



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Affairs, Islands and Natural Environment Committee

**Wednesday 16 November 2022**

**Session 6**



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Pàrlamaid na h-Alba

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**RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE**  
**30<sup>th</sup> 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)

Leia Fitzgerald (Scottish Government)

Rebecca Greenan (Scottish Government)

Amy Hogarth (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 16 November 2022

*[The Convener opened the meeting at 10:06]*

#### Hunting with Dogs (Scotland) Bill

**The Convener (Finlay Carson):** Good morning, and welcome to the 30th meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind members who are using electronic devices to switch them to silent.

Our first item of business is an evidence session with the Scottish Government bill team on the Hunting with Dogs (Scotland) Bill. I welcome: Hugh Dignon, head of the wildlife and flood management unit; Leia Fitzgerald, bill team leader; Rebecca Greenan, deputy bill team leader; and Amy Hogarth, solicitor.

We have about 60 minutes in which to ask various questions. I will kick off, starting with Hugh Dignon. What do you understand the meaning of rough shooting to be?

**Hugh Dignon (Scottish Government):** It is a fairly broad term that encompasses a lot of different sorts of shooting. I suppose that you could characterise it as being informal in its nature compared with the more formal types of shooting, such as driven grouse shooting or driven pheasant shooting.

I am not a shooter, but I know people who are. I have looked into rough shooting on YouTube videos and I have been talking to people about it and so on. It seems to me that it is typically characterised by there being one person or a group of people who are shooting on land that they own or land that they have permission to shoot over—quite often, a farmer will give people permission to shoot over their land. They are likely to be shooting species that are for the pot. That could be from a range of birds, including pheasants, partridge, snipe or woodcock, through to a range of mammals, including hares in season, rabbits and the occasional fox—that is, if they see a fox; I do not think that that is usually the purpose of going rough shooting.

It seems that a fairly typical arrangement might be that, if more than one person is involved in the shooting, they would arrange themselves in a line across the ground that they were going to cover. They would then advance across that ground with one or two dogs, typically with each person having a dog or dogs in front of them. They would be

controlling and directing those dogs to find and to flush quarry species. Those species, when they are flushed, will typically either fly off or bolt off, providing an opportunity for the shooter to shoot the quarry species, and the dog would be directed to retrieve the species back to the shooter.

I guess that that arrangement is fairly common, but it is not always like that. There are other arrangements that we are aware of, but that would be a fairly typical rough shoot.

**The Convener:** There would be no intention for a dog to chase a rabbit, hare or pheasant; it is all about flushing. The purpose of a rough shoot is to shoot and not to have the dogs play any part other than flushing.

**Hugh Dignon:** Yes.

**The Convener:** On that basis, is it intended through the bill to ultimately or effectively ban or prevent rough shooting, as you have described it?

**Hugh Dignon:** No, there is no intention to do that at all. The bill seeks to regulate the use of dogs to flush mammals. Where that is happening as part of rough shooting, that would fall within the provisions of the bill, but the primary purpose of the bill is not to regulate rough shooting.

**The Convener:** Would you describe an impact on rough shooting as an unintended consequence of the legislation?

**Hugh Dignon:** I am not sure that “unintended consequence” is exactly the right phrase, because, if someone’s version of rough shooting involved using a number of dogs—more than two—to flush a mammal, the intention is that that would be within the scope of the bill.

**The Convener:** Was your understanding of rough shooting complete enough to allow you to understand exactly what the implications of the two-dog limit would be on rough shooting, or is that something that has developed since the stage 1 evidence? Is your understanding of rough shooting better now than what it was initially?

**Hugh Dignon:** It is fair to say that we have looked more closely at it and that we have considered how the provisions of the bill would apply to what happens on the ground in most rough shoots, as we understand it.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** To be clear, Mr Dignon, on what basis did you form your idea of what a rough shoot is? Did you go on one? Did you seek witnesses? Did you watch a rough shoot on YouTube? Did you google it?

**Hugh Dignon:** Yes—I did all those things. I have been on rough shoots before, I have friends who rough shoot, I looked at it on YouTube, and I talked with stakeholders.

**Rachael Hamilton:** Will you confirm that it is not your intention to restrict rough shooting through the scope of the bill?

**Hugh Dignon:** No, it is not. As I have explained to the convener, the intention is to regulate the use of dogs being used to hunt mammals, to ensure that they are not allowed to chase and kill mammals and that the ancillary activities around searching and flushing are within the terms of the bill. To the extent that rough shooting uses those activities, it falls within the scope of the bill, but the primary intention, as you know, is to prevent packs of dogs being used to chase and kill wild mammals.

**Rachael Hamilton:** When you looked into what rough shooting is or formed your understanding and shared it with your bill team, did you get information that said that dogs that go out on a rough shoot day are not domestic dogs but are working dogs that are controlled by the person who takes them out?

**Hugh Dignon:** I understand that it is primarily gun dogs that are used, but I do not suppose that it is exclusively gun dogs. A variety of dog species might be used, but I understand that spaniels and Labradors are used primarily. Yes, they are under the control of their owners, usually.

**The Convener:** Finally on that topic, it is reassuring to know that you did your research into rough shooting. Did you do that research prior to the bill being introduced, or did you do it on the back of concerns that were raised by the responses that you and the minister gave to the committee in evidence during the stage 1 proceedings?

**Hugh Dignon:** I was reasonably familiar with it before, but we certainly went back to look more closely at the issue following the concerns that were raised.

10:15

**Ariane Burgess (Highlands and Islands) (Green):** What was the rationale for taking a different approach to the number of dogs when it comes to rough shooting compared with other types of hunting with dogs? If the rationale was to improve workability, the approach seems unnecessary, according to the Wild Animal Welfare Committee. I would like to hear your response to its statement that

“Section 6(2)(c)”

of the bill as drafted

“takes a proportionate approach in requiring the person to take reasonable steps to ensure that a dog does not join with others to form a pack: it should be possible for anyone in this situation to demonstrate that such steps had been

taken. A genuinely accidental or unintended situation is unlikely to be viewed as an offence”.

It sounds to me as though that section of the bill is workable, but I would welcome your opinion on that.

**Hugh Dignon:** The first thing that I would like to say is that we are not making an exception or changing the provisions of the bill in any way to accommodate rough shooting, in particular. The position that we have outlined applies to any activity under the bill. We are saying that, if the activity involves no more than two dogs and it is for one of the purposes in the bill, and if those dogs are not allowed to join up with any other dogs to form a pack, the activity is lawful under the bill. That could be for the section 6 exception or it could be for any of the other exceptions. Indeed, when we look at some of the environmental activities, a similar sort of thinking would clearly apply: if people were using a number of dogs in a project, as long as the activity of each dog was separate from that of others and they were not joining up to form a pack, it would be lawful under the bill. There is no particular exception being made for rough shooting; it is just the application of the bill provisions.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** On the back of that, can you take us through the issues that were considered in reaching an approach whereby there is a difference in the number of dogs that can be used for rough shooting and the number that can be used for other types of shooting, if that is a correct reading of things? Was the safety of wild mammals the primary issue that you considered when you considered this area of the bill?

**Hugh Dignon:** Perhaps I have not been successful in getting this across, but we are not changing the number of dogs that can be used for rough shooting. The same provisions apply for rough shooting as apply for any of the other exceptions.

**Mercedes Villalba (North East Scotland) (Lab):** I have a follow-up question. I am concerned that the exemption in section 6 of the bill, which includes rough shooting, will undermine the wider purpose of the bill because, essentially, it allows for more than two dogs to be present during an activity that involves flushing wild mammals, whereas that is not permissible for flushing foxes.

The rationale seems to hang on the idea that, on a rough shoot, groups of more than two dogs can be prevented from forming a pack. I am interested in hearing a bit more about the evidence base for why that is possible in rough shooting circumstances but not when foxes are being flushed. Why, in one instance, is it believed that the level of control over dogs will prevent

them from forming a pack, losing control and potentially killing the animal whereas, when foxes are involved, the claim is that it is not possible to control dogs and prevent a pack from forming? To an outsider—I have not been on a shoot—it seems that foxes and rabbits are wild mammals. I am not clear on the distinction and the rationale behind the exemption.

**Hugh Dignon:** As I have said, there is not a specific exemption for rough shooting. If someone was flushing a fox with two dogs and, separately from them, someone else was also flushing a fox with two dogs, that would be the same situation that we are talking about with rough shooting.

However, if there is one person in charge of a number of dogs and the purpose of that number of dogs is for those dogs to work together as a unit to flush a fox, that is clearly a different situation. The issue is about the activity, and the activity is a person using dogs to flush a wild mammal. If a person is using one or two dogs to flush a wild mammal, provided that it is for one of the exceptions in the bill, that is okay.

**Mercedes Villalba:** I expect that we will come on to this in more detail later, when we discuss enforcement, but it sounds as though you are saying that, as long as there are enough humans present to have plausible deniability, we could continue to see packs of dogs flushing foxes, if people can say, “Each of us is here separately with one or two dogs.” Can you see how that might—

**Hugh Dignon:** I would take issue with the phrase “plausible deniability”. If someone is operating a pack of dogs, it is clear that that is what is happening. In practice, I think that there is a difference between what happens when a person has one or two dogs that are working under their control and seeking to provide quarry for that one person to shoot, and what happens when a group of dogs is being used for the specific purpose of flushing a fox from some woodland.

**Jim Fairlie (Perthshire South and Kinross-shire) (SNP):** To clarify that, did the Government give any consideration to the point that Mercedes Villalba brought up about what is different about people working with two dogs on a rough shoot is the fact that those two dogs will always be under the control of an individual who is walking up or flushing, and that they will not form a pack on the basis that they are controlled by one individual and are not pack-hunting dogs in the first place? Did you give any consideration to that in your thinking?

**Hugh Dignon:** I think that that is the reality of it, but the law is not setting out to differentiate between different types of dogs. It is talking about the number of dogs that can be used by a person

or by a group of people who are all responsible for that group of dogs. One of the conditions of all the exceptions is that the dogs do not form a pack. It is fairly easy to be reassured that the sort of dogs that are used in rough shooting will not form a pack, but it is not set out in the statute that a particular type of dog must be involved. However, we understand that, and I guess that that is part of the reassurance.

**Jim Fairlie:** Does that come back to the point that, if you have the intent to flush, you will use a particular type of dog? I know that the bill does not specify the type of dog, but the issue comes down to intent. If someone was flushing with lurchers or foxhounds, the intent would be to flush a particular type of animal. If someone was flushing in a game-shooting situation, there would be better control, on the basis that it was a rough shoot rather than what we would recognise as a normal hunt.

**Hugh Dignon:** Yes. As I said, that is the reality of it. It is not my job to do this, but I am guessing that that is the sort of thing that might be taken into account in evidence as to intent.

**Leia Fitzgerald (Scottish Government):** I add that, whether someone is rough shooting, deer stalking or controlling stoats for environmental purposes, if they are operating in proximity to someone else who is also undertaking that activity, the onus is still on them to keep the dogs under control and to make sure that they do not form a pack. The bill was put in that way in an effort to prevent people from claiming that they accidentally on purpose turned up together and just so happened to all have two dogs and to go off and do illegal hunting.

In general, the types of dogs that are used in rough shoots will not form a pack, but, if they do form a pack, the individual needs to take action to separate them, otherwise they could end up being in contravention of the bill.

**Jim Fairlie:** We will come back to that when we deal with enforcement.

**The Convener:** Mr Dignon, you have suggested that you understand exactly what rough shooting is, and that we understand exactly what hunting with packs is. You have said that there was no intention to ban rough shooting, so why not have an exemption for rough shooting? If it is so clearly defined and everything will be okay once the bill is in place, because people make assumptions, why not just exempt rough shooting from the bill?

**Hugh Dignon:** The primary reason for that is that the bill is about regulating the use of dogs and we want to make sure that there are no loopholes in that.

**The Convener:** Surely, the reason we are here is that what is in the bill at the moment and the subsequent additional information or guidance that the minister provided creates loopholes. If rough shooting is so clearly defined in your head and everybody knows what it is and what a pack of dogs working would look like, why not just exempt rough shooting? Why would that create a loophole?

**Hugh Dignon:** I think that exempting it would create a loophole. It would mean that anyone who said that they were rough shooting would be able to say that they were not within the scope of the bill. There would be the potential for people to use the claim that they were rough shooting to carry out some other sort of activity.

**The Convener:** What other activity?

**Hugh Dignon:** For example, the activity of using more than two dogs to flush mammals for the purpose of shooting.

**The Convener:** But you just said that it was quite clear whether dogs were hunting individually or as a pack and that that was the basis for people not to be prosecuted.

**Hugh Dignon:** Yes. That is on the understanding that people, by and large, do not use more than two dogs. If people use more than two dogs and say that they are rough shooting, they will be caught in the scope of the bill.

**The Convener:** In your evidence, did you come across any cases in which people were rough shooting and they had fewer than two dogs?

**Hugh Dignon:** Fewer than two dogs?

**The Convener:** When they were rough shooting.

**Hugh Dignon:** To be clear, I am talking about a situation in which a person is using those dogs. In a group of shooters who may well have met up and set off together, perhaps in a line across a field, they may well have one or two dogs each, so for 10 people, there could be 10 to 20 dogs.

What we are saying is that, as long as those activities are separated—as long as each person has charge of no more than two dogs for the purpose of flushing a mammal and those dogs are clearly separated and not allowed to form a pack with the other dogs that may be in the vicinity—they would be lawful.

If a person was using three dogs for that purpose, that would be caught in the scope of the bill and it would not be lawful, unless they had a licence to do that. If we were to exempt rough shooting altogether, it would mean that people might decide to get around the two-dog limit. They could claim to be rough shooting, even though they had half a dozen dogs with them and were

seeking to carry on the activity of catching mammals.

**The Convener:** Do you have any evidence to suggest that, in the past, someone with three or four dogs has broken the current regulation and used rough shooting as a reason?

**Hugh Dignon:** At present, we do not have a limit of two dogs, so there would be no need for them to do that.

**Beatrice Wishart (Shetland Islands) (LD):** This is quite a complex issue. If multiple people are involved in a shoot and they have a maximum of two dogs each, does it matter if the dog is the shooter's own dog? Does it matter if the gun shoots quarry flushed by their dog?

**Hugh Dignon:** Ownership of the dog is not important; the issue is who is in control of the dog for that activity. However, if you had a situation in which person A had two dogs working ahead of them and their two dogs flushed a rabbit—a mammal—that was shot by person B because the rabbit ran across the line, and person B also had a dog or dogs, that could potentially fall foul of the proposed provisions of the bill because the person who shot the rabbit would have had more than two dogs working for them. They would have had their own two, plus the other ones that had flushed the quarry.

**Beatrice Wishart:** So, even if those involved were spread out in a line, if person B shot the mammal that had been flushed by person A's dog, that would be a problem.

**Hugh Dignon:** Yes.

10:30

**Amy Hogarth (Scottish Government):** I will come in and explain why that is a problem. Section 1(4) of the bill defines what it means for a person to be using a dog for the purposes of the bill. Under the bill, a person is using a dog when hunting a wild mammal by that person involves a dog, even if that dog is not under that person's control. As Hugh Dignon said, person A's dogs might not be under person B's control, but for the purposes of the hunting activity person B is still deemed to be using those two dogs as well, so there would be four dogs in total in that scenario.

**Beatrice Wishart:** If there were five people and two of them owned three dogs each, could the total of six dogs be split among the five people?

**Leia Fitzgerald:** My understanding from speaking to rough shooters is that sometimes, if a person does not have a dog of their own, somebody who has several dogs will loan them a dog. There must be no more than two dogs per activity.



**The Convener:** That would be done only to get around the law. I do not know of anybody who goes shooting who does not have a dog, and who says to a beater or dog handler, "I'll have your dog today." That is a loophole: it is a way of getting around the law that one person cannot have more than two dogs. In a rough shoot, generally there are beaters and people who have dogs, and the people with dogs do not tend to have the guns. The shooters are not in charge of the dogs; the beaters or the people who are there to flush the animals are in charge of the dogs. Many people go to shoots who do not have dogs, but you are suggesting that a beater who turns up with four dogs could speak to somebody with a gun who does not have dogs and say that they will be responsible for two dogs and the beater will be responsible for two, which would get around the law.

**Leia Fitzgerald:** No, because it is about the activity of the person who is using the dogs. It does not have to be their own dog. It is about the person who is using the dogs in the activity. If the person is directing two dogs to flush a wild mammal, the dogs that they are directing and using in that activity need not belong to them. The person could not use four dogs under their direction and be within the parameters of the bill.

**Rachael Hamilton:** Can I have clarification? I think that you have contradicted what you said to Beatrice Wishart. My understanding of what was said before is that if two people had two dogs each and the four dogs were stalking and flushing, and person B shot something that the other person's dogs had stalked and flushed, that would be an offence. Ms Fitzgerald said something opposite to that.

**Leia Fitzgerald:** No. What we are saying is that at a rough shoot there might be several people with several dogs. The activity, as Amy Hogarth said, is using dogs to flush a wild mammal. If you are using two dogs to flush a wild mammal and the person next to you is using two dogs to flush a wild mammal and the mammal is flushed in your direction, it could be deemed to be the case that all four of those dogs were involved in that one activity because they were flushing the same game towards the same person. It is according to the activity, which is why it will be incumbent on anybody undertaking activities under the bill to make sure that there is separation—that there are two dogs per person undertaking the activity of flushing the particular wild mammal.

**Rachael Hamilton:** So, it was your intention to restrict rough shooting though the scope of the bill.

**Leia Fitzgerald:** No. The intention of the bill is to regulate use of dogs, be that in rough shooting, deer stalking or predator control. The bill sets out the purposes for which dogs can be used: under

section 3, on protection of agriculture, and section 6, on game shooting. It sets out the activity, which is the use of dogs to flush a wild mammal, and it sets out the parameters and conditions under which the activity has to be done. For example, the dogs have to be under control and cannot form a pack. The bill sets out the activities in which dogs are used that fall within its scope.

**Rachael Hamilton:** You have looked into rough shooting. You understand what it is—you have googled it, you have watched YouTube videos and you understand that working dogs are under control in those types of shoots, so therefore you are not really worried about it.

**Leia Fitzgerald:** We understand that those dogs should be under control. All dogs in the countryside should be under control.

**Alasdair Allan:** We have talked and have asked about whether exemptions around rough shooting might be workable. In our additional call for evidence, we received a comment from the Scottish Animal Welfare Commission, which stated:

"In the commission's view, extending the bill's provisions further to accommodate other forms of rough shooting is undesirable and unnecessary. To do so would seriously risk undermining both the legislation's purpose and its enforcement."

Did the Government consider that further exemptions in respect of rough shooting would undermine other parts of the bill or the principles of the bill?

**Hugh Dignon:** We are not changing the bill.

**Alasdair Allan:** No. I mean when the bill was drafted, did the Government consider that attempting to make further allowances around rough shooting would undermine parts of the bill? Was that an issue that you considered?

**Hugh Dignon:** I do not think that we considered that specifically at that point, but our intention was—as Leia Fitzgerald said—to treat all uses of dogs to flush wild mammals equally so that the provisions would apply to them equally. A number of concerns were raised about rough shooting. The more we analysed what it seems to us happens on most rough shoots, the more we thought that many of the activities that happen on rough shoots would probably be okay under the bill. Anything to do with shooting wild birds would not come within its scope. Provided that shooting of wild mammals is done under the terms that we have set out—with no more than two dogs flushing quarry for a shooter and where the two dogs are not allowed to form a pack with other dogs—there is no need to think about any further exemptions.

**Mercedes Villalba:** I have two follow-up questions about the number of people and the

number of dogs on a shoot. First, the convener said that, on a rough shoot, dogs are typically—or might be—managed by beaters or others who are not shooting. Is that a practice that you accept is part of a rough shoot?

**Hugh Dignon:** I was slightly surprised to hear the convener describe that as rough shooting. That sounds like driven pheasant or partridge shooting. The situation will be more complicated if there are a number of beaters with a number of dogs and they are driving or flushing mammals that are being shot by other people. That would likely not be lawful under the bill.

**Mercedes Villalba:** In circumstances in which dogs are managed by the shooters—as I understand it from Ms Fitzgerald’s response to Beatrice Wishart—shooting wild mammals that have been flushed by someone else’s dog or dogs would be an offence, and the shooter’s dog does not have to be their personal dog. At what point during the shoot does that need to be decided? This might come up in relation to enforcement. It strikes me that someone could very easily say, “That’s my dog for the purposes of this shoot,” and that that could be changed to suit them.

**Leia Fitzgerald:** It comes back to the activity. When shooting quarry, no more than two dogs can be used in that activity. There will be permutations of different groups of people, but ultimately it is about the number of dogs that are involved in the activity. Shooting of game that is flushed by only two dogs is permitted, but four dogs flushing game would not be permitted because that would be using more than two dogs for the activity.

**Mercedes Villalba:** Could there be a sort of relay flushing, with one dog flushing to another dog, then to another dog and finally to the shooter? How would you keep track of that mammal and know that it had come into contact with only two dogs?

**Leia Fitzgerald:** The onus is on the people who are undertaking the activity, if they are undertaking the activity in proximity to other people. That does not apply just to rough shooting; it applies to, for example, forest rangers controlling deer and to other uses of dogs. People will need to organise and conduct themselves so that such areas of confusion do not arise.

**Amy Hogarth:** On the point about section 1(4), no one will be able to say, “They’re not my dogs.” If a wild mammal has been flushed by dogs and the person shooting is also using dogs, that will fall within the scope of the bill. However, if the shooter is not using other dogs, there will not have been an offence committed. There will only be an offence if more than two dogs have been used.

**Mercedes Villalba:** That sounds slightly different to what Leia Fitzgerald was saying. I

understand that it is related to the activity, so that shooting a wild mammal that has been flushed by no more than two dogs would not be an offence. I understand from what Amy Hogarth is saying that if a shooter had brought dogs but other dogs flushed the mammal to them, that would be an offence.

**Amy Hogarth:** I am sorry. I think that the question was to do with whether a shooter who did not have dogs would be committing an offence. The key thing is section 1(4), which includes the definition of a person using a dog. An offence will be committed by the shooter only if that shooter is also using dogs, so if the shooter is alongside someone who is using two dogs to flush, there is nothing stopping that shooter taking the shot because they are not using any other dogs. As Leia Fitzgerald said, they would be part of the activity of searching for or flushing a wild mammal from cover and it would be separate quarry—a separate activity.

**The Convener:** That is not at all how rough shooting works in practice. What I described was far from a driven shoot; I think that it was suggested that it was like grouse shooting or fox shooting. That is not the case. I should declare an interest. I have taken part in rough shoots, but I do not have a dog that flushes animals. I would stand and shoot, so it is not always the case that the shooter is in control of the dogs. What often happens is that there are four or five people who beat and who have dogs for flushing. That is their day out and that is what they do.

There might be two or three guns who do not have ownership of or responsibility for the dogs that will take part. In that case, who is illegally hunting? Is it the guy with the gun or the beaters with the dogs? This is a grey area.

I was certainly not talking about a driven shoot, but about a rough shoot. Activity that could be described as a driven shoot could include beaters working a wood with dogs that those who are shooting have no ownership of or responsibility for.

**Jim Fairlie:** For clarity, have you made a distinction between a driven shoot and a rough shoot for the purposes of the bill?

**Hugh Dignon:** No.

**Jim Fairlie:** Are the two tied in, so that a driven shoot is exactly the same as a rough shoot for the purposes of the bill?

**Hugh Dignon:** Yes.

**The Convener:** That is not what you suggested in response to Mercedes Villalba. You suggested that a driven shoot would come under the bill in a different way from a rough shoot. Maybe I misunderstood.

10:45

**Hugh Dignon:** As I said, it is not the type of shooting that is relevant; it is the actual activity. If someone shoots a mammal that has been flushed by one or two dogs, there is no problem. If they shoot a mammal that has been flushed by more than two dogs, that is unlawful, unless they have a licence.

**The Convener:** That flies in the face of what the minister has said. If there are four people with eight dogs, does that mean that each of the four guns must shoot only the animals that two dogs have flushed? There could be eight dogs with four handlers and two shooters. Does that make it illegal? From what you have suggested, it would. If that is the case, that would make rough shooting illegal because that is what happens in most cases.

**Hugh Dignon:** Yes. There must be no more than two dogs to flush a mammal for someone to shoot. A group of shooters that has more than two dogs flushing mammals will be unlawful under the bill. As I said at the outset, we are aware that rough shooting is a broad term that encompasses quite a range of activities. The sort of activity that you are describing, convener, is one that would not be lawful under the bill, in terms of shooting of mammals. Clearly, the shooting of wild birds would be a different matter.

**The Convener:** Yes. That seems to be in direct contrast with what the minister said at stage 1. She said that it is about people being in charge of only two dogs and that it is not about the number of shooters. We will maybe come back to that, under enforcement.

**Rachael Hamilton:** I seek more clarification. Will people need a licence to rough shoot so that they do not get caught up in the way that you are talking about? If you are in cover, how do people know which dogs have flushed?

**Leia Fitzgerald:** I do not have the minister's words in front of me, but I think what she was saying was what we have said, which is that the provision is related to the activity. Several people can be present at a rough shoot and they will be regarded as doing separate activities. It is about activity with two dogs. What the minister said was the same as what we have been saying today. It depends how the rough shoot is conducted, which is not to say that rough shooting cannot happen under the bill.

We are just setting out the parameters for use of dogs. As the bill is currently structured, there is no licence required under section 6, and rough shooting is limited to two dogs. People cannot apply for a licence to do any of the activities under that section.

**Rachael Hamilton:** From what you are saying, it sounds as though the Government has not considered that rough shooters need a licence to go out with two dogs because they go out with a friend. It is very rare that somebody goes out on their own, unless it is a farmer just going out to shoot a fox.

**Leia Fitzgerald:** People can go out in a group, but they need to make sure that they are only shooting and flushing the quarry, so they are acting separately. They cannot work together; they cannot have their dogs flush together.

**Rachael Hamilton:** If you are in cover, how do you know which dog has flushed?

**Leia Fitzgerald:** That is something that the shooter will just need to determine.

**Rachael Hamilton:** No—I am sorry. Anyone who is watching this right now will think that this is a complete mess. It is completely confusing; I do not understand what is going on. I have watched a rough shoot, as many people around the table have, and I cannot understand section 6. It is not clear. I am sorry to say that.

**The Convener:** We will move on. The minister said:

“the two dog limit does not necessarily mean that not more than two dogs can be present at a rough shoot.”

We understand that. However, the minister went on to state that the bill would apply to each individual person using dogs to hunt quarry as part of a rough shoot in which wild mammals or rabbits were shot. Does that apply to shooters or those who are in control of and own the dogs that are flushing? Who are the hunters? Does the term “hunter” apply only to the person who shoots the wild mammal, or does it apply to those who are in control of the dogs?

That is what makes the bill completely unclear. The difficulty is that that information is not in the bill—it would need to come forward as guidance. If the guidance is based on what we have heard this morning, it will be incredibly confusing.

**Leia Fitzgerald:** The bill applies to the person using the dogs. That is how the bill is structured. It applies to the person who is deemed to be using the dogs and undertaking the activity.

**Jim Fairlie:** You talk about the person who is using the dog. There will be two people using the dog if there is a shooter and a picker-upper. If a person is walking with the dogs that flush the game—whatever that happens to be—and somebody else shoots the game, that means that two people are using the dog.

**Leia Fitzgerald:** Yes.

**Jim Fairlie:** So, they are both responsible for the dog's actions.

**Leia Fitzgerald:** Both would be deemed to be taking part in that activity.

**Jim Fairlie:** Okay.

**Jenni Minto (Argyll and Bute) (SNP):** We took some additional evidence prior to this evidence session. The League Against Cruel Sports stated that the proposed legislation is very clear and that rough shooting remains legal under the bill, provided each person in attendance controls no more than two dogs and the dogs do not form a pack. For the record, can you give us the definition of "a pack" as opposed to several dogs working independently?

**Leia Fitzgerald:** When we do not have a specific definition for a term in the bill, we simply rely on the ordinary dictionary definition.

**Jenni Minto:** For the record, can you give me the dictionary definition of "a pack", please?

While we are waiting, perhaps we could get an indication of what the difference is in dogs working independently.

**Leia Fitzgerald:** I am looking that up now. We normally use the "Oxford English Dictionary".

**Amy Hogarth:** We will come back on that point.

Section 3(3)(c) refers to "reasonable steps" that "are taken to ensure that any dog used in the activity does not join with others to form a pack of more than two dogs".

That is our condition. For the purpose of the bill, a pack will be more than two dogs.

**Jenni Minto:** Okay. Thank you.

**The Convener:** We will move on to enforcement and loopholes.

**Jim Fairlie:** May I come back in on that, convener?

**The Convener:** Okay.

**Jim Fairlie:** I am sorry to labour the point about the definition of working in a pack. If there were four people with eight dogs, each of those four people had two dogs, and each of them could individually call back any dog that was within the area, would that be regarded as a pack or as four people working independently? Does that make sense?

Let me put that in the context of a shoot. If there are guys walking—whether or not they have guns in their hands—with eight dogs with the purpose of flushing prey, their dogs will work the ground while they are walking. That is called quartering. They will be quartering a particular bit of ground, and they will cross over one another and cross back again. If, at any time, a dog flushed anything that

was running and the owner of that dog or the person who was working that dog whistled and the dog stopped to allow the prey to run, would that dog be deemed to be working individually to the owner or working in a pack when there are eight dogs on the ground at the same time? That issue is really important.

**Hugh Dignon:** In effect, if whoever shoots the prey has more than two dogs working for them, that would not be lawful under the bill. It seems to me that, in the situation that you have described, the person would, in effect, have eight dogs working for them. If they did not have eight dogs working for them but had just two dogs working for them, two dogs flushing prey for them to shoot would be lawful.

**Jim Fairlie:** There could be eight dogs working on the same bit of ground, but one person could take a shot. You will have seen this. If a dog flushed something, whoever was handling the dog would whistle to it, the dog would stop and push the prey forward, and one person would shoot the prey. Would those dogs be deemed to be working in a pack, despite the fact that each individual who had those dogs in front of them could stop them at any given time?

Allow me to clarify what I mean. If a pack of dogs is being worked and foxes are being flushed, the whole pack has to be stopped in order to stop the hunt whereas, when people are quartering, they need only one dog, which pushes prey forward in order for someone to get a clean shot. There is a clear difference in how those dogs are worked on the ground. Can the bill, as currently drafted, allow for that differentiation?

**Hugh Dignon:** No. The bill is structured around the number of dogs. No more than two dogs can be used to flush.

**Jim Fairlie:** That comes on to enforcement.

**Hugh Dignon:** It seems to me that, in the scenario you described, it could not be said that the person was using just two dogs, because people could be shooting game that was flushed by any of the eight dogs.

**Jim Fairlie:** Okay. We will come on to enforcement, so I will leave it there.

**The Convener:** How does the bill set out to differentiate between legal rough shooting with more than two dogs and illegal hunting with more than two dogs? Where does the bill make that clarification?

**Hugh Dignon:** As we have described, that is under where the bill describes what the activity is. A person using more than two dogs to flush a mammal is unlawful. Using one or two dogs to flush a mammal is lawful. That is really what it all boils down to.

**The Convener:** On the back of Jim Fairlie's question, if there are two beaters or dog handlers with two dogs each and one gun, would that be illegal?

**Hugh Dignon:** If the person who is doing the shooting has more than two dogs flushing the game for them, yes.

**The Convener:** Okay.

**Jim Fairlie:** I am sorry, but things keep popping into my head. Is the purpose of the bill not to stop dogs chasing and killing animals? Is there any way to make a differentiation between dogs chasing and killing the animal and the number of dogs that are flushing the animal to be shot? Is there not a way of clarifying that?

**Hugh Dignon:** The bill, as it is structured, says that hunting involves a number of different types of activities, and flushing and searching as well as chasing and killing are among those activities.

**Jim Fairlie:** Okay.

**Mercedes Villalba:** I want to follow up on Jim Fairlie's question. I understand that addressing animal welfare concerns is a motivator of the bill. How is it that multiple sets of one or two dogs flushing to guns leads to higher animal welfare outcomes than a single pack of more than two dogs flushing to guns does?

**Hugh Dignon:** It is about the number of dogs. We think that there is a higher risk of more than two dogs chasing, catching and killing a mammal than just two dogs doing so. That is why the two-dog limit has been introduced.

**Mercedes Villalba:** There might be five sets of one or two dogs flushing in close proximity to one another on a rough shoot. If a fox or a wild mammal is in that area, how will that lead to higher animal welfare than if there were the same number of dogs working as a pack?

**Hugh Dignon:** We talk about the need for clear separation. In effect, if we are talking about those dogs forming a pack, that would not be lawful. We are saying that it would be lawful to have up to two dogs providing quarry for someone to shoot, with those dogs having clear separation from other dogs that may be working in the vicinity. If what you are talking about is, in effect, five dogs flushing a mammal, that would not be lawful.

11:00

**The Convener:** I have to pick up on something that you have said and the minister has also said about chasing, catching and killing a wild mammal, which again has evidenced the lack of understanding of a rough shoot. I know of no occasion when that would be the case during a rough shoot. The dogs that are involved in a rough

shoot are highly trained. If I were to go to a rough shoot and my dog was found to be chasing, catching and killing, I would be asked to leave, and I would not be asked back. The dogs just do not do that. Therefore, I would like to see some evidence of a dog chasing, catching and killing an animal at any time during a rough shoot. If that is the basis on which rough shooting is included, that is a false basis.

**Alasdair Allan:** My question is about the comments that Police Scotland has made on enforceability. You will be familiar with the issue that we have just discussed around what constitutes a pack, but there are other enforcement issues. Police Scotland said that it feels that most people—I think that those were the words that were used—would obey the law, but will those comments be considered when, for instance, guidance or licensing schemes are being formulated?

**Leia Fitzgerald:** We spoke to Police Scotland throughout the development of the bill, and that was the first time that we had seen those particular concerns. As we did when the police raised concerns about the training of police dogs, we will take that away. We will speak to Police Scotland to understand its concerns and consider whether there is anything that we need to do to address them.

**The Convener:** Did you have discussions with Police Scotland on rough shooting prior to the evidence that the minister gave when the concerns were raised?

**Leia Fitzgerald:** We had not had discussions specifically in relation to rough shooting, but we had discussions with Police Scotland about the bill in general and follow-up discussions about the impact of the bill on the training of police dogs.

**The Convener:** Has the minister considered any amendments to address Police Scotland's concerns?

**Leia Fitzgerald:** The minister is in Egypt at the moment, and I do not think that she has seen the concerns that Police Scotland has raised. As I said, the bill team will take that forward.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** We have spoken a bit about loopholes. We know that the purpose of the bill is to close some loopholes that have been apparent. A few stakeholders, on all sides of the debate and argument, have been vocal in expressing the view that any exemptions for rough shooting would create potential loopholes. What considerations have been given to that? We have already discussed that issue, but is there anything specific that you have considered putting into the bill?

**Leia Fitzgerald:** That is why the bill is structured in the way that it is. We considered that people would try to use any of the activities under the bill as a potential avenue for illegal hunting. That is why we have the two-dog limit and why we have set out that it is about the activity—the activity cannot involve the use of more than two dogs, and the dogs have to be under control and cannot form a pack. That approach is basically to prevent people from turning up and claiming that they are all just there separately, when in reality they are hunting with a pack of dogs.

**Karen Adam:** In this discussion, we are drilling down into the details and narrative of particular situations that may or may not happen. The convener talked about his experience on rough shoots and said that, if he had a dog that was out of control, he would not be asked back because, mostly, rough shoots are co-ordinated and organised in the most legal ways possible. In that regard, I do not think that we will have many issues, so would you agree that it will really come down to the enforcement?

**Leia Fitzgerald:** I think that most people are law abiding and seek to do things in the correct way, whether they are rough shooting or carrying out predator control. However, we know that that is not always the case and that wild mammals are, whether accidentally or deliberately, being chased and killed. That is what the bill seeks to address. It is clear to us that dogs are used for a vast variety of things in the countryside, and they fall within the bill if they involve controlling wild mammals. We have sought to set out clearly how people must conduct themselves if they are using dogs for those purposes.

**Karen Adam:** As somebody who is sitting here, scrutinising the bill, I am aware that its priority is animal welfare. Above and beyond everything else, including human activities, it is about animal welfare.

**Rachael Hamilton:** What activities can you list that people use rough shooting as a cover for, as you have just suggested?

**Leia Fitzgerald:** We are not saying that people are using rough shooting for anything; we are saying that the potential is that people will seek to use activities as a cover. For example, we know from evidence from England and Wales that, when a two-dog limit was introduced, people used activities such as trail hunting as a cover for—

**Rachael Hamilton:** But trail hunting does not happen in Scotland.

**Leia Fitzgerald:** It does not happen at the moment, because we do not have a two-dog limit.

**Rachael Hamilton:** What are the similarities between trail hunting and rough shooting?

**Leia Fitzgerald:** They are different activities. We are just saying that any—

**Rachael Hamilton:** So, how could someone get away with pretending that they are rough shooting if they are trail hunting?

**Leia Fitzgerald:** People are not pretending, I do not think, to be—

**Rachael Hamilton:** Your words were “as a cover for”, but that is what you are suggesting. Are you saying that people will pretend that they are rough shooting when they are trail hunting?

**Leia Fitzgerald:** No. We are trying to prevent people from using any of the purposes, whether that is rough shooting or controlling, as a cover for illegal hunting.

**Rachael Hamilton:** How would they do that?

**Leia Fitzgerald:** By saying, “I’m going out rough shooting,” and taking a pack of dogs.

**Rachael Hamilton:** What are the similarities between trail hunting and rough shooting that would allow someone to say to a policeman who arrives, “I am rough shooting”?

**Leia Fitzgerald:** I could go out and say, “I am rough shooting.” I could have a pack of dogs with me and I could let that pack of dogs chase and kill a wild mammal and claim that I was rough shooting.

**Rachael Hamilton:** So, you are saying that rough shooters would look like trail hunters.

**Leia Fitzgerald:** No, I am not saying that rough shooters would look like trail hunters or anybody else; I am saying that somebody could claim to be a rough shooter because they are out there and they are shooting. As we have talked about, a person who goes out with the intention of rough shooting will conduct themselves in such a way to ensure that the prey is shot. However, somebody who turns up in the countryside with a pack of dogs seeking to do illegal hunting could claim that they were rough shooting. The difference would be that they would not be conducting themselves in a way that was not allowing the mammal to be killed by the dogs. They could just let the dogs kill the wild mammal. That is how—

**Rachael Hamilton:** Do people use the same types of dogs for trail hunting as for rough shooting?

**Leia Fitzgerald:** They could use whatever type of dog—

**Rachael Hamilton:** For example, could people use hounds or scent dogs to go out rough shooting, or would they use spaniels to go trail hunting?

**Leia Fitzgerald:** They could use whatever dogs that they think will serve their purposes best for the activity.

**Rachael Hamilton:** That is interesting.

**The Convener:** At stage 1, the bill was voted through unanimously on the basis that it aims to improve animal welfare while continuing to allow dogs to be used to control predators. Throughout the weeks and the months of evidence taking, not once did we hear any issues about animal welfare and rough shooting—I believe that not one piece of evidence on that came before the committee.

I think that there is an unintended consequence of including rabbits in the definition of wild mammal, which is a knock-on effect on rough shooting. Given the response to our additional call for evidence, there are concerns that section 6 does not fit the bill, either for those who wish to continue rough shooting or for those who wish any sort of country sports to be stopped. It does neither and could potentially open a loophole.

Has the bill team considered possible amendments that would address those concerns? That might involve a better definition of rough shooting and excluding it. Alternatively, have you considered other measures that would clear up what looks like a bit of a boorach at the moment?

**Hugh Dignon:** We have seen the amendments that have been lodged and given them careful consideration. However, it is not our job to talk here about amendments that the minister may seek to bring forward. We are well aware of the issues around this, and we are seeing the amendments that are being lodged.

**Mercedes Villalba:** I seek clarification. The Scottish Government's stated aim is to pursue the highest possible animal welfare standards, so can we get an explanation as to why the bill has ended up having an exemption for sport? How does the Scottish Government square the hunting and killing of animals for sport with pursuing the highest possible animal welfare standards?

**Hugh Dignon:** As the convener has reminded us, there is clearly an animal welfare priority that needs to be balanced with the need for effective predator control. So that is the—

**Mercedes Villalba:** Is sport predator control?

**Hugh Dignon:** We are not seeking in the bill to ban an activity that is not really related, except for the potential use of more than two dogs, which we have talked about and which could be used as a loophole. We are not seeking to ban sport shooting. We are seeking to control the use of dogs to prevent them from chasing and killing wild mammals. That is the intention of the bill.

**The Convener:** Thank you. That concludes this session. We very much appreciate your time—the additional session will certainly help us as we go forward to stages 2 and 3.

I briefly suspend the meeting until 11:15, to allow the witnesses to leave.

11:12

*Meeting suspended.*

11:18

*On resuming—*

**The Convener:** Following the session with the bill team and consideration of the written submissions, do members wish to take further evidence from stakeholders to explore some of the issues that have been raised through our additional call for views?

**Rachael Hamilton:** I am none the wiser after the session with the bill team. I was grateful for their time, but there are a lot of questions still to be answered. From a practical point of view, given that there were 232 submissions to the consultation, we really should have some sort of round-table or stakeholder engagement session to get clarification on the unanswered points that we did not seem to get a grip on.

**Mercedes Villalba:** Now that we have had an opportunity to review the written evidence that we received last week—there was a significant amount—I, too, have some outstanding confusion after today's session with the bill team. As long as we have a balance of groups coming in, I think that it would be beneficial to have a round-table session.

**The Convener:** Do members agree to have a further stakeholder engagement session?

**Alasdair Allan:** I am not against that, but I just want to check something. You mentioned a follow-up session earlier. Are we now talking about the same thing?

**The Convener:** Yes. It is a stakeholder session. I just want to confirm that.

**Alasdair Allan:** That is on 23 November.

**The Convener:** Yes. Is that agreed?

**Ariane Burgess:** I agree in principle, but I think that we are none the wiser, and we almost need a back to basics understanding of legal language. I feel like I need to go back and look at the *Official Report*, because, at some point early on, in answer to question 3, the witnesses started saying that it is about two dogs per activity. We are talking about shooters and all sorts of things—

**The Convener:** I am sorry but, at the moment, we are just considering whether we want to take further evidence.

**Ariane Burgess:** I know, but if, after hearing from the bill team, we do not get that it is per activity and we are not clear, I do not know that inviting a whole load of other people in will make things clearer. I know that the majority of members will say, "Let's do it," and I will go with the majority, but I do not know whether that will give us what we need. We have spent a lot of time on the issue already.

**The Convener:** Thank you—that is noted. Is the majority of the committee in favour of having a further stakeholder meeting on 23 November?

**Members** *indicated agreement.*

## United Kingdom Subordinate Legislation

### Organic Production (Amendment) (No 2) Regulations 2022

11:21

**The Convener:** Our next item of business is consideration of a consent notification relating to a UK statutory instrument. As members have no comments on the notification, are we content to agree with the Scottish Government's decision to consent to the provisions that are set out in the notification being included in UK rather than Scottish subordinate legislation?

**Members** *indicated agreement.*



## Petition

### Greyhound Racing (PE1758)

11:22

**The Convener:** Our next item of business is consideration of petition PE1758, on ending greyhound racing in Scotland. Members will note that the Scottish Animal Welfare Commission has written to us to say that it wishes to take more time to consider the issue of a ban on greyhound racing and expects to come to a decision next February. On that basis, are members content to delay further consideration until the SAWC has come to a view on the matter?

**Mercedes Villalba:** Given some of the correspondence that the committee has received, I suggest that, rather than take that decision today, we defer a decision on what we do next until next week, when we have a chance to discuss the work programme.

**Rachael Hamilton:** The letter from the Scottish Animal Welfare Commission does not state when the committee will have access to the results of the decision that the commission has taken to carry out more research and consider that evidence. It is almost as if the can is being kicked down the road on this. Unfortunately, the letter does not give us any clarity on the timetable so that we could consider the matter as part of our work programme.

**The Convener:** It is my understanding that the commission will come to a decision by next February. Initially, I was disappointed with the lack of progress by the commission, given that we had written on two occasions to get a response. However, the response might well give us reassurance that it is taking the issue seriously and will consider all the options and consequences of an outright ban or a licensing scheme. I think that waiting until February would certainly give us the information that we need to take the matter further.

**Ariane Burgess:** I would suggest writing a letter to the Scottish Government requesting further information, including a consultation timeline and the specifics of the proposed consultation on extending the framework for licensing of activities involving animals, including greyhound racing. I would also be interested in writing to the Dogs Trust, the Blue Cross and the Royal Society for the Prevention of Cruelty to Animals to request an estimated publication date of their upcoming evidence-based report.

**The Convener:** We can certainly do that. Again, however, if we deal with that during our work planning meeting next week, we will have a better

indication of the time constraints and how we want to take that forward.

That concludes our business in public, and we now move into private session.

11:25

*Meeting continued in private until 11:41.*



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