



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 14 June 2023

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 14 June 2023

CONTENTS

WILDLIFE MANAGEMENT AND MUIRBURN (SCOTLAND) BILL: STAGE 1	Col. 1
--	---------------

RURAL AFFAIRS AND ISLANDS COMMITTEE
18th 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 (Etrick, Roxburgh and Berwickshire) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Libby Anderson (Scottish Animal Welfare Commission)
Ian Andrew (British Pest Control Association)
Ross Ewing (Scottish Land & Estates)
Chief Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)
Emma Harper (South Scotland) (SNP) (Committee Substitute)
Alex Hogg (Scottish Gamekeepers Association)
Liz McLachlan (NatureScot)
Professor Ian Newton (Grouse Moor Management Group)
Professor Colin Reid (Grouse Moor Management Group)
Professor Alan Werritty (Grouse Moor Management Group)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 14 June 2023

[The Convener opened the meeting at 09:03]

Wildlife Management and Muirburn (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning, everyone, and welcome to the 18th meeting in 2023 of the Rural Affairs and Islands Committee. I remind all those who are using electronic devices to switch them to silent. Ariane Burgess will join us at approximately 9.45, and Emma Harper is substituting for Christine Grahame.

Our first item of business today is an evidence session on the Wildlife Management and Muirburn (Scotland) Bill. I welcome our first panel of witnesses, who are from the grouse moor management review group. With us are Professor Alan Werritty, the chair; and Professor Ian Newton and Professor Colin Reid, members of the group. We have scheduled about 90 minutes for this session.

I will kick off with the first question. In 2019, the Werritty report recommended that

“a licensing scheme be introduced for the shooting of grouse if, within five years ... there is no marked improvement in the ... sustainability of grouse moor management, as evidenced by the populations of”

certain breeds of raptors. Professor Werritty, is there sufficiently strong evidence of wildlife crime on grouse moors to justify the intervention of licensing? Do you believe that the bill reflects the position that your review intended?

Professor Alan Werritty (Grouse Moor Management Group): Under our remit, we started by considering the 2017 report by Scottish Natural Heritage, which demonstrated that a third of tagged golden eagles had disappeared in mysterious circumstances. The way that it was put was that they had disappeared in suspicious circumstances on or around grouse moors, and we confirmed that suspicion in our findings.

There is a clear spatial association between the recovery of illegally killed raptors and managed land for grouse shooting. At that stage, we were unable to produce a map demonstrating that association, although I understand that Hugh Dignon may now be able to provide you with such a map. We had privileged access to information

from Police Scotland to underpin our recommendations and support our findings.

Since then, time has moved on and I have not had access to the same amount of data that was available to me as chair of the review group. However, I turn to Professor Newton, who can, I think, provide us with an update on the situation since we reported.

Professor Ian Newton (Grouse Moor Management Group): As we understand it, the situation is that the persecution of birds of prey has not declined substantially in the years since the report was written. In fact, during the year with the most lockdown, which was 2020, the rate of killing or the number of cases reported to the RSPB was the highest so far this century. In other words, when there were fewer people in the countryside, the level of persecution almost certainly increased. The total for Britain as a whole in that year was 146 cases, of which 26 were in Scotland. In 2021, the following year, the numbers were still high, although they dropped somewhat. I think that the total for the whole of Britain was 108 and the number of cases in Scotland was about 17. The RSPB produces a crime report every year. The figures for 2022 are not yet available, but I understand that they are of a similar magnitude to what they were in the past.

There is a limit to the emphasis that we can put on those figures, because they depend on carcasses or other evidence being found in the countryside, largely by chance, and reported. The general feeling—among conservationists, at any rate—is that the figures represent the tip of an iceberg. Nonetheless, the statistics have not declined significantly since the report was written.

The Convener: You are referring to reports by the RSPB, which is not independent. Surely, the national wildlife crime report would be the place where such findings would be reported. I think that you said there were 26 cases in Scotland. Does that refer specifically to grouse moors?

Professor Newton: No. It refers to the country as a whole. Not all the cases would be on grouse moors. Some will be in lowland areas.

The Convener: On the point about the evidence, it is now between eight and 15 years since there has been a review by the Scottish Government or whoever that would inform the national wildlife crime report. Why are we about to bring in legislation that would appear to depend on research done by the RSPB?

Professor Newton: The RSPB has traditionally been the body that has collated this sort of information, but one has to remember that it is not the RSPB that collects the information; it is members of the public. Most of the survey work on raptor populations in Scotland has been done by

what we now call the Scottish raptor groups. They are groups of interested amateurs—"citizen scientists" would be the words that we use these days—who go out and monitor raptors of various species in their home areas by checking all the known sites every year. There is a broad body of people who are responsible for collecting the information—people drawn from all walks of life. The RSPB collates the information, or most of it, because it is the organisation that is concerned with bird protection and it has the biggest interest in it.

The Convener: Okay. Thank you.

Beatrice Wishart (Shetland Islands) (LD): Good morning. The bill sets out a range of relevant offences in relation to which a licence under proposed new section 16AA of the Wildlife and Countryside Act 1981 may be revoked or suspended. Do you agree that the list of offences is relevant and appropriate?

Professor Newton: Yes. The problem so far, as I am sure you are aware, has been that one needs sufficient evidence for a criminal court to prosecute, but most of these offences take place in remote areas where there are no people to see them, so it is very easy to hide them. Hardly any cases of somebody killing a bird of prey are witnessed. A number of cases have been filmed, but you can appreciate how difficult it is to do that. The important thing is that we can use circumstantial and other kinds of indirect evidence to indicate the scale of this killing.

Beatrice Wishart: Do you believe that the current scope of relevant offences is proportionate?

Professor Newton: Yes. The difficulty is in getting a prosecution under criminal legislation.

Professor Colin Reid (Grouse Moor Management Group): There is a choice to be made in these situations. You are trying to identify offences that suggest that somebody is not an appropriate person to hold a licence. You can approach that in a very narrow way whereby all that you look at is their conduct in the exact area of activity, or you can say that the form of behaviour is reflected in and shown by the way that people react in other situations.

There are similar considerations in all sorts of other areas where licensing is involved. For example, they have arisen in relation to firearms offences. If you are deciding whether to give somebody a firearms licence, do you look only at the way that they have behaved in relation to firearms or do you look at other forms of behaviour that may suggest that they are not to be trusted, that they are unreliable and so on? That is a policy choice to be made.

The list could be a lot shorter or it could be a lot longer. You could make cogent arguments both ways.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): I am keen to explore a wee bit further the range of relevant offences. The bill identifies relevant offences under 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. Given that your review looked specifically at raptor persecution, do you believe that the inclusion of all those things in the bill is proportionate?

Professor Reid: Our remit was not just to look at raptor persecution; it was to look at grouse moor management more widely. In the report, we made a point about the need to look at the matter in a wider context. It would not be sensible to fragment the different bits too much. It could be said people who commit those offences are generally showing an attitude, approach and willingness to behave in a way in relation to the natural environment that is in line with the things that the bill is trying to stop.

If you see the measures as being purely about raptor persecution on grouse moors, I would say that that is an excessively narrow view of what our review tried to look at. Indeed, one of my regrets is that, despite the time that has passed since our report, we have not seen a wider review of the context of upland management. We would have hoped for integration of the outcome of the deer review and the legislation associated with that. We would have hoped that, by now, the post-Brexit rural support systems would be clearer, along with what is happening in relation to carbon management and so on in the upland areas. Looking at any one bit in isolation is a danger.

As I said, however, in relation to this particular issue, you could take a very narrow approach whereby only activities that are immediately involved are deemed to be relevant offences, or you could take a much wider approach whereby a person showing disregard for the elements of the natural environment that we value is enough to be relevant for these purposes.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): You have made a number of points, Professor Reid, and I want you to clarify some of them. Are you saying that what the Scottish Government has done in shaping the bill is broader than what the Werritty review recommended in terms of the scope of triggering a licence for suspension or revocation? I would also like to explore what the Werritty review believed was the causal link between raptor persecution and grouse moors.

09:15

Professor Reid: On the first issue, I do not think that that is the case. We were asked to look at the matter more widely. We expressly did not look at the details of a licensing scheme, because we were very aware of issues such as the duration of licences. We may move on to discuss that today. We consciously identified a number of issues that would have to be thought about, but we did not explore them in detail. We consciously left them for the next stage, knowing that there could be a range of options, all of which would be reasonable.

Raptor persecution was the trigger for setting up the review, but it is not the only thing that we were asked to look at.

Rachael Hamilton: The point is that the bill that the Government has shaped covers a broader range of crimes.

Professor Reid: What has been identified as being relevant indicators that would put a licence at risk captures a range of behaviours in relation to the natural environment, and not just raptor persecution.

Rachael Hamilton: My colleagues have asked about proportionality. Do you have any comment to make about that, given the recommendations that the Werritty review made?

Professor Reid: We did not get into that issue, because we did not work through the details of a licensing scheme. We recognised that you could design a scheme that would be wholly disproportionate or you could describe a light-touch scheme that would have absolutely no problem in passing any test, in any legal or political sense, of proportionality. The balance has to be looked at.

In looking at the issue of proportionality, you have to look at the legislative package as a whole. What are the tests for intervening? What are the appeal mechanisms? What are the procedures? What sanctions are available? It is very much a package, rather than any particular measure being identified in isolation.

Rachael Hamilton: Can I press you on the licensing scheme, Professor Reid? I was on the committee that looked at the review originally, back in the day. I have read through the papers and I note that you said:

“We want to see a licensing scheme that is more flexible and responsive than a black-and-white scheme whereby you have to apply every year to get a licence.”—[*Official Report, Environment, Climate Change and Land Reform Committee*, 21 January 2020; c 12.]

However, proposed new section 16AA(5)(b) of the 1981 act provides that licences may be granted for a maximum of one year. Would the scheme be

improved if licences were granted for a longer period?

Professor Reid: My personal view is that it would. Given that the activities involve long-term management of the land and that businesses expect to be able to plan ahead, I think that annual licence renewal is unnecessary. There could be longer-term licences, subject to the provision that they may be amended or suspended.

Again, it is the idea of the whole package. If, once a licence was granted, you could do very little about it, there would be a stronger case for having annual licences, because the annual renewal would be the only way of keeping an eye on things, changing things or affecting things. Given that the bill provides quite wide powers for ministers or NatureScot to modify, suspend or revoke licences, I think that annual renewal is probably unnecessary.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Your review recommended SNH—or NatureScot, as it is now—as the licensing authority. Does the bill that we are looking at allow for a scheme that you feel NatureScot is in a position to deliver?

Professor Werritty: I think NatureScot is the obvious body to undertake the regulatory function. I cannot think of another public body that could take it on board. It currently operates a general licensing scheme, so it has experience of managing licences. I very much concur with what Professor Reid just said. In my view, licences of up to five years on a rolling basis would be welcomed. I am sensitive to the concern about the bureaucracy and the costs involved, so I think it should be as light touch as is commensurate with the effective delivery of regulation.

Perhaps I should point out the nature of the remit that we had as a review group. We have been focusing entirely on licensing thus far, but licensing was only one of the possible options that we explored. Given the wide-ranging nature of our review, which was to look at more sustainable management of grouse moors in the round, we did not zero in on licensing in great detail, anticipating—as Professor Reid said—that, should this come to this stage where legislation was being proposed, a whole new set of questions would emerge, hence your questioning. Our review was very wide-ranging and triggered a number of quite separate conversations and discussions.

Alasdair Allan: Without second guessing what SNH—or NatureScot—might do, do you have any views about the choices that it faces in terms of licensing? You said that it should be light touch. What is the scope of the options that you feel we should be considering?

Professor Werritty: I think it will build on its experience of operating general licences, which it

has done for a number of years now. I have confidence that it has the professional capacity to undertake this. As a public body, it clearly needs to be concerned about the public perception of how it operates. If it were to be unduly heavy handed, that would not serve it well. It has to negotiate an understanding with landowners. The vast majority of grouse moors are well managed. We are looking at a very small minority where raptor persecution is a major concern. With good will on both sides, I think it can negotiate a system that is effective but not unduly onerous.

The Convener: On the light touch, Professor Reid, you said back in 2020 that licences would more or less be approved automatically. How do the licence application tests at proposed new section 16AA(1) and (2) compare with the vision that you had on the light touch? Could what we have in the bill at the moment be improved?

Professor Reid: Bills can always be improved, whatever they are. In any licensing scheme there is a choice to be made between rigidity, which gives you clarity and certainty, and flexibility, which inevitably involves a degree of discretion and uncertainty. The choices that have been made here are not to have a particularly rigid system where there is a checklist—you do this exactly and you get a licence; you fail to do it exactly and you do not get the licence, or you get your licence taken away or suspended or whatever.

In an area where the scientific evidence is uncertain and changing, where the natural environment is always changing, and where you are dealing with enterprises of a vast range of size, scale and nature, I think that having flexibility is almost inevitable and is the best, fairest and most proportionate way to operate a licence system. With anything else, you would have to have rigid tests, and one size would not fit all, certainly given the changing climate, the changing natural environment and the changing understanding of the pressures on it.

I can quite understand why some people are concerned about the uncertainty of this, the breadth of the test and the fact that it is not fully defined, but the alternative of having something much clearer would pose equal, if not more, problems. As Professor Werritty said, we are relying on a public authority that is subject to internal controls, appeals, external controls and, ultimately, ministerial control, to make sure that it operates the system in a sensible and proportionate way.

The Convener: Given the gravity of the consequences of losing a licence and the other legislation in place—the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992 and so on—are there safeguards in the legislation at the moment to make sure that we do not

potentially see licences being lost for what could be a minor offence? Do we have flexibility but also safeguards?

Professor Reid: The appeal mechanism provides a safeguard. There is also the potential for judicial review eventually, ministerial control and the ombudsman, but it is a matter of choice. If you have an absolute checklist and there are items on the checklist that you cannot prove one way or another, there will have to be flexibility. That means giving discretion to public authorities, but our entire public administration system depends on discretion being in the hands of licensing bodies, Government grant-awarding bodies and so on. There are remarkably few situations where you are absolutely entitled to certain licences and so on. There is always an element of discretion.

Jim Fairlie: Professor Werritty, coming back to the point that you made, the discussion has focused very narrowly on licensing grouse moors, and clearly your report goes much wider than that. I think that you considered at some point the power to impose fines on grouse moor managers in the same way as the Scottish Environment Protection Agency would have the ability to impose fines. Was that in addition to licensing or was it a separate thing? Are they two different things, or did you think that both of them would work together?

Professor Werritty: In addition to the review group, I had four special advisers assisting me. One of those was a senior official from SEPA who manages its regulatory controls, particularly on discharges into water bodies. Picking up on how that operates, I thought there might be an analogous situation in terms of licensing grouse moors. SEPA issues permits to discharge into watercourses, controlled in terms of the specified pollutant or whatever is going into the watercourse, and it has the ability to monitor that and charges a fee for so doing. I am particularly picking up the point that there is income recovery for SEPA from that activity. I notice that, in the bill as drafted, there is no mechanism for cost recovery by NatureScot. My understanding is that NatureScot at the moment does not seek to recover the costs of issuing licences. I wonder whether it would be wise to revisit that, following SEPA's experience.

My concern is that, at the end of the day, compliance is crucial to the success of this whole enterprise and one has to monitor that compliance. If NatureScot does not have the resources, either via gathering a fee from a licence or from an increase in its Government grant, I am very concerned that it may not be able to monitor the performance of this bill, should it become an act, in an effective manner. That was the context

in which I thought the SEPA experience might be an interesting one.

Jim Fairlie: Correct me if I am wrong—I may be misinterpreting or misunderstanding you—but, if you were going to fine somebody because they had done something on the grouse moor or on the land that would be subject to a fine, you would need a burden of proof to do that.

Professor Werritty: Yes.

Jim Fairlie: Given that the licensing scheme has the potential for an investigation and suspension of the licence, does the fine element of it make it a lot harder to retrieve any money? Would there be more cost in trying to get the burden of proof to a level where a fine could be imposed?

Professor Werritty: I do not quite follow you.

Professor Reid: If I could come in, I think that there is—

Jim Fairlie: I am possibly misunderstanding.

09:30

Professor Reid: There are several different issues here. The Regulatory Reform (Scotland) Act 2014 created a system of what is generally known as civil penalties or civil sanctions. When somebody has a licence, one of the responses to discovering a breach can be to use the powers, as in this bill, to suspend or revoke the licence or modify it so that you put in extra conditions that make future behaviour different. In some areas of environmental and other law, the regulatory body has the power itself to impose a fine—either a fixed fine or a variable fine—or to take an enforcement undertaking. A whole range of sanctions are provided for in the 2014 act. Those are not being copied here. There may be a question as to whether they should be, but for those, as you say, there still has to be a burden of proof. The Scottish legislation has generally used the civil burden of proof as the basis for imposing fines but, as always, it is subject to appeals and later controls.

One option in this bill would be that, when NatureScot or the ministers find things are going wrong, rather than being forced into considering whether to suspend or revoke the licence, knowing the major consequences that that would have for the enterprise, they could consider whether to impose a penalty. You are then faced with a further question: for what sort of breaches is that appropriate? Again, you will have endless arguments over these things. I am sorry if I am sounding very uncertain about this, but in designing a regulatory scheme there are all these choices to be made. It is about trying to think about all the circumstances that will be relevant.

What will make sense, what will be practical and how the different bits fit together is complicated. There will never be one right answer. There will be plenty of scope for argument on all the different bits and how they fit together.

Jim Fairlie: You have definitely added more questions than answers, that is for sure.

Professor Reid: I am sorry. That is the job on this side of the table.

The Convener: I will bring in Rachael Hamilton to ask, I think, the last question on licensing for a few moments.

Rachael Hamilton: Professor Reid explained the situation pretty well, but I want to get some clarity on the suspension of licences. The bill includes proposed powers for NatureScot to suspend licences even if it is not satisfied, in relation to the civil burden of proof, that an offence has been committed. Of course, there would be an official investigation relating to the person who had been accused of committing an offence. What are your observations on proposed new section 16AA, if you have had an opportunity to look at it? Do the proposals contain a lower evidential bar to suspension than was envisaged in the Werritty report?

Professor Reid: We did not get into the detail of envisaging what the bar for different interventions would be. I can see why that provision has been included—it has been included to enable quick interim action to be taken when there is perhaps not a complete case but strong indicative evidence. That may be useful, and it is, of course, a power that only “may” be exercised. I cannot imagine the power being used in many circumstances, but it has been included to cover situations in which a formal investigation will take a long time—getting to the stage of a prosecution certainly takes a long time—and there is a desire to intervene more rapidly. It is a fairly strong power, and I envisage it being used very rarely, if at all.

Rachael Hamilton: In a previous session, stakeholders said that an appeal could take a long time—up to a year. With regard to your vision of how the legislation should be shaped, should sheriffs have a discretionary power to decide that a penalty imposed by NatureScot should have no effect, pending determination of an appeal?

Professor Reid: Such provision appears in several environmental licensing schemes. The question relates to which danger we think is greater. The evidence—not in relation to grouse moors, but in other areas—is that, in circumstances in which sanctions are put in abeyance during an appeal process, that appeal process is sometimes seriously abused by people dragging it out for as long as possible to ensure

that the sanction is not imposed on them. If we make it that way, the public interest suffers. If we make it the other way, the private interest suffers, because the person who is subject to the sanction is affected. It is a question of knowing whom to trust and finding that balance. I expect that NatureScot and ministers would take into account the length of time of an appeal and the difficulties associated with that when deciding whether they would be justified in suspending a licence during an investigation rather than beforehand. I see it as a very extreme power, and I cannot imagine it being used.

Rachael Hamilton: Do you think that an investigation should be triggered by a vexatious allegation?

Professor Reid: If an investigation is triggered by something that is not incredibly strong evidence, I cannot imagine ministers or NatureScot deciding that that is a basis for suspending a licence, because the whole point of an investigation is to find out whether something is going wrong. I totally expect that a decision to suspend would be taken only when things were going wrong and there was a need to act immediately. If there was a single—possibly vexatious—complaint, I do not see how NatureScot could reasonably come to the conclusion that strong action needed to be taken immediately. Having read the evidence from the previous session, I accept the concerns that there are not absolute written guarantees, but that is inevitable unless we have an incredibly fixed, rigid system that cannot respond to changing circumstances and cannot respond quickly to situations that involve real problems.

The Convener: The difficulty lies in whether there are serious allegations and serious evidence and the basis on which a licence can be suspended. The difficulty is in ensuring that, as you say, there are safeguards in that regard. We will move on.

Alasdair Allan: I want to focus on the licensing system. We have not allowed the witnesses to explain why they came to the conclusion that it was necessary to legislate in order to address abuses. You have mentioned that the vast majority of estates operate responsibly, but what evidence led you to conclude that there is a need for a code of practice, for example? Can you give us a flavour of the incidents and evidence that drew you to the conclusion that a code of practice is necessary?

Professor Newton: The main issue relating to grouse management is the illegal killing of valued birds of prey. Over the past six or seven decades, most other measures that might reduce such persecution have been tried nationwide, but the practice still persists. Licensing provides the next

potentially big deterrent to the practice. It is the penultimate measure; the ultimate measure would be to ban grouse shooting altogether. We did not want to get to that stage, so licensing was the next measure that was open to us.

We felt that licensing would raise the profile of the activity, both to the applicant and the general public, and provide some reassurance to concerned members of the public that grouse shooting activities are being taken seriously. Some members of the public would otherwise have called for the banning of grouse shooting, which we did not want to happen.

We have already covered the other advantage of a licensing system. The current penalties rest on criminal convictions, which are almost impossible to obtain. Licensing opens up the possibility of taking much more account of circumstantial evidence and of introducing a number of penalties or sanctions of varying severity, ultimately leading to suspension or revocation. By acting largely on circumstantial evidence in relation to penalties, we move from the criminal burden of proof to the civil burden of proof.

Even though a licence might be offered for, say, a three to five-year period, NatureScot would have the opportunity to ask for annual information on things such as the number of animals killed, and the sort of animals killed, associated with grouse shooting. For example, information could be provided on the bag sizes, the number of hares, the number of predators and so on. That would give NatureScot an opportunity to learn more about what happens on grouse moors before deciding how to proceed. Annual statistics are available on most major land uses. For example, in relation to forestry, information on the number of hectares and the kinds of trees that are planted each year is readily available, and, in relation to agriculture, we have information on the crops that are grown and so on. However, absolutely no evidence on anything that happens in relation to grouse shooting is fed into central Government.

What we recommended seemed to be a way of filling that gap at no major cost to landowners. In order for NatureScot to monitor the situation, it would be useful for it to have information on the animals that are being killed, to be alerted to any unexpected changes and to follow population trends. Such information would fill an important evidence gap in relation to land use in Scotland.

For those various reasons, we were persuaded, after a lot of discussion, that licensing was a sensible option.

Professor Werritty: One of our most striking findings, which is perhaps not as self-evident as it ought to be from our report, was our key

recommendation that, if raptor numbers continued to deteriorate over a period of five years, there should be licensing. That was a unanimous recommendation by the whole group, which included two members who, in effect, represented the grouse shooting sector. That implies that there is a willingness across Scotland to regard licensing as an appropriate way forward, given that, in a sense, everything else has failed. That is where we feel we are.

We looked at a number of alternatives. We looked at self-regulation, but that has not worked. We looked at accreditation schemes and financial incentives that might be introduced. We looked at a range of alternatives; we did not lightly or immediately descend on licensing as the way forward. As you can see from our report, we explored a range of options in some detail, and we recommended licensing because we thought that it was the only credible way forward. That was agreed by all members of the review group, including those who, arguably, represented a shooting interest.

The Convener: Are you satisfied that the code of conduct deals with the recommendations from the review of medicated grit?

Professor Werritty: Yes. Medicated grit was an interesting area for us to explore. We recommended that there should be a voluntary code in that regard, rather than a legally binding or statutory code. Our concerns were twofold. First, in relation to the administration of medicated grit, we recommended that the grit be withdrawn at a fixed period in the year to prevent it from potentially entering the food chain. We were somewhat concerned that estates should engage with the veterinary profession to ensure that the administration is done to the highest possible standard. Secondly, there were concerns about leaching of the chemical attached to the medicated grit into watercourses. Although SEPA could not give us any clear indication as to whether that would potentially be inimical, it thought that some degree of regulation through a voluntary code of practice could perhaps improve the way in which medicated grit is used.

There was no suggestion that medicated grit should be withdrawn. We could see that it was a crucial element in the business model of grouse moor management, but we felt that a voluntary code of practice, with all estates adopting best practice, would be valuable in both those respects.

Emma Harper (South Scotland) (SNP): Good morning. It is interesting to hear that this is not just about the management of grouse. The convener has brought up the issue of medicated grit, and we have heard about raptors. I want to confirm whether the introduction of a licensing scheme would be the optimal way to manage grouse

moors, track what is happening and collect data. I am looking at Professor Newton because that is what he has said: this is the only way forward for being able to manage or trace what is happening, rather than just having a voluntary code of practice.

09:45

Professor Newton: What was the specific question?

Emma Harper: Specifically, is the optimal way forward the introduction of a licensing scheme?

Professor Newton: As we have said, the various other methods that we could use have not worked. We are driven to the position of licensing because the other methods have not worked. However, introducing licences brings other advantages, which I have outlined, particularly the central acquisition of important data on what is happening on a major area of land, which at the moment we have little or no information on.

Professor Werritty: One of the most striking things that we discovered in our review was that the science base is heavily contested between, on the one hand, peer-reviewed journals publishing experts' findings in the international literature and, on the other, what one could call local vernacular knowledge arising from gamekeepers and land managers. There is enormous antipathy between evidence in those two arenas. One of the things that will be a valuable outcome of the bill is that we will begin to develop a more credible science base across the whole area of moorland management. It is very striking how little we know when it comes to robust detail about the way in which the natural environment of a grouse moor operates.

We will probably come on to muirburn in due course. The muirburn literature is full of enormous contradictions and uncertainty. As Professor Newton has said, if we can assemble a much richer database as an ancillary benefit of the bill, that will advance the science. There will then be a virtuous loop that can inform adjustments to the regulatory system so that we can begin to tweak it as the science becomes more secure and firmly attested.

Ariane Burgess (Highlands and Islands) (Green): Good morning. Thank you for being with us this morning; so much good information has already come from your experience. You are already beginning to touch on what I wanted to get into in the meeting, which is the bigger picture in relation to land management and grouse moors, identifying the fact that we could start to create a credible science base and understand what is really going on. I am interested in hearing what you think is the potential for sustainable grouse moor management contributing to tackling the

climate and biodiversity crisis. Could the bill support that?

Professor Werritty: Yes. Indirectly, it could move us in the right direction. Professor Newton will be able to speak with more authority on bird ecology and the significance of appropriate management of moorland for promoting appropriate habitat for birds. I am sure that, in a moment, we will come on to the question of carbon budgets and carbon sequestration, particularly in those parts of grouse moors that have a very thick peat layer. In how we manage muirburn and its interaction with wildfires and so on, a contribution can clearly be made in terms of the climate crisis. Perhaps I could invite Professor Newton to address the ecological aspects of your question.

Professor Newton: Grouse moor is a fairly unique habitat and it supports a number of birds that are relatively rare by international standards. A lot of predators can be legally controlled on grouse moors, which means that the species that nest there generally nest with good success and can maintain their populations. That is not necessarily the case in many other parts of Scotland or Britain. Certain species can maintain themselves on grouse moors at densities that would not be possible in the rest of Britain, and they sustain their populations in the long term. Many species are now declining in Britain as a whole, but one of the areas where they are maintaining themselves is grouse moors, which is due to grouse moor management. There is a lot to be said for that.

A few years ago, I did an exercise in which I looked at the environmental impacts of different major land uses in the uplands of not just Scotland but Britain as a whole. I found that, leaving aside the raptor issue, grouse moors are the least environmentally damaging of all the major land uses. Forestry, for example, has destroyed much more peatland than grouse moors have ever done. It has also been responsible for a lot of acidification of landscapes, which puts it in a totally different field to grouse moors. Agriculture in the uplands, with huge densities of sheep and so on, has had a huge impact over a period of several decades in changing upland vegetation, mostly to species of plants that sheep do not like to eat, and has caused a lot of erosion and soil compaction.

As I said, looking at the different land uses, I found that the one that causes the least damage, apart from the raptor issue, is managed heather moorland for grouse. If you take out the raptor aspect, grouse moor stands up very well and the birds that live there are able to sustain good populations. It is becoming increasingly important as an area for maintaining ground-nesting open-

land birds as general predators in the countryside such as foxes increase in number in Britain as a whole, which has tipped a lot of bird species into decline. Grouse moors are one of the areas where that has not happened. We have no interest in reducing the area of grouse moors.

Ariane Burgess: I want to come back to the code of practice. I am interested in the idea that you are looking at the scientific evidence base and the bigger picture. Have you looked into the issue of lead shot being used? I realise that that is being phased out, but I am aware that, in parts of my region, at least historically, lead shot might be fired from what is a grouse moor but ends up being shot into trees on neighbouring land. Is there any understanding of the problems of chemical grit running into the watercourse? Is that talked about? Have we looked into lead seeping into our ground and our watercourses?

Professor Newton: I do not know of any research relating specifically to grouse moors, but, obviously, lead shot has been tipped on to grouse moors for well over a century now. Several people have commented to me that, if you get a grouse and cut it open, you will very often find that they have bits of lead shot in their crop. Grouse, like a lot of other herbivorous birds, pick up bits of grit and swallow it to help with food digestion. The assumption is that they pick up little bits of lead shot in mistake for grit, if we can put it that way, so they are being contaminated indirectly, as are a lot of other birds in Britain. However, I would not say that lead shot is used more on grouse moors than it is on any other areas where game is shot. It is a general problem, and we need to reduce or, preferably, eliminate the use of lead shot in Britain. It is the final remaining use of lead that the public are still exposed to, and we could so easily remove it.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning, panellists. Following on from Ariane Burgess's question, does the bill support the full potential of what grouse moors could do to support biodiversity and climate change?

Professor Werritty: It is clearly not a primary driver for the proposed legislation, so I guess we have to ask whether it is supporting other initiatives that the Scottish Government is developing as we deal with the climate and nature emergency. On the biodiversity side of things, as Professor Newton has just argued very cogently, it is a positive contribution to sustaining the current level of biodiversity and not allowing it to deteriorate further. For climate change, it is a much more mixed picture.

When we come to muirburn, as I said earlier, the literature is incredibly confused. I do not know whether you have had access to a recent

NatureScot report that was published in 2022, which was a meta-analysis of all the literature on muirburn. The single most important takeaway message is that we know so little about the impact of muirburn on carbon budgets, wildfire and greenhouse gas fluxes. In terms of the precautionary principle, which we have mentioned on a number of occasions, we need to proceed circumspectly with muirburn, given the lack of clear scientific evidence. The regulation that is proposed for muirburn takes the current system, which relates to a piece of legislation that was passed in 1949 and which we discovered was no longer fit for purpose. A statutory code on muirburn with all the regulations implicit within it will provide us with a very positive way forward.

I emphasise again a point that we reflected on in our report, which is the notion of adaptive management. It goes back to what Professor Reid was saying earlier about the need to provide some wiggle room in the bill and not to make it unduly prescriptive, because, as the science base develops—I emphasise that the science base underpinning a lot of moorland management is incredibly fragmented, contested and incomplete—and as the gaps begin to be filled in, we can tighten up some of the regulatory models and adjust and move forward in a way that could be beneficial for both climate change and protecting biodiversity.

Karen Adam: That is helpful. I do not want to put words in your mouth, but could we see the bill as more of a vehicle to get the full picture that we do not currently have?

Professor Werritty: Yes—absolutely.

The Convener: We have two very short supplementary questions from Rachael Hamilton and Jim Fairlie.

Rachael Hamilton: I will try to keep my question brief. Professor Werritty, has the socioeconomic impact of grouse moor licensing been assessed adequately in this process, bearing in mind that there was no direct or indirect engagement with businesses as part of the business and regulatory impact assessment?

Professor Werritty: Yes. That was one of the major challenges that we had with our remit when the then cabinet secretary invited me to take on the review. One of the key elements of the remit was to have regard to the socioeconomic impact of any measures that we might recommend. However, we did not have the capacity or focus to drill down deeply into that area. We relied on work that had been done by a separate investigation, which was commissioned by the Scottish Government. The numbers are in our report, and I am just looking for them.

If I remember correctly, the grouse sector currently supports about 2,500 full-time jobs and generates more than £24 million of gross value added, so grouse moor management makes a very significant contribution, particularly to the rural economy. Were there to be a ban—I take that as the most draconian measure on grouse shooting—that would have an incredibly adverse impact locally on the rural economy. Therefore, in our recommendations, we seek to protect those jobs and interests and to encourage estates that do not demonstrate best practice in how they are managed to achieve that level of performance.

Rachael Hamilton: I just understand this—

The Convener: Sorry—we have sort of jumped to a new topic. I will bring in Jim Fairlie for a supplementary question on our previous topic, and we will then go back to the socioeconomic topic. Jim Fairlie, please come in with your questions.

Jim Fairlie: Professor Newton, I will come back to you. Something that struck me when you were talking about predator control and the effect that that will have on particular species of amber/red-list ground nesters, are you saying that the management on a grouse moor is helping to sustain those red-list type birds such as golden plover, redshank and snipe? Are they in better health on grouse moors than they are on unmanaged places?

Professor Newton: That is exactly the point that I am making. As far as we can judge, the populations, for the most part, are good and self-sustaining on grouse moor areas, whereas in most areas elsewhere—not everywhere; I cannot speak for everything—they are declining, and they are declining mainly because they are not producing enough young to offset the usual mortality rate. Most of that poor reproduction, at least on the uplands, is due to predation. On the lowlands, you also have agriculture.

10:00

Jim Fairlie: Is it predation across the board, from mammals and particularly corvids? Corvids are particularly good at finding eggs.

Professor Newton: The predation comes from all the ones that take bird eggs or young chicks, which are the corvids, foxes and mustelids such as stoats. They are probably the main ones, along with badgers in some areas.

The Convener: Jim Fairlie, do you want to continue with exploring rural businesses and European convention on human rights considerations?

Jim Fairlie: Yes. Professor Werritty, are you aware of any concerns that have been raised by stakeholders that the provisions in the bill on

licensing may not be compliant with the ECHR, for example, due the potential of disproportionate interference with property rights?

Professor Werritty: I defer to Professor Reid on this one.

Professor Reid: Any time that you are interfering with businesses and property rights, you could potentially fall foul of the ECHR. The question is, is it a proportionate interference? There are various elements to that. First, is the reason that you are interfering a legitimate one? The European Court of Human Rights and our own legislation made it clear that environmental protection is a legitimate reason for interfering, so you are over that first threshold. The question then is whether the detail of the interference is proportionate or not. That brings us back to the discussion that we had earlier about the precise details of the licensing scheme and how it operates. If the legislation were wide enough to allow a very extreme strict/harsh intervention that would fall foul, just because the legislation allows that to happen does not mean the legislation itself falls foul of the convention. It is a question of how it is operated in practice, and that means looking at the legal tests, how they are operated, how those operate with the various controls, redress mechanisms and so on.

I can see the legislation, as drafted just now, operating in a way that would be perfectly compliant with the ECHR. I can also see it being operated by a rogue NatureScot or a rogue minister in a way that would cause severe problems. I do not think that imposing the requirement for a licence in itself will fall foul of the convention unless the hoops you have to go through to get a licence are absolutely absurd.

Jim Fairlie: Let us presume that the hoops are dead easy, you just apply for the licence and you get it. I think that you were suggesting that a heavy-handed NatureScot person could impose certain restrictions. At what point does that breach ECHR?

Professor Reid: Sadly, the answer is when it is disproportionate. I am trying to think of an absurd example. Say the code of practice recommended people did not wear sunglasses when out shooting, because it affected their vision, and it was found that on one occasion one member of a shooting party had worn sunglasses and the result was, "Right, your licence is revoked." That would be a clearly absurd use of it.

Jim Fairlie: Can I put one further example that has been put to me? As a former sheep farmer, I may have had the desire to shoot a white-tailed eagle because it was lifting lambs. I would be fined and possibly imprisoned, and I would face the full force of the law, whatever that happened to be,

but I would not be stopped from farming sheep. If I am a grouse moor manager and I do something and the licence is removed, I am effectively stopped from carrying out my way of making a living. Would that issue fall under the ECHR?

Professor Reid: I could almost guarantee that that would go to the courts and you could never guarantee what the result would be. Although you would be stopped from grouse shooting, you would only be stopped for a time; it would not necessarily be a lifetime ban. The question would be whether there are other uses of the land at all. I am sorry—I apologise for all the lawyers. Proportionality is by its definition a rather vague test. It is a question of looking at all the factors and weighing the public and private interest factors together and allowing regulatory bodies an element of discretion.

Jim Fairlie: This will be interesting.

Professor Reid: If you keep thinking, life will throw up an endless range of circumstances, some of which will be absolutely in the grey area. This is exactly the sort of thing we try to think up when making problems for the students to get them to answer this way or that, without caring what the answer is. As a teacher, the argument is what you are interested in.

The Convener: I am conscious of time and I would like to go on to wildlife traps, but I have a brief supplementary from Rachael Hamilton.

Rachael Hamilton: That is generous of you, convener. Thank you.

Going back to my original question, page 16 of the BRIA states that the Scottish Government has not consulted on the impact of licensing on businesses either directly or indirectly. Bearing in mind what you said about the challenges around determining the socioeconomic impact of grouse moor licensing, would you have expected the Scottish Government to have done that as part of the BRIA?

Professor Werritty: Speaking purely personally, that would seem to me to be something that it should have done. This whole area is problematic because we know so little about the socioeconomic impact of grouse moor management. As I mentioned earlier, the Scottish Government commissioned a separate study. That study, I have to say, was imperfect in a number of ways, not least because of the challenge of obtaining the appropriate data, for obvious reasons. There are elements of commercial confidentiality. It is, in fact, difficult to drill down into the socioeconomics of grouse moor management. There is a bit of an impasse here. We do not know in detail much about the socioeconomic impact of grouse moor management. Clearly, if the bill is to be well

informed and evidence based, we need to get that additional information. I am not sure how that comes about. One of the frustrations of my review was that this area, which we were charged to give due regard to, was problematic because the evidence simply is not in the public domain other than the separate report that I mentioned, which we found imperfect.

The Convener: We will now move on to wildlife traps with a question from Alasdair Allan.

Alasdair Allan: Can you explain a little bit about how you came to the conclusion that there was a need for a new regulation around wildlife traps? Are you satisfied with what the bill has done in terms of making your recommendations real?

Professor Werritty: I ask Professor Reid to speak on this one.

Professor Reid: We know that trapping and snaring is a long-running and controversial issue. There are problems with the misuse of traps. By introducing a licensing system, the hope is that the professionalism of many gamekeepers and land managers will be recognised and they will have the reassurance that they can defend themselves there. In speaking to the public they can say, “We do it in the proper way, which has been properly assessed, using the relevant traps in the relevant way.” The law on trapping and snaring has been a bit of a mess because it has been rather inconsistent, so anything that tries to make it simpler by drawing things together is good.

The experience has been that the requirement for training and the requirement for visiting traps and snares has reduced the misuse problems with animal cruelty. It seems sensible to try to have greater consistency and greater controls to make sure the abuse is not happening while giving this form of reassurance that professionally operated traps can be used.

Alasdair Allan: Can you say anything about numbered traps?

Professor Reid: Again, we did not look at the details of that. I have seen the varied evidence on that both ways. It is clearly incredibly helpful to be able to identify who is responsible. We drive cars that have licence plates, so we know who is responsible for a motor vehicle and therefore who has a stake in it. On the other hand, I understand the fears of some of those in the industry that it may lead to identification of people and harassment.

The Convener: Given the grave consequences of the inappropriate or illegal use of traps—again, we are looking at the consequences of potentially losing a licence or whatever—are the concerns that we have heard from land managers well founded? Should there be a specific piece of

legislation on tampering with traps to ensure that we do not get any more vexatious claims from someone with the wrong intent taking a tagged trap, setting it in an illegal manner and then calling the police, resulting, perhaps, in the loss of a licence? What are your views on a specific new criminal act with regard to traps?

Professor Reid: Such activity is already criminal under malicious mischief or possibly vandalism; the question is whether it merits a separate crime. Indeed, this is another long-standing issue in many areas of law. On the one hand, there is value in having a specific crime that signals that a particular form of behaviour is unacceptable, but on the other, you then end up with endless layer upon layer of crimes, which makes it harder to understand what is going on and enforce and so on.

In one sense, about half the crime in Scotland could possibly just be dealt with as breaches of the peace, but we want separate named crimes that deal with different things for a variety of reasons. The question is whether one thinks it important to have a public signal of a specific named offence to justify criminalising something that is already criminal. There are lots of examples of activities that are already criminal where another crime gets put on top for policy or public signalling reasons. Depending on your view, that is either a helpful and useful function of the Parliament or it simply creates unnecessary complications.

The Convener: I will not repeat the law that you stated that people who tamper with traps might be convicted of, but the fact is that there is a low rate of convictions from using that piece of legislation. From what you have said, it would appear that a specific law on tampering with traps might have a positive effect.

Professor Reid: I am not convinced that it would, because you would hit exactly the same problems that you have with raptor persecution with regard to gathering the evidence. It has been suggested that the number of reported wildlife offences is a lot lower than the number that occur in reality, and I am sure that it is the same with tampering. From some of the evidence I have heard in other contexts and in the Werritty review, it certainly seems that gamekeepers and landowners are telling people that this is happening but they are not reporting it to the police. If they did, you would face exactly the same problems of finding the evidence beyond reasonable doubt in rural and remote areas.

The Convener: I call Rachael Hamilton, to be followed by Jim Fairlie.

Rachael Hamilton: I do not have a question just now, convener.

The Convener: Okay. I call Jim Fairlie.

Jim Fairlie: My question has been asked, convener.

The Convener: That is grand. We move on to muirburn and questions from Rhoda Grant.

Rhoda Grant (Highlands and Islands) (Lab): You talked earlier about the science around muirburn and whether it was beneficial and what the impact was. Why did you come to the conclusion that it should be subject to increased legal regulation?

Professor Werritty: The current system is a voluntary code, and our experience is that it is not working. We were presented with evidence, particularly from the Cairngorms national park, of wildfires that were perhaps associated with out-of-control muirburn. Our starting point was that the current system was broken and that we needed to move from a voluntary to a statutory code. Regulated and well-conducted muirburn, as Professor Newton has indicated in his comments on upland bird ecology, can be positive. It is important that muirburn is conducted in a way that complies with the code, meets the regulations imposed and can be properly reported.

Another issue that we are concerned about goes back to a lack of evidence on how moorlands are managed. Under the code, it will be necessary to report where the muirburn is taking place in addition to all the other permissions that will need to be gathered in advance.

A statutory code for muirburn is therefore a major positive step forward. Perhaps Professor Newton can say a bit more about the impact of muirburn more widely.

10:15

Professor Newton: It is important to realise that muirburn is central to the whole issue of driven grouse management. If you could not burn heather moor, you would not get the densities of grouse that you get with burning. The idea of burning on grouse moors is, as you probably know, to burn it in small patches; each pair of grouse will have, in their nesting territory, some patches of short heather, rapidly growing heather on which it can feed and long heather in which it can take shelter from predators or nest. That is the reason for the small patches of burning that you will see on grouse moors.

Generally, the burning happens on a 10 to 15-year rotation, so it is not that frequent, and it creates on grouse moors a structure in which patches of ground have different heights of vegetation. That is important in increasing biodiversity, as some animals will live in the patches of low vegetation and others will live only

in the high vegetation. If you were to burn the whole lot in one go, the ground would be absolutely uniform. The environmental impact of burning on grouse moors is therefore lower than it would be if you were burning much bigger patches.

The other advantage of that patchy burning—or strip burning—is that it provides a firebreak, which ensures that any accidental fire does not spread quite as rapidly as it otherwise would. Of course, the other advantage of fairly frequent burning is, as I am sure you have discussed already, that it prevents the build-up of a lot of dry trash that would create a really hot fire that could get out of control.

It is interesting to look at all the well-known cases in recent years of fires getting out of hand and burning many square kilometres in one go. All of them happened in summer. As they were outside the proper burning season, they were not the result of controlled burns. In fact, all the big fires have happened in areas that have not been burned for several decades, which means that there has been a huge build-up of dry trash on the ground that has got the fire going. It is mostly under those circumstances that we have cases of fires penetrating deep into the peat, which is where the problems start.

With most of the controlled burning that is done more frequently—that is, every 10 years or so—the ideal is to get the fire spreading rapidly in what is called a cool burn. Such a fire does not last long; instead, it sweeps over the ground without penetrating the peat below it, which is from where most of the carbon would be released.

Rhoda Grant: Obviously that has the benefit of stopping the sort of wildfires that we have seen quite recently and the resulting devastation, but how do we get that kind of land management—or at least the kind of management that stops wildfires and the damage that they cause? How do we replicate that elsewhere outwith grouse moors?

Professor Newton: I would imagine that the rest of the burning is carried out on land for agriculture such as sheep-grazing land in the upland. If you are burning, you need to make sure that firebreaks are always on hand if anything goes out of control, and you should not burn every year. I remember that, in the 1950s and 1960s, a lot of sheep farmers were burning every year, which is too frequent. However, you need to control things in some way or other by, say, having firebreaks and preventing the build-up of trash over a number of years.

Rhoda Grant: So, as well as having licensing, should we also be saying to landowners that they

need to control the risk of wildfire on their land, too?

Professor Newton: Yes. Landowners—or, at least, the ones to whom we spoke—are all conscious of the risk of wildfires. The management of fires in general, at least on grouse moors, has improved enormously over my lifetime. For example, when there is a fire, a lot of land managers will now take water up on to the hill—they will tow it up in a trailer—so that they have water on hand; there will also be enough men around to keep it under control. A lot of the controlled fires that got out of hand happened due to insufficient manpower, the wrong weather conditions and so on.

The code of conduct has helped a lot in this respect. My impression from our meetings with landowners is that they were much more conscious of muirburn than they used to be and were doing it correctly for their own benefit, apart from anything else.

The Convener: Alasdair Allan has a brief supplementary.

Alasdair Allan: In some of the evidence that we have taken and some of the things that we have looked at, there has been a concentration on the proposed distinction between peatland and non-peatland areas and on questions relating to the 40cm figure for peat depth and all the rest of it. From what you are saying, I am trying to get a picture of whether there is evidence that muirburn per se is responsible for the kinds of fires that you are alluding to, where peat burns on the hill, or whether this is an entirely different type of fire that we are talking about. Is muirburn a factor in the type of fire in which peat burns on the hill?

Professor Newton: It is bound to be a factor in that, occasionally, you will get a controlled burn that will get out of hand to some extent. In the past, some of those burns might well have led to local peat fires. In general, though, such fires have not had the sort of impact that the wildfires have had in recent years, simply because of the amount of stuff that can burn and the length of time that the fire rages over an area.

Inevitably, if you are burning vegetation, something is going to get out of control sooner or later, and you just have to make sure that you have the equipment and the manpower on the ground to stamp it out as soon as possible. During our interviews for the review, we learned that landowners occasionally had controlled fires that got out of hand, but generally they brought them under control themselves without the need to call the fire brigade, just because they were prepared for it. That sort of thing has improved in recent years.

The Convener: I call Karen Adam.

Karen Adam: What are your views on the proposed licensing system for muirburn? Do you feel that it meets the needs of the review's recommendations?

Professor Werritty: I think that, broadly, it does. As we have repeatedly said, we did not in the review drill down to the level of detail that we are now scrutinising at this legislative phase. Our strongest recommendation related to the fact that the existing code, because it was voluntary, was not proving effective. The existing code is well constructed, by and large; however, we felt that, because it was purely voluntary, it had loopholes, and there were occasions when non-adherence to it had produced the problems that we have been speaking about.

As far as I am aware, we do not have any details of what the proposed code might look like yet. Presumably, it will emerge at a later stage in the legislative process. If it follows the existing voluntary code, with suitable tweaks and adjustments, I will regard it as meeting our recommendations.

I do not know whether Professor Reid has any thoughts on this.

Professor Reid: There will be the same challenges that arise with designing any licensing system. How much flexibility will you have? Will you have rigid requirements and conditions? It will be exactly the same sort of debate.

The Convener: It appears that most of the peat damage is done when fires get out of control, whether they be wildfires or whatever, so it seems quite strange to impose regulations that are based on peat depth.

Following on from that, Professor Werritty, your report suggests the need for an increase in regulatory control relating to the muirburn code. Do you think the bill's provisions adequately address that?

Professor Werritty: I am satisfied that the regulations as currently written in the bill deliver on what we recommended.

The Convener: Okay. Thank you. Rachael Hamilton has a very brief question.

Rachael Hamilton: Professor Newton, you have described the habitat benefits of muirburn. With regard to the questions that Alasdair Allan and the convener have asked and the issues of peat depth and cool burning, should there be a single licensing scheme rather than two schemes, one for peat depth under 40cm and the other for peat depth over 40cm?

Professor Newton: I do not know. I would be happy if there were one licensing scheme to cover the lot, but with regard to this magical figure of

40cm—or 30cm or 50cm or whatever it might be—that is a difficult question to answer, because we just do not know. If you were to lower the figure by 10cm or raise it by 10cm, for example, we would have no idea of the acreage of land that would be affected. The more that you lower it, the more land will be taken in if you, for example, ban burning. If you dropped the figure by, say, 10cm or 20cm, how much acreage would that cover? It is a difficult question. To my mind, I can see the value of having a definite figure such as 40cm, 30cm or whatever, but it does not really tell you all that you need to know, which is who will be affected and over what sort of area.

Professor Reid: This is an example of the difficulty of having, say, one licence for muirburn wherever it is and assuming that the licensing body will reflect differences in peat and so on in that licence. It brings us back to things being flexible and uncertain. I can see that having a specific requirement in the bill is an attempt to provide greater certainty and greater knowledge, but we can also see the problems that it will give rise to. Is it appropriate to have it at all? What should the measure be?

We come back to the issue of there being two sides to the coin. Precision and certainty have their advantages, but flexibility and discretion have their advantages, too.

Rachael Hamilton: And what about the scientific data?

Professor Reid: There are opportunities for the scientific data to change. That is why the bill specifically provides that the figure can be changed to reflect the fact that the science on this is developing.

The Convener: I will take a short supplementary from Emma Harper, and I will then bring in Jim Fairlie.

Emma Harper: My short supplementary is about training and education. Professor Newton, you described the complexity of muirburn, with small patches being burned and the fire being managed to make sure that it does not get out of control. Should the issuing of licences be correlated with a requirement to provide education and training for our gamekeepers and land managers?

Professor Werritty: We made such a recommendation in our report. If you are going to have a code that will be strongly adhered to, you will need to ensure that all the personnel involved are up to speed with best practice. Training—and, indeed, updating that training from time to time—will therefore be quite important. We see training of key personnel as a fundamental part of the proposed code, and we very much hope that it will be included.

Professor Newton: I should say that such training should cover all aspects—not just muirburn, but trap operation, employment of medicated grit and so on. A good background of training is needed for everything.

The Convener: I call Jim Fairlie, to be followed by Beatrice Wishart.

Jim Fairlie: Professor Reid, I want to come back to what you said about licensing and the figure for peat depth, whether it be 30cm, 40cm, 50cm or whatever. Among the current weaknesses of the muirburn code are that few of its provisions incur penalties and there is no robust system of monitoring and compliance. Given that we are now about to put something else in place, does the bill provide solutions to the issue of compliance? Are there robust enough penalties to ensure that that happens?

Professor Reid: You will need a licence, and serious non-compliance with the code will be a ground for revoking, modifying or suspending it. As we discussed with the grouse shooting licences, there could be scope for financial penalties as an alternative remedy. With the requirement for a licence, the code moves from being something voluntary, under which there are absolutely no sanctions for ignoring it, to something that, if ignored, will put your licence at risk.

The third step is to say that breaching any provision of the code will, by itself, become a criminal offence. However, there are huge problems with that, as it would overcriminalise things. The code would have to be written in a way that would allow you to judge in black and white whether an offence had been committed.

The current position, therefore, is appropriate, subject to the possibility of there being scope for fixed penalties if, for example, you did not give adequate notice to your neighbours. Perhaps it might be more appropriate to have a fixed-penalty notice for that sort of thing instead of ministers or NatureScot not granting a licence the next year or simply revoking it. Having those more minor sanctions might be appropriate for minor breaches.

Jim Fairlie: Would that also not require NatureScot to be able to go out and measure the depth of peat?

Professor Reid: For peatland issues, the measuring is a problem, yes.

The Convener: I call Ariane Burgess.

10:30

Ariane Burgess: I would be interested in hearing whether you feel that the

recommendations on muirburn have been addressed in the bill and whether there is anything else that you would like to see in it. For example, in your review, you recommended increased training, which you have already addressed with my colleague Emma Harper. You also recommended that a fire danger rating system for Scotland should be introduced to better support decision making about where and when to burn, and that the Scottish Government should explore changes to the current rural payments and inspections division payments. It might not be appropriate to deal with those recommendations in the bill, but how do we ensure that they are dealt with? Is there anything else that you think should be addressed in the bill?

Professor Reid: I am very much of the view that those issues are not appropriate for a bill. They are policy matters that should be pursued with the Government through the stakeholders and this committee and others.

Ariane Burgess: On muirburn, is there anything else that you think needs to be in the bill, or are you content with it?

Professor Reid: On muirburn, until we see exactly what the code will cover and what it says, it is a bit hard to say. However, the bill creates a structure or framework that is adequate and meets the requirements.

Ariane Burgess: When we were talking about wildfires earlier, I picked up that we need to follow the precautionary principle. The desire to move from a voluntary practice to a regulated and licensed practice is because we will potentially see more wildfires happening. Maybe that will be from natural causes, but my understanding from talking to people who work in that area is that wildfires are always at the hand of a human, whether it is in error or by intention.

I picked up from what you were saying that, as wildfires increase, we will need to increase the workforce and the equipment that is on hand to attend to those. Regulating muirburn is a way of moving towards a more precautionary approach so that we limit what might happen in other areas. We have already seen, with the fires in Cannich and Corrimony, that deploying people to attend to the fires is quite challenging.

Professor Werritty: I concur with what you have said. That is the right direction of travel.

The Convener: Before we move on to the last couple of questions, can I have your views on the presumption against muirburn and why it should be the last management tool, given what you have said about control of wildfire and improving species habitat?

Also, do we need more accurate data on peat depths—to 50cm rather than 40cm—before we bring in any regulations, to give land managers a little bit more certainty?

Professor Werritty: The problem with peat depths is that I understand that the existing map is based on a depth of 50cm. Therefore, if you migrate away from that, you clearly have a challenge in how you determine peat depth, although there is commentary on the bill about ways of dealing with that by using probes over, say, squares of 100m by 100m.

It would perhaps be good to have the James Hutton Institute give us more detailed information on Scotland's peat soils, particularly seeing that they are so vulnerable, but it would be a major undertaking to effectively remap Scotland's peat soils. In the interim, we will have to rely on the measures in the bill. I very much hope that NatureScot and grouse moor managers will be able to find a way of determining peat depth that is not unduly onerous in the demands that it makes on the estate managers but satisfies the requirements in the bill.

The Convener: And on the point of the presumption against muirburn?

Professor Reid: The provision that “no other method of vegetation control is available”

sets a very high standard. It is possible that the term “reasonably available” or something like that might be more appropriate. Again, you have the problem that setting a rigid test takes away your flexibility and your ability to respond to different circumstances. People will differ on whether other control is available for rocky ground, on steep ground and so on. There can be issues. A bit of fuzziness can be helpful for operating the system.

Ariane Burgess: Coming back to peat depth, my understanding is that that is an historical measurement that was used by the United Kingdom Government at the time when trying to identify energy sources. The measurement was about something different. We are looking at peat in relation to the damage that can be caused.

We have a peatland restoration initiative in Scotland in which we fund land managers to restore peat, so it seems to me that we are talking about two different things when we start to talk about depth. Peat is a continuous cover and, no matter its depth, we need to protect that in terms of our carbon emissions. What are your thoughts on that?

Professor Werritty: The soil map would have been produced many years ago and would not have had in mind what we have been talking about. Certainly peatland restoration is a whole

different area that is not within the remit of this inquiry or our report.

Ariane Burgess: We try to protect peat because we recognise that it is a super carbon sink. It is great that we are moving potentially to the licensing of it, but it seems odd that, on the one hand, we are funding the protection of it and, on the other hand, we are saying that it is okay to burn it, no matter the depth.

Professor Werritty: The current restoration programme is taking degraded peatlands and restoring them to as near as can be back to their original pristine condition. That often involves raising the water table and removing trees. It is a totally different agenda to what we have been talking about in terms of grouse moors. Although you can see certain parallels between the two areas, they are quite discrete in terms of the underlying science.

Ariane Burgess: We need to move to an ecosystem approach and look at everything as a whole.

Professor Werritty: Yes.

The Convener: Finally, you made recommendations in your review on issues such as satellite tagging, additional sentences and consolidation of wildlife law. To what extent have those have been implemented? Should those recommendations be in the bill or should they form part of a non-legislative approach? Not all your recommendations have been adopted. How would you like to see that addressed?

Professor Werritty: Perhaps I could ask Professor Newton to speak about satellite tagging, because I think that there have been some developments.

Professor Newton: Satellite tagging has turned out to be one of the main methods that we have of monitoring how birds of prey die. It has revealed, as you know, a lot of interesting results. The bulk of the mortality in several species occurs on or near grouse moors. Satellite tagging has been a major source of evidence. It may be necessary to continue that into the future to keep monitoring the situation. It has been extremely revealing both for the golden eagles—their tagging started off this whole process—and also for hen harriers and other birds that have been tagged.

An issue that we have not touched on so far is the evidence that birds of prey suffer on grouse moors. The evidence is a lot more substantial than one might believe. It is not just finding a few carcasses on a grouse moor—that is a trivial aspect of it. The populations that live there are monitored annually by so-called citizen scientists. There are multiple strands to the evidence that things are going wrong on grouse moors. For one

thing, a lot of the known territories are much less frequently occupied each year than they are on areas outside of grouse moors. Birds disappear during the breeding season. Pairs disappear much more frequently on grouse moors than they do outside grouse moors. The nesting success of the birds there is very low compared with elsewhere.

In addition, quite a lot of the breeding population of some species consists of young individuals that would not normally get the chance to breed in a bird population, but they can do so because the adult population has been reduced and territories have become available to them. The proportion of youngsters in the breeding population has grown. A lot of evidence is collected for individual species, and those are highly significant differences between grouse moor and other terrain.

Furthermore, if you have a change in the management of grouse moor, you immediately get a response in the case of the raptors—when a different manager comes in, their numbers either go down or they go up. How they manage the moor and their attitude to birds of prey is immediately reflected in what happens to local raptor populations. That is just one other line of evidence that we have.

Professor Reid: On consolidation of the legislation, the bill is clearly a backward step, because we are talking about introducing section 16AB into the Wildlife and Countryside Act 1981. I am delighted to see that the Scottish Law Commission's new programme of work includes consolidation of wildlife legislation as one of its medium-term plans. I would be absolutely delighted by anything that this committee and others can do to make sure that that happens and that the Government supports it.

The Convener: Do you have any comments on that, Professor Werritty?

Professor Werritty: I have no further comments.

The Convener: I thank the witnesses for attending this morning. It has been a hugely useful session. I will now suspend the meeting for 15 minutes to allow for a changeover in witnesses.

10:40

Meeting suspended.

10:55

On resuming—

The Convener: Welcome back, everyone. We are joined by our second panel of witnesses: Libby Anderson is a member of the Scottish Animal Welfare Commission; Ian Andrew is chief executive officer of the British Pest Control

Association; Ross Ewing is director of moorland at Scottish Land & Estates; Chief Superintendent Mike Flynn is from the Scottish Society for the Prevention of Cruelty to Animals; Liz McLachlan is from NatureScot's wildlife management team; and Alex Hogg is chairman of the Scottish Gamekeepers Association. Again, we have approximately 90 minutes scheduled for this session.

I will kick off with the first question. Do you agree with the provisions in the bill that ban the use and purchase of glue traps, which follows the advice of the Scottish Animal Welfare Commission? Do you agree that a ban on the use of glue traps is more appropriate than a licensing system?

Alex Hogg (Scottish Gamekeepers Association): I am sorry, but I have no comment to make on that. The issue does not come under our remit.

The Convener: It is probably appropriate to bring in Ian Andrew.

Ian Andrew (British Pest Control Association): Our position is very clear: a public ban on the purchase and use of rodent glue traps is absolutely the right thing to do. However, it would have devastating results for us, as professional pest controllers, if we were to lose that tool. It is the only tool that we have for capturing rodents quickly. It is true that we have alternatives. We have biocidal products, although the lifespan of those is in question. We also have break-back traps. However, there is increasing genetic resistance to biocidal products, and there is increasing behavioural resistance to break-back traps and to biocidal products. Rats and mice are clever creatures. They understand that these things are not good for them.

If we lose the only tool that we have to capture a rodent quickly, it will result in increased populations, which in itself is not good for animal welfare. In addition, businesses and organisations such as supermarkets, restaurants, pubs, hospitals and schools where there are infestations will be closed for longer periods of time. At the moment, an environmental health officer who goes into a premises where there is a rodent infestation will want to see three clear instances of no capture on glue boards so that the premises can reopen quite quickly. Biocidal products take approximately two weeks. That is two weeks of businesses being closed before they can be reopened. With break-back traps, it can take many days before rodents will go anywhere near them.

The glue trap is just a method of capture. If the rodent is not on the glue board for a considerable length of time and is then humanely dispatched, the position is more favourable from an animal

welfare perspective than it is with biocidal death and death caused by a break-back trap. Of course, the issue with glue traps has been misuse. Mike Flynn's team has found instances of glue traps being put outside buildings. I cannot think of any conceivable excuse for a glue trap to be deployed outside a building. Internal use for high-level infestations in high-risk areas is the only way of capturing it.

In response to the financial memorandum that goes alongside the bill, we made the very conservative estimate that, if glue traps are banned, that will have an impact of about £22 million on the Scottish economy every year through the closure of businesses. That represents half of all restaurants, shops and supermarkets being closed for a week once every 30 years. That was very conservative. That would have £22 million-worth of commercial impact on the Scottish economy. It is absolutely the case that animal welfare is critical, but that has to be balanced with public health.

11:00

The Convener: Are there any other comments? Libby Anderson.

Libby Anderson (Scottish Animal Welfare Commission): Clearly, I am a member of the Scottish Animal Welfare Commission, which provided the report on the basis of which the Scottish Government formed the view that it would go for a full ban. To explain the history of the report, we took evidence from many stakeholders, including Ian Andrew's organisation, the pest control industry, animal welfare advocates and environmental health and enforcement organisations, and we considered all of that seriously.

First, nobody disputed—I am grateful to Ian Andrew for agreeing with this—that glue traps cause severe and generally prolonged animal suffering. The wide view is that that is at a level that is so unacceptable that an outright ban is now justified. I could go into some of the detail of the injuries, but you may not need that.

In our reasoning in the report, we took into account the public health risks and the severe animal welfare consequences, and we looked at other models. For example, in New Zealand, a strict licensing scheme, which involves ministerial approval for the use of any glue trap, was brought in in 2015. In the past year or two, the number of approvals has dwindled down to zero. We accept that there is a different demographic and a different pattern of living in New Zealand, so we are not necessarily comparing like with like, but with the approvals literally at zero, we can see that that system is effective in many situations.

The other thing that we did in our report, while saying that the animal welfare issues merited a full ban and that public opinion would back that, was to set out a potential fail-safe licensing scheme, which would be specific, case by case and for a limited period. We offered that as a potential alternative that might see us through the period while further developments arise in technology and science. I know that the industry works with scientists and is keen to develop it, and I know that the industry acknowledges the suffering.

On the point that Ian Andrew made about glue traps being relatively quick, the industry code requires traps to be inspected twice daily—in other words, that could happen 12 hours after an animal had been trapped in that horrible and painful situation. To require almost immediate inspection would be so onerous on the industry that that would be difficult. It is a question of balance. The commission's view was that an outright ban is justified, and we are pleased that that is the approach that the bill takes.

Jim Fairlie: I have a couple of questions. Out of curiosity, what is a glue trap and how does it work? It sounds ridiculously simple, but what is it and how does it work?

Ian Andrew: It is a piece of board covered in glue. Typically, you would form a barrier. Let us say that there was a rat running around at a supermarket. You would identify where the point of ingress was and you would form a barrier so that the rodent had to cross the glue trap and they would get fixed to it. In the worst case, that would be for 12 hours, but from a BPCA perspective, we are happy for our members to stay on site so that the period is nowhere near 12 hours. The glue trap catches the rodent and then it is humanely dispatched, usually by blunt force trauma.

Jim Fairlie: Libby Anderson said that, in New Zealand, the level has dwindled down to zero. How has New Zealand managed to go from using glue traps to not using them?

Ian Andrew: That is comparing apples with pears. We have near pandemic levels of rodent infestations, particularly in the city centres of Edinburgh and Glasgow. The populations are different. In New Zealand, the rodents have no genetic resistance to biocidal products. There is no research on this, but it would appear that there is little evidence of behavioural resistance to traps in New Zealand. It is a different standard. They do not have the big cities that we have. Population levels of rodents are much less significant in that country.

In other countries, other methods are used. For example, in Europe, the drowning trap is effective and popular, but it is illegal in this country.

Rachael Hamilton: How does our population of rodents compare with those of other countries? Do you have like-for-like figures?

Ian Andrew: I am sorry, but there is very little data. There has been a lot of press speculation about an increased population, but it is probably more the case that there was a change in the behaviour of rodents during lockdown, for example, when takeaways and restaurants were closed, which meant that they had to forage in other, more domestic environments and urban environments. However, it is hard to say what the actual numbers are.

Rachael Hamilton: Another measure that could be looked at or a methodology for working out the size of the population could be the number of operators who have been called out to various institutions, such as hospitals and supermarkets, which has increased. I do not want to cause alarm among the public, but you have indicated that we have a growing problem with rodents. It would be good to get some understanding of how you have come to that conclusion.

Ian Andrew: Our members are busier than ever and are getting increasingly busy. It is not just rodents that they are dealing with, and there is a high level of seasonality, but they are getting busier, so they have an increased number of pests to deal with. To be absolutely clear, if glue boards are banned, my members will do much better commercially, because it will take much longer to get a rodent infestation under control. For my members, if glue traps are banned, their businesses will boom.

There is little by way of specific data on volume. It is mainly anecdotal. Some research was done recently that included Scottish local government call-outs. That would indicate that there was a slight increase. Of course, most local authorities deal only with local authority housing stock; they do not deal with takeaways, hospitals, supermarkets and so on. Sadly, there is no tangible data.

Beatrice Wishart: What is your understanding of the current extent of the use of glue traps in settings such as hospitality and hospitals?

Ian Andrew: Thankfully, it is fairly rare, but, if there is an infestation in a high-risk area—particularly a food environment, for example—the food safety legislation has to be adhered to. There is a risk to public health and therefore the rodents need to be dealt with swiftly. My technical manager, who was a pest controller for 15 years, used them twice in her career.

Again, there will be geographical differences. For example, on the Byres Road in Glasgow, I suspect that they are used daily, because there is an endemic problem. Despite the Prevention of

Damage by Pests Act 1949, which allows local authorities to take a much more global approach to pest control, rats and mice move from one premises to another and from one building to another. There is no real block approach to rodent control. Each takeaway will have its own pest control company or will do it themselves. Better use of the 1949 act would make control much more effective.

Beatrice Wishart: Are you saying that there would be public health implications if glue traps are not used?

Ian Andrew: Absolutely. I am not sure whether the committee is including the Royal Environmental Health Institute of Scotland in its research.

The Convener: I am not aware that we are. It is not taking part in any of the witness sessions.

Alasdair Allan: On that theme, I wonder whether, in coming to a view about banning glue traps, it was envisaged, discussed or debated what that transition would be to, given what Ian Andrew has said. What is the transition to, in schools and hospitals?

Libby Anderson: We have to hope that the industry will continue to work to develop improved traps. Electric traps, for example, are not well distributed around the country. New traps are coming along all the time. When we talk about spring traps later, we may consider those as well. That is being developed all the time.

I hear Ian Andrew's point that rodents do not readily go into new traps. The conventional solutions are things such as improved proofing and prevention. No doubt, many pest controllers will come along and do that or advise people to do that first of all. In an industrial or health premises, that work would have to be on-going constantly. On rodenticides, we know that anticoagulants are pretty cruel, so we cannot just say, "Use those, and that will be fine." You do not generally see the animals that have died as a consequence of that but, if you do, it is not attractive.

The commission was aware of potential unintended consequences, which is why we wanted to give it time. However, the overwhelming weight of evidence about the suffering that is caused by glue traps led us to believe that they had to go. Certainly, everyone agrees that they should not be used by the public.

Alasdair Allan: Perhaps it is not in your remit to say what the alternative is, but that is the big question that we are all considering. What is the alternative for a hospital?

Libby Anderson: There is no one solution. It would not be correct to say that we can recommend an alternative. The notes

accompanying the bill state that 11 of the 14 local authorities that responded to the bill said they do not use glue traps. Many organisations do not use them. Ian Andrew mentioned that they are little used in the industry, which I am pleased to hear.

It seems to me that it is feasible, given the overwhelming evidence about animal welfare and the good will and productive thinking, that a couple more years should bring better solutions. I cannot tell you what they will be, but there are men of science out there, and we hope that that will be the case. That is a reasonable assumption.

Ian Andrew: It is, but hope is not a strategy. We hope that we will have alternatives but, just to be absolutely clear, at the moment we do not. The glue trap is the only means of rapid capture and, when used professionally, rapid dispatch through blunt force trauma. It is the only thing that we have. Everything else takes time. Biocidal products and break-back traps take time, which means that hospital wards and school canteens will be closed for much longer periods. The already fragile hospitality sector will probably be the first to suffer. Environmental health officers have no choice—they have to close premises until they are free from infestation.

11:15

Jim Fairlie: To clarify, you are saying that the use of a break-back trap would take much longer than if you set up a barrier with a glue trap and a rat comes over the top of it. However, you more or less know the behaviour of a rat. I get that there will be some resistance to it, but is there not a method that you can use with a break-back trap that will catch the rat? I am trying to think of the behaviour of the rat and why it is coming out in the first place. It will come out for a particular reason, and not because you drive it out. Therefore, if it will be done quickly, somebody has to be on site to alleviate the problems that Libby Anderson has talked about. If you were using break-back traps, would you not just use more of them and make sure that they were baited appropriately?

Ian Andrew: Absolutely. A break-back trap is small; a glue board is larger. You would be putting down literally thousands of break-back traps.

Jim Fairlie: How many rats are you trying to catch if you are putting down thousands? I am sorry—I am not trying to be facetious; I am trying to get a picture in my head of what this looks like.

Ian Andrew: If there was a point of ingress behind the convener, for example, and that was identified as the point of ingress, although that would be nothing to do with the convener being there—

Alasdair Allan: That did actually happen once in committee many years ago.

Ian Andrew: Okay. As a barrier, in effect, a dozen glue boards would be placed around the convener so that the rodent had to cross one to get to any food source, harbourage or water. That is why they are coming in—it is for food, water or harbourage.

Jim Fairlie: What is the difference between having glue traps and break-back traps in exactly the same numbers?

Ian Andrew: The problem is that a break-back trap is small, so thousands of them would need to be deployed, which is just impractical.

The Convener: Ariane Burgess has a supplementary question.

Ariane Burgess: I am not quite sure where to bring this in, but I want to clarify something. We are talking in detail about how and where traps are used, which is very helpful, so I thank Ian Andrew for that. I get the sense that we need to do a 360° look if we are bringing in this legislation. However, primarily the legislation is being introduced to address raptor persecution. In the policy memorandum, paragraph 13, under “Policy objectives”, says:

“The use of glue to trap birds is an offence”.

That is what we are trying to tackle here, is it not?

The Convener: No, we are not covering that just now. We are talking specifically about glue traps.

Ariane Burgess: I understand that, but I am confused as to why we are talking at length about glue traps, and I am trying to get clarity. We are talking about them because the bill is bringing in provisions on glue traps, but it is about wildlife management, muirburn and specifically raptor control. I want to get clarity.

The Convener: The provisions that we are discussing do not relate to wildlife control; they are specifically about glue traps.

I will bring in Karen Adam.

Karen Adam: My question is for Libby Anderson and Ian Andrew. What are your views on the proposals for a transition period?

Libby Anderson: The commission recommended that the proposed strict licensing scheme should last for no more than three years. We made that recommendation two years ago. It is fairly simple: we would like the transition to be as short as possible.

Ian Andrew: We fundamentally do not want a transition period; we want to keep glue boards, as they are the only tool that we have for rapid

capture. Our members are already licensed by Liz McLachlan’s team for bird work—and for gull work in particular. We are carefully, closely and robustly licensed to do other aspects of pest control. Similarly, our members cannot purchase rodenticides without proof of qualification and, shortly, they will require proof of continuing professional development. The same applies for insecticides.

Control measures and licensing schemes are already in place that work effectively. The bird licensing is now online and it is effective. The same applies south of the border. We do not want a transition; we believe that we can have an effective licensing scheme for professional pest controllers that limits the use of glue boards to high-risk situations. South of the border, consideration is given to the training, the qualification and the CPD of anyone who is licensed to use glue boards, which is absolutely right. However, we need to keep the access to these tools. A transition will not work.

The Convener: I will bring in Mike Flynn.

Chief Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals): Thanks, convener. I want to pick up on a couple of points.

On the last point that Mr Andrew raised, not every pest controller is a member of his organisation, so they do not have that governing body. Nobody needs a licence to use a glue trap, and I am pleased to hear Mr Andrew saying they should 100 per cent be banned for general public use. I must admit that the general public have caused concerns for us. Not everybody has the confidence and wherewithal to destroy an animal once it has been caught. We have had live animals on glue traps being put in bins or being drowned. They are horrendous things to use, and they are totally indiscriminate.

Since the late 1950s, it has been illegal to use any kind of glue to trap a bird, so there is already a precedent. These things will catch anything. We have found home-made ones. With the traditional ones, you used to be able to buy them for 99p at B&M, so anybody could put one in their loft and then forget about it. We have had home-made ones that have caught foxes, and we have had gulls caught in them—they have been totally misused. That has nothing to do with reputable pest controllers, but it is just an easy way. They cause suffering. I agree that 12 hours is better than just being left there, but it is still a long time for a sentient mammal to be trapped and doing whatever to try to free itself.

Ian Andrew: On the 12 hours, we are more than happy to stay on site, if that is required. You cannot stay in the same room, because that will

prevent the rodent from coming on to the glue board, but you can stay on the premises for three or four hours or whatever.

On the technology point, there is greater use of cameras, for example. Traps can be monitored remotely and, as soon as something goes on to one, the pest controller will have visibility of that. The 12-hour period is very much the extreme.

Karen Adam: I will move on to my next question. Police Scotland has advised that perhaps the possession as well as the use and purchase of glue traps should be included in the ban. Can I ask for views on that?

Libby Anderson: I have nothing to add on that, really.

Ian Andrew: The reality is that professional pest controllers get their products, whether they are biocidal products, break-back traps or glue traps, from about half a dozen suppliers in the UK. For the public, it is a different story, but professional pest controllers use about half a dozen. For rodenticides, there are point-of-sale checks—you have to show that you have done your qualification before you can purchase them. Through our relationships with Amazon and eBay, we get things taken off almost overnight. If something is banned for public use and comes on to eBay, our relationship is such that it would be taken down immediately.

Ariane Burgess: I want to pursue the question that I raised earlier. The policy memorandum mentions that the bill will bring in a ban on glue traps. It says that the bill

“is being introduced to address raptor persecution and ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare conscious manner.”

Paragraph 13 of the policy memorandum states that

“The use of glue to trap birds is an offence”.

Are glue traps used? Is that what we are trying to do here with the glue-trap ban?

The Convener: No. It is quite clear that the provisions on glue traps are not related to grouse-moor management. They are related to general animal welfare concerns.

Ariane Burgess: In that case there is something confusing in the policy memorandum, which may need to be clarified with the Government bill team. I wonder why the memorandum mentions that

“The use of glue to trap birds is an offence”.

Are glue traps used to trap birds?

The Convener: It is not my position as convener to answer that, but my understanding is that they are not.

Jim, do you have a supplementary on glue traps before we move on to wildlife traps?

Jim Fairlie: Mike Flynn has already answered my question, thank you.

The Convener: We will move on to the theme of wildlife traps.

Beatrice Wishart: Do panel members agree that there is a need for additional regulation of use of wildlife traps? What is your experience of use of spring traps and live-capture bird traps? What evidence is there that traps are misused in relation to both animal welfare and wildlife crime concerns?

Ross Ewing (Scottish Land & Estates): The rationale is broadly set out in the policy memorandum. Paragraph 58 refers to illegal use of traps in or around grouse moors and qualifies that with two references to incidents where raptors were persecuted using a spring trap. Paragraph 59 then goes on to say:

“Where live capture traps have been used to persecute raptors, they are usually either ladder traps, or funnel traps.”

The inference is that traps are sometimes used to persecute raptors on grouse moors. The only thing that I would draw the committee’s attention to in terms of the actual evidence base for that is the official wildlife crime record. From the latest record, which was published this year and covers 2021, incidence of birds of prey crime involving trapping raptors is consistently lower than it is for shooting or poisoning, for example. It happens far less than shooting and poisoning.

The other important thing to say—I need to make this point clear—is that the wildlife crime record does not specify where incidents have taken place. We cannot say with certainty that trapping incidents, for example, all happened exclusively on grouse moors.

There is a fairly weak evidence base, to be honest, for the introduction of further regulation on use of certain wildlife traps in this context. It is regrettable that the policy memorandum has not expanded on that in a little bit more detail. We are talking about introducing a licensing scheme for numerous spring traps, the supporting evidence for which is summarised in two anecdotal references to raptor persecution. The evidence base is largely deficient and probably needs to be clarified further by the Scottish Government.

The Convener: In previous sessions, Hugh Dignon referred to Fenn traps on more than one occasion. However, it is my understanding that the

setting of Fenn traps is illegal at the moment, so those Fenn traps would not come under any new potential licensing scheme.

Ross Ewing: I could not speak to the exact legalities around it, but the traps that are generally used on grouse moors are DOC traps. I will defer to Alex Hogg, who can speak in a little bit more detail about the sort of traps that are generally associated with grouse moor management.

Alex Hogg: Last year, the Russian Federation made it illegal to use Fenn traps to kill stoats because the traps were not killing them in 38 seconds. The break-back trap that we were using was a Fenn trap, so we all had to change our management. We now use either a DOC or a Tully trap to catch a stoat. The traps are so strong that if you catch your fingers in one, you will break your fingers. The traps immediately kill the animal. They are good traps. Every grouse moor has now transferred over, at a cost of thousands of pounds. A Fenn trap was about £9 or £10 but the new traps all run at about £40. It is a huge expense, but we have done it and it works well. The animals do not suffer—that is for sure.

Rachael Hamilton: Is the licensing scheme proportionate and workable, including the requirement for compulsory training and registration for all trap use? Should there be a bespoke scheme that is identified to one serial number rather than individual serial numbers, where an operator may not use all of those traps?

Alex Hogg: We are doing a lot of training. We have done all the snare training. We are up for doing the trap training and getting it right. Whatever you decide on, we will comply with it and get the guys up to speed with their training.

11:30

Ross Ewing: The question was whether the licensing scheme is workable and proportionate. Broadly, given the current provisions, the answer is no. That is not the Scottish Government's fault, but there has been a lack of awareness about the potential unintended consequences of the scheme.

The key problem relates to the imposition of unique licence numbers on traps that are used much more readily than, for example, traps that are used to catch live birds, which are the only traps that are currently required to have unique licence numbers.

The implication of putting unique licence numbers on all trapping infrastructure, including spring traps, essentially results in that trapping infrastructure becoming personalised. It is tied to a specific operator. That should not be a problem, but it is, because of the extent of trap interference,

tampering and sabotage in the Scottish countryside. This committee probably has the biggest wealth of evidence anywhere to suggest what the scale of the problem is because a number of gamekeepers responded to your recent call for views and made clear the sort of incidents that they were faced with.

In your summary of the responses to the call of views, where you did your analysis, under the question:

“Do you agree that there is a need for additional regulation of the use of certain wildlife traps?”,

for those who disagreed, one of the key words used was “sabotage”. A lot of people spoke to that in their responses to this committee.

That is a problem because if you have a unique licence number that is tied to a trap, that trap could then be sabotaged and be made illegal through other ways and means, through the actions of a third party. That trap would then tie the illegally set operation to an individual. If there is a unique licence number, that individual is much more likely to be the suspect in any investigation that then comes down the line. Of course, we know that if you are under investigation in the context of this licensing scheme, you can have your personal licence to trap suspended. Moreover, the licence to shoot grouse could be suspended by the initiation of an official investigation.

I can appreciate that that was a lot of steps to go through, but the unintended consequence of personalising trap infrastructure where there is rifle interference, sabotage and tampering with infrastructure in the Scottish countryside has unintended consequences. It is important to set that out.

Alex Hogg: As soon as people have done it, they put it on Facebook and it is all over the place before they even get back, which encourages the behaviour. It is scary—it really is.

Rachael Hamilton: Convener, I want to explore what happens—

The Convener: We have jumped ahead a bit. That is fine—it is the nature of a round-table discussion. However, can we focus on trap tampering at the moment? It will probably be helpful to explore that issue.

Karen Adam: For the purpose of clarity and for the record, why would somebody be sabotaging and tampering with traps?

Ross Ewing: That is a good question. Some people are ideologically opposed to grouse shooting. If they are walking on a grouse moor and there is a trap there, they might take it into their own hands to sabotage it. Some people are ideologically opposed to use of traps for wildlife

management. For some people, killing a sentient being is too much—they do not agree with it and therefore they take matters into their own hands. Some people, frankly, do not know what they are doing; they come across a trap and think that it is fun to smash it. There are all sorts of broad motivations. I should stress that these are my assumptions, but I imagine that these are the things that go through people's heads when it comes to sabotaging, interfering and tampering with trap infrastructure.

Rachael Hamilton: What are the implications for the humane use of traps if they are interfered with? I have spoken to gamekeepers in my constituency whose traps have been interfered with, which is quite distressing. However, Ross Ewing is suggesting that having related serial numbers could lead to a potential for prosecution for the gamekeepers.

Ross Ewing: Yes. One of the most common things to happen in the context of traps being sabotaged is that the box or the tunnel over which the spring trap sits is removed, exposing the trap to the elements. That carries significant consequences for animal welfare because if non-target species are caught in such a trap, there will be some pretty seismic consequences for the animal welfare components that most gamekeepers take into account when they are setting these things.

The act of exposing the trap to the elements is probably one of the things that you see most often. That is certainly reflected in the responses to the call for views. You are right. The big problem here is that if that sort of incident happens—if someone removes the tunnel or the box and the trap is exposed to the elements and someone else comes across it and reports it—a unique identification number immediately links the trap to an individual, who is then most likely the subject of an investigation, which, as we have heard, could come with the consequence of a licence being suspended.

The Convener: We have had the feedback from the call for views, but to what extent is that an issue? We heard from the earlier panel that there are very few, if any, prosecutions for tampering with traps. What is the extent of it and what do stakeholders suggest is the route to stopping it?

Ross Ewing: On the extent of it, just to give you a flavour, we put on surgeries to help people respond to the consultations associated with the bill, given the gravity of the consequences. Of over 100 gamekeepers that I interviewed, I can count on one hand the number who have not been impacted in some way by trap interference, tampering or sabotage. That will give you a feel for the scale of the problem. You have the individual responses. I also refer you to the public

consultation that preceded the bill. The analysis of the consultation said:

“The potential for malicious tampering with, or damage to, traps was a key concern of some of those who felt that the proposed penalties are too severe.”

The analysis also said that

“Some of those who disagreed at Question 29”,

which was the relevant question,

“suggested that, if proposals are taken forward, there should be an equivalent offence of interfering with legally-set traps.”

That is fundamental, because ultimately the act of interfering could result in the trap becoming illegally set, which carries animal welfare implications. The strongest feeling from the sector is that the penalties for trap interference, tampering or sabotage should equal those for mis-setting a trap in the first place. That seems logical to me, but I will leave that to the committee.

The Convener: We will stick with tampering, before we move on. We will hear from Alex Hogg.

Alex Hogg: You can imagine that a lot of the traps are baited with rabbits and, as long as they are covered, they work perfectly well. If they are tampered with, however, and the covers are lifted off, the rabbit is exposed to eagles or buzzards, for example, and the next thing is a huge serious incident with a raptor in a trap, which is bad.

Rachael Hamilton: There is a piece on training—

The Convener: We will go back to questions on regulation in a minute. We are sticking to tampering at the moment. We come to Mike Flynn.

Mike Flynn: On Ross Ewing's point about tampering, if a trap is registered in my name, for example, and it is interfered with, it is still up to the prosecution to show that Mike Flynn set the trap. It might be my name on it, but somebody still has to prove that it was me who was operating it at the time. I agree with the countryside people: there should be a specific offence for anybody who interferes with a lawfully set trap. If it is lawfully set, any suffering should be minimised, but that is outwith the setter's control if the trap is tampered with. At the moment, the offence can be malicious mischief, possibly theft or possibly vandalism. There should be a specific offence.

Ariane Burgess: It is good to hear that point from Mike Flynn. Do we have any developments in technology? We are aware of the digital technology that supports us with the raptor persecution aspect. Is there some kind of digital technology that we could apply to traps so that we could see whether they were being tampered with, just as you can see a vessel's activity in our inshore fisheries?

Ross Ewing: Some people take it upon themselves to set trail cameras where they have set traps. The problem is that spring traps are used in such numbers across grouse moors that setting cameras for each one is probably practically impossible. Where we have seen successful prosecutions, they have generally resulted from the keeper either sitting out and watching, seeing what has happened and taking the evidence accordingly or setting a piece of technology such as a trail camera.

Ariane Burgess: Could we take that technology further and have something within a trap so that you could tell if it had been moved? We do that remotely for many other things. Surely, we could move in that direction.

Ross Ewing: I am not aware of anything being done at the moment.

Ariane Burgess: It is an opportunity for somebody.

Ross Ewing: It is perhaps an opportunity.

The Convener: We will jump back now to additional regulation.

Jim Fairlie: I am conscious that that question has been answered by a gamekeeper and by somebody who represents Scottish Land & Estates and I want to get a balanced understanding. Libby Anderson, Mike Flynn and Liz McLachlan—do you feel there is a need for additional regulation of setting traps?

Mike Flynn: Yes, I do. I am all for training, which Alex Hogg supports and his organisation can do. We have had people who have been on a training course but have then abused it. That knackers them when they go for the defence, “I didn’t know the law.” They do know the law because they were trained and they passed that training.

Anything that could kill an animal, as far as I am concerned, should always be a last resort, but if it is going to be used, it should be by trained individuals who, if they break the law, have no excuse because, as part of their training, they are told exactly what the law is.

Lastly, on tampering, if the legislation comes in, strict records would have to be kept, which would say, for example, “I visited my snare/my trap on that day and it has been interfered with.” That would be a defence for the person because they have already declared that, in addition to reporting it to the police.

Libby Anderson: The reason why live traps and spring traps are included in the bill is that Professor Werritty’s report identified a connection between the use of traps and raptor persecution, which gave rise to the bill. From the commission’s

point of view, we would welcome their inclusion and see an opportunity to improve welfare issues, because live bird traps and spring traps both pose welfare challenges.

In the case of crow cage traps and Larsen traps, there are known welfare issues to do with the decoy bird being confined for a lengthy period, and all of the birds are exposed to the elements. Food and water are provided only to the decoy bird, and the trapped birds are meant to be there for only 24 hours, but that could be a very long time on a winter day up in the mountains. There are inherent welfare issues and there are concerns about the way that birds are dispatched when the operator comes to inspect them. We have seen evidence of birds being poorly dispatched and suffering as a consequence.

Jim Fairlie: Could you explain what you mean by “poorly dispatched”?

Libby Anderson: Yes. I remember that some years ago, the organisation that I worked for observed a keeper going into a cage and attempting to kill the birds by just laying about them with a stick. I am sure that colleagues from the profession would agree that that is not an appropriate way to attempt to kill a dozen crows.

Jim Fairlie: That brings me back to Alex Hogg’s point about the training and professionalism of the people carrying out those acts. Would not training be part of the process?

Libby Anderson: I would like to move on to talk about the advantages of training. It would not only ensure that best practice is observed, but is needed for reasons of accountability and maintaining standards. Like Alex Hogg, I do not think that there is any objection to training. The concerns that have been identified are more about ID tags and problems about potential sabotage, which are beyond my ken, frankly.

Could I very quickly say something about welfare issues around spring traps? Live bird traps are used under a general licence, welfare standards are applicable and there is accountability, because the animals that are trapped are live animals. With spring traps, in theory, animals will be killed or rendered irreversibly unconscious instantly, but we know that is simply not always the case. The humane trapping regulations that Alex Hogg referred to apply only to stoats but the same type of traps could be used for weasels, squirrels or rats and there are no specific humane trapping regulations for them. At the moment there is little accountability for use of spring traps. There is no recording of the animals that are caught, there is no recording of animal welfare issues and there is no requirement to demonstrate the need to kill those animals. All that could be incorporated into a

licensing scheme and could be the subject of training. Those are the advantages that we see.

Liz McLachlan (NatureScot): We recognise that spring traps and other live-capture traps for birds are important wildlife management tools, but if used inappropriately—be that because they have been tampered with, have been set inappropriately or whatever—there is the risk, in addition to the welfare issues that we have discussed, of capturing protected species and other non-target species.

The Convener: As the expected licensing authority, how will NatureScot go about developing the systems and approved training courses to address some of the things that you have touched on? What resources will you require, will they be available and when do you think a decision about the cost and cost recovery being made?

11:45

Liz McLachlan: As with our other licensing approaches and schemes, we would develop the licensing scheme in conjunction with stakeholders. We would listen to the interested parties, just as we have recently done for schemes such as that for mountain hares. We would develop a proportionate approach.

We already have a trap registration system and we have already moved the registration process online so that it is simple and effective. It allows us to know who is licensed, and we would expect to extend the registration scheme to incorporate the new requirements of the bill. Additional resourcing would be required to develop the online system, and there will be a cost associated with that. However, the additional resource that would be required for managing the system once it is up and running would be minimal.

The Convener: Is it likely that we will know what the approach to fees and full cost recovery will be before we complete stage 1 of the bill?

Liz McLachlan: Probably not, although as we go through the process into stage 2, we will develop a better idea of the scale and the cost.

The Convener: Thank you. We have jumped around a bit and I am conscious that some members of the committee might not have got to ask the questions that they would like to ask. Does anybody have any further questions on proportionality, workability, reporting and whatever else in this section?

Jim Fairlie: I would like to ask question 8.

Rachael Hamilton: Can I go back to question 6?

The Convener: Yes, we cut you off on question 6.

Rachael Hamilton: Thank you. I think that it was not fully answered. I am trying to establish whether the licensing scheme is too broad brush if traps are to be registered with a unique licence number and gamekeepers or others—a trap could also be used in an urban setting—had to do the training for all of the traps. Should the scheme be designed to recognise and accommodate the needs of operators? That is one question.

My second question is about the agreement on international humane trapping standards, which Libby Anderson mentioned. She mentioned the trapping of stoats in Orkney. We have been told that the standards are very high and that those traps are designed in the way that they are because of the high standards rather than because of the need for operator expertise. How can we use that as an example for a licensing scheme when the spring trap is designed to such high standards?

Libby Anderson: The traps would still need the expertise of the operator. Previous reports—not about the misuse of traps, but about traps causing welfare issues—concerned the places where they were set. For instance, traps had been set on a rail and had become entangled in vegetation, which could affect the action of the trap and therefore the animal—assuming it was the target animal—would not necessarily be killed cleanly when it went in. There are many examples of animals being caught by the paw, the face or the back leg. That has been happening for many years—there is no question about that.

Rachael Hamilton: Has the agreement only recently been approved?

Libby Anderson: The agreement on international humane trapping standards goes back to about 2009, I think. There was a long implementation period for various parties. It finally came into force under the Humane Trapping Standards Regulations 2019 in 2020, and affects only stoats. The wider international agreement covers all fur-bearing animals that are trapped for fur in the relevant countries. The standards do not cover foxes or mink, for example, but they cover stoats, because ermine is a sought-after fur in some places.

It was an international agreement, so it was inevitably a bit of a compromise. The standards for killing traps allow a time to irreversible unconsciousness of 45 seconds for stoats and that is what the new traps, if correctly set, can achieve. For martens, the time to irreversible unconsciousness is longer—120 seconds—and the period is 300 seconds, or five minutes, for other species. We would not allow that in a slaughterhouse and it is not what you would define as humane slaughter, so it is arguable that the standards need to be looked at again. In looking at

licensing conditions, we have an opportunity to ask what is the best welfare that could be offered by traps.

Rachael Hamilton: Does the panel have any views about whether having individual serial numbers that are related to the operator on each trap is proportionate?

Ross Ewing: It would make sense for each operator to have one unique ID number to avoid multiple replications depending on each type of trap that they use. That strikes me as an inordinately sensible thing.

The Convener: Before we move from whether the bill is proportionate—we have talked about licensing and the penalties, as well as the potentially grave consequences of a licence being removed—do you think that it is proportionate that someone who has set a trap incorrectly or whose trap has been tampered with could face their licence being suspended? A licence could be suspended on instigation of an official investigation rather than when there is proof of guilt or there is the burden of proof. Is that proportionate?

Ross Ewing: No, it is absolutely not proportionate. The provision extends through all three licensing schemes. The extent to which the ECHR would be engaged is at its highest in the context of grouse-shoot licences. However, you can understand why the notion that a licence could be suspended, first, without the regulator being satisfied that a relevant offence has been committed—that is what the bill says—and, secondly, on the basis of there being an official investigation, causes a great deal of concern for our members and keepers.

I am not saying that NatureScot would necessarily behave in that way, but according to the bill it would be able to take away a licence when it was not satisfied that a relevant offence had been committed, provided that an official investigation had been established. To give you a flavour of how easy it would be to establish an official investigation, I point out that all that it would take is a phone call to a police officer to say, “I saw gamekeeper X on estate Y mis-setting or removing the tunnel from trap Z.” That is how easy it would be.

The Convener: I suppose that the follow-on from that is to ask how we ensure that traps are set properly. Do we need to look at higher penalties when it is found that a gamekeeper or a pest control agent has set traps illegally? How would we address that, because this is all about reducing animal suffering?

Ross Ewing: There has been an endeavour to increase the penalties to be applied, which is something that we would all appreciate. As is right

and proper, we do not support people mis-setting traps. However, the extent to which traps could be interfered with through vexatious ways and means is obvious to us and is something that we think needs to be addressed.

Liz McLachlan: NatureScot has a huge amount of experience in licensing and licensing approaches. We issue approximately 90 types of licence to approximately 5,000 licence holders per year. We have a lot of experience in dealing with sanctions related to licences. There is a scale of sanctions. We acknowledge that there are different types of licence breaches, from administrative errors to unlawful activity. They happen across our suite of licensing. We operate a compliance monitoring system that includes a scale of sanctions that depend on the type of breach and what we want to achieve with various sanctions.

We also have a very good relationship with Police Scotland and work very closely with it on any circumstances that are brought to our attention. It would not necessarily be the case that our receiving a phone call making an accusation against an individual would, there and then, translate automatically to suspension of a licence. We would follow up with inquiries and we would look for evidence, as we do in relation to our current licence restrictions. We look at the body of evidence for each incident.

Ross Ewing: I completely accept the points that Liz McLachlan has made and do not doubt for one second her ability or that of the team that she manages. Under the bill, however, NatureScot would have the power to suspend a licence on the basis of an official investigation having been established, and without being satisfied that a relevant offence had been committed. Any right to appeal for the practitioner thereafter would be materially weakened by the fact that, in legislation, the regulator need not be satisfied that a relevant offence had been committed, provided that an official investigation had been established. To us, that is a systematic failure that would leave people wide open to vexatious allegations.

Alex Hogg: Gamekeepers are very worried about suspicion. It has scared us to death.

The Convener: It was mentioned at our previous evidence session that there is no requirement for NatureScot to be satisfied that there has been an offence, and that all that is needed for suspension of a licence is an official investigation. As far as I am aware, as soon as someone phones the police and the police take any action, that is official: there is never an unofficial police investigation. What are your comments on that cloudy area in the bill?

Liz McLachlan: Probably the best example under our general licence restrictions at the moment is that we operate an agreed framework before we restrict use of the general licence to any estate. I work very closely with the police on removing use of the general licence and would be looking for evidence of crimes against wild birds. For NatureScot, evidence of a crime having been committed is that the police have “crimed” an incident—which is to say that they have allocated a crime number to it. That relates to the civil burden of proof of a crime. That is the system that we operate.

We have a scale of sanctions that we can use, depending on the type of breach. If a breach is what we would deem to be a technical breach of a licence condition, we can offer warning letters; initially we would write, providing advice. Sanctions can be scaled up to the point at which, when a crime has been committed and the police have crimed it, we can remove licences.

The Convener: Specifically, are you comfortable with the bit of the bill that says that NatureScot does not have to be satisfied?

Liz McLachlan: Yes, we can work with that.

Ross Ewing: I am sorry, but that gives the regulator excessive discretionary power and does not provide our members with adequate safeguards. It does not provide keepers with adequate safeguards. It means that there is no burden of proof required at all. You talk about the civil burden of proof. The provision requires no burden of proof, because an official investigation can be triggered very easily by a vexatious allegation.

12:00

Jim Fairlie: I am feeling a bit of déjà vu; we have been here before in relation to hunting with dogs. What I am taking from this is that the working relationship between landowners, keepers and NatureScot is paramount so that there is proper understanding. You all sit here and agree with the need for the bill, so I do not understand why there is such concern that a gamekeeper might be prosecuted by virtue of a vexatious allegation when you have a working relationship with the licensing authority.

Ross Ewing: With the greatest respect, I note that “a working relationship” is not a protection in law nor an adequate safeguard. I have absolute respect for Liz McLachlan and other people at NatureScot, but there is nothing to say that someone with a bit more of an agenda could not come in and exercise the full discretionary powers that are afforded by the bill. Relationships change and are no safeguard at all against people having their licences taken away because an official

investigation has been established via vexatious ways and means.

Liz McLachlan: I will add that individual working relationships are important in management of our licensing approaches. NatureScot has policies and procedures in place. We operate according to frameworks; it should never come down to personalities. In doing my job, and in everyone in my team of licensing officers doing their jobs, we are bound by NatureScot policy and procedure, and by our frameworks, in how we operate. Those systems guide us in licensing.

If people are not happy with a decision in respect of how we have undertaken assessing a licence, they have, as they would have in relation to any public body, a right of appeal. Our licensing appeals are dealt with in the same way as any complaints to NatureScot are dealt with. If individuals are not satisfied with that, as a public body we are subject to the remit of the Scottish Public Services Ombudsman and, ultimately, to judicial review. I argue that there are checks and balances in the process of how NatureScot, as a public body, can operate to deliver the licensing approaches.

The Convener: I will go back to proposed new section 12D on modification, suspension and revocation of licences. It clearly states:

“The relevant authority may ... suspend a wildlife trap licence if, despite the relevant authority not being satisfied as mentioned in paragraph (b)(ii) ... there is an official investigation or proceedings in relation to a suspected relevant offence”.

That takes NatureScot out of the loop. You can voice your concerns that you are not satisfied that an offence has taken place, but a licence can still be suspended. Are you comfortable with that?

Liz McLachlan: Yes, we can operate with that. As a body, we can operate in that way.

Ross Ewing: We have the greatest respect for and confidence in NatureScot, but the fact of the matter is that all the processes that Liz McLachlan referred to differ from the bill. The bill clearly gives the regulator the power to suspend a licence on the basis of an official investigation without being satisfied. How does that provide any degree of safeguarding of those operating wildlife traps, grouse-shooting businesses or muirburn licences? It does not.

Liz McLachlan: We have a working relationship with the police. We are not an investigating authority in our own right. If Police Scotland comes to us with a concern about an incident, it will, quite rightly, not go into all the fine details about the whys and wherefores of their investigation. If Police Scotland is investigating an incident, we will have a discussion, but I will not necessarily know all the whys and wherefores of what is going on,

who has done what or who is suspected of doing what: I will know none of those details. That is the point that the bill is making—that NatureScot is not an investigating agency. At the moment that is the job of Police Scotland. It would do the investigation. Whether we would, at the start of an investigation, have the information to satisfy us about what has occurred is not within our remit.

Rachael Hamilton: What you are talking about, to be able to suspend a licence, is beyond civil and criminal standards, is it not? You say that Police Scotland can make that decision pending investigation, but the bill goes beyond what is currently in place.

Liz McLachlan: The bill would give us the power to suspend licences. Under the Wildlife and Countryside Act 1981 we already have the ability to suspend or revoke licences that we have issued. We can already do that for a variety of reasons.

Rachael Hamilton: I will ask about Libby Anderson's point on Larsen traps and decoy birds. You said that in the uplands a decoy bird could be in a Larsen trap for up to 24 hours. How is that established in a remote rural area?

Libby Anderson: What I meant to say was that the decoy bird could be there for considerably longer than 24 hours. The trapped bird should be there for only 24 hours because the traps must be inspected.

Rachael Hamilton: How do you know that?

Libby Anderson: How do I know?

Rachael Hamilton: How do you know? Does someone sit on the hill for that length of time?

Libby Anderson: The operator would be inspecting the trap regularly because that is a condition of the licence.

Rachael Hamilton: So what you are asking for is what gamekeepers are currently doing, which is using Epicollect5 to monitor some of the activities that the operators are carrying out in terms of innovation technology and that sort of thing. I am sorry—I cannot work it out. I am very confused about how, without having evidence, you establish that operators are following bad practices.

Libby Anderson: There are many reports from many organisations, some of which are here today.

Rachael Hamilton: Who?

Libby Anderson: RSPB, OneKind, and Scottish SPCA formally report on welfare issues with crow cage traps.

Rachael Hamilton: Do people sit on the hills?

Libby Anderson: I do not suppose that they do—I have no idea—but the reports come in and welfare issues are observed. You might find insufficient shelter for the decoy bird or that it does not have the right size of perch.

Rachael Hamilton: I understand that. We are here to tackle wildlife crime and animal welfare issues, but I cannot understand how there would be evidence to suggest that, or whether the evidence is peer reviewed.

Libby Anderson: There is peer-reviewed evidence on welfare issues relating to traps that have been examined by NatureScot and the Scottish Agricultural Science Agency, I think. There have been reports on the issues surrounding the traps. I think what you are asking me is whether welfare issues arise in crow cage traps and Larsen traps.

Rachael Hamilton: You did say that.

Libby Anderson: Yes, I did say that and there is evidence of that. You also asked about inspection. There is a requirement in the general licence that if we could see that a trapped bird had been there for longer than 24 hours, that would be a breach of the licence. Liz McLachlan will correct me if that is wrong.

Rachael Hamilton: Alex Hogg wants to come in.

Alex Hogg: All keepers are trained to high standards. We check crow cage traps every 24 hours. The decoys are well looked after. The birds have proper shelter, proper food and proper perches. It is so difficult now. Members of the public are saying things, but we are doing things to the highest standard. We totally disagree with what Libby Anderson is telling you.

Libby Anderson: That is good news, but it also means that training and licensing should be less burdensome, does it not?

Alex Hogg: We do not mind licensing. It is people interfering with what we are trying to achieve that causes serious problems.

Karen Adam: To go back to adequate safeguarding, Ross Ewing has spoken about vexatious complaints and interference. What would you see as being adequate safeguards?

Ross Ewing: A few things need to happen. The provision that allows for a licence to be suspended on the basis of an official investigation without the regulator being satisfied needs to be removed in toto. I have serious concerns about whether that is ECHR compliant. The second thing is that we need to raise awareness and try to deter people from vexatiously tampering and interfering with and sabotaging traps. I think that the way to do that is by making it a bespoke offence to tamper or

interfere with or sabotage a legally set trap, and to make sure that the penalties reflect those that exist for people who mis-set traps, as defined in the bill.

Karen Adam: That would be helpful, because if people are tampering with traps because, in their minds, they do not agree with the killing of animals, they are killing animals by doing that.

Ross Ewing: Yes—and in the most grotesque way.

Karen Adam: Education is needed.

Ross Ewing: Absolutely. I completely agree.

Ariane Burgess: My question is directed to Libby Anderson and Mike Flynn. We started to talk about Larsen traps and crow cage traps. I would be interested to hear about the animal concerns for trapped birds and decoy birds with multi-catch crow cage traps and Larsen traps. You have talked about it already, but I would like to hear a bit more.

Libby Anderson: I think that I have covered that already, so I will be brief. As soon as you trap a live animal, you are putting its welfare at a degree of risk and you are responsible for its welfare. The general licences have raised welfare standards for crow cage traps and Larsen traps considerably over the past few years. The decoy bird receives a limited amount of welfare provision. The decoy bird is the bird that is captured to attract other birds to the trap. There is a requirement to provide the decoy with food, shelter and water, but it is still confined either in a relatively small Larsen trap or in the bigger crow cage trap and it is close to others—congeners, as we call them—of its own species where it does not want to be, so that is obviously likely to cause psychological distress.

I also mention that such birds are exposed to the elements. They could be in considerable heat or cold and there is a risk that they will not be inspected daily, although I am glad to hear Alex Hogg say that they definitely are. However, in times of severe weather, the general licence suspends the requirement for daily inspections for understandable reasons of human welfare, but of course the birds are left out there. The birds are inherently put at many risks before there is even any bad practice, inadequate provision or poor dispatch, which I mentioned earlier.

Ariane Burgess: Thank you for that clarity.

Mike Flynn: I would say the same as Libby Anderson. I do not want to disagree with Alex Hogg, but not everybody plays by the rules. I recognise that every industry has rogue people who, sadly, let everybody else down. Suffering can occur. We have found that some trapped birds in crow cage traps have been left to starve to death.

Whether that would be because something was wrong with the gamekeeper, I do not know, but birds can suffer. We have concerns about the call-bird in Larsen traps, because that is not natural; the space is too confined. If you were to keep a pet parrot like that, you would be breaking the law, because the bird must be able to stretch its wings freely in all directions. We do not agree with the basis of Larsen traps.

Alex Hogg: I want to respond to Mike Flynn talking about birds starving to death in a Larsen trap or a crow cage trap. Because of interference, we used to lock the door open. In our training, we now advise taking the door away completely so that there is no way that that bird can ever get caught. The training says to take the door home. We often used to lock the door back with padlocks and so on, but people would interfere. If people take the door away, that cannot happen.

12:15

Jim Fairlie: I want to touch on the understanding of the extent of use of different wildlife traps in Scotland and what the overall impact is on animal welfare and biodiversity. What is your view on the suggestion that licensing should be supported by statutory reporting in order to increase transparency and enable a better understanding of the impacts? I will direct that first to Alex Hogg.

Alex Hogg: Gosh, can you repeat that, please?

Jim Fairlie: It is about the numbers and the extent of use of different wildlife traps in Scotland and their overall impact on biodiversity. What is your view on the suggestion that licensing should be supported by statutory reporting? In other words, if you set 100 traps, you have to say where those 100 traps are, what you have caught in them and how many animals are killed each year.

Alex Hogg: We would agree with that and, again, it is about training. We do it with snaring at the moment, so it could easily be done with trapping. It would provide feedback to the Government and NatureScot about what animals were being trapped and dispatched or whatever. I would also say that, unless we can trap animals such as stoats, rats and weasels, the golden plover and, especially, the curlew will be extinct in five years.

Ross Ewing: Next week, when the committee goes to Byreclough moor in the southern uplands, you will see the extent to which traps are used on one grouse moor. I hope that that will be a very useful experience for you all.

I think that Professor Newton outlined the benefits beautifully in the previous session. The biodiversity benefits of grouse moor management

are in no small part down to the effective management of predators, which include, of course, mustelids and corvids, and that is where trapping infrastructure comes into its own. The biodiversity benefits are very clear to see.

On reporting requirements, NatureScot will have the capacity under the bill to modify a licence for no reason at all—it can just do that instantaneously. That gives the regulator quite a broad degree of discretion. Most practitioners already keep very detailed records using apps such as Epicollect. They are already collating that information, so that in itself should not be a problem. The notion that people could be compelled without good reason to provide records is probably something that we would take issue with.

Jim Fairlie: You talk about reporting “without good reason”, but the reason would be—I have had this conversation with various welfare organisations—to understand how many animals are killed annually, in particular to increase grouse numbers. That is the challenge that would come back to you. How do you answer that? That is not a trick question.

Ross Ewing: Increasing grouse numbers is undoubtedly one of the motivations for it, but we cannot shy away from the other biodiversity benefits. As I said, keepers are already keeping those detailed records. If we are handing over that sort of information, I personally would like to know why NatureScot wants that information.

Jim Fairlie: Perhaps so that NatureScot has an understanding of what the picture is throughout Scotland.

Ross Ewing: Yes, I completely accept that, if NatureScot puts forward a good reason as to why it wants it, but I do not think that it should be applied to everyone unilaterally. There should be a good reason to modify a licence to impose conditions.

Liz McLachlan: At the moment, on our trap registrations, we require a return only for folk who are using meat bait. However, if we had good reason, under the bill we could put conditions on a registration or licence that would require a return. We do that for most of the other types of licence that we issue. Our licences have a condition of at least a final return. Some of our licences require people to submit interim returns to us, which can include what was taken under that licence. We could put a condition on where traps are located. There are a variety of things that we could put a condition on if there was a requirement to do so. In the case of other licence types that we put conditions on, one of the requirements is purely the need to find out what is going on, what the impact on populations is and what is being taken

through traps. We could put that as a condition on the licence, but we would always have a reason for doing it. We do not tend to put unnecessary conditions on any of our licences. The conditions that we put on are always for a reason and we articulate that reason to all our licence holders.

The Convener: I am aware that Rhoda Grant will have to leave the meeting. Rhoda, would you like to ask your question?

Rhoda Grant: Yes—thank you, convener.

We are aware that the Scottish Government might make an announcement about further regulation of snares and that it is gathering evidence on humane cable restraints. What are your views on that?

Libby Anderson: The Scottish Animal Welfare Commission provided a position paper to the Scottish Government that looked at the welfare issues surrounding use of snares and recommended that they should be banned because of the animal suffering that they cause. We looked at snares generically, but we have also looked at humane or modified cable restraints. The basic operation of the snare is the same whether it is modified or not, but it has a breakaway mechanism added, two swivels and a running eye to ensure that the noose relaxes, which it is supposed to do. It has a shorter tail to try to reduce the amount of struggling. We looked at that and we could not see any fundamental difference between the manner of operating of the conventional type and that of the new type.

The literature that was published by the Game and Wildlife Conservation Trust more than 10 years ago identified improved selectivity in the captures. In that trial, it was mainly hares that were caught, but foxes, badgers and deer were also caught. The non-target species are supposed to get out of the modified snare more easily but, as far as we are concerned, the animal welfare issues from being captured in a wire noose and restrained for a lengthy period are the same. They include things such as hunger and thirst, fear of predation and actual predation, of course, and the struggling that can cause the animal to harm itself. The animal can suffer from capture myopathy, which may not be visible at the time. It is a metabolic condition that is brought on by stress and exertion and usually leads to death. In our view, all those things can be consequences of the use of snares on animals.

Ross Ewing: My answer to that is that we are in a biodiversity emergency. We need to be doing everything that we possibly can to reverse biodiversity loss, and snaring is an important part of the predator management toolkit. We have just seen severe restrictions placed on the use of dogs to flush foxes from cover to be shot. That is one

part of the toolbox pretty much gone, except under licence in very limited circumstances. If this goes as well, we are left with pretty much one tool in the toolbox, which is shooting, which is not always possible, practicable or safe. Our very strong view is that snaring should be retained.

I disagree strongly with the Scottish Animal Welfare Commission on this and it was regrettable that it did not seek to take more evidence. It certainly did not come to us to ask for evidence of our thoughts on this, which I think is a bit of a systemic failure, to be honest. It would have been helpful if it had, because we have consulted veterinary surgeons widely on the matter and we have a number of veterinary surgeons now who have endorsed the GWCT paper that Libby Anderson referred to, which supports retention of humane cable restraints. We strongly hope that the cabinet secretary will take that into account when she comes to make a decision on this.

There are veterinarians out there who think that snaring is an integral part of the predator management toolkit, without which we are severely compromising our ability to effectively reverse biodiversity loss. Snaring is fundamental as a component of the predator management toolkit and the retention of humane cable restraints is fundamental, in our view.

Mike Flynn: On Ross Ewing's point, I think that the vets who support use of snares are a very small minority. The British Veterinary Association's position is that it is against them, but that is a separate point.

On the point that Libby Anderson made, snares cause suffering. It has been a bane to us that we have opposed snaring for all these years and it has been used against us many times. In four years, among the complaints that have come to us—and that is how we deal with things—12 involved foxes, and we had 13 badgers, 12 cats, an otter and four deer caught. They are totally unselective and the new device will make no difference to that. I have seen it only on the SGA website. To me, it looks like a snare. You can call it what you like; it is still a snare and it will cause the same kind of problems. We will stick by the position that we totally oppose them and we support a full ban on snares being bought or used.

Alex Hogg: First, I think that Mike Flynn will agree with me that the snaring cases are often poachers—they are never gamekeepers. Nearly every time, the snare will have been set by a poacher and it will be totally illegal. It will never be checked, and the poor animal is choked to death, and it is just horrible to see.

I am convinced that this new snare is unbelievably good. It has got a breakaway on it, which means that when an animal such as a red

deer, a roe deer or a badger goes in, it tugs the snare and it just breaks away. The snare has a wee kirby grip thing on it and two swivels. It is about three feet long, not like the old snares that were about six feet and dragged across to the pins and could get tangled. It is very short, with double swivels. It is almost like a dog collar.

Please watch the video if you can. It shows a fox that has been caught in a snare. It was taken with a drone so the fox could not see what is happening. Without the use of snares, we will lose our curlews and lambing percentages will go right down, because sheep farmers will go back to the old days when there was an unbelievable number of foxes. We need that tool in the box.

Libby Anderson: In response to Ross Ewing's point about our paper, I say that it was a literature review that was provided to the Scottish Government and I think that I am right in saying that the Scottish Government spoke to stakeholders, so I am pretty sure that that was part of the process. That should have accounted for that.

The other thing is that the modified snares appear to be a recent development in Scotland. As far as I am aware, there is no official scientific trial. I think that they have been used in two locations in Scotland.

Alex Hogg: We have been using them for eight years.

Libby Anderson: On a trial or official basis?

Alex Hogg: No, no, it is official. The other important thing that I forgot to say was that scientists are using them. They are using them to catch foxes, tag them with radio collars then let them go. That proves to me that the fox has never been damaged.

Rachael Hamilton: I seek clarification on that evidence. In the previous session the Government official said that the evidence is missing and that the Government is still gathering evidence on the new development in snaring techniques such as humane cable restraints.

Ross Ewing: It has it now.

Rachael Hamilton: Okay.

The Convener: We have a final question on snaring from Jim Fairlie.

Jim Fairlie: I am content.

The Convener: Ariane Burgess has a supplementary question.

Ariane Burgess: No, I am content. I have that answer now, but do we have time for me to ask question 12?

The Convener: Yes, that is fine.

Ariane Burgess: This question is on Scottish SPCA powers and I will direct it to Libby Anderson. What are the key considerations in coming to a view on whether the Scottish SPCA's powers should be expanded to investigate wildlife crime?

Libby Anderson: The commission supported that proposal in the legislation on the basis that wildlife crime causes great harm to animal welfare. It seemed logical to us that adding a cadre of about 60 trained and experienced inspectors who could gather evidence would promote the cause of animal welfare.

Ariane Burgess: What will we need to consider in expanding that power? What would they be allowed to do?

Libby Anderson: They would be allowed to go on to land. This is a little bit beyond my remit, but they would be allowed to go on to land to gather evidence, which they are not currently able to do. They have powers under the Animal Health and Welfare (Scotland) Act 2006 to carry out investigations and gather evidence, but they do not have the equivalent powers under the Wildlife and Countryside Act 1981. Arguably, animal welfare investigations cannot take place because of the difficulty of responding in a timely manner to incidents in remote locations. There is animal suffering out there that is not being investigated because of the resource issue. It seemed to the commission that it would be sensible to add all these experienced, trained officers to the body.

12:30

Ross Ewing: In response to the question from Ariane Burgess, I refer you to Police Scotland's response to the call for views that you ran. It noted that there may be some confusion as to which agency the public should report incidents to for wildlife crime, which is a fair point. It also noted that there was a tendency for the SSPCA to instigate and commence investigations without police involvement and that that may ultimately hinder any subsequent police investigation and/or involvement. It also questioned the SSPCA's ability to properly look into some aspects of criminal investigations, including financial inquiries, closed-circuit television work and identifying links to serious and organised crime.

The other point that Police Scotland raised, which we definitely endorse, is that investigations must remain impartial. Basically, it raised a concern that the SSPCA's views on issues such as snaring, for example, could create conflicts of interests and call into question its integrity and impartiality.

There are also concerns over compliance with, for example, the Regulation of Investigatory

Powers (Scotland) Act 2000, the Scottish crime reporting standards, the Lord Advocate's guidance and codes of practice. It also notes that there would be probably have to be an overhaul of training processes in and accountability for the SSPCA.

We have consulted widely with members on that point, and it is fair to say that there is a deficit of trust and confidence in the SSPCA's ability to investigate impartially. That is supported by things that you see on social media, such as official Twitter accounts that are associated with senior individuals. In reference to snares, one person said:

"Disgusting devices which have no place in modern society. Without doubt snares should be banned."

They also said:

"Disgusting devices that have no place in this day and age. Any claim that snares are selective to only pest species is total non sense. Even if they were pest species can also suffer."

Another tweet said:

"but after 30 odd years, still seeing the dreadful results of snaring. Why is this still legal. Obviously this otter was not legally snared, but as long as snares are allowed, such suffering will continue, pest or not."

You can understand why land managers, on seeing evidence like that, have concerns that, when it comes to legal management practices, the charity—the extension of whose statutory powers is being considered—is holding partial views. You can see why people might not feel comfortable or feel that the SSPCA could impartially investigate an incident involving wildlife crime.

Mike Flynn: This is not a new issue. It has been debated since 2010 when it was suggested by Peter Peacock, who was then an MSP. I think that we have been through about five ministers in that time, and the matter is now, I hope, coming to a conclusion.

In answer to the concern that Ross Ewing and his colleagues have, no person can be charged or taken to court for something because it does not follow our policy. Take someone who phones our helpline and says, "There's a snare there, but I don't like it" or whatever. If our inspector goes along and the snare is set lawfully, it is lawful. Nobody can be prosecuted for that. I am sorry to oppose something that Alex Hogg said, but gamekeepers are involved. It is not just poachers who get involved in that kind of thing.

It has always concerned me that the lack of trust that is being talked about seems very selective—it is mentioned only when it comes to snaring and things like that. In the past four years, the Scottish SPCA has been solely responsible for reporting seven offences of badger baiting, two of which involved gamekeepers acting totally against all

Alex Hogg's rules. There has been no concern whatsoever from landowners, the police, the Crown Office and Procurator Fiscal Service or anybody with us investigating badger baiters. They are bad guys; they are definitely wrong. Badgers are wildlife, and baiting them is a crime. All the other offences are crimes and wildlife crime causes suffering.

At the moment, my inspectors could go on to land if there is a snared badger and it is alive. If it is dead, it should be the police that do that, because of the section 19 powers of the Wildlife and Countryside Act 1981.

One of the things that has caused us problems is when we are dealing with a live animal—that comes under the 2006 act, as that animal is under the control of man—and we can clearly see stuff going on. We then must go away and report that to the police. They will deal with it—if they have the manpower to do so. Other offences could be happening.

The bill would allow us only to do what we currently do for all domestic animals. I have some figures here. Wildlife crime takes up less than 1 per cent of the jobs that come to us. In 2018, 95 reports went to COPFS for animal cruelty and one was for wildlife crime. 2020 was a bad year because of the badger baiting and stuff. We do not class it as wildlife crime if a lawful sport is involved.

For anything like that, I am more than happy to stand by our policy on snaring. There is plenty of evidence—which has been in front of the court—of where animals have suffered, mainly because of misuse. However, people are still using illegal snares, such as self-locking snares, which have been banned for a long time.

As I said, this is not a new issue. Alex Hogg and I were on a Government body eight or nine years ago looking at ways to improve snaring. We still say that they should be banned. It is not something that we are just making up a little policy for.

I have read most of the responses that have come to the committee. Two responses from countryside users say that they do not trust us or that we are lobbying. The lobbying aspect was raised as a formal complaint. It took six months to investigate between ourselves and the MSPs who were involved. The complaint was found to be inadmissible.

If I was going to try to do backroom lobbying on something like our snaring policy—it is perfectly open to us to lobby and every MSP has probably had it—I am hardly likely to go on Twitter where anybody can see it and go, "By the way, look at me—I'm breaking the law." I would like to think that we have a bit more sense than to do that kind

of stuff—not that there is anything going on Twitter that we are not proud to speak about. When it comes to lobbying, practically everything that we ask MSPs for is in writing, so it would be subject to freedom of information provisions and all that.

We do not prosecute crime. The police do not prosecute, either, in the big scheme of things. The Crown Office and Procurator Fiscal Service must ensure compliance with all the concerns that Ross Ewing raised, whether that is compliance with the Regulation of Investigatory Powers (Scotland) Act 2000, the Human Rights Act 1998 and requirements on disclosure. All those things must be complied with before it proceeds with a case. It must be satisfied that any evidence that we put forward is lawfully obtained, that there is an accused, that there is corroborated evidence and that it is in the public interest to do so. Therefore, the idea that we could prosecute somebody for setting a perfectly legal snare or any other trap is not right—that could not possibly happen.

We did not even make the original request for more powers, but we are more than happy to assist the Government and the police. The proposal was never intended to replace Police Scotland, which is a fantastic organisation that we work with daily on various things, including organised crime. Whatever the Government decides—it is not a done deal yet—if it says that we can have extra powers and it sets out the conditions, we will work with the police and the Government to ensure that we can do it. I can assure you that that would be done to the satisfaction of the Crown Office and would meet the legal requirements.

The Convener: As you know, I have the hugest respect for the SSPCA. The Government officials have said that the SSPCA has some additional resources, but there are concerns that, as a charity, it might not be sufficiently neutral. There is almost an embedded conflict of interests. If people are making donations to you on the basis of bringing in a ban on snares, you could be seen as targeting snaring, whether it is legal or illegal, and that puts the SSPCA in a very difficult position. Before agreeing to take on additional powers, will you consider that doing so could bring conflicts of interests?

Mike Flynn: Are you suggesting that we as an organisation—or any other organisation—should drop a policy of opposing a cruel practice just because it would help us to get powers? We could not do that. The veterinary profession would go nuts.

The Convener: No, I am not suggesting that you are doing this for the money or whatever. However, if you have a campaign to ban snares for example, but you also have powers to gather evidence on or investigate those things, there

could be a suggestion that, because you are getting the bulk of your income from an anti-snaring body, you are disproportionately targeting that to provide evidence. I am not suggesting that you are doing something for the wrong reason, but that could be an implication of that.

Mike Flynn: That is an inference that people can make but, as I have explained, it could not happen. We could not do that just because we do not like something. We would have to get it past the procurator fiscal, who must be satisfied that there is sufficient evidence. If they thought that we were doing anything on the back of a campaign, we would be in trouble. When it comes to misappropriation, if somebody complains about an inspector's conduct, we do not try to make excuses; we say, "Tell the police." If we have acted unlawfully, people should go to the police. If anybody falsified evidence, they would be subject to the court, for contempt of court, perjury, attempting to defraud the public and so on. We are entirely open.

It is not going to break my heart if we are not given the extra powers. We have plenty to keep us going. By the same token, you said that we could be seen to be campaigning for a ban on snares, but all the same allegations could be made about our domestic animal work. Nobody ever complains about that when we find the skinny dogs, the stabbed dogs and that kind of stuff.

When it comes to wildlife crime, it seems to be the case that if it is a ned—for want of a better word—who is doing it, everybody supports us, but if it is somebody who could be perceived to be part of the countryside legal set, there is opposition. I do not know where that mistrust comes from. I have had a great relationship with Alex Hogg for 25-plus years. We do not always agree, but it is easy for me to talk to him. When it comes to visiting people and so on, Ross Ewing, Alex Hogg, you and any member of the committee are welcome to visit any of our centres to spend a day with an inspector—just ask the people who have taken up that offer. We have a wildlife centre that deals with between 8,000 and 10,000 wild animals a year. You are all welcome to come and see it. We are open; we have nothing to hide.

The Convener: I was certainly not implying that you had anything to hide.

Mike Flynn: I know that you were not.

The Convener: I was simply suggesting that you could be put in a difficult position. You might have additional resources, but we all know that resources are absolutely limited. Given some of your other roles, such as the challenges that you are dealing with in the cost of living crisis, you might be asked to prioritise your work, and that could potentially come down to your income and

the availability of resources. Would you need to be directed on what your priorities were when dealing with wildlife or would that be something that the SSPCA would look to prioritise?

Mike Flynn: We would take cognisance of what the Government suggested and any protocol with the police that was in place. We can investigate something and take it forward only if it is a crime. If it is no a crime, we are no gonnae investigate it. We will take cognisance of whatever the officials say. We will comply with whatever this committee and the Parliament decide we are allowed to do.

Everybody's resources are finite but, as I explained at the very beginning, in the majority of cases it is members of the public who have called us. We are already there dealing with a live animal, so it is a duplication of resource. We are there and then we have to phone the police to come to do the same thing. Do not get me wrong—we have the powers under the 2006 act. There is absolutely nothing to stop us investigating wildlife crime under the 1981 act, with all the barriers that we have to go through because we do not have section 19 powers, because we are also recognised as a specialist reporting agency. Therefore, we have had wildlife and countryside cases, but we have to get warrants and all that stuff, which is quite right—I have no problem with all that.

To answer your question, if the Government says that we can act in that way, nobody could turn round and say, "You can investigate crime, but you cannae investigate that bit of crime," because it would be there in law. Obviously, whether a case goes forward is up to the fiscal, and ultimately it is the decision of the court.

The Convener: Thank you.

Alex Hogg: Mike Flynn and I have the utmost respect for each other, especially when Mike finds a starving pony in a field or something like that. I admire him for that.

However, when it comes to investigative powers, I think that the only organisation that should investigate is Police Scotland, because it is the only fair organisation that looks at those things. It also has far more powers now. Wildlife crime has become really serious, so I believe that it should be down to the police.

Ross Ewing: I would like to make a point, just for the committee's awareness. We raised a lot of concerns about the notion that an official investigation could be grounds for suspension, even if the regulator is not satisfied that a relevant offence has been committed. If, for the sake of argument, the SSPCA is given powers to investigate wildlife crime, its initiation of an official investigation would be cause for a licence to potentially become suspended. Given our

concerns over partiality and given that Mike Flynn—for whom I have great respect—did not address a lot of the key points that Police Scotland has rightly put on the record on this point, the proposal is not one that we can support.

Personally, I have some big questions over the extent to which the SSPCA inspectors are vetted and trained compared with what police officers go through, because there are rigorous vetting processes that are right and proper. I do not feel that those processes are in place. I will take up Mike Flynn's helpful offer on that offline.

However, as an organisation that has spoken to numerous people on the topic—we have literally gone around the country helping people with their consultations and hearing what they have to say—we know that this is an issue that goes across the countryside. It is not being raised through our influence or anything like that. For whatever reason, people have misgivings about the Scottish SPCA being afforded enhanced powers to investigate wildlife crime, for reasons such as those that I have just set out to do with licence suspension.

12:45

Mike Flynn: That is perfectly fine. Earlier, you criticised the Scottish Animal Welfare Commission for not examining things fully, but you never spoke to us about your concerns. My phone is always on. If you have a concern, please phone me.

Alex Hogg made a point about a pony in a field. The evidential burden is the same. It does not matter if it is an animal in an illegal cage and it is suffering or a pony that is starving in a field. The evidential burden is the same. Whatever decision is made about powers, if the decision is made to give us such powers, and if it comes down to the fact that, in certain areas, we are not recognised as being able to carry out an investigation because we have no place doing so, that will be worked out in a protocol, as opposed to us phoning NatureScot and being told, "That may have to come through the police," or whatever. All of that is open.

Ross Ewing: That does not provide them with protection—they would not have protection, because reference is made to the initiation of an official investigation. That is you responding to a phone call. That is what constitutes an official investigation. We have spoken to retired police officers about that who confirmed as much. If you get a phone call alleging criminality and you go and investigate that, technically, in law, NatureScot would have the power to suspend someone's licence to shoot grouse, to trap, to make muirburn or whatever.

Mike Flynn: I cannot speak for the police, but I cannot see even the police getting a phone call, phoning up Liz McLachlan and saying, "Cancel the thing."

Ross Ewing: That is not what we are saying.

Mike Flynn: Before they could say that it was an official investigation, they would have to see some form of criminality. That is common sense.

Ross Ewing: That is not what we are saying. It does not provide protection in law. We are talking about safeguards—legal protections for our members. Frameworks and standard operating procedures do not provide that legal protection. All that we are asking for here is to get that protection recognised but, as things stand, Liz McLachlan could—I am not saying that she would—revoke someone's licence on the basis of you establishing an investigation. I have every confidence in Liz McLachlan, but that is the worry that we have. If someone came in who had a different agenda and NatureScot changed its operation, that could happen. In law, that would be conceivable.

Mike Flynn: I am certainly more than happy to discuss this with you offline.

Ross Ewing: That is great—I would appreciate that. Thank you.

The Convener: The issue is certainly one that we will pick up when we have the police and the procurator fiscal service in front of us in future sessions. That brings this session to a close. Thank you very much for your contributions, which have been hugely helpful.

I ask the public to leave so that we can move into private session.

12:47

Meeting continued in private until 13:02.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba