect the environment as a positive consequence of predation control. Do you not think that that should be reflected in how the licence would be applied for and granted, on a general level?

Màiri McAllan: Your last point touches on the issue that, if there were not differences in how long people can apply for the licence for and the terms thereof, the difference would be theoretical. However, where the terms exist, I see that people might say, “Should I apply under the protection of livestock clause or under the environmental protection clause?”

The terms of the licensing scheme are still to be developed, so it is difficult for me to give concrete responses to that. However, our purpose has been to reflect the ways in which people need to call on the use of dogs in land management throughout Scotland. Finding that there is a fox present in fields—and having to call on support for that—is a different matter from a large-scale environmental project about an invasive non-native species. We are not deliberately pursuing the idea that protection of livestock is not an environmental issue, because it is an environmental issue. There is a theoretical distinction—

Rachael Hamilton: I think that we might need to work that through. It is a good thing to air as part of the practicalities of improving animal welfare in general.

I will pick up another point. In response to Jim Fairlie, you mentioned that the Scottish Government has assessed the use of two dogs. Can you write to the committee with that detail? Has a document been published?

Màiri McAllan: I can certainly write to the committee with some of what we considered when we developed the two-dog limit.

The Convener: To build on that, why does the bill distinguish between environmental purposes and the protection of livestock? Why do environmental benefits have to be part of a scheme? If the bill is all about animal welfare, foxes and other wild mammals will not have a different welfare experience, depending on why they are being culled. Why is there a difference between environmental purposes and livestock protection, when the bill is all about animal welfare? The fox does not know whether it is being culled for killing lambs or being controlled for disturbing ground-nesting birds, so why bother distinguishing between the two?

Màiri McAllan: We have to bother to distinguish because we are trying to make something work that has not worked up to now. It is incumbent on us to be specific about the circumstances in which it will be permissible to use an exception under a rule. We are trying to achieve clarity and specificity in the bill.

I am not saying that the protection of livestock is not an environmental issue, but there is a practical distinction between someone who requires assistance with the protection of livestock and a long-term project for the eradication of an invasive non-native species on an island. The welfare issues are not different, but they are different activities.

In case I have not expressed that clearly enough, I will hand over to my colleague Hugh Dignon to see whether he can add anything.

Hugh Dignon: Clearly, the control of foxes to protect livestock is likely to have environmental benefits. We appreciate that it will benefit species other than the livestock that is being protected. There is a range of farmer-led schemes, such as the Working for Waders scheme, that would easily fit the environmental criteria.

To pick up on the convener’s point, there is a difference between section 7 and section 3. The activities that are permitted under section 7 are capturing and observing whereas, under section 3, it is just killing to protect livestock. That recognises that somebody might use dogs not only for the

purpose of killing the species that they are flushing, but for the purpose of photographing and researching. That is possibly an easier bar to get over.

The Convener: Thank you for that helpful clarification.

Mercedes Villalba: Please forgive me if this is outlined elsewhere and I have missed it, but will you explain in what circumstances you envisage a licence being issued? Is it intended that there will be regular reviews of the licensing scheme to ensure that it meets its purpose?

Màiri McAllan: I cannot give detail today on the content of the licence beyond that which is set out in the bill. The bill sets out the mandatory requirements for what will be in the licence, but the development and terms of the licensing scheme will be informed by the bill process and the stakeholder engagement that we are already undertaking.

NatureScot will review the operation of the licensing scheme, as it does with the operation of all the licensing schemes and other matters that it is in charge of. In the Bute house agreement, there is a commitment to review the operation of licensing schemes generally to ensure that they are compatible with the law and in line with our expectations. The licensing scheme under the bill will be part of that review, too.

Mercedes Villalba: Are you saying that the detail will be in the bill at stage 2 or is that something for when the bill becomes an act? I am not sure about the process.

Màiri McAllan: We are undertaking engagement with stakeholders throughout the development of the bill, and we are listening closely to the evidence that the committee takes. All of that will feed into NatureScot's development of the licensing scheme. Hugh Dignon said that we would be happy to keep the Parliament up to date as that develops, but the scheme will be finalised after the bill is passed, as has been the case with other pieces of legislation, most recently the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020, in which we brought hares within protected status. We designed and finalised the licensing scheme for them after the passage of the bill.

The Convener: We are about to move on to questions on licensing, so we have slightly jumped the gun.

Jenni Minto: Minister, just for the record, will you explain why the Scottish Government has decided to introduce licensing?

There has been some discussion about the 14-day maximum period for control reasons versus the two years for environmental reasons. You

have said that you want arrangements that are correct, workable and practical, but from the perspective of my constituency and other large areas of Scotland, this is all about how small farmers rather than foot packs operate. I would like to hear your thoughts on that, please.

Màiri McAllan: I have mentioned it a couple of times now but, just for clarity, I point out that the principal reason for the licensing scheme being tagged on to two of the exceptions is that we recognise, as Lord Bonomy did, that in certain circumstances the use of two dogs will not enable that lawful activity of flushing to waiting guns. Indeed, he specifically said that terrain—for example, hill ground or thick forests—was one of the reasons that it might not be workable.

In recognition of that, we have introduced the licensing scheme as an exception to an exception. We talk a lot about balance; I want all of us to get to a point at which we have a licensing scheme that is workable and available to those who have no other option. If, say, a farmer needs a licence during a busy lambing period, they should not be unduly burdened by that. At the same time, however, we cannot allow the system to become so weak that we are right back to where we were in 2002, with licences just being applied for readily without anybody knowing why—or, indeed, knowing what is actually happening in the countryside. That is what we need to avoid.

The timings reflect the Scottish Government's understanding of practice. For example, a farmer might see evidence that there are foxes around. They might be able to undertake control measures with two dogs, but if they cannot, and if there are no other options, they will be able to apply for a 14-day licence to deal with the issue. As we understand it, that is the timescale in which it should be possible to do that. In the longer-term projects that we have observed—including the stoats on Orkney, which are being namechecked a lot today—more time is required. That said, the two-year period is a maximum, not a general rule.

Jenni Minto: Will you expand on your comment about these things being “possible to do” in the 14-day period? Some farmers have said to me that it is a difficult timeframe to work within, so it might be helpful to understand the evidence that you have had to back up the decision to make the period 14 days.

Màiri McAllan: I can include more on that when we write to you about our considerations in developing the two-dog limit, but I have to say that it largely reflects what we have been told about what is necessary. By the same token, if I am being told that it is not going to work, my mind is not closed to that. After all, I do not want this not to work or its availability to undermine what we are

trying to do. That said, where it is needed, I do not want it to be a fudge.

Jenni Minto: That is great. Thank you.

The Convener: Minister, I am conscious that we have only 15 minutes left. Do you have the flexibility to go over the 90 minutes that have been allocated?

Màiri McAllan: I can do so. I might need to cancel whatever is next, but I will check.

The Convener: There are still a lot of questions to come. It is just one of those things; we have had a lot of detail right in the middle of the session. As we come towards the end, the questions and responses might not be quite so long, but I do not want to stifle this section of our questioning. If you could be flexible, we would very much appreciate it.

Màiri McAllan: I want to accommodate what I can. What time do you think we might finish?

The Convener: It might take an additional 15 minutes.

Màiri McAllan: That is fine.

The Convener: Thank you. I really appreciate that.

On the back of Jenni Minto's question, are you open to suggestions about having a different method or a different number of days? Fourteen days is very prescriptive; weather conditions, for example, could play a part in whether the pest control that takes place during those 14 days is effective. It has been suggested in some places that there could be an annual licence to allow dogs to be used for pest control purposes for X number of days. Are you open to the suggestion of having a flexible licence that is not for a specific 14-day period but for X number of days over a calendar year?

11:15

Màiri McAllan: There is a multitude of ways in which we could do that. I am open-minded to ways that allow us to strike the balance that I highlighted to Jenni Minto between achieving what we want to achieve—that is, the highest possible animal welfare standards and no chasing and killing of wild mammals in the countryside—and facilitating people for whom two dogs are not enough and no other methods are available.

As I recall, we have discussed the possibility of people not necessarily being required to resubmit evidence for a licence application every time, but, frankly, everything has yet to be worked out. The weather is an example of a practical reality that I would want to be reflected.

Hugh Dignon: I have a couple of quick thoughts about the business of an annual licence that can be used on different days.

I can see the appeal of such an approach, but inevitably there will have to be considerations such as when it would be appropriate to use more than two dogs and considerations of, say, the presence of nesting birds or other species that might need to be taken into account. That would involve a large degree of flexibility and would probably mean a loss of control over the possible impact of those dogs.

As for, say, the weather holding up the use of a licence, I would expect NatureScot to be flexible if it were told that the work could not be done, because of snow or because it was too wet, and if it were asked whether it could be done in the following two weeks without the whole application having to be resubmitted. Clearly that would make sense.

The Convener: Thank you. We will move on to a question from Jim Fairlie.

Jim Fairlie: If you do not mind, Mr Dignon, I want to come back to you on your previous point, as it ties in with my next question.

I am just thinking about the type of licence or about having a seasonal licence—*[Interruption.]* I am sorry—I know that you cannot follow what is going on in my head. I was thinking back to what the minister said earlier about dogs going to ground. Nobody wants dogs to go to ground, but if the licence is left until, say, lambing time, foxes will already be in the ground and you will have more dogs going underground instead of flushing.

In several evidence sessions now, I have made the point about the licence pre-empting cubbing time to stop more terriers going underground. Are you prepared to consider that? I am sorry—that should have been addressed to you, minister. I am concerned about getting the timing for applying for a licence wrong and about its being too prescriptive.

Hugh Dignon: I do not think that there is any prescription on when that two weeks should be. A person who expects to need a licence should apply for it for the period that they think that it will be of most use to them.

Jim Fairlie: It is that two-week period that I am concerned about. As a practical land manager, I think that the period should be outwith nesting season and when we know that foxes are not going to ground to cub. There is plenty of scope for having a season during which hounds can be on the ground and able to flush those areas where you know that you will not be able to get out with a lamp. Will the bill consider that specific situation?

Màiri McAllan: I understand what you are saying. We are coming at this on the basis of considering how to make things workable, and that will cover a whole series of issues, including timing.

Jim Fairlie: I fully understand your difficulty in trying to walk that fine line.

My other question is about other conditions that you might apply—again, I have raised this issue at a number of meetings. Is the number of guns on the other side as important as the number of dogs that are flushing? Hugh, I might have made this point to you when you were last at committee. If you have only two guns covering 150 yards of forestry, a fox will run straight through the middle and not get chased. If you have 15, the fox will not run anywhere and will get shot. Is the number of guns as important in the licensing scheme as the number of dogs?

Màiri McAllan: I have been thinking about that issue ever since I heard it being discussed. I understand that the reasoning behind it is to ensure that the shot happens as soon as possible and to avoid cruel and unlawful chasing and killing. It would be difficult to include something like that in the bill, because dogs are used in various circumstances, but it could be considered as the terms of the licensing scheme are developed.

Jim Fairlie: Does NatureScot have the local understanding to build up that relationship? The committee has also discussed the need for a working relationship between NatureScot and land managers. Could that sort of thing be built into that relationship?

Màiri McAllan: NatureScot already has a relationship with land managers and will seek to foster it to make this work however we need it to. As I have said, although I do not think it is appropriate to put such a provision in the bill, I do not see why it should not be considered as the licensing scheme is developed.

Ariane Burgess: The committee has heard and read evidence from several witnesses who do not agree that there is a need for a licensing scheme and are concerned that it will leave loopholes for traditional fox hunting to continue.

If there is to be a licensing scheme, do you believe that it would benefit from incorporating some of the principles that were set out in Alison Johnstone's proposed member's bill from the previous parliamentary session on protecting Scotland's wild mammals? It proposed that there should be no negative impact on the local or national conservation status of the species in question, that licences should be issued where there is a risk that dependent young will suffer and that licences must be conditional on reporting the

number of animals that have been killed or hunted for publication by the licensing authority. Has the Scottish Government considered those or other licensing principles that were suggested in my former colleague's proposed member's bill?

Màiri McAllan: For the purposes of today's discussion about stage 1 of the bill, my answer is similar to my response to Jim Fairlie: all those issues are already being, and will continue to be, considered as the terms of the licence are developed. I am content at this stage that what is in the bill allows us to develop a licensing scheme that will be rigorous and which will cover what is needed. It is a framework at this point, and we will build on that through consultation and stakeholder engagement.

I know from speaking to stakeholders that one of the things that is most important to me is important to them, too—that is, that the licensing scheme is available where no other option exists. I think that that is pretty robust.

Ariane Burgess: What I am hearing in your response is that there will be scope during the bill process.

As has already been noted, several stakeholders, including the League Against Cruel Sports and OneKind, are concerned that the exceptions and licences in the bill will leave loopholes allowing practices that are cruel to animals to continue, as happened with the Protection of Badgers Act 1992. In order to reassure stakeholders and the 87 per cent of the public who are in favour of a watertight ban on traditional fox hunting, are you confident that no licences will be granted to any of the 10 mounted hunts in Scotland that currently hunt with dogs two to four times a week for five or six months of the year?

Màiri McAllan: Because it is a criminal issue, I will make no assumptions about the reasons for hunts going out in the past. However, I am absolutely confident that the bill, once passed, will stop the illegal activity of chasing and killing an animal in Scotland's countryside and will facilitate legitimate control under strict circumstances.

Ariane Burgess: Thank you.

The Convener: I call Edward Mountain.

Edward Mountain (Highlands and Islands) (Con): This is the second time that I have been to the committee, but I again remind members that I have an interest in a family farm. It does not have lambs on it, for which I might be thankful.

Minister, I have a couple of what I think are interesting comments to make about licensing. I think that Jim Fairlie is right: flushing a fox out of a wood can be preventative if it moves the fox on before lambing starts. Foxes will use the same

ground each year and should be moved on before lambing starts. However, I am concerned about the requirement to provide evidence of damage. If evidence of damage has to be submitted during the short lambing period, everyone will want to use the same dogs for the same 14-day period to flush foxes out of the woods to waiting guns. How will that issue be addressed?

Màiri McAllan: I understand the point. I do not want people to get to the stage of being able to demonstrate that damage has been done. We do not want dead lambs to be used as evidence that a licence was needed. Drawing on the expertise of farmers and land managers, the Scottish Government and NatureScot understand that it is not necessary to wait until lambs have come into contact with a fox in order to justify control of the fox.

Edward Mountain: I will be interested to see how the licence pans out. Mr Dignon will know that, in previous licensing schemes, gamekeepers were required to keep poulters in a freezer until they had been inspected by Scottish Natural Heritage, in order to prove that they had been damaged by the species in question.

Lord Bonomy made a very interesting point about the number of dogs required to cover an area of ground. He said that more than two dogs and half a dozen guns would be needed to cover a 200-acre block of forestry. In your view, what would be an acceptable number of dogs? You said that you have been thinking about licensing. If somebody applied for a licence to use 10 dogs, would that be sufficient or too many? How about 15? Where is the limit?

Màiri McAllan: Picking up on the previous point, I would just note that the bill makes reference to “preventing” damage, so it is not necessary to wait until damage has been done.

As for the minimum number of dogs, that is dependent on the activity, the land and the issue at hand. At this stage, I am not going to theorise about what would be a suitable number, because there are so many variables that I could not possibly be accurate.

Edward Mountain: So, you have no preconception about the number of dogs that might be required in any circumstance. As you have rightly said, the aim is to get the fox out and shot as quickly as possible, without it being chased, and that will require the use of more than two dogs. Am I right in saying that you have no preconception about the number of dogs?

Màiri McAllan: My preconception is that the minimum number should be used to fulfil what is needed across the space of land, depending on its size and the issue at hand. I am not able to say what that number would be in the multitude of

possible scenarios. The minimum number should be used to do the job in hand.

Edward Mountain: Thank you for allowing me to ask those questions, convener.

The Convener: NatureScot will be expected to determine the number of dogs that are covered by each licence. How will it go about doing that? Will there be a licence for up to 10 dogs or a licence for up to 40 dogs? What is your understanding of the process that NatureScot will have to go through to determine the number of dogs that are covered by a licence?

Màiri McAllan: This comes back to the bones of the licensing scheme, as set out in the bill. Explicit reference is made to

“the minimum number of dogs”;

thereafter, that issue will be for NatureScot’s experts to determine—I am, of course, a politician, not an expert—according to the circumstances in front of them, which will include the size of the farm, the size of the fields, the number of sheep, the size of the environmental project and the rate of spread of the invasive non-native species. All those things will have to be taken into account. Therefore, I could not possibly determine what the minimum number of dogs would be in the circumstances.

The Convener: We move to questions from Rachael Hamilton.

Rachael Hamilton: Before I ask my questions, I want to respond to Edward Mountain’s point by putting on record the fact that, in his review, Lord Bonomy—who has been quoted a lot today—concluded that restricting the number of dogs

“could seriously compromise effective pest control in the country”.

The minister’s response to the convener indicated the resource that might be needed to determine the number of dogs that would be covered by a licence. We have talked about licences a lot today. The issue is an important one, because we need to get this right. There has been a cut of £700,000 to NatureScot’s budget. Given all the evidential requirements that you have just listed, will NatureScot be able to do its job across Scotland, from north to south and east to west?

11:30

Màiri McAllan: That is a reasonable question. We have already been discussing it for some time with NatureScot, to ensure that there is clear understanding about the extra work that comes with an additional licensing scheme and the body’s capacity to fulfil that. It has assured us thus far that that is manageable within its current budget.

Rachael Hamilton: We are already at stage 1 and there has been no consultation on the licensing scheme as yet. It is therefore difficult to determine whether NatureScot will, with its current reduced budget, be able to fulfil those requirements. Do you think that it might be worth looking at the financial implications in the consultation on the scheme?

Màiri McAllan: We have a financial memorandum, which was published with the bill. On the basis of that, and given the organisation's experience of administering similar schemes, NatureScot has assured us that it has sufficient resources to develop and administer the scheme.

Rachael Hamilton: I do not have the financial memorandum in front of me, but I am sure that it says that the bill does not create any additional resource implications for bodies or stakeholders.

Màiri McAllan: I do not have it in front of me.

Rachael Hamilton: We will check on that.

I go back to the point about consultation, because it is important to get feedback from stakeholders and practitioners. In the evidence that we have heard, a number of witnesses from the rural sector said that they are part of a working group of rural stakeholders. Have you had the opportunity to meet the group and hear about how those people who represent land managers and farmers can be part of the process?

Màiri McAllan: Sorry—Hugh Dignon was just reminding me what RELM stands for.

I have undertaken meetings across the piece, and I have actively tried to engage with everyone who has an interest in the bill. From the beginning, I have always said that I am particularly interested in developing policy that people who will be affected by it will understand.

On the specific point about the RELM group—we think that RELM stands for rural environment land management—my colleague Leia Fitzgerald was just telling me that she has been invited to a meeting of the group and will be attending.

Rachael Hamilton: Okay—that is fantastic.

Convener, do you want me to conclude my questions in one go rather than coming back in later? My next question is relevant.

The Convener: No—I will move to Jenni Minto first, because she has a question.

I beg your pardon, Jenni—do you have a question? I have you down as having a supplementary on this issue. Is that right?

Jenni Minto: I did have one, but Rachael Hamilton has covered quite a bit of it.

We could probably move on to discuss the licensing scheme. If the bill is passed and the scheme is brought in, how will the Scottish Government monitor the information that NatureScot provides to ensure that the licence is as appropriate as it should be?

Màiri McAllan: That is a really good point—it is similar to the point that Mercedes Villalba raised earlier about the need for review. From the Scottish Government's perspective, we have an interest in understanding, and a duty to understand, the effect of the laws that we pass and whether the licensing schemes that are developed are working properly. We have a commitment, under the Bute house agreement, to review that across the piece to ensure that that is the case.

NatureScot will be responsible for monitoring, evaluating and reviewing the scheme for its own purposes. When Robbie Kernahan was in front of the committee, he was quite clear that NatureScot embraced that role and would be undertaking it.

Sorry—Hugh Dignon has just reminded me that NatureScot will be publishing the data, which is a helpful form of scrutiny.

The Convener: Rachael, is your question on licensing?

Rachael Hamilton: I have asked this question in consecutive evidence sessions. What would happen if NatureScot was satisfied that there was no alternative method of controlling predators, but it was demonstrated that there had been loss? Can you cite any other scheme or example that would offer compensation for loss of livelihood or livestock?

Màiri McAllan: Did you mean loss of livestock?

Rachael Hamilton: I meant loss of livelihood because of income being affected by loss of livestock.

Màiri McAllan: I heard that issue being discussed before. Our position on it is that we are not considering provision of compensation.

Rachael Hamilton: Are you considering the possibility of allowing an appeal process?

Màiri McAllan: I believe in appeal processes, and there is an internal review and appeal process in NatureScot. I asked the same question as you have, and it was explained to me that that is NatureScot's structure for dealing with that, so it does have one. I am supportive of review and appeal processes and keen to see that they are in place and available.

The Convener: We will move on from talking about licensing shortly. We touched on the financial capacity in NatureScot. I understand that the estimate of the cost to NatureScot is £118,000.

Does that involve any cost recovery from those applying for licences, and has any consideration been given to charging for licences? Will £118,000 be the total cost?

Màiri McAllan: That estimate does not involve cost recovery, presently, but it could do so, if that was sought.

The Convener: Would that be done using secondary legislation?

Màiri McAllan: There is a provision in the bill to allow us to make supplementary changes, and if that section and the bill were passed, we could do it through that, so it would depend on whether that happens. I hope that my legal colleagues are not cringing at me making that assumption, but I think that that would be the provision through which it could be done.

The Convener: Perhaps Hazel Reilly could make clear exactly what powers the bill would give the Scottish Government to charge for licences.

Hazel Reilly: All wildlife legislation—currently, the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, &c) Regulations 1994—is not run on a cost-recoverable basis, but there is provision for NatureScot to bring that in administratively, should it wish to do so. I can clarify that in writing, if that would be helpful.

The Convener: We will now move on to talk about prohibition of trail hunting, which is covered under sections 11 and 12 of the bill. The first question is from Beatrice Wishart.

Beatrice Wishart: Last week, we heard from Police Scotland that making trail hunting illegal to limit the opportunities for people who want to disguise illegal hunting as a legal act is not necessarily reason enough for doing so. What is your view on that, and what impact do you believe that the prohibition will have in Scotland?

Màiri McAllan: I will go back to something that I tried to convey in my opening remarks about closing the loopholes of the Protection of Wild Mammals (Scotland) Act 2002 and how, equally, the bill is about taking the opportunity to ensure that more do not open. The issue of trail hunting falls squarely into that category.

We have decided to ban trail hunting for two reasons. First, we think that there is an animal welfare risk in that an animal that is trained to follow an animal-based scent can easily pick up the scent of an animal elsewhere and begin the chase and kill, which is exactly what we are trying to stop.

Secondly, we are trying to ban it because we have evidence from down south that trail hunting is being used as a cover for the continuance of illegal hunting, so we want to prevent that from

beginning in Scotland. It is not a well-established practice, so that part of the bill ought not to be controversial or difficult. It is about ensuring that we do not allow more loopholes to open.

Beatrice Wishart: The measure is about prevention.

Màiri McAllan: Exactly.

Beatrice Wishart: I have a question about police dogs, but I note that Karen Adam is down to ask about that, so I will leave it there.

The Convener: I will bring in Karen. If your point is not covered, I will bring you back in, Beatrice.

Karen Adam: Trail hunting has been made controversial by opposing groups, and there have been calls for impact assessments and suchlike. Have you considered that, or do you feel that you have enough evidence?

Màiri McAllan: On the banning of trail hunting?

Karen Adam: Yes.

Màiri McAllan: For the two policy reasons that we have pursued the ban, which includes the fact that trail hunting is not a well-established practice in Scotland, I am content that it is a proportionate measure to take.

Karen Adam: Police Scotland commented that there should be exemptions for the training of police dogs. Do you have any comment on that?

Màiri McAllan: Police Scotland made an important point. It had not been raised with me previously but, now that it has been, I will consider how we can accommodate the training of police dogs.

The Convener: We move on to enforcement, which relates to part 3 of the bill.

Alasdair Allan: Do you have a view, minister, on the powers of search in the bill? The Law Society of Scotland had questions about whether they were sufficient in every instance.

Màiri McAllan: That is another interesting point, similar to the one about the training of police dogs. We would not want to do anything that got in the way of the operation of Police Scotland duties.

The absence of stop-and-search powers in the bill reflects the Animal Health and Welfare (Scotland) Act 2006, which does not contain such powers. However, as with the training of police dogs, we will speak to Police Scotland and decide whether something needs to be accommodated at a later stage.

Karen Adam: The Law Society said that the ancillary powers in section 21 for Scottish

ministers to modify any enactment were quite broad. Do you have any comment on that?

Màiri McAllan: Yes, and I take on board what the Law Society of Scotland says. However, that is a pretty standard provision throughout not only wildlife legislation but legislation generally and would allow us to make amendments should that be needed without having to go through primary legislation again. Cost recovery is an example of where we might want to make such changes. Indeed, if any deficiencies arose, that provision would allow us to make changes without having to introduce another bill, in contrast to the 2002 act. It is not an overstretch; it is a standard part of drafting.

The Convener: The Law Society raised a concern, so it must be more than just a general provision. It considers that there is a need for subsequent guidance and prosecution policy. Will that be forthcoming?

Màiri McAllan: As I should have made clear in my answer to Karen Adam, the section relates to regulations to give effect to or in pursuit of the bill, not anything outwith its scope.

Perhaps Hazel Reilly might want to add to that.

Hazel Reilly: The Law Society focused on one narrow part of section 21, which states that it can be used to “modify any enactment”. However, that is very much caveated by subsection (1), which says that the section is to be used

“for the purposes of, in connection with or for giving full effect”

to any provision of the bill.

That limits the extent of the power, and I reiterate that you will see such a section in many acts of the Scottish Parliament. I also note that the Delegated Powers and Law Reform Committee made no comment in relation to the power.

Ariane Burgess: Context matters, whether for enforcement or in relation to the bill as a whole. The UK Climate Change Committee has called for a 20 to 50 per cent cut in the number of sheep and cattle to help to combat climate change. Over the evidence sessions that we have had, it has grown on me that we are talking as if things are going to stay the same. However, if we are really going to respond to the nature and climate emergencies, the way in which we farm will change and the way in which we manage our land will need to change. Did you give any consideration to that as you drafted the bill?

11:45

The Convener: I am not sure that that question is applicable to the bill that is in front of us, which is about animal welfare. You may comment if you

wish to, minister, but I do not think that you should feel obliged to do so because that is not really covered in the bill.

Màiri McAllan: I agree. I was about to say that I do not think that that question pertained to the purpose of the bill. I can say that the Government must consider climate change and bake that into all the legislation that we develop, but food policy and the management and welfare of wildlife are two separate issues.

Ariane Burgess: They are absolutely connected. One of the problems of this committee is the need to recognise that they are connected.

The Convener: Okay. I bring in Rachael Hamilton.

Rachael Hamilton: I asked Police Scotland about deprivation orders and the seizing of vehicles, horses and quad bikes. That also speaks to my point about financial resources for Police Scotland. They do not have facilities for keeping hounds. They have dog kennels, but they cannot keep horses. I do not think that we are talking about many quad bikes, but it is important for the minister to recognise that there could be financial implications.

Màiri McAllan: That is an absolutely fair point. Just as we work with NatureScot on the financial implications, we will work with Police Scotland. The Scottish SPCA plays an important role in helping Police Scotland to manage some resource issues, including the rehoming of animals. We are due to undertake some work to review the powers of the Scottish SPCA that pertain to wildlife crime, which might play into some of that.

Rachael Hamilton: Thank you.

The Convener: Minister, I thank you and your team for your evidence. I really appreciate the additional time that you have given us—my estimate of 15 minutes was not too far out. Thank you for your attendance today. Your full answers were very much appreciated, and we look forward to working with you as the bill progresses.

I suspend briefly to allow witnesses to leave, and so that we can have a short comfort break. We will resume at 11:55.

11:47

Meeting suspended.

11:56

On resuming—

Subordinate Legislation

Seed (Fees) (Scotland) Amendment Regulations 2022 (SSI 2022/186)

Meat Preparations (Import Conditions) (Scotland) Amendment Regulations 2022 (SSI 2022/193)

Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2022 (SSI 2022/203)

The Convener: Our second item of business is consideration of three instruments that are subject to the negative procedure. I refer members to paper 3. Do members have any comment on the instruments? Members have no comments.

Aquatic Animal Health (Amendment) Regulations 2022

Animals, Food and Feed, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc) Regulations 2022

11:57

The Convener: The next item is consideration of consent notifications on two United Kingdom statutory instruments. I refer members to paper 4 and page 38. Do members have any comments on either notification? Members have no comments.

In relation to the Aquatic Animal Health (Amendment) Regulations 2022, are members content with the proposal to write to the Scottish Government to ask how any disputes will be resolved between the three UK Administrations over amendments to relevant lists, and to highlight to the Constitution, Europe, External Affairs and Culture Committee the changing role for the Scottish Parliament as a result of that SI?

Members *indicated agreement.*

The Convener: Do we agree with the Scottish Government's decision to consent to the provisions that are set out in the notifications being included in UK rather than Scottish subordinate legislation?

Members *indicated agreement.*

The Convener: That concludes our business in public, and we move into private session.

11:58

Meeting continued in private until 12:51.

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