



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 31 May 2023

Session 6



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RURAL AFFAIRS AND ISLANDS COMMITTEE

17th Meeting 2023, 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)
*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)
*Rhoda Grant (Highlands and Islands) (Lab)
*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

George Burgess (Scottish Government)
Hugh Dignon (Scottish Government)
Alastair Douglas (Scottish Government)
Leia Fitzgerald (Scottish Government)
Mairi Gougeon (Cabinet Secretary for Rural Affairs, Land Reform and Islands)
Norman Munro (Scottish Government)
Sam Turner (Scottish Government)
Annabel Turpie (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 31 May 2023

[The Convener opened the meeting at 09:06]

Decision on Taking Business in Private

The Convener (Finlay Carson): Good morning, everyone, and welcome to the 17th meeting in 2023 of the Rural Affairs and Islands Committee. I remind members who are using electronic devices to switch them to silent, please.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take item 7 in private?

Members *indicated agreement.*

Rural Affairs and Islands Remit

09:07

The Convener: Agenda item 2 is an evidence-taking session with the Cabinet Secretary for Rural Affairs, Land Reform and Islands, for which we have scheduled 90 minutes. I welcome to the meeting the cabinet secretary, Mairi Gougeon, and her Scottish Government officials: George Burgess, director of agriculture and rural economy, and Annabel Turpie, director of Marine Scotland.

We will kick off with questions on the proposed agriculture bill. First, cabinet secretary, can you give us an update on where exactly we are with that? When can we expect the bill to be introduced?

The Cabinet Secretary for Rural Affairs, Land Reform and Islands (Mairi Gougeon): As the committee will be aware, our consultation on proposals for a future agriculture bill closed last December. We have been analysing the consultation results, and we will be in a position to publish the response to the consultation shortly. As I have previously outlined, we have a commitment to introducing an agriculture bill to the Parliament this year, and we are still on track to deliver that.

The Convener: Thank you. I call Alasdair Allan.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): I was going to ask about the timetable for amendments to the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, which is not to be confused with the rural bill. Given the ping-pong that is going on with legislation at Westminster just now, I wonder whether you can explain the two pieces of legislation, particularly the agriculture bill and its relevance.

Mairi Gougeon: Are you asking about the transitional amendments that we need for the current schemes?

Alasdair Allan: Yes.

Mairi Gougeon: As I said in my initial response, we will introduce the agriculture bill this year. Earlier this year, we published our route map for reform, in which we are looking to introduce conditions in 2025 and then to phase the transition to the new framework over the years from 2025 onwards. We therefore need to introduce legislation to extend the provisions in the 2020 act. I cannot give a definitive timescale for that at the moment, but we need that transitional piece of legislation to allow us to continue with the various schemes that we have at the moment so that we can ultimately implement the route map that we have set out. I will, of course, keep the committee informed as we look to introduce that.

The Convener: On the agriculture bill, it would be helpful to get a clear indication of what “this year” means, given the tight timescales that we will be working to get a new system in place. Can you be any clearer on what “this year” means?

Mairi Gougeon: I have said that we will publish the bill this year. I hope that you appreciate that, under the ministerial code, it is not possible for me to give a definitive date until it has all been agreed by Cabinet and discussed with the Parliament. I cannot give a definitive date for the introduction of the bill, but we intend to do that as soon as we can.

The Convener: Okay. Thank you.

We have heard some in the farming sector calling for 80 per cent of the funding to be base payments. What is your position on that? Can you give us some examples of what conditionality might be applied to payments in pillar 1?

Mairi Gougeon: Our route map sets out information about when we are looking to publish information on conditionality, which we hope to be in a position to do very soon. It also sets out some of the areas in which we could apply conditionality in the basic payment scheme, whether that be on greening, the good agricultural and environmental conditions requirements, cross-compliance or potentially elements of a whole-farm plan. That was all listed in the information that we published. We also mentioned potential conditions for voluntary coupled support. We will announce the detail around what we published in the route map shortly.

I will go back to your question relating to NFUS Scotland’s calls and the budget splits. The discussions are on-going. I know that that is the NFUS’s position, but other bodies have different views on that. We have committed to a policy of co-development in relation to how we develop our agriculture policy, so we will continue to have those discussions with the agriculture reform implementation oversight board, the NFUS and other stakeholders before setting out a position.

The Convener: Okay. Is it likely that conditionality in some of the examples that you have given will be in the proposed bill, or will it be introduced after the proposed bill has been passed?

Mairi Gougeon: That conditionality will not be in the bill. As I outlined in my response to Alasdair Allan, that is where we need the transitional provision, using the powers within the current act, to allow for conditionality and continuity so that we can deliver what we set out in the route map.

The Convener: Given how important conditionality might be, MSPs could be asked to

vote on an agriculture bill when we do not know how the payments will be made and how much will be paid. We will be voting blind because conditionality on the bulk of the payments, which is such an important part of the bill, will not be decided until after the bill has been passed.

Mairi Gougeon: There will be an opportunity for scrutiny as the bill goes through. We need a piece of framework legislation, which is what we will introduce, to give us an adaptive framework for the future. That is what we set out in our proposals, and we will introduce that as part of the bill.

We have been working through our consultation responses so I cannot say definitively what will be in the bill at the moment, but the aim is for the secondary legislation to contain that detail.

I understand the calls for clarity, more detail and more information. We set out in the route map when that information will become available. There will, of course, be the opportunity for parliamentary scrutiny as part of the process.

Ariane Burgess (Highlands and Islands) (Green): I have a couple of questions about the thinking around the payments. One is about supporting farmers who are already growing or want to grow more fruit and vegetables or plant protein. As you know, horticulture uses less land and supports many more livelihoods in rural areas. I am interested in hearing what your thinking is about supporting more people to grow food in Scotland.

Mairi Gougeon: That is what we have set out in our vision. I hope that, during the debates that we have had in the Parliament in the past few weeks, we have emphasised the importance of producing our own food. Our vision for agriculture sets out that we want to produce more and meet our food needs more sustainably.

Ariane Burgess: I am specifically asking about horticulture. What are your thoughts on that?

09:15

Mairi Gougeon: Horticulture is a vital sector to Scotland in respect of the fruit and vegetables that we produce. We know that a number of issues affect the sector at the moment, but we want and encourage people to become involved in horticulture.

We also have various schemes. There are various projects, including a few in my constituency, that look at community-supported agriculture, and we have supported various schemes through those that are really important, because all of that is about strengthening and shortening our local supply chains. That, of course, also meets the objectives that we want to

set out in the good food nation plans that we will produce.

Ariane Burgess: I have a follow-on question, which is about less favoured areas. I get contacted by crofters who are concerned about inflation having an impact in less favoured areas, where they farm sheep and cattle. One opportunity that we have with a change in policy is in the diversification of what they can do. I am interested in hearing whether you can confirm that farmers in less favoured areas will be supported to access funding for projects such as the forestry grant scheme so that they can diversify.

Mairi Gougeon: Yes. In addition, if improvements can be made to the grant schemes that we currently have, we want to make those at the same time. The committee will probably be aware that we have had a consultation, which closed within the past couple of weeks, about improvements to the forestry grant scheme—about what we can do to remove some of the barriers that people face in accessing that scheme and trying to overcome those, because we want the integration of more trees on farms. We have an integrating trees network to which we like to direct people, to show exactly how that can be done. Such opportunities are really important.

I emphasise that I recognise the importance of the less favoured area support that we currently provide. That is why we have committed to maintaining the levels of payment as they are at the moment. We will continue our work on that, as we set out in our route map, as we look to build the future framework.

George Burgess (Scottish Government): I will make a brief supplementary point.

An important part of the agriculture bill consultation was about making sure that tenants and crofters are not barred from participation in schemes because of the nature of their tenure, whether those are environmental schemes or other forms of diversification. Certainly, we support that.

The past month has been agritourism month, and quite a number of MSPs will have seen good examples in their own areas of a form of diversification that brings in significant income for holdings.

Ariane Burgess: Thanks for confirming that.

The Convener: There are two brief supplementary questions, from Jim Fairlie and Rachael Hamilton.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): Good morning, cabinet secretary. I want to go back a wee stage to how conditionality will be implemented, which the convener talked about. For folk who may not be as au fait with how

the system works, framework bills and legislation, if something is set out on the face of a framework bill, that will become an act. However, there might be scope later to bring in stuff to help to achieve the objectives. Is that why the details and the conditionality have to wait until later? Does that make sense?

Mairi Gougeon: We would have the requirements for tier 2 in the new legislation. The measures to be included in that would be set out in secondary legislation. Ultimately, that allows for flexibility in the future so that we do not have to go back and amend primary legislation every time. That also means that we can adapt, add to or change those measures if there are innovations in agriculture, for example. That provides us with the flexibility and the adaptive framework that we will need for the future, so that we have more flexibility than we have through the current schemes.

Jim Fairlie: So, if we put everything right at the start, it would be fixed, and primary legislation would have to be amended in order to change anything as things developed.

Mairi Gougeon: Yes.

Jim Fairlie: That is the clarification that I was looking for. Thank you.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Good morning, cabinet secretary. Clearly, there is a call to maintain direct payments in tiers 1 and 2. The arguments are made on the basis that, currently, farmers are looking at efficiencies, improving the environment and all the rest of it. Removing those payments without clarity would mean that they could not plan for the future. We know that the livestock industry is contracting and that that genetic bank of high-quality livestock will never be able to be replaced. What impact study has been done on what you have said about pushing that down the line so that we look at it beyond primary legislation?

Mairi Gougeon: We are not pushing that down the line. In the route map that I published in February, I set out a very clear timescale for introducing changes and making information about those changes available to enable people to plan. The route map sets out a very clear timetable to try to give people comfort with regard to information.

However, I should say that we will not be removing any payment without there being clarity. As I have said before in the chamber—and I am keen to make the commitment again and to be clear about this—we are not going to see any cliff edges in support, with people one day accessing schemes that are gone the next. I absolutely appreciate the importance of the issue, of people's ability to plan their future and their business, and of the need for longer-term clarity and security.

Indeed, that is why we have committed to maintaining direct payments. We recognise how important that support is to our food production and in enabling our farmers and crofters to continue to undertake the good work that they are already doing. Again, our route map sets out a clear timetable to show when more of that information will be available.

Rachael Hamilton: Perhaps I can give you an example of individuals' concerns. Yesterday, I spoke to a group from the islands—we know how important livestock farming and crofting are there, particularly in the less favoured areas. They are hearing suggestions that, instead of the livestock farming that is so important to their livelihoods being considered, trees are going to be planted in places such as Westray, where they cannot grow. The Government therefore needs to be very clear in its communications about the tiers and the sustainability of the future for farmers and crofters.

Mairi Gougeon: I do not know where those suggestions have come from, but I am more than happy to follow the matter up with you and to hear those concerns.

As I said in last week's debate, I absolutely recognise the importance of livestock farming to our island communities. In some parts of the country, people do not have as many opportunities to look at other measures that they could take or other types of farming that they could undertake. There will always be a place for livestock farming in Scotland, because we do it well here, and that will continue into the future. Again, I am more than happy to follow up those issues.

I also want to ensure that our communication is clear. It is frustrating to hear the sort of example that you have highlighted. I want the messages that we send out to reach everyone. However, if you are hearing those things, that must not be the case. I want to hear any suggestions that people might have for improving our communications, because we are looking to do that as much as we can.

We have many examples that we could highlight. There are the different networks—our agriculture, biodiversity and climate change network, our integrating trees network and so on—in which so much good practice is being undertaken, and there is also the Farm Advisory Service. We are looking to engage with as many people as possible, and that is what we have tried to do by providing more clarity and information through the route map. I would direct people to look at that and the list of measures that we have published for an indication of what things might look like in the future. We are also actively seeking feedback, because we want to hear how those measures might work.

The Convener: I call Jim Fairlie.

Jim Fairlie: Earlier in the year, cabinet secretary, you gave us information about the national test programme. Will you update us on where you are with that?

Mairi Gougeon: Yes, I am more than happy to do so. With regard to track 1 of the national test programme, I think that the last time that I appeared before the committee, we were looking at fairly low figures for the carbon audits and soil tests that had been undertaken. I think that I said then that, anecdotally, we were hearing that more people were intending to claim, but I think that the final figure for the tests that had been undertaken by the time that the claims window closed was more than 1,000. There were just over 500 carbon audits, with the rest made up of soil tests.

That means that more than £1 million in funding had been allocated to that, and that is not to mention the 500 carbon audits that had already been undertaken via the Farm Advisory Service.

For track 2 of the programme, we undertook a widespread survey, which got about 1,000 responses, to understand more the knowledge about and uptake of sustainable and regenerative practices across the industry. We were quite pleased with the response rate to that.

The survey showed that the majority of people had undertaken an action such as a carbon audit or nutrient management planning. It was also important in helping us to identify people's motivations for undertaking actions, as well as in identifying barriers or what was preventing people from undertaking specific actions. Getting those views from the survey was really helpful.

Jim Fairlie: What are the barriers?

Mairi Gougeon: Key barriers related to knowledge and support. Progress is needed on that. Access to funding was also identified as a potential barrier. Perhaps George Burgess has further information to add.

George Burgess: The cabinet secretary has described the main points that came out of the survey. More recently, more detailed work has been done with a smaller group that was drawn from the 1,000 respondents whom she mentioned. Detailed one-to-one work is being done with about 60 of the individual farmer respondents to work through the list of measures that we set out in February and look at how those measures would work for them. That is all feeding back into the scheme's design. We are also picking up feedback from the NFUS and its members. Yesterday, I heard quite positive feedback that the arable sector is really quite favourable to the list of measures.

Jim Fairlie: I presume that you are taking views from across the country.

George Burgess: Yes.

Jim Fairlie: All four corners need to be involved, because of the different topography.

George Burgess: Yes.

The Convener: The figures are quite disappointing. What has been the outcome of soil testing? Have we seen changes in the use of fertiliser? In Ireland, 41,000 farmers applied for the lime scheme, which will produce almost immediate improvements in soil fertility. Are you disappointed that the schemes in Scotland are not delivering? Will you give us an idea of why that is?

Mairi Gougeon: I was glad that the figures increased towards the end of the claims window, which we had expected. We want as many people as possible to take the support that is there to undertake the actions, but we know that a lot of farmers and crofters already undertake soil testing and carbon audits. We are trying to incentivise that as much as possible.

It was the programme's first year, and we will run it for the next couple of years, so I hope that it will continue to build and that interest will build, so that more audits and tests come through. We really encourage that, because that will give businesses their baseline, which they can make improvements from.

We want to build on the test programme and to continue to support carbon audits and soil testing. We have added support for animal health and welfare plans this year, and we hope to add biodiversity audits to the programme as we move forward.

The Convener: Where are we seeing positive outcomes? Just doing a test is not positive in itself; giving a farmer a couple of hundred quid to get the vet to come in does not do anything. Where are we seeing positive results?

To hark back to Ireland, the result of soil tests there is that 41,000 farmers have applied for lime grants. Where are the improvements here? Testing is just the first step. Have you done research into the resulting benefits? The same question applies to animal health tests.

Mairi Gougeon: Those elements have only just launched. On the individual actions that have been taken on the back of audits, I gave the figures for support that has been claimed; I do not know whether George Burgess wants to come in on that.

Before we get to that, I agree with you that it is all very well to undertake a test, but the actions that are taken on the back of it are what is really important. As part of the soil testing, we offer £250

in personal development funding to enable and encourage upskilling, which allows people to undertake nutrient management planning.

09:30

I detect a criticism from you on the funding that has been offered for animal health and welfare. However, that scheme was not designed by us alone but with our farmers and crofters, our chief vet and other key stakeholders. Together, we looked at a package that would incentivise the sector. We did not just want to undertake a plan; we also considered meaningful actions that would have an impact for those businesses. That is how the programme was developed. From the feedback that I have heard—I do not know whether George Burgess has more information—the package of available support has been well received.

George Burgess: There was a meeting of the British Veterinary Association in the Parliament a couple of weeks ago. Feedback from that was that the response had been good. I think that vets are encouraging their customers to participate in the scheme. On soil testing, the impact will be on individual farmers. Farmers will discover information about their soil and will then have the ability to adjust the amount of lime or fertiliser that they use. The benefits will be felt on an individual scale.

The Convener: The policies will be output driven. How are you planning to record positive outcomes?

Mairi Gougeon: The actions and measures that people undertake will be critical to that. That is where it will be important to get feedback on some of the measures that we have outlined and what we are looking at for potential inclusion in a future framework. It is where track 2 of the testing programme comes in, because there will be detailed and in-depth work with farmers and crofters, which will allow us to see how those measures work together and understand the improvements.

Rachael Hamilton: I have a quick point on that. During our evidence sessions, we have heard from various members of the ARIOB and other stakeholders that it is very difficult to establish the baseline so that they can work out what the outcome is for environmental benefit. I have made the point in the chamber that it is particularly difficult because farmers have already spent thousands on thousands of pounds undertaking measures, including soil testing. They have been spending and investing their own money, because they know that doing so reduces input costs and increases productivity and efficiency. How will the Government ensure that the individuals who have

already carried out those measures are rewarded? Where will the baseline start?

Mairi Gougeon: That is an important point. The need for recognition was raised a number of times in the debate last week. I certainly hear that when I am out and about visiting different farmers and hearing about the actions that they have already undertaken. We know that we have a lot of work to do. Initially, we want to incentivise those people who have not undertaken the actions to do so and to get the baseline information. That we recognise and reward the work that has already been done is fundamental to our thinking and planning going forward.

George Burgess: We are clear that we are not penalising those who, as you say, have already taken the right action. Many farmers will already have been doing soil testing, and they are still eligible to claim through our scheme. It is not like some banks that offer good interest rates only to new customers. We are ensuring that farmers who are already undertaking the right actions can benefit from what they have already done, in the same way as those who we entice into undertaking the measures.

Karen Adam (Banffshire and Buchan Coast) (SNP): Can you provide an update on climate change plans for Scottish agriculture, particularly on emissions targets?

Mairi Gougeon: We need to provide an update to our climate change plan and set out our policies for meeting targets. Work on that is on-going, and I believe that the plan is due to be published later this year.

Karen Adam: Has progress on the plan been derailed in any way? Do you feel that it is progressing in a timely manner and in the way that was expected?

Mairi Gougeon: It is really challenging to meet the emissions envelope that we have set out. There is no getting around that. We have really stretching targets to meet.

We need to reduce our emissions by 2.4 megatonnes of CO₂ by 2032. The work that the farmer-led groups undertook on that tells us that combining all the measures takes us to a 1 megatonne reduction, so we still have a gap to fill. The challenge exists. We are trying to see how we can work through it together and fill the gap. We are considering what further work we can do on policies that we can introduce to enable us to do that.

The Convener: We have touched on livestock numbers in Scotland before. There were previously worries that the Scottish Government was going to consider some sort of scheme that would reduce livestock numbers. Will you once

again go on the record to say that, when the agriculture bill is introduced, it will protect the livestock numbers that we have and avoid a reduction that might get us closer to the critical mass that would result in a rapid decline of the livestock industry in Scotland?

Mairi Gougeon: First of all, there is no plan to cull any livestock in Scotland. I said last week that I support our livestock industry. I see a strong role for the industry and envisage it continuing into the future. We produce livestock well in Scotland and that will continue. We do not have any policies to actively reduce livestock numbers, but I separate that from the point of putting the matter into a bill, because, as I outlined, we will be introducing a framework bill and that would not be the place to put a specific commitment such as that. I hope that you understand that, but I want to be clear and unequivocal in my comments supporting our livestock sector.

The Convener: Thank you.

Jim Fairlie: I find it strange that we are talking about Irish agriculture when the Irish are predicting a cull of 200,000 cows.

Cabinet secretary, will you give us your expectations regarding the future of agricultural funding support schemes in the longer term? Do you have long-term security of funding from the United Kingdom Government, given that it is the source of 96.4 per cent of the funding that comes to agriculture in Scotland?

Mairi Gougeon: We do not have clarity about funding beyond 2025, which makes it really difficult to plan. We have moved from a scheme that worked to seven-year programmes through the common agricultural policy, and, right now, we are working on yearly budget allocations, which makes it really difficult to plan for the future.

Jim Fairlie: We currently receive about 17 per cent of the annual UK budget for agriculture. There is some concern—unless I am confused—that that will be Barnettised as the situation develops. Do you have any indication from the Treasury about what the level of funding will be? If it did Barnettise the funding, what would that mean for the Scottish pot's ability to deliver for Scottish agriculture?

Mairi Gougeon: When the Bew review was undertaken, there was a commitment in it that there would be further discussion about future allocations and how they would work. We have continued to pursue that with the UK Government to try to discuss what future funding will look like. However, despite pressing for them, those discussions have never taken place.

I do not know whether George Burgess has anything to add to that.

George Burgess: As the cabinet secretary says, there have been no discussions, despite a number of requests for them.

I do not want to go down a Barnett formula rabbit hole, but I will give a little bit of clarity. The formula is not about absolutes, so it would not say that Scotland would get a population-related share of the spending in England. It works on increments or decreases, so, if the Treasury decided to do what Mr Fairlie suggests, it would be quite a complicated process. We simply have not had any discussions with the Treasury on it and, as the cabinet secretary says, the key point is that we simply have no clarity on funding beyond the next few years.

Jim Fairlie: Have you tried to have discussions with the UK Treasury on whether there will be future funding?

George Burgess: Yes.

Mairi Gougeon: Yes, we have. We have raised it repeatedly with the Department for Environment, Food and Rural Affairs and various secretaries of state that we have had throughout the time, but, as yet, there has been no response.

Jim Fairlie: Okay. In a previous Constitution, Europe, External Affairs and Culture Committee meeting, Jonnie Hall of NFU Scotland said:

“If we took an ELMS-type approach in Scotland and we phased out direct support and things such as less favoured area support for our more disadvantaged areas, that would be almost the death knell for Scottish agriculture.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 16 December 2021; c 9.]

If we wanted to adopt a different policy and we had a different scheme in Scotland to support less favoured areas, could the United Kingdom Internal Market Act 2020 present an issue for the funding that comes to Scotland?

Mairi Gougeon: That has been the concern with the passing of the Subsidy Control Act 2022. We felt that that could constrain our ability to create our own bespoke policies in the future. England has developed the environmental land management scheme, and it is only right and fair that we develop schemes that work for our farmers and crofters in Scotland and that recognise the very distinct and unique challenges that we face here.

LFASS was a particular area of concern, as we felt that, because of subsidy control, if we decided on that scheme or to continue a similar scheme in the future, that could be open to challenge. I believe that guidance in relation to agriculture has been published, but we still have concerns about that.

We did not think that agriculture should have been included in the Subsidy Control Act 2022 in

the first place. It was unusual for that to be done. I do not think that any of the consultation analysis in relation to why that should have been included in a subsidy control regime was shared with us.

I will pass over to George Burgess, who might have more information, particularly on the guidance point.

George Burgess: Agriculture is treated differently in terms of subsidy control at World Trade Organization and European Union levels. As the cabinet secretary has said, we simply do not understand the rationale for lumping it in with other sectors in the domestic scheme.

Jim Fairlie: Does it not concern you that you do not know why agriculture has been lumped in, given the fact that the funding that goes to it is almost double what it would be under a Barnettised system? I know that I keep going back to the Barnettised system, but that is generally how cash is generated other than through the block grant. Does it not concern you that there has been no explanation of why that was the UK Government’s approach?

George Burgess: It does. As the cabinet secretary has said, we expressed our opposition to that on a number of occasions and asked for justification. However, very little has come back by way of justification.

The Subsidy Control Act 2022 provides opportunities for individuals to challenge. DEFRA might be fine with our proposed schemes, but it would take only one person to mount a case about not being able to claim whereas a farmer or crofter in Scotland or Wales could claim and a challenge could be brought forward. That adds to the uncertainty.

Jim Fairlie: Okay. The summit that Rishi Sunak held in 10 Downing Street was very welcome. The UK Government seems to have had a change of direction on farm to fork. However, I was incredibly disappointed that you were not invited to that event, cabinet secretary, given that we are supposed to have a four-nations approach. Was any reason given for why you should not have been at a discussion at a UK level on what was going to happen with the farm industries across the UK?

Mairi Gougeon: I clarify that devolved Administration ministers were not invited to the event in Downing Street. George Burgess was invited to attend, so there was official representation there. The invitation came in at very short notice—I think that there was around a week’s notice beforehand. We raised our involvement in that at the interministerial group, given the devolved nature of what was being discussed, and the other devolved Administrations have raised that issue as well.

Jim Fairlie: It is absolutely vital that we get UK Government ministers to come to the committee to answer the questions that we continue to raise with the Scottish Government. We can get no answers to those questions, because the Scottish Government cannot get answers from the UK Government.

Alasdair Allan: I concur with that last point.

My question is about how the Scottish Government is preparing for the possibility that the UK Government will go in a different direction. Obviously, the Scottish Government is indicating its commitment to active farming in a way that we have not heard as clearly from the UK Government. Do you have any concerns about your policy direction being undermined by a radically different direction from the UK Government?

Mairi Gougeon: The concerns broadly relate to the Subsidy Control Act 2022 and the measures through that. There could potentially be challenges in the future to policies that we would look to introduce or to have here again, recognising our distinct and unique circumstances in Scotland and how our industry is different from that of England, for example.

09:45

We are still to see how that will develop, but it is frustrating, because we did not need to be in a position where agriculture was included. Because of the Subsidy Control Act 2022, we now have less freedom and flexibility to design our own policy than we would have had as a member of the EU. We will have to carefully consider that as we move forward and develop our own policy.

Rachael Hamilton: Last week in the chamber, in answer to a question from me, John Swinney said that the £33 million of funding following from the Bew review, which he had deferred when he was Finance Secretary, would be returned to the agriculture and rural budget. He did not give a timescale but said that that would happen in future years.

We know what the finance secretary, Shona Robison, said on Thursday about the financial black hole and the pressure that Scotland faces to cut spending or increase taxation, so do you have a timescale for the return of that £33 million?

Mairi Gougeon: I do not have a definitive timeline yet, but I will continue discussions with the Deputy First Minister about when that money will be returned to the portfolio.

I also want to be absolutely clear that that money is ring fenced. It must come back to the portfolio and cannot be spent in other areas. It will

be returned to the portfolio, but the detail of the timeline is still to be determined.

Rachael Hamilton: I do not know where that money goes. For clarity, has it been allocated to something else? Will it have to be found again? I do not suppose that you know that answer. It seems to me that the money can just come back if it has just been sitting somewhere. Has it been used? Does it have to be found and returned?

Mairi Gougeon: I will hand over to George Burgess, who can explain more of the detail of that.

George Burgess: The removal of that money from the RAI portfolio allowed the Scottish Government to reduce its overall spending and achieve a balanced budget. The money is not sitting in a bank account somewhere, but we have a commitment—as already expressed by the previous Deputy First Minister and again by the current Deputy First Minister—that that ring-fenced money will return to the portfolio in a future year.

Our central finance colleagues will have the difficult job of finding that money within the overall Scottish Government budget to ensure that it comes back into the portfolio. As we have already said, we have no certainty about funding from the UK beyond two years from now, so we might come to a point, not very far down the line, when we really need that money to come back in to plug a much larger hole.

Rachael Hamilton: That was in a previous financial year, so those things cannot be related.

The Convener: When is ring fenced not ring fenced? If you have taken £33 million out of a ring-fenced budget, that money is surely not ring fenced.

Mairi Gougeon: As George Burgess outlined, it helps us. The most adequate way to describe it is to say that it is almost like making a loan back to the centre that must be returned in future years.

The Convener: So, the money is not really ring fenced.

George Burgess: It is ring fenced.

The Convener: It is not in the budget any more.

George Burgess: It is different from any other Scottish Government funding, which could be moved from health to education to transport. This money is allocated for agricultural purposes and can be spent only on agricultural purposes.

The Convener: It was not spent on that. It was taken out of the agriculture budget and spent on something else.

George Burgess: It will come back.

The Convener: It was taken. The £33 million was taken out of the budget to be spent on something else.

George Burgess: It was taken out of the budget, but it was not spent. As I tried to explain earlier, it allowed overall Scottish Government spending to be reduced, to stay within the limits.

The Convener: The money was used for something other than the agriculture budget, which we suggested was not ring fencing.

Mairi Gougeon: It was offered as a saving; it was not spent in another area. That is what George Burgess is trying to make clear.

The Convener: It is not very clear.

Mairi Gougeon: I would be happy to follow up with more information and to detail that, if that would be helpful. The money was not spent in any other area; it was offered as a saving.

The Convener: It was just not in the agriculture budget, even though it was ring fenced.

George Burgess: Yes.

The Convener: We have heard about Barnett consequentials and about how agriculture in Scotland is different, so it needs to be viewed differently. What is your specific spending ask of the UK Government? Is it £650 million or more each year ad infinitum? Is the figure linked to inflation? What is your specific ask of the Treasury for the agriculture budget? The NFU is unclear about what the Scottish Government's ask is. What are you asking the UK Government for and how would that money be formulated?

Mairi Gougeon: Essentially, we are asking for our fair share of funding. We already face a shortfall in what we were promised on the back of Brexit—we were promised that agriculture funding would be replaced in full, which it has not been. We have a £93 million shortfall, so we expect at least that, if not more.

The Convener: So, you are looking for £720 million or thereabouts.

Mairi Gougeon: We would welcome more funding from the UK Government, but we should—

The Convener: This is really important. You need to have an ask. Are you asking for £800 million this year and next year? You talked about multiyear funding. How will you pull together the ask? Is it for £800 million or £900 million? How will you negotiate that? Will the funding be ring fenced? I need to have that clear in my mind because, when we asked the NFU about the subject, it was not clear. It said that having £650 million next year would be fine, more or less, as long as the funding was multiyear.

What are you asking the Treasury for? Do you have to submit a business plan for the agriculture spend that you foresee over the next five to 10 years, which the Treasury has to approve? If so, that would suggest that agriculture was not devolved. What is your ask of the UK Treasury for the next five years?

Mairi Gougeon: On all the points that you are talking about, the position is not as straightforward as going and asking for £X million in funding. As I said, we expect at least the previous promises to be fulfilled and the shortfall to be addressed, but the whole point is that we need to have the discussion on allocations and go through the detail.

The Convener: What is your position?

Mairi Gougeon: We need to discuss the situation with the UK Government.

The Convener: But what is your position?

Mairi Gougeon: I cannot set out for the committee today a definitive figure, because we need to have the discussion on how the allocations will work, but we are not even getting that far.

The Convener: You say that you have asked over and over for the discussion, but what we and Scottish farmers need to know is what your position is. Do you see the funding as a fixed grant? How do you proceed with that? Does the Scottish Government agree its agriculture policy then tell the Treasury that it needs £800 million to fund that? What is your policy? What would be your ideal situation? Is the figure inflation linked? Your ask of the Treasury is completely unclear.

George Burgess: I would simply say that it is probably not the best way to begin a negotiation by broadcasting your starting point and your fallback. That would not be a good thing for us to do at this stage.

The Convener: I do not think that farmers will think that that is a good position—they want some clarity. Do you not have a position on your ideal scenario—whether that is £800 million, £900 million or £1 billion—and how that would be formulated?

Mairi Gougeon: We are getting into questions about what we would be looking to go into a negotiation with that it is not appropriate for us to discuss right here and right now, as George Burgess said. We still have the critical points that need to be addressed—the complete lack of clarity and the shortfall so far that needs to be addressed in the interim at least and which we expect to be addressed going forward.

We want to discuss what an allocation would look like for Scotland, as was promised in

response to the Bew review. That promise has not yet been fulfilled and we are being ignored on that.

The Convener: What clarity are you seeking from the Treasury?

Mairi Gougeon: I have outlined that. Going forward, we need to have clarity and certainty about what funding will look like, because we cannot plan for budgets beyond 2025 or even get an overall figure, which constrains what we can do. Initially, we want clarity, but the most important thing is having the first conversation, which is not happening.

Alasdair Allan: I presume that the issue comes down to not what you ask for but what you are given. Were things simpler when you had a regime of seven-year funding, as was the case pre-Brexit?

Mairi Gougeon: Yes.

The Convener: So, one of your asks of the Treasury is for funding over seven years. The next bit is how you are going to formulate your ask. Is it going to be based on environmental schemes or on production? How would that be reviewed over a seven-year period? I would have thought that those are fairly straightforward questions. What is your position on what your desired outcome might be? Should you not focus on that rather than waiting for clarity from the UK Government? I do not know what it could base that on.

Mairi Gougeon: Again, we need to have that conversation. Ultimately, we want to be able to design and fund a system that will work for us, in Scotland, and not have those constraints from the UK Government.

The Convener: What constraints?

Mairi Gougeon: The ones that we have talked about so far—the potential policy constraints that we could face on what we design. We have talked about the multiyear funding as well. I think that you are trying to pin me down to responses that I cannot give you today. The important thing is that we need to make sure that we get the shortfalls addressed and that we at least start to have those conversations, which have not begun yet.

The Convener: It is a bit hypocritical. You cannot tell us about the £33 million shortfall, never mind any other shortfalls.

Mairi Gougeon: It is not hypocritical at all. I think that you are confusing points that are not remotely related.

Alasdair Allan: On a point of order, convener, that was unparliamentary language.

The Convener: I am seeking clarity. I would suggest that the position on the £33 million is not unlike the uncertainty that we get going forward.

Mairi Gougeon: I disagree with that, because £33 million will be returned to the portfolio and must be spent within it, whereas we do not know what funding will be allocated to the portfolio. We do not know how much we will get or when it will come.

The Convener: Okay. Thank you for that. We will move on to questions on forestry from Christine Grahame.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): We will have a change of temperature with my questions on trees. This whole thing is new to me, but I was surprised to learn that the policy aim is to have 21 per cent of Scotland covered by forests by 2032. I do not know whether that would be terribly popular with lots of people. I would like to know whether those trees are going to be Sitka spruce. I remember the whole of Galloway being covered by Sitka spruce. I also understand from the Scottish Land Commission that an unintended consequence may have been an increase in land values.

I am learning as I go, so I may be asking things that are very stupid, which I am well known for. I note that the criteria for getting grants have a great deal to do with what is planted and where. I appreciate that the consultation concluded just this month, so this question might be premature, but can you give me your thoughts on how the grant system might operate so that we get the right trees in the right places, communities and farmers are in the main content and we can reach your 21 per cent target?

Mairi Gougeon: I do not think that those are stupid questions at all. They are the issues that we are grappling with, because we absolutely want to see the right trees in the right places. That is about how we can have the right balance between commercial tree planting—to support the timber industry in Scotland—and native tree planting.

It is too early for me to talk about what changes might be made to the scheme, given that the consultation closed only within the past couple of weeks. I think that we had more than 200 responses to the consultation and we will need to analyse them before setting out what changes could be made. However, it is really about trying to identify what the barriers are at the moment and how we can support the better integration of trees on farms.

Christine Grahame: Do you agree that we did things wrong in the 1960s, 1970s and 1980s, when large swathes of Galloway, for instance, were planted in Sitka spruce? That was not good for the environment. There was a sort of boundary of native trees to conceal them, but it was really

just a great big harvesting crop. I hope that those days have gone. Do you agree?

Mairi Gougeon: We definitely learn lessons from what has happened in the past. Again, it is about getting the right mix with, as you said, the right trees in the right places.

Christine Grahame: You mentioned the timber industry in Scotland. I thought that we had lost it, actually. I think that Mr Burgess is indicating that that is not the case. There are several things that proper afforestation can do for wildlife and the climate, but also for industry. Mr Burgess, can you tell us whether that is part of your thinking about the kind of afforestation that will go ahead?

George Burgess: Forestry is not my area, specifically—

Christine Grahame: But you made a face when I said that I thought that we had lost that industry.

George Burgess: I can think of several significant timber businesses in Scotland, including in Ayrshire and near Inverness. There is a pretty active timber industry.

Christine Grahame: Are they processing Sitka spruce or other varieties?

George Burgess: They will be processing everything that is available to them.

10:00

The Convener: Cabinet secretary, your portfolio has changed somewhat. What are your responsibilities with regard to forestry? I know that you are responsible for more than just agroforestry.

Mairi Gougeon: I assumed the responsibilities in relation to peatland, forestry and land reform that previously sat with the Minister for Environment and Land Reform.

The Convener: Thank you.

Rachael Hamilton: Will you give us an overview of the work that the food security unit is carrying out?

Mairi Gougeon: Yes, I am happy to do so, and I will be happy to keep the committee updated on the unit's work as it develops.

As I outlined in last week's debate, the Scottish Government's food security unit is now up and running. Initially, it will focus on monitoring the risks and potential threats to the supply chain. Last year, we had the report from the food security and supply task force. That was a really useful piece of work because it highlighted where some of the evidence gaps might be and where further work needs to be done. It was helpful in making

recommendations for us to pick up. The food security unit can continue that work.

Essentially, the work of the unit is about monitoring the risks and identifying what we can do in the short term. Although it is, of course, impossible to know what challenges might come down the road, the unit is seeking to identify any potential threats that could harm our food security in the future.

Rachael Hamilton: It would be useful for the committee to receive, as soon as possible, an update—a strengths, weaknesses, opportunities and threats analysis—on the challenges that our farming and crofting sectors face. I believe that there has been a contraction of 12 per cent in the beef herd. Our critical mass is reducing rapidly: we are now down to 413,000 cattle.

Given that we face a contraction of a sector that provides an essential source of protein and an affordable source of food, I would like the food security unit to provide clarity on the future of the agricultural support scheme. It should also let us know what the risks are in the supply chain. Last year, the Scottish Government reduced the funding for abattoirs from £0.5 million to £5,000. I have those figures here, if the cabinet secretary needs them.

What is the food security unit trying to do, other than state the obvious?

Mairi Gougeon: I have outlined the initial piece of work that it will be doing. You asked for specific information about what the unit will be looking at.

Rachael Hamilton: But the contraction that I mentioned is happening as we speak.

Mairi Gougeon: Absolutely. I am happy to come back with further information. You asked for some analysis in relation to the issues that the unit will consider. I am happy to provide that.

However, you also mentioned specific areas that will not necessarily fall within the remit of the food security unit. For example, you asked for clarity on future support schemes. We have set out the route map in relation to that. It is not the food security unit's job to provide that information. We will provide that information according to the timelines that are outlined in our route map.

You mentioned the funding of abattoirs. I would like you to send me the further information that you referred to, because I want to interrogate the detail of it. There might be funding from different schemes. I want to understand the position more.

There are a number of pieces of work being done in other areas. We are taking forward a pilot in relation to our smallholders. Part of that work is about abattoirs and the future of processing. I

think that a survey will be undertaken quite soon, because I know that that continues to be an issue.

So, not all of those are specific pieces of work that our food security unit would take forward but there are links and given where the food security unit sits, there will be crossover and it will be engaging with colleagues and wider stakeholders. There are specific pieces of work that will be undertaken by other areas.

Rachael Hamilton: I will give you an example from the conversation that I had with islanders yesterday. It is really important that the food security unit engages with the individuals responsible for transport in the Scottish Government because the unreliable ferry services have caused issues in getting livestock to market. We know that islanders have been having to supplement feeding because of a lack of grassland, for example. They are booking slots way ahead to get the store lambs off the islands to market, but they are being let down by the ferries. There are animal welfare issues in the islands because of it. As you have already acknowledged, there is a huge impact on the wider economic benefit to the islands. If there is anything in the food security unit that is not currently transparent, it is that cross-departmental work.

Mairi Gougeon: That follows on from the discussion that we had last week, when we talked about the national islands plan. A lot of cross-Government work goes on, particularly by islands officials, that relates to that. I was in Shetland the other week and similar issues were raised. We liaise with our colleagues across Government to ensure that we tackle those issues as best we can.

The Convener: We will move on to fisheries. Annabel Turpie will be pleased to hear that.

Karen Adam: What progress has been made on the 12 action points that are set out in the future fisheries management strategy?

Mairi Gougeon: I am happy to provide an update. I do not know whether you want me to run through every single action, but I point the committee to the delivery plan for each of the actions that is set out in the future fisheries management strategy, which we published last year. That shows where we are against the strategy and how we intend to deliver against the actions. I will draw out some key pieces of work as examples, and Annabel Turpie will, no doubt, want to add to those.

The first action in the future fisheries management strategy is about promoting fisheries as a safe career of choice for people. We have provided Seafish with more than £400,000 to deliver free safety training for the fishing industry, and we have spent about £2.1 million on

encouraging new entrants into the industry, which was funded through the marine fund Scotland.

Work has been progressing in other areas, too. The future catching policy is listed as an action in the strategy. We consulted on that last year and we are due to publish the results of the consultation soon. It was quite a technical consultation. However, when we look to implement the policies, we expect to see some positive steps forward.

There are also actions in the strategy around local resilience, connecting to local markets and enhancing global markets for seafood. We have published a seafood strategy. We have talked about the importance of our seafood trade, of confidence in it and of its resilience, but our policy commitments relating to remote electronic monitoring and vessel tracking are important in delivering that, too. We have had a consultation on remote electronic monitoring, which we launched at the same time as the future policy consultation, and we hope to be in a position to publish the results of that soon. Many pieces of work have been under way.

Karen Adam: It certainly sounds like it. What work has been undertaken specifically on strengthening co-management processes?

Mairi Gougeon: There have been further developments in relation to that since the delivery plan was published. We have talked about strengthening our regional inshore fisheries groups. There has been a refresh of that network and we appointed six new chairpeople. We also extended the groups' reach out to 12 nautical miles. That is one development.

We have also done a refresh of our fisheries management and conservation group and how it operates. That is about getting all the different stakeholders round the table and trying to move forward on a lot of the key areas and issues that we face. That group has been established with terms of reference. We are using a hub-and-spoke model, so we have the main FMAC group and four sub-groups that feed into it. We have one on inshore fisheries, one on scallops and one on fishing and climate change. The name of the last one has escaped me, but I am sure that Annabel Turpie can provide that information.

As well as the refresh of that group and the regional inshore fisheries groups, we hope to undertake a review of the regional inshore fisheries groups in the summer next year, just to see how all of that is operating.

Annabel Turpie (Scottish Government): The four sub-groups are on inshore fisheries issues, scallop fishing, future catching policy, and fisheries and climate change issues. We intend to form one

other sub-group, which will focus on the fisheries management plan.

I will give an example of what the cabinet secretary has outlined. The sub-group on future catching policy will be heavily involved in this technically complicated, if not complex, policy area, so that we have expertise on that and can move things forward. That is a good example, because it has already met and it has terms of reference. We are planning future catching policy workshops over the summer, which that sub-group will be heavily involved in, because we cannot do this successfully unless our stakeholders are working with us at the table.

The Convener: There is a lot going on with marine protected areas, highly protected marine areas and international fisheries negotiations. Are any changes planned to the structure of Marine Scotland?

Annabel Turpie: We are focusing very hard on how we adapt to the increasing demands of our people across Scotland—our communities, our marine industries and the people of Scotland generally—in relation to how we use marine to play our part in addressing the climate change and biodiversity crisis. We are moving to more of a project and programme model. We deliver lots of services in the marine directorate. We do licensing and consenting, and last year we provided £9.7 million-worth of science data, whether that was surveys or analysis of them. We deliver those services, but we are also really focused on how we can best serve the people of Scotland by bringing people together in teams to deliver our increasingly demanding workload.

One of the advantages of that is that we are bringing together people who have real expertise and depth of experience in stakeholder relationships and fisheries, fisheries management and aquaculture alongside marine protection. In that way, we are ensuring that we look at things in the round. That also means that we can be quite fleet of foot when we need to be, which we are all experiencing the need for as demands increase.

The Convener: It might be helpful to the committee if you could set out the changes to the historical structure of Marine Scotland, how you see the structure going forward, and how that is going to improve the way that you work with the industry.

Annabel Turpie: I am very happy to do that. I can send something in writing.

The Convener: Thank you.

Ariane Burgess: How does the Scottish Government intend to use marine spatial planning tools such as the national marine plan and regional marine planning to mitigate the loss of

fishing grounds that is associated with potential HPMA's and forthcoming inshore fisheries management measures?

Mairi Gougeon: There are currently no spatially explicit measures in the national marine plan. However, with regard to our marine planning, the measures that are outlined in the national planning framework 4 and our regional marine plans all look to develop that spatial planning further.

We are developing a new national marine plan: NMP2. I believe that there will be a national planning forum meeting on that in the next month so that stakeholders can feed into that process. That specific spatial ask is being considered as part of the work that is being taken forward in relation to NMP2. Annabel Turpie might want to add some further information.

10:15

Annabel Turpie: I do not have much to add to what the cabinet secretary has outlined. Clearly, that is Ms McAllan's area of responsibility. However, I will say two things. First, as we mentioned in FMAC, it is really important to work with industry on how we can best engage strategically to join together all the multiple strands of engagements so that we are not discussing them in isolation. Secondly, we need to make sure that we have collective reporting across multiple programmes of work so that we can understand the progress.

In the future fisheries management strategy delivery, we will undertake a consultation on vessel tracking because we know that it is vital that we increasingly listen and capture as much data and analysis as possible on fishing patterns, as well as other industry patterns, so that we have the best socioeconomic analysis of that. That will enable us to look at matters—the environment, the community and social impact, the economic and marine impact and the industry impact—in the round. We are taking forward a whole suite of measures that will increase our ability to have really good socioeconomic analysis.

Ariane Burgess: Thanks for that. I hear what you say about HPMA's being in Ms McAllan's remit, but the issues are connected. The creelers and divers who have spoken to me have all said that they want to protect habitats for fish and shellfish so that they become more abundant and our seas can support more fishers fishing for more fish.

HPMA's, which are in effect fish nurseries, should be a policy that creelers naturally support. I believe that HPMA's, otherwise known as no-take zones, could still attract their support if the surrounding fisheries management measures give them sufficient space and protection from the

mobile sector. I am looking for your reassurance that the Scottish Government is exploring ways to support low-impact creelers and divers so that our inshores can sustain more jobs in fishing, not fewer.

Mairi Gougeon: We will be engaging with all those key sectors as we move forward. We have recently had a number of debates in the Scottish Parliament to consider some of the issues that have been raised, and it is really important we take all of that into consideration. However, that is also important in relation to the networks that I have talked about and the refresh of those networks that we have undertaken. That will be vital going forward, so that we can really encourage that working together and multilateral engagement as we look to work through some of the issues.

Annabel Turpie: I stress that we want to hear people's ideas. The co-production model is very much based on the fact that, together, we have all the bits of the answer. Government alone does not have all the answers and it would be foolish to suggest that that was the case. If people have great ideas that they want to try or analysis that they want to share with us, I ask that they please bring those things to us. That is what we want—there is an open-door policy and we use the stakeholder groups. We have to ensure that we are getting the best ideas that are out there. In the run-up to the HPMA consultation, we did 20 events out and about, because we wanted to hear people's ideas.

Ariane Burgess: Do you think that people in the sector and in general really understand the shifting baseline syndrome in our fisheries and the level of decline that we are facing? We have legal obligations to manage our fisheries to good environmental status. There are the indicators, and we understand from one of them—I think that it is number 11—that the sea bed is severely damaged, which is one of the reasons why we need to bring in more protections. It is all connected, and, if we want fishing for the future, we have to bring in those protections. However, I get the sense that people maybe do not fully understand that we are dealing with a very degraded situation and that, if we do not do anything now, there will not be anything to bring back.

Mairi Gougeon: In the engagement that I have had, I have certainly met a lot of passionate people in each of their sectors, who all greatly value and know the importance of the sustainability of the stocks that they fish and catch—

Ariane Burgess: It is not just the stocks; it is also the sea bed. When I bring this issue up, the discussion goes to stocks, but the sea bed is the

critical factor for fisheries, for bringing the fish stocks back and for the ecosystem that we need in order to see our waters flourish.

Mairi Gougeon: Absolutely, but it is in everybody's best interests to ensure that we have sustainable fisheries. That is what we want to see, and it is what the industry wants to see going forward.

We are seeing some fantastic pieces of work around our coastline that are being led by fishers. We have a couple of inshore fisheries pilots at the moment and, so far, they are showing us really positive results. There is the Mull crab box and we have one in the Outer Hebrides as well. That brings me back to what Annabel Turpie said about working with the different sectors, bringing all those different threads together and seeing how we can move forward.

I think that everybody appreciates that our seas are changing—there is no doubt about that—but we all want to ensure that we have a sustainable sector and sustainable industries. Ultimately, that is what we want to work together to achieve.

Rhoda Grant (Highlands and Islands) (Lab): I welcome the use of words such as co-production and the like because I know that there is real concern, especially around HPMA, that things are going to be forced on people from the top down. There is a wee bit of concern that that is being done by a different department and that it is not joined up. How can we join it up and make sure that co-production works?

When people speak to me, I hear that they are really keen on making sure that there are areas that are protected but that they do not want those to be imposed on them. They want to be part of making those decisions and making sure that fishing is sustainable. In a way, a lot has been lost because of that impression, so we need to change that. I know that creelers and divers are just as concerned as mobile gear boats are, so how can we involve them more? They are not going to come to Edinburgh and knock on your door.

Annabel Turpie: I apologise if I have given the wrong impression. The marine directorate is working on HPMA and MPAs as well as on fisheries management, FMAC, aquaculture and so on. It is the portfolio responsibilities that are split. Ms McAllan leads on HPMA and MPAs and Ms Gougeon leads on fishing and aquaculture, but we join up across those areas. We are bringing together the people with the expertise to work across them. One of the things that Ms Gougeon and I have been discussing doing over the summer is giving the committee a road map that shows how all those things link together. I think that something like that has been done for agriculture, which has been helpful. If the

committee would find that helpful, I would like to do it.

We are working through the many consultation responses that we have had. As the First Minister and Ms McAllan have said, she will be doing a summer tour. I know that Ms Gougeon is already meeting groups to discuss HPMA's and we will, of course, be working through FMAC as well. The need to listen to people is absolutely being heard loud and clear and understood.

Rachael Hamilton: I am sorry, but I have to disagree with you. I met a huge number of creelers and trawlers on Monday and they said that the phone rings off the hook to Marine Scotland and they never get any reply. They do not feel listened to. That is an important issue to take forward.

I am so glad that you are defending the industry in terms of sustainability, cabinet secretary, because there is so much misinformation out there. What I heard from the fishermen is that they are very concerned about their safety. They already have a challenging role to play in going out to get those sustainable protein sources to feed our nation. If they are displaced, it means that they will be forced to go into areas that are dangerous and they will not even be able to take shelter.

There are a number of issues that need to be worked through with Marine Scotland and I implore you to actually listen to people who know what they are talking about. I hear you say that you are listening, but that is not the case. They are devastated and they are on their knees. Many members of this committee agree with me.

Mairi Gougeon: If you are saying that people are getting in touch and they are not getting any response, I want to follow that up, because that should not be happening.

I have undertaken to meet some industry representatives, as I think I mentioned in my committee appearance last week, and I know that the Cabinet Secretary for Net Zero and Just Transition is doing the same, because we want to do that active engagement and go out and listen to people. I am not going to prejudge the outcome or the next steps of the consultation, because we are still working through the responses.

I appreciate the point about displacement and the issues that could arise from that, and that will all be factored in to any decision making as we go forward. We recognise the importance of the fishing industry to our coastal and island communities and to Scotland's wider economy. That is why we support the industry.

Our negotiations have secured £486 million for our fishers. Annabel Turpie mentioned some of the

figures for what we spend on science and how we are trying to encourage new entrants. We also spend £22 million on compliance. We continue to invest in the industry because we see a role for it now and we also want it to be sustainable for the future. Our blue economy vision also recognises food security and food production because they are critical for the future.

The Convener: Members should bear in mind that we are now fast approaching the end of the session, so they should try to keep their questions and answers as succinct as possible. We move on to a question from Alasdair Allan.

Alasdair Allan: The committee looked at the Clyde cod seasonal spawn closure some time ago, and one of the issues that we heard about was the certain need for vessel monitoring systems and other forms of monitoring. Could you say a bit more about what monitoring has taken place?

Mairi Gougeon: I would be happy to. Work has been undertaken by Marine Scotland scientists together with scientists from the University of Strathclyde to look initially at the stock assessments for cod, haddock and whiting. They have been collating the information that we have received from scientific surveys as well as information from commercial fisheries. With that information, they are looking to develop qualitative stock assessments.

Annabel Turpie, do you want to add anything further about the monitoring?

Annabel Turpie: Over the summer, we will engage with our stakeholders to gather their views on our strategic objectives. We will share our analysis of that when it has been peer reviewed and has gone through the usual checks.

Alasdair Allan: My other question is to ask for the timescale for that. Am I right in thinking that it is a two-year process? What kind of conversations are you having with fishermen? Fishermen seem to engage well with this form of science and there seems to be a lot of support for VMS in particular. What kind of engagement are you having with the fishing community about all of that?

Mairi Gougeon: You are absolutely right that we have used biennial closures, and this will be the second closure that we have had. We had a consultation in the lead-up to the previous closure, so we will undertake another consultation. I cannot give a definitive timescale for that yet, but we are looking to do it soon. We will continue to keep the committee updated on that.

Beatrice Wishart (Shetland Islands) (LD): To go back to the point about misinformation on fisheries, I refer members and anyone else who is listening to some excellent papers that the

Shetland Fishermen's Association has produced, entitled "Fishy Falsehoods", one of which is about the impact of trawling on the sea bed. It says that there is scientific evidence that shows that the

"true impact of trawling on the seabed is much less than the lurid headlines would suggest."

I will go on to my question. What key outcomes and challenges for the Scottish fishing fleet are emerging from the latest international fisheries negotiations?

Mairi Gougeon: As I outlined previously, we have secured about £486 million of fishing opportunities, but, within that, there are changes in the different stocks from previous years. One of the main challenges is the cut of around 30 per cent to the monkfish total allowable catch. I am really keen that we work together with industry and see how we can better develop the evidence base around that.

Although we have seen that cut in monkfish catch, there have been increases in other stocks, which are looking quite strong. We have seen some quite big increases in North Sea cod, North Sea haddock and whiting. Detailed information on the percentage changes is set out in a letter that I sent to the committee in January, but we have seen some positive moves in relation to some stocks. However, again, there are particular areas of challenge on some species that are valuable to Scotland.

10:30

Beatrice Wishart: I am pleased that you mentioned monkfish, given its importance and value to the white fish fleet. If more work was done by Marine Scotland to properly assess monkfish stocks—doing that could avoid further quota cuts—would you ensure that the importance of monkfish to Scotland is matched by increased scientific efforts? Annabel Turpie highlighted earlier that you provided £9.7 million-worth of science data. Is there any intention to increase that?

Mairi Gougeon: We want to work with industry to see how we can better improve scientific efforts—on monkfish, in particular. That is exactly what we are looking to do.

Alasdair Allan: We have touched on this already, but the REUL bill that is going through the House of Commons will touch on—if that is the right way to put it—areas of devolved competence, some of which affect food safety and other areas that are of interest to the committee. What are the Scottish Government's expectations regarding UK ministers use of powers in the bill, given that we appear to be in territory where the UK Government does not need to obtain consent from the Scottish Parliament on some of those issues? Can you tell

us what point that debate has reached in the areas that affect your portfolio?

Mairi Gougeon: I will certainly try to. The bill has been a bit of a moving feast as it has progressed through the UK Parliament, so I might ask George Burgess if he can give you some more specific details on that.

We started in a position whereby all retained EU law was intended to be sunsetted at the end of this year. Thankfully, the UK Government has changed course from that. Unfortunately, a lot of work had already been undertaken to prepare for it, because it was going to be a very significant challenge. Instead, the UK Government has published a schedule of about 587 instruments that it is looking to sunset towards the end of the year.

We had an interministerial group meeting on Monday 22 May, at which I asked the then DEFRA secretary of state whether there would be any further changes to the schedule and what the process would be if there was a disagreement in relation to what was on it. There has been continuing movement, particularly over the past week, in how that work has developed.

Alasdair Allan: Are you now talking about ping-pong between the two houses of the UK Parliament?

Mairi Gougeon: Yes. The process for legislative consent had been triggered, but the UK Government said it would be carrying on regardless of whether it received that confirmation, so that has been frustrating throughout the process.

The key concern in all of this is that the bill contains powers that would mean that the UK Government and its ministers could amend or revoke devolved legislation. There is no consent mechanism in the legislation. Even though there are 587 instruments in the schedule, the whole of retained EU legislation, where it relates to devolved areas, is open to the UK Government. We are talking about thousands of pieces of legislation that the UK Government would have the power to change until 2026.

The Convener: What is the Scottish Government's position on that? This committee and the Net Zero, Energy and Transport Committee will probably have in their remit the bulk of the laws that will be revoked, reviewed or whatever. Once that legislation is sitting with the Scottish Ministers, how will you engage with committees on that?

Mairi Gougeon: I want to be clear that we will absolutely do that engagement. There have been frustrations about the pace that the bill has moved at. We have been trying to get answers to those questions so that we can get the correct

processes in place. As far as I am aware, those discussions are on-going. George Burgess may have more information.

George Burgess: Some discussion was already going on between the parliamentary authorities and the Scottish Government about the handling of what we expected would be a considerable number of statutory instruments. The original plan was to save bits of retained EU law. As the cabinet secretary outlined, the recent change in moving to a schedule to repeal 500 or more instruments means that fewer instruments will come to the Parliament. We simply do not know at this stage how many instruments there might be, but this will probably be a smaller than expected issue for the Scottish Government and Parliament to deal with.

We have been making efforts in recent weeks to scrutinise the list of 500 instruments to ensure that there is nothing there that would be a problem for us. Most of them, fortunately, seem to be old or defunct bits of European or domestic legislation that will not cause a problem. We are ensuring that nothing slips through the net.

Rhoda Grant: I have a quick question on crofting reform. We were promised reform in the previous session of Parliament, but that slipped because of Covid. It is really urgent. It may not seem a lot to many people, but it is stopping crofting development. When will reform happen and can you guarantee that it will happen during this session of Parliament?

Mairi Gougeon: I have made commitments about that. As I said in connection with the agriculture bill, I cannot give a definitive timescale as to when any legislation will be introduced.

It is important to highlight the work that is already under way. I think that this issue is really important and I want to assure the committee that I hear what you are saying. We have increased the Crofting Commission's budget and have been working with the commission to see how we can start to address some of the issues that it is up against, which I hope will start to improve things.

We re-established the crofting bill group last year. It has met 10 times so far, more meetings are planned and all the relevant stakeholders are being considered. The bill group has considered some of the issues that were raised by the previous rural committee in its report on crofting. In his contribution to the agriculture policy debate last week, Alasdair Allan raised something that I did not have an opportunity to touch on in my summing up, which is that there has been a degree of consensus on tackling some of the issues.

Good progress is being made. I assure you that work is progressing well and that it is still our

intention to introduce crofting reform. I will be happy to keep the committee updated.

Rhoda Grant: Will that happen in this session of Parliament?

Mairi Gougeon: That is the commitment that we have set out, because we realise the importance of the issues.

Alasdair Allan: Some specific details of that subject relate to the wider debate about agricultural policy. As you have alluded, there have been efforts to identify problems, and the crofting law slump exists. As I and many others have pointed out, a single shareholder in a common grazing has the right to veto environmental and agricultural projects. I do not want to list all the issues, but, in some places, croft tenancies are changing hands for truly ridiculous sums of money that clearly have nothing to do with agriculture. Is the Government beginning to give thought to some of those specific issues in advance of any legislation?

Mairi Gougeon: Some of those issues are being picked up and discussed by the crofting bill group. We are keen to make progress if there are areas where we can do so without requiring legislation. I appreciate the points that you have raised today and during last week's debate, and I assure you that those points are very much in the minds of members of the bill group as they do that work.

The Convener: I apologise to members that we have run out of time for questions, but we will write to the cabinet secretary on some topics, specifically licensing activities that involve animals, and the Government's position now that the Animal Welfare (Kept Animals) Bill—which the Scottish Government might or might not have been minded to consent to—will not go through the Westminster Parliament. Also, timescales for proposed—

Christine Grahame: I am sorry to interrupt, but can we also ask about rescue and rehoming centres? Some of them are quite well meaning but amateur. Will that also be part of the work?

Mairi Gougeon: I can give a quick assurance that that will be part of the consultation. We will be looking to announce that and take those licensing proposals forward in the coming weeks.

The Convener: Okay—that is helpful. We are looking for more information on the recommendations from the programme board, on timescales for the proposed Scottish veterinary service and for commencing substantive sections of the good food nation plan, and on where we are with the development of the good food nation plan and setting up the Scottish food commission.

Mairi Gougeon: I can give a very quick response in response to that last point. I wrote to the committee—I think that that was in January—with a broad outline for the timetables for when we would introduce the good food nation plan and the commission. We are still working to those timescales; nothing has changed and nothing has slipped in relation to that. We hope that we will be looking to consult on a draft good food nation plan over the coming months.

The Convener: Thank you very much. We very much appreciate your time this morning—

Jim Fairlie: On a point of order, convener. My colleague Alasdair Allan raised a point of order with you earlier on, which you did not seem to have answered, about whether your language—when you accused the minister and her official of being hypocrites—was appropriate. The cabinet secretary has been extremely generous with her time in coming to this committee on multiple occasions.

I would also like to ask you these questions: have we, as a committee, written to the secretary of state for agriculture in Westminster? Have we had a response to that request for her to appear here? If so, what was that response?

The Convener: Thank you, Mr Fairlie. I think that the word “hypocritical” is not necessarily unparliamentary, given what we were discussing. I think that it was a hard line of questioning, and I am comfortable with that.

I will refer to the response that we gave to Mr Fairlie last week, which is on the record, that we would write to the UK Government after our meeting with the cabinet secretary. It is a matter of record that that was raised last week.

Jim Fairlie: Have we specifically written to the minister to ask her to attend our committee, given the number of areas where there is crossover between policies?

The Convener: Mr Fairlie, maybe if you paid attention you would remember that, last week, we said that we had had a response from the cabinet secretary to say that they were not able to attend at that time. That is published and it is a matter of public record, so it is on the website. You would have received that correspondence. Last week, we also touched on the topic of further information from the UK Government, and the decision was taken a few weeks ago that we would write to the secretary of state on the back of this meeting with the cabinet secretary to raise any concerns that we had from that. I think that you will see that both of those issues have been covered.

Jim Fairlie: Can I clarify? We have written to the secretary of state—

The Convener: Mr Fairlie, I think that I have already put on record exactly what you have asked. I am now going to suspend this meeting—

Jim Fairlie: No, I am not actually clear on what your response was.

10:43

Meeting suspended.

10:44

On resuming—

Subordinate Legislation

Animal By-Products and Animal Health (Miscellaneous Fees) (Scotland) Regulations 2023 [Draft]

The Convener: Our second item of business is consideration of the draft Animal By-Products and Animal Health (Miscellaneous Fees) (Scotland) Regulations 2023. The instrument is subject to the affirmative procedure. I welcome back to the meeting Mairi Gougeon, the Cabinet Secretary for Rural Affairs, Land Reform and Islands, and her officials from the Scottish Government: Alastair Douglas, head of disease control branch, animal health and welfare division; and Keith White, solicitor.

I invite the cabinet secretary to make an opening statement.

Mairi Gougeon: Thank you, convener. I am happy to appear before the committee to discuss legislation that will introduce changes to the fees structure of the Animal and Plant Health Agency to uplift the fees for some statutory services that are delivered by that organisation on behalf of Scottish ministers and to deliver the Government policy of full cost recovery for those specified schemes.

The schemes covered by the instrument that the committee is considering cover animal by-products, salmonella control programmes, artificial breeding controls, checks on live animals at border control posts and the poultry health scheme for work carried out to allow producers to trade domestically and/or internationally.

Charges for those services also apply across the English and Welsh Administrations. The Welsh Government and the Department for the Environment, Food and Rural Affairs also have full cost recovery policies and also intend to introduce legislation to uplift fees for those statutory services.

The Animal Health (Miscellaneous Fees) (Amendment and Revocation) (Scotland) Order 2023 amends the Poultry Compartments (Fees) (Scotland) Order 2010 by revoking provisions that currently allow value added tax to be added to fees charged. His Majesty's Revenue and Customs has indicated that statutory fees that can be performed only by the Animal and Plant Health Agency are out of scope for VAT and that no VAT is therefore due upon them.

No business and regulatory impact assessment has been prepared on this occasion, because the Animal and Plant Health Agency has already carried out engagement with the affected sectors

to understand the impact of the planned changes to fees. The affected industry sectors are fully aware that the APHA has been moving to full cost recovery for most such charges and that no significant impact on business is anticipated.

I end my comments there and I am happy to answer questions from the committee.

Rhoda Grant: I have some concerns about the charges. I understand that you are going for full cost recovery and that the charges have not been increased for some time for some time. Most charges are now going up by at least 25 per cent and some are doubling. Have you considered the impact that that will have on farmers and crofters?

Mairi Gougeon: There is a project board, which has been overseeing the full cost recovery. My officials will probably be able to tell you who is on that board, but I know that there are stakeholders from each of the Administrations on it.

Farmers and crofters have known that the policy is coming and, because of the engagement that has been undertaken by APHA, we do not expect a significant impact. We have been overcharging in some areas and undercharging in others, which is why the phasing in of increased charges is important. We will introduce a 50 per cent uplift this year and will increase that to 100 per cent full cost recovery next year. Phasing that in, rather than doing it in one fell swoop, is a way of recognising concerns about charges.

I am sure that I will be corrected if I am wrong, but I think that the only exception is in relation to work at border control posts, where there will be 100 per cent cost recovery this year.

Rhoda Grant: Have any producers expressed concerns about that, or are they all reasonably relaxed because that is not a huge part of their business?

Mairi Gougeon: As far as I am aware, no concerns in relation to that have been expressed.

Alastair Douglas: Any concerns are really just about the process. There is continuous dialogue with the Animal and Plant Health Agency about efficiencies and savings to streamline the processes.

The Convener: The fees are calculated based on true costs. It is a bit of a coincidence, but this has coincided with acute inflation and there is no reference to inflation rates. Can you expand on how the fees were calculated?

Alastair Douglas: The full methodology that APHA developed will be published on the gov.uk website. I do not have that to hand, but it can be shared with the committee in advance of publication so that there is transparency and to let members see how the methodology has changed.

The Convener: Will that have any impact on, or implications for, the difference between domestic and international trade?

Alastair Douglas: I do not have the answer to that question. I will have to take that one away.

The Convener: As no other members have any questions, I invite the cabinet secretary to move motion S6M-08906.

Motion moved,

That the Rural Affairs and Islands Committee recommends that the Animal By-Products and Animal Health (Miscellaneous Fees) (Scotland) Regulations 2023 be approved.—[*Mairi Gougeon*]

Motion agreed to.

The Convener: Is the committee content to delegate authority to me to sign off a report about our deliberations on the affirmative instrument?

Members *indicated agreement.*

The Convener: That completes our consideration of the instrument.

Animal Health (Miscellaneous Fees) (Amendment and Revocation) (Scotland) Order 2023 (SSI 2023/143)

10:50

The Convener: Our next agenda item is consideration of a negative instrument: the Animal Health (Miscellaneous Fees) (Amendment and Revocation) (Scotland) Order 2023. Does the committee agree to make no recommendations in relation to the instrument?

Members *indicated agreement.*

The Convener: I suspend the meeting for a 10-minute comfort break.

10:50

Meeting suspended.

10:59

On resuming—

Wildlife Management and Muirburn (Scotland) Bill: Stage 1

The Convener: Our next item of business is an evidence session with the bill team for the Wildlife Management and Muirburn (Scotland) Bill. We have scheduled approximately 90 minutes for the session. I welcome Hugh Dignon, head of the wildlife management unit; Leia Fitzgerald, wildlife legislation team leader; Sam Turner, wildlife management team leader; and Norman Munro, solicitor.

I will kick off the questioning. How did the Scottish Government come to the conclusion that a ban on glue traps was more appropriate than licensing, given that concerns were expressed in the consultation that such a ban might cause problems in settings such as hospitals, schools and hospitality?

Hugh Dignon (Scottish Government): The primary driver for the Government's position on a ban on glue traps was the report by the Scottish Animal Welfare Commission, which considered in some detail whether, on balance, some sort of limited use of glue traps was justified or whether a total ban was the right way to go. We were heavily persuaded by that report. We also recognised that there would be considerable difficulties in operating a licensing scheme when there was no recognised body for the people who would be using glue traps in such circumstances.

Leia Fitzgerald might want to add to what I have said.

Leia Fitzgerald (Scottish Government): We considered going down the licensing scheme route. As Hugh Dignon said, one of the primary drivers for a ban was animal welfare. We were also satisfied that there were plenty of satisfactory alternatives for rodent control.

In addition, we looked at what was going on in the rest of the UK. We looked closely at the evidence that was provided during the debate in the Welsh Parliament, and we considered the international position. For example, we looked at what was happening in the Republic of Ireland, where glue traps are banned.

We also spoke to professional pest controllers. We contacted all the local authority pest controllers in Scotland, and the majority who responded indicated that they did not use glue traps.

Taking all that evidence together, we were content that the option of a complete ban was the best way to go.

Christine Grahame: I very much welcome the proposed outright ban on the use of glue traps, because they are the cruellest form of pest control. Why was a similar attitude not taken to the use of snares? I might have got this wrong, but I think that the Scottish Animal Welfare Commission recommended a ban on the use of snares.

Hugh Dignon: The first thing to say is that the issue of snaring is still under consideration. If we decide to introduce a ban on snaring, we will draft such provisions in time for a Government amendment to be lodged at stage 2. That is still under consideration.

Christine Grahame: I did not hear the answer because somebody coughed. Am I correct in saying that, although a ban on snaring does not appear in the bill as laid, serious consideration is being given to lodging an amendment to introduce such a ban at stage 2?

Hugh Dignon: Yes, that is correct.

Christine Grahame: That alerts the committee to the fact that it might require to take evidence on that matter at stage 2, because that would represent a substantive addition to the bill.

Hugh Dignon: Yes. We will certainly ensure that any provision that sets out to ban snaring will be with the public and with stakeholders in good time for evidence to be taken before stage 2. That is a certainty.

Christine Grahame: Thank you for that clarification.

Jim Fairlie: One of the responses was from the owner of a pest control business, who said that they had concerns about banning the use of glue traps in food-designated areas. Was that considered?

Hugh Dignon: Yes. One of the key arguments for retaining the use of glue traps is so that they can be used in food production areas and in some health settings. However, as my colleague Leia Fitzgerald said, there are alternative means of rodent control that are used by other pest controllers and other local authorities. We envisage that there will be a transition period to allow people to develop alternative methods and to gain expertise in the use of other techniques.

Jim Fairlie: If you ban the use of glue traps, will you ban the sale of them?

Hugh Dignon: Leia Fitzgerald will speak about that.

Leia Fitzgerald: A ban on the use of glue traps is included in the bill, but we believe that a ban on their sale would engage the United Kingdom Internal Market Act 2020. We have had discussions with the UK Government about that, and we will continue to discuss the issue with it.

We hope to be in a position, ahead of stage 2 or stage 3, to lodge an amendment to ban the sale of glue traps, but we must consider the matter in conjunction with the UK Government, given the interplay with the 2020 act.

The Convener: I have a question on something that Christine Grahame touched on. What information are you currently lacking that is preventing you from including a ban on snares in the bill? If you wait until stage 2 before including such proposals, that will ultimately reduce the committee's ability to scrutinise them.

Hugh Dignon: I think that a ministerial announcement on the direction that we want to take on the use of snares is fairly imminent. We have gathered quite a lot of evidence not only from the likes of the Scottish Animal Welfare Commission—as Christine Grahame mentioned—but from snaring practitioners, with whom we have been in touch through the land management groups.

The evidence that is missing and that we are still gathering is on a new development in snaring techniques that the land management groups have talked to us about, which they call humane cable restraints. We thought that it was important that we take that into account. We also decided that it would be helpful to seek from them any empirical evidence that they might have on the impact on welfare of the new humane cable restraints. That is the last piece of the jigsaw. We anticipate getting all that evidence as a package to put before ministers very shortly, and there will then be some sort of ministerial decision.

The Convener: In that case, why did you not delay the introduction of the bill in order for the provisions to be included and go through the full process of scrutiny? We are talking about only a few weeks.

Hugh Dignon: We had hoped to get the position on snaring ready in time for the introduction of the bill, which was planned with the parliamentary authorities and our parliamentary managers, in order to include snaring provisions. However, as I said, there were some later developments, and we thought that we should wait for those significant new pieces of evidence before drafting the relevant provisions. We wanted to ensure that we were dealing with the full picture.

Christine Grahame: Can I follow that up?

The Convener: Okay.

Christine Grahame: It is just on a point of process, rather than a substantive issue. I take it that the bill is already drafted and ready to go.

Hugh Dignon: Yes, it has been drafted and has already been introduced.

Christine Grahame: Is it possible for the proposed amendment that is intended to be lodged at stage 2 to be brought before the committee at stage 1 in order for us to take evidence on it during our stage 1 consideration, rather than us having to wait to take evidence at stage 2?

Hugh Dignon: Yes, that is our intention.

Christine Grahame: That would be helpful to us.

The Convener: When you say “Yes”, given that we have recess in four weeks’ time, when do you think that that is likely to happen? We have to plan our committee sessions on the bill. When do you expect that to be available?

Hugh Dignon: I would hope that we would be able to provide that proposal before recess, but I am not 100 per cent certain on that. Does Sam Turner have any further information on the timing of that?

Sam Turner (Scottish Government): Potentially, we could do that. I am not able to commit to that and say that it will definitely be done by then, but that is what we are hoping.

The Convener: Thank you.

Rachael Hamilton: Mr Dignon, can you clarify whether you have consulted others, such as vets, on humane cable restraints?

Hugh Dignon: That is the part of the picture that we are trying to complete. We have asked the land management groups that have said to us that the restraints are a significant new development in snaring for empirical evidence that they improve animal welfare outcomes. That evidence will primarily come from veterinarians.

Rachael Hamilton: Do you already have that evidence?

Hugh Dignon: We have some of it. The land management groups have said that there might be more to come.

Rachael Hamilton: Are they supportive of that development?

Hugh Dignon: The groups that have written to us are supportive.

Alasdair Allan: You have touched on some of this, but if alternatives to glue traps are available—as has been indicated to you—why is the Government anticipating a transition period?

Leia Fitzgerald: Different members of the public and pest controllers will use different methods. The transition is designed to give people time to replace glue traps with other methods and to give shops that currently sell glue traps time to wind down their stock. It is also to give us time to

publicise the changes that are coming and make people aware of them.

Jim Fairlie: What evidence is there to justify the need for additional regulation of grouse moors? Has an on-going link been established between grouse moor management and raptor persecution, and why is licensing preferred to the alternatives? What alternatives did you consider?

Hugh Dignon: The bill and the introduction of a licensing regime are the latest and, we hope, last step in a long series of Government initiatives to tackle raptor persecution, which has been associated with driven grouse moors. There have been a number of other initiatives over the years—the introduction of vicarious liability, a pesticide disposal scheme and restrictions on general licences. You will be broadly familiar with the history, but there was a report into golden eagle tags that had disappeared or stopped sending signals in suspicious circumstances. That report showed that perhaps up to a third of tagged golden eagles were disappearing in circumstances for which the most likely explanation was wildlife crime, and most of those were on or around grouse moors.

There is a long history of wildlife crime that is associated with some grouse moor businesses—it was by no means all such businesses, but there was certainly a clear association. As I said, there have been initiatives in the past, and throughout that period, ministers have said that we will continue to take steps until the illegal killing of birds of prey on grouse moors is brought to a halt.

We believe that the licensing scheme, which was recommended by Professor Werritty, is perhaps the most effective way of delivering a meaningful sanction and an effective deterrent to wildlife crime on grouse moors. That is what has brought us to this stage; that is why it is in the bill. I am not sure whether that answers your question, Mr Fairlie.

Jim Fairlie: What alternatives were considered? You have introduced vicarious liability and taken measures to do away with poisons, as you said. Was there any option other than licensing at this stage? Why did vicarious liability not work?

Hugh Dignon: I will deal with your last question first. I do not think that we would accept that vicarious liability did not work. In fact, the other day, we had a presentation in my office from someone from Police Scotland who said that, in his opinion, it had worked in that it had had a serious deterrent effect. However, it clearly did not do the whole job, because raptor persecution continues. The problem with vicarious liability is that it depends on there being a criminal conviction. One of the long-running difficulties in this area has been the difficulty of securing a

criminal conviction because there are very few, if any, witnesses, there is no victim who is able to speak up and these things happen in remote places. That was a problem with vicarious liability.

Jim Fairlie: Was the issue the burden of proof?

Hugh Dignon: Yes, it was the criminal standard of burden of proof, which is that something has to be beyond reasonable doubt. It was hard to establish that, and it was hard for law enforcement to establish that a particular individual had carried out a criminal act and to prove that beyond reasonable doubt, because of the difficulties of such acts having been carried out in remote locations and there being few witnesses in such circumstances, as I said.

Since at least 2007, there has been a series of escalating measures as the Government has sought to tackle the issue. We are now in a position where we think that licensing is justified. We recognise that it is quite a significant measure and that there will be a serious and significant impact on a business that loses its licence. The next step beyond that would be an outright ban, and we are certainly not contemplating that at present. That is the only step that we would see as realistic and practicable after a licensing scheme.

We are hopeful that the licensing scheme will provide an effective deterrent and meaningful sanction. If it does not, we do not know where we would go, beyond having the ban.

11:15

Rachael Hamilton: You mentioned the Werritty report, which says that licensing should be introduced only if raptor populations have not improved. What evidence do you have to suggest that raptor persecution and grouse moors are connected? On what objective evidence are you basing your assertions on the rates of raptor persecution? The golden eagle project is eight years old, so it is now out of date.

Hugh Dignon: So, in terms of the evidence—

Rachael Hamilton: I mean the evidence that connects grouse moors to raptor persecution.

Hugh Dignon: As I said earlier, that is a long-term pattern. We can consider that convictions for raptor crime have quite often been associated with gamekeepers on grouse moors. However, there have not been that many—160 crimes were recorded during the 10-year period between 2011 and 2021. For a large number of the crimes that involved raptor persecution, the carcasses were found on or around grouse moors.

Rachael Hamilton: Was there evidence to suggest the connection? What did you use—DNA or other things? How did you connect the crimes

to the grouse moors or establish that the persecution was committed by somebody who was managing a grouse moor?

Hugh Dignon: As I have said, it is a mixture. First, when there were convictions, the people who were convicted were often associated with the grouse moor business. Secondly, carcasses were usually found on or around grouse moor businesses. Thirdly, there is a clear motivation around the control of raptors to protect grouse stocks and promote the grouse moor business. Hard and clear evidential links and pretty strong circumstantial links exist.

Rachael Hamilton: Can you provide the committee with that specific evidence so that we can take a look at it? I cannot see it in the information that we have. The offences overall in the wildlife crime reports are not split between those that connect to grouse moors and others. The numbers of raptor persecution offences are coming down, so clearly whatever is happening out there is working.

Professor Werritty said to the Government in his recommendations that, if the raptor population numbers did not improve, a licensing scheme would be appropriate.

Hugh Dignon: We can certainly provide you with more evidence that associates raptor persecution with grouse moors. We can itemise in writing the sort of thing that I have been talking about.

The Convener: That would help, because there appears to be a lack of firm evidence on the positive or negative effect of the legislation that we have had in the past few years since the last substantive report was done in, I think, 2012. We do not know whether things are improving or getting worse as a result of the legislation that has been put in place since then, such as the increased penalties and so on. In relation to the Werritty recommendations, it is not clear that things are getting worse and that we should have a licensing scheme.

Hugh Dignon: We can provide you with the evidence that Ms Hamilton has asked for around why we believe that raptor persecution has in the past been strongly associated with driven grouse moors.

The Convener: To know whether it has increased or decreased since 2012 would be helpful, too.

Hugh Dignon: I am not sure of the significance of 2012.

The Convener: I beg your pardon—it is since 2017.

Hugh Dignon: Since the publication of the Werritty report, the raptor persecution situation has undoubtedly improved. The Government welcomes the reduction in the incidence of crime; however, it has not gone away. Since the Werritty report was published, Police Scotland has still recorded raptor crime offences, and there have been 10 in the past couple of years. We can certainly provide the statistical proven link—in other words, the link between criminal convictions and grouse moor management.

Rhoda Grant: Just for clarification, you said that a third of the golden eagle population was disappearing. Is that the population around grouse moors, or are you talking about the Scottish golden eagle population as a whole?

Hugh Dignon: It is a third of the tagged golden eagle population. The assumption was that the people who were doing this were not discriminating in favour of shooting or killing only tagged birds and therefore they would tend not to take action against a tagged bird if they were able to. If we are talking about a third of tagged birds, we can extrapolate from that that it is a third of all birds—that is, golden eagles across the whole of Scotland. Where they disappeared or where they were found, though, the evidence overwhelmingly pointed to an association with driven grouse moors.

Rhoda Grant: Do you have a map that shows those disappearances?

Hugh Dignon: Yes.

Rhoda Grant: Could you share it with the committee?

Hugh Dignon: I do not have it in front of me, but we can certainly provide you with it.

Rhoda Grant: Thank you.

Christine Grahame: I am trying to understand the issue of licences, which are terribly important in all of this. I take it that the licence will go with an area of land.

Hugh Dignon: Yes.

Christine Grahame: In that case, to whom will the licence be granted? After all, many large estates in Scotland are owned by corporate organisations that are registered abroad and are therefore not subject to Scottish jurisdiction. I wonder whether Mr Munro, your solicitor, will explain this to me. How will you ensure that, if a licence is breached, there is somebody—a named person—who can be taken to court and that things do not happen vicariously?

Norman Munro (Scottish Government): The applicant for a licence may be the owner of the land or somebody acting on their behalf—say, a groundskeeper. If an offence is committed in

connection with the management of the land, the bill contains provision for a power allowing the relevant authority to suspend or revoke the licence if it is satisfied that a relevant offence has been committed by someone connected with the ownership of the land. It is not the case that a licence will be revoked if a third party who is unconnected with the land commits a relevant offence—it would have to be somebody who is connected with the ownership or management of the land in question.

Christine Grahame: Just to complicate things a bit more, I know that land can be owned by several landowners across several estates. If there are multiple owners of the land, none of whom is resident in Scotland, to whom is the licence granted? The issue that I am trying to get at is how we ensure that people are liable, so that when someone asks, “Who is liable?”, we can say, “I know—it’s this person.”

Norman Munro: The person to whom the licence is granted will be set out in the licence itself. That information will be provided to the licensing authority in the application, and the licence itself will set out the person to whom it has been granted. As a result, there will be a direct trail and no ambiguity of the kind that you have described.

Christine Grahame: So, will there be a named person on the licence? I am just trying to understand this.

Hugh Dignon: Clearly, the key sanction is the suspension of the licence, which will mean that no grouse shooting can take place. Even if we are talking about some shadowy company in the Cayman Islands or something, it will not matter, in a way, because the grouse shooting business will have to stop. A withdrawal or revocation of a licence will mean no more grouse shooting on that land, and anyone who shoots grouse there will be committing an offence.

Christine Grahame: But how do you revoke a licence? Do you not need a named party? After all, the suspension could be temporary.

Hugh Dignon: Well, to whoever has been granted the licence, it will be revoked, so it does not really matter—

Christine Grahame: —where they live.

Hugh Dignon: Indeed.

Christine Grahame: Or whether it is a company in the Bahamas.

Hugh Dignon: The licence holder for the piece of land will need to be associated with the management or ownership of the land but, even if it is hard to get hold of them, you will still be able to revoke the licence.

Christine Grahame: Therefore, it does not matter if you cannot serve a notice on them or anything like that.

Hugh Dignon: I ask Norman to say whether that would be an issue.

Norman Munro: No, it would not be an issue, as long as there was the ability to provide the reasons for the revocation to the person in question. An address will be provided as part of the application, so there will be a way to communicate to the person to whom the licence was granted that the revocation has taken place. Therefore, we would not go down the formal route of serving a notice, but information about the revocation would still need to be provided.

Christine Grahame: Therefore, to put it in simple language, I should not have any concerns about estates that have two or three companies operating on them that are registered abroad. You will still be able to revoke the licence. There will not be problems about intimation or anything such as that. You could put it in a newspaper or the internet, but you will be able to revoke the licence—you will not need to actually serve someone with a notice.

Hugh Dignon: If they have been able to apply for a licence and provide the necessary information to do that, it will be possible to revoke it.

Christine Grahame: That is fine. I just wanted to clarify that, because it is an issue that might come up.

Hugh Dignon: Yes, that is right.

The Convener: I have a point of clarification about something that Norman Munro said. Is it the case that there is no need for the regulator to be satisfied that a crime has been committed in order to revoke a licence—that there only needs to be a police investigation for a licence to be revoked? That is what the bill suggests. Is that correct, or does the regulator need to be satisfied that a crime has been committed?

Norman Munro: There are varying degrees with regard to revocation or suspension taking place. Revocation of a licence may take place only when the licensing authority is satisfied that a relevant offence has been committed. In relation to an investigation, it will be possible to suspend a licence in those circumstances only when the licensing authority deems it appropriate while an investigation is on-going. It is a power, so it would be for the licensing authority to determine—based on the circumstances and the degree of the offence—whether it would be appropriate to suspend a licence pending the investigation, but a revocation of a licence is not possible while an investigation is on-going.

The Convener: Therefore, a straightforward police investigation—if someone phones up to say that there is a dead golden eagle on a certain estate and the police investigate—would be grounds for the regulator to suspend a licence.

Norman Munro: It would be open to the regulator to determine whether it would be appropriate in those circumstances to suspend a licence.

The Convener: That is a concern, if there are potentially people who wish to cause disruption to licensing at particular times of the year.

Christine Grahame: I have a brief supplementary question. Is there an appellant procedure, if a licence is suspended?

Norman Munro: Yes.

Christine Grahame: What is the process?

Norman Munro: It is an application to the sheriff.

Christine Grahame: Therefore, in such circumstances, there is a method, which is to apply to the sheriff to appeal the suspension.

Norman Munro: Yes, that is correct.

The Convener: My concern is that, if there was a vexatious claim on 12 August, when an estate had bookings, and if the estate then had to go through a process of appealing to the sheriff, that could, in effect, bring that estate's income to an end for a year.

Hugh Dignon: It is important to be clear that, as Norman Munro said, it is a power that the licensing authority will have; it is not an automatic position. It is clear that it would be dependent on the degree of seriousness of the offence. That power is for use in the case of a particularly egregious sort of offence where it appeared that something terrible had happened and it would be unacceptable for the business to continue while a police investigation rolled on. However, in the sort of circumstances that you are talking about, I do not think that it would occur to the licensing authority to immediately suspend a licence.

The Convener: Will there be something in the bill to ensure that that is the case, given that there will almost certainly be vexatious claims of raptor persecution? Do we not need safeguards in the bill to avoid that happening? The damage to an estate could be significant, as could the knock-on effect on those who work on the estate and any associated businesses.

11:30

Hugh Dignon: The licensing authority, NatureScot, is a public authority and it acts reasonably—it is obliged to act reasonably—and it

will have its own internal appeal process for any immediate concerns. There is then the appeal process to the sheriff, as Norman Munro set out. We do not need something in the bill that requires the licensing authority to act reasonably in those circumstances.

Jim Fairlie: The convener has asked a chunk of the questions that I was going to pursue. However, there is quite a bit in the next line of questioning, which is on the basis for licence suspension and revocation, and procedural safeguards.

I want to get on the record the fact that relevant offences are those set out in part I of the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, part III of the Conservation (Natural Habitats, &c) Regulations 1994, section 1 of the Wild Mammals (Protection) Act 1996, and the Hunting with Dogs (Scotland) Act 2023. What is the justification for the different relevant offences that are listed in the bill in relation to potential suspension or revocation of the section 16AA licences? In particular, why are those not related to raptor persecution included, and what evidence is there linking those offences to grouse moors?

Hugh Dignon: Those offences have been selected and put into the bill because they could all be connected with the management of grouse moors. That is not to say that they all have been or are regularly, but it is conceivable that some of those offences might be committed by someone to assist with the management of a grouse moor. They are generally offences relating to protected species that might predate on grouse or grouse eggs.

Jim Fairlie: Why should there be a revocation of a licence provision for those acts on grouse moors? Are there not already fairly stringent penalties for perpetrators of those acts? Why should the revocation of a licence be added to that?

Hugh Dignon: As I say, it is about providing an effective and meaningful sanction for the sort of people who will take that type of action around the promotion of their grouse shooting business. It is to ensure that we can react to that effectively.

Jim Fairlie: Given the point that the convener made about vexatious claims and actions by people who have a distinct distrust and dislike of grouse moors, does it seem fair to add a sanction to grouse moors that does not apply to other rural businesses?

Hugh Dignon: I am not quite sure how vexatious claims work in such circumstances.

Jim Fairlie: If somebody dumped a dead sparrowhawk right in the middle of a grouse moor and then, quite by chance, found it and reported it,

that would be a vexatious action by somebody who was deliberately targeting the grouse moor.

Hugh Dignon: Yes.

Jim Fairlie: We have all the other sanctions in the definitions of relevant offences in the legislation that I spoke about earlier. It goes back to the earlier point about a vexatious claim if someone's business is suspended on 12 August and how that will have a real impact.

I am asking these questions because they might be the main areas of debate as we go forward with the bill. Is it fair to add the revocation of a licence to the sanctions that already exist? What would be the methods of ensuring that people were not targeted?

Leia Fitzgerald: The licensing authority would have to be satisfied that an offence had been committed and that, on the balance of probability, it had been committed by someone who was connected to the management of the grouse moor. It would not be sufficient to find a mammal or bird that had been illegally killed; the licensing authority would have to be satisfied that that connection existed before it could decide to suspend a licence. It would also discuss the matter with Police Scotland.

The approach is based on the model that NatureScot currently operates for the suspension of general licences; in other words, we are taking an established model that we know works. As a result, the reasoning will be the same—NatureScot will have to look at the body of evidence and whatever else is presented by Police Scotland to see whether it can make that connection. It is not the case that there will be grounds for suspending a licence simply as a result of a crime being committed.

Jim Fairlie: We had similar conversations during the passage of the Hunting with Dogs (Scotland) Bill. In that case, we established the need for a good working relationship between NatureScot and land managers to ensure that this type of thing is taken into account in procedures. The bit that concerns me slightly is not the revocation of a licence—I have no qualms about that—but the suspension of a licence. In that respect, we need to ensure that a good relationship exists between NatureScot and land managers. Are we doing anything to encourage that?

Leia Fitzgerald: Yes. One of the recommendations of the Werritty report was that those relations be fostered, and that work is ongoing. We work very closely with stakeholders, and we have the partnership for action against wildlife crime, on which land management groups are represented. That work will continue, but

generally we have good relationships with land managers.

Jim Fairlie: Thank you.

The Convener: I am concerned that this is a double whammy. For example, if you were to shoot a golden eagle on land that was not designated as grouse moor, the penalty that you would get would be different from what you would get if you had been on a grouse moor. How do the implications of that sit with the European Court of Human Rights?

Hugh Dignon: I think that this gets to the heart of the licensing scheme. If you were to shoot a golden eagle on land that was not the subject of a section 16AA licence, the only sanction that could be applied would be a criminal one, which would, as I have said, require the criminal standard of proof for conviction, with all the attendant difficulties that I outlined earlier. The issue on grouse moors is that, when such an event happens and the police are able to report to the licensing authority that there definitely has been a crime, the licensing authority is able to take a view on whether, on the balance of probabilities, the crime has been carried out by someone connected with the management of that land. It can then suspend or revoke the licence. It is therefore not a double whammy; we are talking about different processes on different pieces of land.

The Convener: Is there, in practice, a difference between revocation and suspension?

Leia Fitzgerald: Yes. A suspension could be for just a short period. For example, if NatureScot had concerns, it might think it important to suspend a licence for just a couple of months to allow the grouse moor to take action and get its house in order. A revocation is a more permanent thing. We wanted a range of sanctions. Revocation would be the most serious, but we would also have the ability to suspend a licence for a short period if that response was felt to be more proportionate than a permanent revocation.

The Convener: Okay. Thank you.

Rachael Hamilton: Ms Fitzgerald, where in the bill does it say that there is an upper limit for the time taken for an investigation?

Leia Fitzgerald: We cannot put an upper limit on that, because that is outwith our control.

Rachael Hamilton: What if it takes a year? The individual will have had their licence suspended and therefore their livelihood taken away for a year, perhaps without any evidence of a dead bird.

Leia Fitzgerald: The licence will not be suspended if there is no evidence of criminal activity and an investigation is active. In such cases, NatureScot will keep in contact with the

police to ensure that there is no suspension if there is a change in the investigation.

Rachael Hamilton: I just want to be clear. Is an official investigation triggered by, say, a vexatious claim even if there is no evidence of, for example, a dead bird?

Leia Fitzgerald: There would need to be evidence that a relevant crime had been committed by someone connected with the grouse moor. If the police were investigating and found a dead badger but there was no such connection, NatureScot would not be able to suspend the licence. It would need to be assured by Police Scotland that it was a relevant offence and that it was connected with the management of grouse moors.

Rachael Hamilton: I will go back to some of the original stuff that we talked about. Does the Government have evidence to suggest that the cause of death in relation to raptor persecution is linked to grouse moors? Obviously, the aim is to ensure that there is robust evidence and that there is a causal link to a specific aim that you are trying to achieve, because, although there are other relevant offences in other bits of legislation, this is specific and relevant to wildlife crime that is related to grouse moor management. It is almost as though it is different for those who are operating grouse moors, compared with other regulation.

Hugh Dignon: That is at the heart of why we have brought in the licensing scheme.

Rachael Hamilton: Have you got evidence? Can you tell me categorically that there is evidence to suggest that the cause of death is raptor persecution? If so, is that evidence peer reviewed?

Hugh Dignon: I go back to what I said previously. We have evidence of convictions over a period of years. We have evidence from the Whitfield and Fielding report, and we have other circumstantial evidence over a number of years of dead birds being found on or around grouse moors. That is the evidence that we have that there has been an issue with raptor persecution on some grouse moors, so—

Rachael Hamilton: You are saying that the bill will improve that situation because you have evidence to suggest that that raptor persecution is linked to grouse moors.

Hugh Dignon: Yes.

Rachael Hamilton: Well, I will be interested to see that.

The Convener: In section 7—in line 35 on page 10—the bill states that the relevant authority may

“suspend a section 16AA licence if, despite the relevant authority not being satisfied as mentioned in paragraph (b)(ii)—

(i) there is an official investigation or proceedings”.

Will you set out exactly what “an official investigation or proceedings” means, because it reads as though that could be someone phoning the police and the police then investigating. What does that actually mean? That suggests that the relevant authorities need not be satisfied in order to suspend a licence.

Hugh Dignon: That is set out in the bill, where it defines what an official investigation is. Section 7(11) states:

“official investigation’ means an investigation by the Police Service of Scotland ... for consideration of the question of prosecution, offences alleged to have been committed”.

It would be for the police to inform the licensing authority that it was investigating a crime and, as I said earlier, it would be for the licensing authority to decide whether to suspend a licence in the light of how serious it considered those offences to be. Therefore, if the police were investigating, NatureScot would not routinely immediately suspend a licence.

However, there would be circumstances in which it might appear to be entirely unacceptable for a business to carry on if particularly egregious offences had apparently been committed on its land. It is in such circumstances that a licence might be suspended, and I come back to the point that we would expect the licensing authority, as a public authority, to behave reasonably in those circumstances.

The Convener: Again, it is the word of the law. Someone taking a video of someone pointing a shotgun up in the air might be enough to trigger a police investigation, and that would result in the suspension of a licence even if the relevant authority were not satisfied.

Hugh Dignon: No, it could result in a suspension; it is not the case that it automatically would. It is not that it would but that it could result in a suspension.

The Convener: It could. Okay.

Christine Grahame: It might not be the case that someone would call the police. They might call the Scottish Society for Prevention of Cruelty to Animals, for example. What is the interaction between the Scottish SPCA and the police in those circumstances?

Hugh Dignon: The Scottish SPCA does not have the power to investigate those sorts of crimes, and people should phone the police in the first instance. I would expect the Scottish SPCA to

advise people to do that or to report the matter to the police itself.

Christine Grahame: Thank you. I wanted that to be clarified.

11:45

Rachael Hamilton: Convener, I think that the committee needs clarity on that, because “could” and “would” is not “yes” or “no”. The question is: does it, or does it not?

Christine Grahame: “Could” means discretion—

Rachael Hamilton: No, no, no—we need clarity.

Christine Grahame: But that is what it means.

Rachael Hamilton: It could or—

The Convener: I think that there is reasonable doubt over that, and it might be something that needs to be considered in our stage 1 report. There is nothing more about “could” or “would” in the legislation. However, you have put the matter on the record.

Christine, would you like to ask your other question?

Christine Grahame: Oh—I had forgotten, with that debate about “could” and “would”. Which one is it, please? *[Interruption.]* What page? Oh dear—maybe you should—

The Convener: We can come back to you—

Christine Grahame: What was it about? I can just ask it. *[Interruption.]* Oh, the code of practice. I now know what it is—thank you very much.

What is the justification for having a statutory code of practice when you already have licensing?

Leia Fitzgerald: The code of practice is a recommendation of the Werritty review that was accepted by the Scottish Government. It will set out the best practice that people who are operating these businesses should adhere to, and it is something that the licensing authority will be able to take into account when making decisions about granting a licence.

Christine Grahame: You do not think that that is overkill. Oh—I should not have used that expression. I should have said, “You do not think that that is over the top.”

Leia Fitzgerald: No. I think that it is important to set things out, as Werritty said. The Werritty review looked at a number of grouse moor management issues such as the use of medicated grit and recommended the drawing up of a code of practice for the use of such products. We therefore

think it appropriate to set out best practice in that respect.

We already have a code of practice on muirburn, and there are also codes of practice for other aspects of wildlife management, countryside management and agriculture. This is not without precedent.

Christine Grahame: What is the status of a code of practice in court proceedings?

Hugh Dignon: The primary purpose of the code of practice in this particular legislation is to enable the licensing authority to have regard to how much or otherwise an applicant has complied with it.

Christine Grahame: It is just something to have regard to. It is persuasive rather than determinative.

Hugh Dignon: Yes. The code of practice will, like most codes of practice, have a range of recommendations. There will be things that you must absolutely comply with—that is, legal requirements; there will be things that you really should comply with; and there will be things that are good practice and which might or might not apply to your particular business. It will not be a question of saying, “You must do all of these things all of the time.” There will be things that you must do all the time, and there will be others that you will not have to.

If a business were continually ignoring best practice recommendations that they could comply with, the licensing authority would be entitled to say, “We think that you should be doing this. Can you explain why you’re not? It would be good environmental practice.” That is the sort of extent to which the licensing authority will have regard to the code of practice in its licensing decisions.

Christine Grahame: If someone did not comply regularly with such recommendations and did not take such advice, it could lead to a determination being made with regard to their licence.

Hugh Dignon: It could.

The Convener: I call Ariane Burgess.

Ariane Burgess: First, I want to continue with Christine Grahame’s line of questioning, as I am interested in getting a little bit more detail as to why you chose to use the phrase “have regard to” instead of something stronger like “must comply with” in relation to the code of practice. Secondly, what kind of evidence would a licence holder need to present to show that they had had regard to the code of practice? Finally, how do you think compliance with the code of practice will be monitored?

Hugh Dignon: On your first question about requiring absolute compliance, that would mean having a one-size-fits-all code. Clearly, businesses

are of different sizes, are in different geographical locations and have different resources at their disposal, so we recognise that having such a code would not fit everyone.

As for the evidence that licence holders would have to supply, I think that it would be the other way round, with NatureScot saying, “It’s been brought to our attention that you are not complying in certain key respects.” We are not asking people to set out every single thing that they have done to comply with the code.

That brings us back to the point about enforcement. NatureScot is not going to be a police force—it is not going to be out investigating people’s business and so on—but it has area staff and people with expertise in particular spheres who will report concerns. Concerns will also be reported by non-governmental organisations and members of the public. It is by those means, I think, that breaches of the code of practice will come to light.

Ariane Burgess: Okay. Thanks.

The Convener: Will the code of practice be developed alongside the bill, as evidence comes forward, or will it not be clear what the code of practice will be until after the bill is passed?

Hugh Dignon: The development of the code of practice is already under way, and I hope that a draft of some description will be available to the committee at some stage during the passage of the bill.

The Convener: Thank you very much.

Jim Fairlie: We will move on to the theme of rural economy impacts and property rights. Clearly, as is usual, there are two sides to that argument as we go through the process. The policy memorandum states that

“The Bill is compliant with the European Convention on Human Rights”.

How did the Scottish Government come to the conclusion, in its business and regulatory impact assessment, that there will be little or no impact on those businesses that comply with existing law? How would it seek to reassure rural estates that are raising concerns about the prospect of an additional administrative and financial burden associated with licensing?

Hugh Dignon: We are very clear that the licensing process will not be bureaucratic or burdensome and will be the minimum that is required to operate the licence. We envisage a system in which people can quite easily apply for the licence, and the presumption will be that they will get the licence unless there is some reason not to grant it. They will not need to make a case for why they should get the licence.

To get the licence, people will have to say that they have or manage a piece of land on which they wish to take grouse; provide some basic information on where that land is, how they would describe it on a map, who is responsible for it and who we would contact; and maybe give some basic information about the nature of their business on that land. That would be it. I do not really go along with the idea that the licensing process will be a burdensome requirement on businesses.

Jim Fairlie: To go back to the convener's previous point, if we want the code of conduct to facilitate licensing, will it be a prerequisite to have the code in place before the licence is granted?

Hugh Dignon: Yes—before the scheme is launched, the code of practice will be available.

Jim Fairlie: I presume that the code is being worked up with stakeholders.

Hugh Dignon: Yes, it is.

The Convener: Would non-compliance with the code potentially result in an applicant being refused a licence?

Hugh Dignon: Potentially, yes. Again, I do not think that this would be a routine occurrence, but, where there is persistent failure to comply for no good reason, the licensing authority would be entitled to say, "We're not going to give you a licence for that activity."

Rachael Hamilton: I have a simple question. Is the bill compliant with the European convention on human rights?

Hugh Dignon: Yes, it is, as far as we are concerned. As you know, the Scottish Government is obliged by law to comply with the ECHR, and we look at those things very carefully, as do the Presiding Officer and the Parliament staff. Norman, do you want to add anything to that?

Norman Munro: The Scottish Government has very carefully considered the ECHR implications of the bill's provisions, and the Scottish Government's position is that the bill is compliant with the ECHR and, consequently, is within the legislative competence of the Scottish Parliament.

Rachael Hamilton: I return to our discussion about the suspension of a licence without any evidence of wrongdoing. Is that compatible with the ECHR?

Norman Munro: In relation to suspension, the provisions do not say that that would happen where there is no evidence of wrongdoing; there would need to be some evidence of wrongdoing in order for the licensing authority, whether that is NatureScot or the Scottish ministers, to be compliant with the ECHR in its conduct. Taking that into account, the authority would be able to

suspend the licence, as Hugh Dignon mentioned earlier, only in certain circumstances, which would depend, for example, on the egregiousness of the offence that is on-going.

Rachael Hamilton: In layman's terms, can you give examples of what you mean by "some evidence of wrongdoing" to explain how that provision is compliant with article 1 of protocol 1 of the ECHR?

Norman Munro: In order for a licence to be suspended, there would, first of all, need to be evidence of a relevant offence having been committed.

Rachael Hamilton: Such as?

Norman Munro: An example might be an animal or a wild bird being found on the land.

Secondly, the relevant authority would need to be satisfied that there was a causal connection between the offence and the licence holder to justify exercising the power to suspend a licence. It has the power to do that, but that is not mandatory. It is not the case that, if there was an investigation, suspension must occur. It would be a question of degree and for the licensing authority to determine on the basis of the circumstances of each case.

Rachael Hamilton: What is the difference between suspension and revocation?

Norman Munro: Revocation may occur where the licensing authority is satisfied on the balance of probabilities that an offence has been committed. That will likely be when the investigation has concluded. There is also a power to suspend and not revoke when an investigation is on-going. The definition of "official investigation" is provided for in the bill.

As Hugh Dignon and Leia Fitzgerald mentioned, it is a question of degree in that options are open to the licensing authority in determining what action to take. The authority may modify a licence to impose additional conditions. It may also suspend a licence depending on what has occurred or, if the person who is involved in the ownership or management of the land in question has been convicted of a relevant offence, it may take the last-resort route of revoking the licence. However, that is a power that the licensing authority has at its disposal; there is no mandatory requirement on the authority to use it in those circumstances.

Rachael Hamilton: To be compliant with the ECHR, if there is a vexatious complaint, there must be an immediate investigation and evidence to suggest that there has been wrongdoing.

Norman Munro: The licensing authority will be a public authority and so will be required to go

about its conduct in a way that is compliant with the ECHR. Therefore, any investigation that takes place would similarly need to be compliant with the ECHR.

The Convener: We could spend an awful lot of time on this area. There are issues with NatureScot deciding on the civil burden of proof that a licence should be suspended even if a court does not. There are some difficulties understanding how that will engage with the ECHR.

We will probably write for more clarification on that, because there is some dubiety in our minds about NatureScot's ability to suspend a licence or the situation in which a police investigation would, in effect, result in the suspension of a licence. We will return to that in writing rather than explore it at the moment. I am still having difficulty in getting my head around it.

Karen Adam: I have a question about the rationale for regulation. What evidence is there on the extent to which wildlife traps are used and the associated impacts on animal welfare and biodiversity? What traps are used?

Hugh Dignon: A range of traps are used in Scotland. Specifically, the traps that are typically used in grouse moor management are spring traps to catch stoats and weasels, in particular, and Larsen traps or crow cage traps to trap wild birds.

Those traps have a legitimate purpose and can be—and most usually are—used perfectly legally and correctly. However, they can also sometimes be used to catch protected species, and they can sometimes also catch other non-target species unintentionally. That is the risk. The Werritty recommendations were really about reducing that risk such that traps would be operated by people who were trained to do that and through the fact that traps could be identified with the particular person who had set them, so that there would be that chain of accountability. That is where we are coming from with the wildlife trapping provisions.

12:00

Karen Adam: In relation to the spring traps and the live capture bird traps that you mentioned, what conclusion was reached that required additional regulation?

Hugh Dignon: It was about the potential for those to be misused. The live capture traps have been used in the past to capture raptors. Again, there is good evidence of that; there is video evidence and convictions and so on. Spring traps have also sometimes been abused to catch raptors. For example, although the Fenn trap is no longer a lawful trap, when it was, it was used to do that. It was placed on top of a pole so that, if a

raptor came down to perch on the pole, the trap would close on the raptor's legs, and it would be caught there and die a pretty grisly death. Those were the sort of impacts that had been happening. I am not saying that they were typical, but they had been happening and there were convictions for them. It was therefore about addressing that.

More generally, it was also about seeking to improve animal welfare outcomes even when those traps are used lawfully. It was about ensuring that the highest standards apply and that people are operating to those high standards, as delivered by training courses. As I said, it is also about ensuring accountability through the fact that those traps are identified and registered with the authorities.

Ariane Burgess: Picking up on that point about training, the requirement for trap operators to complete training is similar to the approach that the Government has implemented for the use of snares. Some respondents noted in their evidence that more than 3,000 individuals have undergone the training to operate snares and that only three have failed. How will the legislation ensure that the training programmes are robust and effective at ending bad practice?

Hugh Dignon: We or NatureScot will approve the training course, and we will check that there is high compliance with those training courses. I guess that it is not difficult to pass those courses if one pays attention. I suppose that the key point is whether that person then continues to apply that level of skill, knowledge and practice in their daily work. That is the key issue, which is where the registration part of it comes in. It is important that we ensure that the courses are effective and are delivering the right standard of training.

Alasdair Allan: As I understand it, there is a distinction between wildlife trap licences and section 16AA licences in that one has an appeal process and the other does not. Can you explain the reasons behind that distinction?

Hugh Dignon: The primary reason is the level of impact of the sanction. We are very much aware that suspension or revocation of a 16AA licence would have a significant impact on a business—that is really its purpose. For that reason, we think that an appeal to the sheriff is justified. The internal processes in NatureScot are sufficient in relation to the way that most of its licensing regimes operate.

The Convener: I want to go back to the issue of licensing, but I want to make sure that I am not going to step on any of my colleagues' toes. What are your thoughts about the one-year duration of the licence? Would it not give more certainty and reduce NatureScot's workload if it was a multiyear licence?

Hugh Dignon: The one-year licence reflects the fact that the activity is seasonal and it is similar to most of the licences that NatureScot operates, which are for one year or occasionally two years. The key point is that it will not be difficult to obtain or renew the licence. It will not involve a significant process or workload for the applicant.

The fact that the licence is issued yearly will enable the licensing authority to have a clear understanding of what is happening across the country over a period of years. It will be able to understand where this sort of activity is going on and how the businesses are operating.

The Convener: Is it in the public interest to have an annual licence when there might be no evidence that things have changed? It also takes away some of the certainty that is necessary for investment in grouse moors. Is it really worth an annual review or process? I know that you say that the process will be simple, but is it really needed?

Hugh Dignon: It was our judgment that that would be the appropriate level, but I guess that there are always counter-arguments for such things, and we are always open to hearing them.

Jim Fairlie: How will the Government respond to concerns from land managers that tampering with legally set traps could mean that individuals are vulnerable to prosecution? Is there current evidence that that is a significant issue in relation to legally set traps?

Hugh Dignon: The current position is that there is a risk that someone could be prosecuted as a result of someone else tampering with a trap. I am not aware that there has ever been a prosecution of someone in that situation. We are aware of frequent claims that there is tampering. We hear regularly from land managers that people tamper with legally-set snares and other traps, and we are also advised that there are already offences that apply to that action. They are criminal activities. I am therefore not certain how anything in the bill will alter that basic picture.

Jim Fairlie: That is the point that I was going to come to. If there is evidence of somebody illegally tampering with a trap or setting a trap illegally with the aim of someone else taking the fall, is there a way of prosecuting individuals who carry out that activity?

Hugh Dignon: We are advised by the Crown Office and Procurator Fiscal Service and the police that those are potential crimes.

Jim Fairlie: Can the committee have clarification of what that is and how it could be acted on?

Hugh Dignon: There is no doubt that it is potentially a criminal offence to tamper with a trap, but, in the same way as it is difficult to identify and

prosecute people for raptor persecution, it is difficult to identify and prosecute people who are tampering with a trap.

Jim Fairlie: I accept that fully. I would just like to have clarification of what the illegal activity is and how it would be prosecuted.

Hugh Dignon: I think that malicious mischief was mentioned as one of the potential offences: it is a common law offence. Criminal damage is another potential offence, but it is probably better if we get evidence from the Crown or the police on that.

Jim Fairlie: If you could come back to us, that would be grand.

Rachael Hamilton: I also need clarification of Mr Dignon's response to Jim Fairlie that there is no evidence of trap interference, tampering or sabotage.

Hugh Dignon: I did not say that.

Rachael Hamilton: What did you say?

Hugh Dignon: I said that there is no evidence of anyone being prosecuted.

Rachael Hamilton: You will accept therefore that there are individuals who are concerned that traps are being interfered with and sabotaged.

Hugh Dignon: Yes.

Rachael Hamilton: Has that been reflected in the responses to the call for evidence so far? Has the bill team picked that up?

Hugh Dignon: It has been mentioned. We have frequent meetings with land managers, and gamekeepers, in particular, have expressed their concern about that over a number of years. I can perfectly well see the risk. My point was that I was not aware that anybody had been prosecuted in a circumstance where they said that their trap had been tampered with.

Rachael Hamilton: That speaks to the same approach that you are taking to grouse moor licensing. Should there be a bespoke offence for tampering and interference with and sabotage of traps?

Hugh Dignon: As I understand it, the issue is not the lack of an offence. The issue is the difficulty in securing a prosecution and identifying—

Rachael Hamilton: Therefore, are you saying that there is a lack of evidence? That is exactly the same approach that the grouse moor licensing is taking—

Hugh Dignon: No, I am not saying that there is a lack of evidence. I am saying that, if a trap has been tampered with, there is a difficulty in being

able to identify who did that beyond reasonable doubt. That is the problem.

The Convener: There is a suggestion that there could be a tougher way to deal with that than a charge of malicious mischief. Perhaps there is a need for a specific crime to be set out in the bill to send the message out that tampering with traps is absolutely unacceptable. Given the response to the call for views, it is clear that it is a significant concern to gamekeepers that traps are being tampered with, so that might be something to consider as an amendment at stage 2—the need for a specific offence rather than relying on other pieces of law. You appear to be suggesting that the law is not sufficient to prosecute those who are tampering with—

Hugh Dignon: I am not saying that there is a deficiency with the offence; I am saying that there is a problem with gathering sufficient evidence to prosecute.

The Convener: Maybe a change in the legislation would address that issue of the burden of proof. I just want clarity on that. Do you think that there will be any grounds to make a clear offence in the bill that would make it easier to prosecute those who tamper with traps?

Leia Fitzgerald: We can discuss with the police and the Crown whether they feel that that would help them or whether there is a need for a specific offence. We will continue to speak with stakeholders about that.

The Convener: Thank you. I am sorry—I have no intention to put words in your mouth. I just want some clarity on whether we could make an improvement in the bill.

Ariane Burgess: I am interested in the key issues that the Scottish Government needs to come to a view on to make a decision about extending SSPCA powers. Is the Scottish Government working with Police Scotland to consider that?

Hugh Dignon: Yes, we will announce a position on that shortly. You will be aware that Susan Davies carried out a review of that. She led a task force to look at the issues, which are pretty well understood. The SSPCA has some additional resources that it could bring to bear in tackling wildlife crime, but there are concerns that, as a charity, it might not be sufficiently neutral and that it might in some way undermine the primacy of Police Scotland as the main law enforcement agency for tackling wildlife crime. Those are the key issues.

Another issue that comes up quite often is the timeliness of gathering evidence. Often, the SSPCA will be investigating something and in a position to seize evidence but will be unable to do

so under its current powers. Those are the sorts of issues that ministers are looking at, and I think that we will be able to come to a conclusion on that very soon. We would certainly get any changes that ministers wanted to make to the current position to the committee within the same sort of timescales as with the snaring provisions.

Ariane Burgess: Can you give any examples of the kinds of cases with which the SSPCA has usefully assisted Police Scotland in the past?

Hugh Dignon: I do not have specific cases to hand, but the SSPCA has reported cases to the Crown on numerous occasions, which have led to successful prosecutions. It goes without saying that, under its existing powers, it has carried out useful and effective investigations.

12:15

Christine Grahame: What are the current limitations on the SSPCA investigating anything? When must it just stop? What has been considered with regard to extending those powers?

Hugh Dignon: Primarily, the SSPCA's powers are to do with animal welfare; it can investigate cases in which an animal is in distress. For example, a case in which an animal is in a trap and suffering would clearly be within its powers. However, it would not be within its powers to investigate a dead animal in another trap next to the first one, because there would be no suffering involved. It also would not be within its powers to investigate an unlawfully set trap with no animal in it at all. At present, its powers lie in cases where an animal is suffering.

Christine Grahame: It must seem a bit odd to the public that, in the example—which I have not seen—of one suffering animal and one dead animal beside each other, the SSPCA can be involved with one case but not with the other.

Hugh Dignon: That is the current position.

Christine Grahame: I know that this is just under consideration, but you have mentioned a possible amendment at stage 2, whereas our briefing says that changes would be brought in by affirmative procedure. What process are we looking at? I appreciate that an instrument under the affirmative procedure means taking evidence and so on.

Hugh Dignon: The current provisions in the bill will ensure that we can, if we wish, bring forward an instrument. However, if we are going to make a change and decide to do something further with SSPCA powers—that has not been decided yet but a decision is fairly imminent; ministers will take the final view on that point—we would introduce

specific and explicit provisions in the bill on those powers.

Christine Grahame: That is, indeed, better done through primary legislation, in my view.

I asked earlier about amendments on snaring. Is it possible for even a draft of the SSPCA powers amendment to be put before the committee during our stage 1 contemplation, whether or not it is in its final form? That would give a steer on which anybody in the committee might take a view. Indeed, the Government might change it, or somebody on the committee might take a view to amend the proposed amendment in one way or another.

Hugh Dignon: That is our intention, as it is with snaring.

The Deputy Convener (Beatrice Wishart): I am just covering for the convener for a few minutes. I will bring in Rhoda Grant with question 13, which is on muirburn.

Rhoda Grant: Why are there two different types of muirburn licence—one for peatland and one for other areas?

Hugh Dignon: It is not so much that there are two different types of licence as that the muirburn licence for burning on peatland is subject to a higher degree of scrutiny and that more stringent restrictions are in place with regard to when it will be granted, relating to the depth of the peat and so on. That is because we perceive that there is a greater risk of environmental damage through burning on peatland.

Rhoda Grant: People always ask us about bureaucracy and simplifying things. It seems to me that a lot of people might need a muirburn licence and a muirburn licence on peatland and so might potentially need to apply for two licences to carry out the one exercise. Could the process be simplified to make it more straightforward in practice for people to apply for licences?

Hugh Dignon: A muirburn licence will apply to a piece of land. The land manager will say, “I want to burn on this piece of land,” or maybe, “I want to burn on all these pieces of land,” across an estate. The licensing authority will need to assess whether any of that land is peatland. The applicant will be asked, “Is any of this land peatland?” If it is, specific requirements will apply.

Clearly, we want to ensure a higher degree of scrutiny and control over burning on peatland, because of the greater environmental risks. I do not think that it is a matter of having two licences; instead, there will be a licence that allows burning on peatland, if that is what you want to do, or, if not, a licence that will not have those requirements attached to it.

Rhoda Grant: So, if there is a mixed licence covering peatland and non-peatland areas, you will need the peatland licence.

Hugh Dignon: You will certainly need to meet the requirements for burning on peatland, yes.

Rhoda Grant: I am sorry if this sounds as if I am not following you, but are you saying that you would have only one licence but, within that licence, you would be allowed to burn on peatland? I am trying to get at whether you will need two different licences.

Hugh Dignon: You will not need two licences for any one piece of land. If the land that you wish to burn on falls within the definition of “peatland”, your licence will be a licence for burning on peat.

Rhoda Grant: What if the land is mixed?

Hugh Dignon: I am not sure—

Leia Fitzgerald: It will depend on the purpose. There are more purposes for which you are permitted to do muirburn in non-peatland areas. If, for example, you wanted to undertake muirburn to prevent wildfires, you might need to apply for only one licence, as that purpose is shared between muirburn and non-muirburn activity. It depends on the land that you are burning on and the purpose.

However, as with all our other licensing schemes, we will be looking to work with stakeholders to develop the licence. It might be that the application form can be designed in a way that can capture different purposes, for example, but we would seek to work with stakeholders and get their feedback on what the licence application should look like, the level of information that should be sought and whether, as has been suggested, it would be better to have one licence that could capture multiple purposes on different types of land or whether stakeholders would prefer to have distinct licences. As I said, we will develop that in more detail with stakeholders.

Rhoda Grant: That would be useful. I am thinking about a crofter on a small croft, part of which is peatland and part of which is not, who has to get involved with all this bureaucracy, identify the area that is peatland, measure the depth of the peat and all of that. That seems really complicated to me, and it leads to concerns about whether people will apply for licences, especially for small areas of ground.

Hugh Dignon: The key point is that different considerations will apply to peatland, apart from where, as Leia Fitzgerald has said, the purpose is prevention of wildfire. We are aware that there is, potentially, a significantly higher environmental risk from burning on peat, so there will need to be different considerations in that respect. Whether all that can be combined in a single licence or whether there will need to be one licence for the

peat bit and another for the non-peat bit will be, as Leia has said, a matter to work out with stakeholders and the licensing authority.

Rhoda Grant: So, will that come in secondary legislation under the affirmative procedure?

Hugh Dignon: I am not sure whether it will be an affirmative instrument—I do not think so.

Leia Fitzgerald: NatureScot will start to develop the licensing scheme now but, as with the hunting with dogs legislation, once we have the final shape of the legislation, NatureScot will sit down with stakeholders to begin the process of designing the application forms and guidance that will go alongside them. It will start those discussions now, but the final shape of the licence will obviously have to be determined after the legislation is enacted, as it will be determined by what is in the legislation. However, that is part of NatureScot's in-built process. In developing a new licensing scheme, it will sit down with stakeholders and involve them in the design process.

Rhoda Grant: But will all of that come back to the Parliament in the form of secondary legislation?

Leia Fitzgerald: No, because all the requirements in the licensing scheme will be set out, as they are at the moment, in the bill. The detail—what the boxes will be, what information will be asked for and so on—will be taken forward after that, so there will be no need for legislation. As with other licensing schemes, that will be done after the event in conjunction with other stakeholders.

Alasdair Allan: As other members have said, licences can be granted for different purposes, according to whether the location is peatland or non-peatland. I noticed that one of the reasons that can be offered for burning on non-peatland is to manage the environment, but am I right in saying that that is not one of the reasons for applying to burn on peatland where you can offer to enhance the environment but not to manage it? I might be reading that wrong. Could you explain the point about the reasons that people can offer?

Could you also say a bit about what outcome you are trying to prevent by people burning on peatland? There have been examples in England of wildfires where it has been alleged that the peat has been burned on a hillside, although it might be difficult to point to examples of that in Scotland—I am not sure. The other half of my question is therefore about what you are trying to prevent by people burning on peatland.

Hugh Dignon: The purposes of a licence under section 10(2)(b) are a subset of the purposes under section 10(2)(a), which clearly has a wider range of purposes. For example, restoring the

natural environment, which is available as a purpose when the licence applies to peatland, is a subset of the purposes in section 10(2)(a)(iii), which has restoring as part of it, but conserving, enhancing and managing do not apply to peatland. Section 10(2)(b) is a narrower set.

Basically, when it is peatland, we have envisaged that a landowner might take the view that muirburn is the right way to go in order to restore or repair the land, if it is agreed with NatureScot. That is what that particular provision is about, but burning of peatland is not permitted for the wider range of purposes that are set out in section 10(2)(a).

Alasdair Allan: The other half of my question is, why the distinction?

Hugh Dignon: The first thing to say is that this is clearly an area in which there is a lot of contested science and we are not settling on a particular view of whether burning on peatland is necessarily damaging. We are saying that there is a risk of serious carbon emission through burning that damages the peat; there is a risk of peat degrading and emitting; and there is also a risk that the peat will catch fire, which would again cause catastrophic carbon emissions and could be a serious long-term issue to deal with. Those are the sort of risks that we are seeking to mitigate but, again, I would say that it is not settled science. We appreciate that, and for that reason the provisions in the section on muirburn are subject to order-making powers that will allow us to adjust the purposes for which muirburn might be carried out, and to adjust the definition of what is peatland and what is not.

The Convener: We will move on to Ariane Burgess.

Ariane Burgess: Some stakeholders have raised concerns that the purpose of using muirburn to manage wildfire risk on peatland will become a loophole. How will the need for muirburn to manage wildfire risk on peatlands be assessed?

Hugh Dignon: The first thing to say is that wildfire is clearly a serious risk. We are seeing that now with fires in the north of Scotland, and we envisage that it will only get more difficult with ongoing climate change. We are therefore absolutely certain that it needs to be in the bill.

Whether or not it will form a loophole will be for the licensing authority to determine. The licensing authority will try to follow the latest science and it will need to be au fait with what is actually happening on the ground. It will also need to take advice from the Scottish Fire and Rescue Service. The Scottish Government will clearly be influenced by its advice on that.

At the end of the day, it will be a matter for the licensing authority to decide where wildfire risk is best managed by muirburn and the extent of the muirburn that is necessary to manage that wildfire risk, if that is put forward as the primary purpose for burning.

Sam Turner, who knows more about that, may want to add something.

12:30

Sam Turner: The key point is what Hugh Dignon said about the work with the Scottish Fire and Rescue Service. I know that NatureScot will also be working with stakeholders on the code of practice, alongside the guidance. That will be a key part of it.

Ariane Burgess: To follow up, the muirburn season outlined in the bill runs until 15 April, which overlaps with the start of the breeding season for many moorland bird species, such as curlew, whose nests could be threatened by muirburn. Has the Government given consideration to bringing forward the end date of the muirburn season—for example, to 15 March—to protect threatened species?

Hugh Dignon: Again, I think that that is something that can be amended in the future. Certainly, we would not want to see curlew nesting being in any way threatened by muirburn. If there is evidence that that would, indeed, be the case, we would be happy to look at that, as I am sure would NatureScot. Again, Sam might have further thoughts on that.

Sam Turner: There is also an order-making power such that that could be amended without needing primary legislation.

Beatrice Wishart: My question is about the muirburn code. Some stakeholders have questioned why the bill requires licensees to “have regard to” the code rather than, for example, to “comply” with the code. Why have you chosen that wording? How will it be determined that a person has had regard to the muirburn code?

Hugh Dignon: That comes back to the same sort of considerations that were discussed when we were talking about the grouse moor management code. The code will contain a mixture of requirements. Some will be compulsory in the sense that it is the law that a person must do X or Y. Some will be highly recommended, in relation to record keeping and so on. Some may apply only in certain circumstances and in certain parts of the country, depending on the underlying topography, the size of the burns or any other considerations.

Leia Fitzgerald: NatureScot has the power to put conditions on the licence. It could, for example,

make it a condition that the person must comply with section 1 of the code, if that was deemed appropriate.

Christine Grahame: To go back to a question that was raised before, there were concerns about the ability to suspend muirburn licences where

“there is an official investigation or proceedings in relation to an offence under this Part”.

Could you perhaps give clarity as to what is “an official investigation” and what are “proceedings”?

Hugh Dignon: My colleague is drawing my attention to the definition that is in section 13(7) of the bill.

Christine Grahame: Section 13(7) of the bill—I should have known that. There we are. Rap over the knuckles. What is the definition in section 13(7)?

Hugh Dignon: To quote the bill, an “official investigation” means

“an investigation by the Police Service of Scotland or any other body that has as one of its functions reporting, for consideration of the question of prosecution, offences alleged to have been committed”.

Christine Grahame: Can it be triggered by just a complaint? That would not be “proceedings”?

Hugh Dignon: No. It has to be an investigation by the police.

Christine Grahame: It has to be an official police investigation whereby people are advised that that is happening.

What about the official investigation—I am sorry, I am muddling myself now. I do not want to muddle you up. The official investigation must be by the police.

Hugh Dignon: Or, to quote the bill again,

“any other body that has as one of its functions reporting”.

Christine Grahame: What are “proceedings”, then?

Hugh Dignon: Proceedings are criminal proceedings.

Christine Grahame: So, they are actual live proceedings in that somebody has been served with a charge.

Norman Munro: Yes, that is correct.

Alasdair Allan: There are a variety of views among stakeholders around the figure of 40cm depth of peat and why that figure has been chosen. Could you tell us why it has been chosen, please?

Hugh Dignon: Again, this is a much-debated issue in this area. At present, the figure in the code of practice is 50cm but there are people

arguing that it should be 30cm while, south of the border, the figure of 40cm applies in protected areas. We were trying to balance some of the arguments and take what we thought was a precautionary approach. Indeed, I think that that has been the underlying principle in all of our work on muirburn, and the provisions that you are seeing in the bill are a recognition that this is an area of significant concern.

There are big issues at stake as far as carbon emissions are concerned, but there are also big issues at stake with regard to effective management for grazing and other agricultural purposes. We have therefore tried to balance all of that and have taken, where possible, a precautionary approach to minimise the potential risk to the environment—certainly while the scientific debate goes on about the effects of muirburn on carbon emissions, the damage to peat and so on. These are on-going debates, and we want to be able to react accordingly in the future, but, in the meantime, we think that the 40cm figure represents a practical and pragmatic approach to setting a depth for peat to which our controls will apply.

Alasdair Allan: On your point about the precautionary principle, I appreciate the need to restore peatland—I do not dispute that aim—but I come back to the question that I asked before. Is the scenario that we are envisaging when we talk about carbon emissions based on carbon from vegetation, or is it posited on the idea that peatland burns on the hills?

Hugh Dignon: It is both. Clearly, there will be some carbon emissions from the burning of vegetation, but the key thing is to prevent carbon emissions as a result of exposing or burning the peat.

Alasdair Allan: Is there evidence of wildfires in Scotland in which peat has burned on the hill?

Hugh Dignon: I believe so, yes.

Alasdair Allan: Right. My other question comes back to an issue that Rhoda Grant, in particular, has already asked about. How do you measure an area that has wildly varying topography? How does somebody go about measuring a few acres of land where the depths of peat might vary wildly?

Hugh Dignon: I recognise that and, indeed, know that that can be the case. It will be for NatureScot to promulgate a methodology in that respect; that is something that it is developing and will develop further. There is already a methodology being used south of the border for protected areas. Again, we will seek to make this simple and not have, say, a complicated matrix or formula that people have to follow. It will probably involve using a pole to assess depths in a number

of spots over a given area and then determining the average depth.

Sam, do you want to add anything?

Sam Turner: The methodology is used not just south of the border but in a number of other activities. The peatland code, for example, provides guidance on how to measure the depth across the land, and the methodology is also used for wind turbine developments as well as another area that has escaped my mind for the moment. However, the point is that there are already methodologies and guidance out there for conducting surveys.

Alasdair Allan: Thank you.

The Convener: Will land where the peat is more than 40cm deep have to be of a certain area before a licence is required? For example, will it have to be half an acre, three acres or whatever? Unless these areas are looked at in detail, is there not a risk that someone could inadvertently not apply for the right licence, because the peat in some areas of their estate is 40cm deep?

Hugh Dignon: I would say that a proportionate approach would be required here, and NatureScot will take it. For example, it would not be sensible to include a piece of ground with a pocket or two of peat that is more than 40cm deep within the definition of “peatland”. As I said in my response to Mr Allan, there will be a methodology for assessing land, and the amount of land over a particular depth will clearly be one of those key considerations.

The Convener: The problem is that the term “proportionate” will have a completely different meaning to someone from the RSPB, for example, and to someone who is managing a grouse moor. Does the legislation not need to set out those differences instead of just having the term “proportionate”?

Hugh Dignon: It will not be for the RSPB or someone who is managing a moor to decide what is proportionate; NatureScot will decide what the proportionate approach is.

Rachael Hamilton: What size of area does the Government define as peatland?

Hugh Dignon: Do you mean what geographical area?

Rachael Hamilton: What size of area?

Hugh Dignon: That is what we have just been talking about.

Rachael Hamilton: What is the number on it? Can you quantify it?

Hugh Dignon: I am not sure what you are asking me. We have a 40cm figure for thickness or

depth. We have said that it is clearly not relevant if it applies across a square metre but that it is relevant if it applies across a couple of hectares. That is the proportionality element with which NatureScot will come forward when it develops the methodology for people assessing whether their licence should be for burning on peatland or for burning only on land that is not peatland.

Rachael Hamilton: So, to clarify, are you planning to set a minimum level?

Hugh Dignon: Do you mean a minimum area?

Rachael Hamilton: Yes.

Sam Turner: In the methodologies that are currently used, 100m by 100m is the sort of grid that is used in surveys for the peatland code and for forestry—that is the other area, which I forgot about earlier. The survey methodologies are already being used. It might be that, for this muirburn issue, slight differences exist in the methodology in relation to what NatureScot decides is proportionate and appropriate. At the moment, a 100m by 100m grid can be placed on the land and probes can be taken within that area to assess where the peat is and is not.

Leia Fitzgerald: If it is helpful, we can provide more written evidence of the current methodologies and how they are applied and used to determine whether an area is peatland.

Rachael Hamilton: Hugh Dignon said that the depth would be considered. Is it in the public interest, however, to arbitrarily define something as either 40cm or 50cm? What is the difference?

Hugh Dignon: As I have said, it is by its very nature an arbitrary limit, but it represents our best assessment of where the risks lie.

Rachael Hamilton: You have talked a number of times about “environmental risk”. What is the evidence on which you have arbitrarily redefined the depth of peatland that would benefit the environment? What is the scientific basis of using muirburn as a tool of last resort, as referred to on page 16 of the bill, when

“no other method of vegetation control is available”?

Would that not actually increase the risk of wildfires?

Hugh Dignon: We are saying that prevention of wildfires is one of the purposes for which muirburn on peatland will be permitted.

Rachael Hamilton: What is your scientific basis for that?

Leia Fitzgerald: We are restricting muirburn on peatland as a recommendation of the Climate Change Committee, which considered the issue. We have taken into account the recommendations of Werritty, the Climate Change Committee and all

available science, as well as the peatland restoration work that we are doing, to come up with what we believe is a proportionate approach that allows some burning on peatland in limited circumstances but that also allows NatureScot to be able to consider applications and take all factors into account when deciding whether it is appropriate to issue a licence.

Rachael Hamilton: Are you concerned that individuals who apply for a licence in good faith will fall foul of the law if a correct assessment has not been made of whether the land is peatland and of how many licences are needed? It may not be practical to probe an area. There may be different depths of peat.

12:45

Leia Fitzgerald: As Sam Turner said, people already have to measure peatland if they want to carry out certain developments, so this is not new. We are building on a methodology. There is already a requirement for people to be able to determine whether land is peatland. That happens already.

Hugh Dignon: Under “Requirement for muirburn licence”, section 9(3) says specifically:

“It is not an offence ... for a person to make muirburn on peatland if the muirburn licence relating to that land specifies that the land is not peatland.”

If that person has applied for a licence and the licensing authority has agreed that that land is not peatland but someone later comes along and says, “Well, actually, it is, because of X and Y,” no offence has been committed, because they have a licence that has allowed them to carry out burning on land that is not peatland.

Sam Turner: We envisage that NatureScot would assess the application and the survey work that has been done by the applicant. If what the applicant says that they have done has been done, there would be no offence, as Hugh Dignon said. NatureScot would agree that the person had done the appropriate level of survey work.

The Convener: I am conscious of the time.

Rachael Hamilton: I have one last quick question. Can I have some clarification on the Climate Change Committee’s position, which you said you use as your scientific basis?

Leia Fitzgerald: We can send that to you.

The Convener: There is some suggestion that the Climate Change Committee is reviewing its position in the light of new evidence that suggests that muirburn is carbon positive in comparison with other methods of vegetation control. We will certainly look at that further down the line.

Thank you for that clarification. There was some concern that, if people got the wrong licences for peatland or non-peatland, that could ultimately result in criminal proceedings. That clarification has been very helpful.

I wonder whether you would consider a de minimis area. You talked about using a 100m by 100m grid. That may need to be included in the bill, to make sure that some people are not needlessly caught up in the legislation. We might consider that.

Jim Fairlie: I have a great deal of sympathy for you when it comes to trying to get workable legislation, because there are considerations of livestock, of grouse moors, of wildlife and of the environment. It will be difficult to get the right balance. I am not going to ask any more questions. I will think a bit more before I open my mouth.

Christine Grahame: He is wise! That is not very like a politician.

The Convener: This evidence session has been hugely useful. Thank you very much for your contributions. We will now move into private session.

12:48

Meeting continued in private until 12:56.

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