OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Rural Affairs and Islands Committee

Wednesday 18 September 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 18 September 2024

CONTENTS

RURAL AFFAIRS AND ISLANDS COMMITTEE

22nd Meeting 2024, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Ariane Burgess (Highlands and Islands) (Green)
*Rhoda Grant (Highlands and Islands) (Lab)
*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)
*Emma Harper (South Scotland) (SNP)
*Emma Roddick (Highlands and Islands) (SNP)
Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Karen Adam (Banffshire and Buchan Coast) (SNP) (Committee Substitute)
Jim Fairlie (Minister for Agriculture and Connectivity)
Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)
Mark Harvey (Highland Council)
Edward Mountain (Highlands and Islands) (Con)
Ronan O'Hara (Crown Estate Scotland)
Dr Rachel Shucksmith (University of the Highlands and Islands)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 18 September 2024

[The Convener opened the meeting at 09:05]

Subordinate Legislation

Charges for Residues Surveillance Amendment (Scotland) Regulations 2024 (SSI 2024/218)

The Convener (Finlay Carson): Good morning, everybody, and welcome to the 22nd meeting in 2024 of the Rural Affairs and Islands Committee. I remind everyone to switch their electronic devices to silent. We have apologies from Elena Whitham, and I welcome back Karen Adam as her substitute.

Our first agenda item is consideration of the Charges for Residues Surveillance Amendment (Scotland) Regulations 2024, which is a negative instrument. Does any member wish to comment on the instrument?

Rhoda Grant (Highlands and Islands) (Lab): I am a bit concerned about the instrument. I wonder whether an island communities impact assessment has been carried out. There is a move to get micro abattoirs on to our islands, although they may not be there yet. I wonder whether the costs that are associated with the instrument would make that a more distant hope.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I note Tim Eagle's comments on the instrument at the Delegated Powers and Law Reform Committee in relation to the increase in financial costs. I am slightly concerned about that. I do not think that we have enough information about that or about the deficit that is expected by 2029. I also want to know how the instrument will affect game and milk processing plants and slaughterhouses, for example. I want to understand the instrument's impact.

The Convener: I have some concerns about such a big increase in potential costs—from £5 million to £8 million. I do not know whether that is down to operating costs and veterinary costs.

I certainly do not think that there is enough information in the papers that we have before us today to enable us to make a decision. I propose that we move this agenda item to next week, so that we can consider it when we have the minister in front of us to deal with two other pieces of subordinate legislation and can make a decision then. Do members agree to do that?

Rachael Hamilton: I have a comment on the evidence that has been submitted so far. There are two bits of anonymous evidence. I wonder whether, as a committee, we should reach out to anyone else who has been affected, prior to meeting the minister.

The Convener: I look to my clerks for advice on that. That might be difficult to do over such a short timescale, but, on the back of the information that we get from the minister, we could make further decisions on how to proceed.

Rachael Hamilton: My comment is on the record now, convener. If people who are affected by the instrument pick it up, they can contact the committee.

The Convener: Okay. That is grand.

Do members agree to move this agenda item to next week?

Members *indicated agreement.*

Salmon Farming in Scotland

09:08

The Convener: Our next item of business is an evidence session as part of our follow-up inquiry into salmon farming in Scotland. Today's session is about marine spatial planning and consenting processes. We have around 90 minutes for the discussion. I welcome to the meeting Mark Harvey, who is from the planning team in Highland Council, and Ronan O'Hara, who is the chief executive of the Crown Estate Scotland. Rachel Shucksmith, who is the marine spatial planning manager at the University of the Highlands and Islands, joins us remotely.

I also welcome Edward Mountain MSP, who will be taking part in the discussion. Mr Mountain, do you have any interests to declare?

Edward Mountain (Highlands and Islands) (Con): Thank you, convener. Yes, I do. I would like to remind members that I have an interest in a wild salmon fishery on the River Spey, which is on the east coast of Scotland. It is not affected by fish farms along the east coast, and it employs three full-time people. I think that that has probably covered it. Any other details that anyone wants are in my entry in the register of members' interests.

The Convener: Thank you.

I will kick off. We have a number of themes and our first is "Reforming consenting—towards a single framework". How has the planning and consenting regime for salmon farms changed since the publication of the Rural Economy and Connectivity Committee report?

Mark Harvey (Highland Council): The biggest change is that the Scottish Environment Protection Agency recently became the main regulator for wild fish interactions—largely to do with sea lice interactions with wild fish. That is quite a big difference as far as planners are concerned.

We gave considerable attention to that area and initiated the use of environmental management plans, which basically encouraged a system of wild fish monitoring as a way of assessing impacts. That was successful in terms of getting fish farm interests, operators, fishery boards and river trusts talking to one another and discussing ways of monitoring, but it left a lot to be desired scientifically and in relation to effectiveness.

The movement of SEPA into that role, and SEPA going about it in the way that SEPA does—with scientific, evidence-based procedures—is a big change and probably the biggest one from planners' point of view.

Ronan O'Hara (Crown Estate Scotland): The Crown Estate Scotland is a public corporation but not a regulator in the traditional definition. We come at this very much from the perspective of a landlord managing the seabed asset on behalf of the people of Scotland. My team continues to collaborate and work in a fashion that supports the changes that are being progressed, as described by Mark Harvey, and we will continue to actively contribute and add value where we can.

The Convener: Dr Shucksmith, what do you believe are the current challenges around aquaculture planning and consenting, and what further improvements would help the current regime to address them?

Dr Rachel Shucksmith (University of the Highlands and Islands): From my perspective as a marine planner, I imagine that a greater roll-out of regional marine planning was expected by now, which might have influenced the development of aquaculture and other industries in our marine regions, particularly in the Highlands and Islands. That process has probably been slower than anticipated.

Orkney is currently consulting on its regional marine plan, and we are hoping that the Shetland plan will be adopted by ministers before the end of this financial year. That might provide a greater steer for aquaculture development in future and help to reduce conflicts.

The Convener: One of the REC Committee's key recommendations was that there should be a more integrated and co-ordinated framework approach to consenting. One of the consenting task group's solutions was to pilot a four-stage process. What is your experience of that? Is it working? What are your thoughts on the four-stage process?

Dr Shucksmith: I imagine that there will be regional differences. In different parts of Scotland, there are greater levels of conflict in relation to development, but in the region where I live, there is less objection to and conflict with aquaculture.

On whether the process is working, we are not a statutory consultee for aquaculture development. That is different from other forms of marine licensing—we are a statutory consultee for everything else that requires a marine licence but not for aquaculture. We are not directly involved in providing a response unless the issue falls within the pre-application criteria, in which case we become a statutory consultee. That is a difference, or perhaps an oversight, in the process.

The Convener: Mark Harvey, what are your views on the four-stage process?

09:15

Mark Harvey: To be honest, our experience is that we are at both ends of the pole. Recently, we have been involved in a pilot programme for co-ordinating pre-application discussions between us and SEPA. That reflects SEPA's primary role in regulation now, although the planning authorities are still important in the planning application process. That programme has been quite detailed; it has made good progress and so far is regarded as a success and an improvement.

To reflect on what Rachel Shucksmith said, if we regard pre-apps as a tactical approach, I do not think that we have made huge progress with strategic marine planning. It is fair to say that we do not treat the marine environment—or our patch of it in Highland—in the same way that we treat the terrestrial environment.

The Convener: Ronan O'Hara, do you believe that the Crown Estate, as part of the consenting group, had a sufficient mandate to tackle the challenges that we have just touched on?

Ronan O'Hara: When I reflect on the vires under which the Crown Estate Scotland operates and our remit to maintain and seek to enhance the value of the Scottish Crown estate—and, in doing so, to advance sustainable development—I think that our contribution to the process as a whole is very much to bookend it: at the beginning to provide an option, and, at the end, when others have exercised their expertise in matters such as regulation, consenting and spatial planning, to rely on that information and evidence to inform our decision in stepping into a lease.

Our perspective is shaped by that context, so our contribution has not been fettered, and we continue to contribute to and support the attempts and efforts to have a more effective and efficient process from start to finish.

Rhoda Grant: Both the Griggs review and the Rural Economy and Connectivity Committee inquiry recommended that Marine Scotland should act as the overarching body with regard to consenting. Is that being considered? If so, would it be beneficial?

Mark Harvey: As I said, what has happened is that SEPA has become the main regulator. Regulation is a nitty-gritty, detailed process, so SEPA was well positioned to take on that sort of work, perhaps more so than Marine Scotland. That said, the sea lice framework was very much a joint project between Marine Scotland, as a scientific body, and SEPA.

Marine Scotland might be able to take regulation forward in a way that focuses on one regulator, but please do not ask me how that would come about in a practical sense. Over the years, we have realised that the remits for planning, SEPA and Marine Scotland—with its various branches, such as the fish health inspectorate—are varied and eclectic, and it is difficult to bind all of that together into one discipline.

Ronan O'Hara: As is the case with most forms of change or development, there are benefits and disbenefits. The concept of a lead agency or actor has value and merit but, based on my understanding of the existing process, a variety of skills and expertise reside in different localities. For example, the role of Mark Harvey and his team allows the local community voice to really come through in the process. Whatever approach is ultimately settled on, we need to be cautious of not losing facets or attributes that currently add value.

Rhoda Grant: Would you agree that SEPA is better placed than Marine Scotland?

Ronan O'Hara: I am not sure that I could give a categoric answer to that here and now.

Dr Shucksmith: On the roles of the different regulators and consenting authorities, planning permission from a local authority, such as Highland Council or Shetland Islands Council, is needed at present, and planning sits under a different legal framework from marine licensing. As Highland Council has highlighted, the result would be differences in how we manage applications. For instance, pre-application consultation is embedded in the planning process—in my area, it is well used by aquaculture developers of all sizes. However, that process might be more challenging for Marine Scotland to deliver in a more remote setting and it is not legally embedded in the marine licensing process. Similarly, the role of monitoring for compliance—for example, whether a site remains well lit or is in the place that was consented—is undertaken not by Marine Scotland but by a local authority.

If we were to move from the planning side to the marine licensing side, there would be differences in the process. Some might be positive but some could be negative.

Rhoda Grant: Do you feel that things are okay as they are, with SEPA apparently taking a lead, or do you believe that the role should be given to local authorities? Do local authorities have the most important part of the consenting process?

Dr Shucksmith: SEPA and local authorities lead on different parts of the consenting process, and both are important. SEPA is the competent authority when it comes to looking at biological impacts but it does not have a remit to look at impacts on communities—or, rather, on users—in the same way. It might be challenging, therefore, to move something such as aquaculture to a single consenting process.

Rhoda Grant: Are you saying that we have more to gain through the system that we have in place rather than trying to streamline further, because we would lose elements if we did that?

Mark Harvey: Just to follow up on that, the argument often jumps between whether there should be a single entity—a single consenting body and, possibly, a single consent to aquaculture—or whether there just needs to be better co-ordination between the different disciplines that Rachel Shucksmith has highlighted. The latter is probably where we are now—there is room for better co-ordination. The recent pre-app pilot project was about how we can achieve a higher level of co-ordination between the different regulators without losing the nature or the essence of what they do and why regulation is in the hands of the body where it sits.

Rhoda Grant: Okay. Rachel, would you agree with that?

Dr Shucksmith: Yes. Exactly as Mark has explained, it is more about stronger co-ordination being perhaps necessary rather than giving the role to a single body, as each body brings something quite different to the licensing and consenting process.

Ariane Burgess (Highlands and Islands) (Green): To pick up on that, I note that both Mark Harvey and Rachel Shucksmith mentioned stronger co-ordination, so what kinds of things have you seen change or do you think need to change to improve that co-ordination?

Mark Harvey: That is a good question. The pre-app project identified quite a lot of areas. Achieving co-ordination was a more complicated project than one would have imagined at the outset. There is an advantage to the regulatory structures processes happening in parallel, but plenty of arguments against that exist as well, in that it is quite difficult for operators to move through the system in parallel.

However, probably the biggest outcome from effective co-ordination would be to allow that to happen, whereby the processes for planning, the controlled activities regulations licence and the marine licence would be more in parallel than they are at the moment. The overlapping issues would then be discussed at the right point—the most effective point—which does not always happen at the moment.

Ariane Burgess: Rachel Shucksmith, have you anything to add?

Dr Shucksmith: Not specifically, other than to note that, in Shetland, the local authority has established working groups between interested parties—for instance, between aquaculture and fisheries—to improve co-ordination. There are regular meetings now between the sectors, which is a positive development.

The Convener: Before we move on from this section of questions, I have a final one for Mark Harvey and Rachel Shucksmith.

The recommendations were made by the Rural Economy and Connectivity Committee back in 2018, and the Scottish Government now says in its programme for government that one of its objectives is to “Improve the consenting process”. That suggests that the pace of change has not been good enough, given that the Government wants to see an increase in the economic impact of fish farms. Over the past eight years, have we failed to deliver the recommendations of the committee?

Mark Harvey: It has been slow. It is also relatively complicated. A lot of science went on in the background of SEPA’s work on its framework for wild fish interactions, and it built on science that was already going on, so, arguably, when the framework was introduced, there could well have been nearly eight years’ worth of work behind it, which was not necessarily initiated immediately on the back of the committee’s recommendations but was there anyway.

Such things are slow, and could be criticised for that. However, if in trying to reform a system you bring together a large organisation such as SEPA and several local authorities—and the marine directorate, with its complicated structure on top—that is bureaucratically difficult. That perhaps reflects on the multiregulatory issue: it is difficult to reform as well as to work with.

The Convener: Rachel Shucksmith, do you have any comments on the pace of change?

Dr Shucksmith: Obviously, public bodies have been through a challenging time since 2018. Consenting processes are slow; in and of itself, a consent might take several years from start to finish. Although it seems to be quite a long period of time, particularly for those who seek change, implementing a change and having statutory consultation times within that will always take a number of years. Therefore, although the period of time is long, that is probably unsurprising when it comes to wholesale change.

The Convener: We move to our next theme, which is strategic spatial planning.

Rachael Hamilton: Good morning. Has spatial planning progressed since 2018, and what opportunities could there be to incorporate aquaculture into the progress of spatial planning as we move forward with the new national marine plan?

Ronan O’Hara: My overarching sense is that, across all forms of usage and not just aquaculture,

I have definitely observed advancements and developments in spatial planning—particularly so in relation to the non-aquaculture aspects. For example, I cite the work that we have progressed in the marine data exchange, which seeks to build transparency, with more information and the use of technology, to ensure that spatial planning is supported and informed.

However, there is still opportunity for people, technology, data and systems to be used in effective and efficient ways to enable forward-looking decision making. Ultimately, there is an opportunity to use an incredibly valuable resource in the most effective and efficient way to benefit society and the economy. We must ensure that we do that in an environmentally considered fashion.

09:30

Rachael Hamilton: Would you like there to be an emphasis on spatial planning, considering the balance between socioeconomic benefits and climate benefits such as the biodiversity and climate change goals that the Government hopes to achieve through the national marine plan?

Ronan O'Hara: Without a doubt. That is more than a wish for Crown Estate Scotland. We are a creature of statute, and our statute requires us to pursue an economic agenda and, at the same time, balance the tension constructively with our obligations to advance sustainable development in the broader sense—social, economic and environmental. We welcome any innovations or advances that aid us in that agenda.

Rachael Hamilton: Mark Harvey, I think that you talked about bureaucracy in some of the statutory delivery. Am I right in saying that you thought that it was a bit burdensome—although I am not sure that you used that word?

Mark Harvey: Yes. The co-ordination is burdensome.

Rachael Hamilton: Does that translate to the role that the marine directorate will play? Ronan O'Hara has just spoken about how we can use technology and data to improve biodiversity, address climate change and increase socioeconomic benefits. Do you see opportunity for that in the next national marine plan? Have we made progress since 2018?

Mark Harvey: There has been slow progress, or slow movement, at least, in a certain direction. I would argue—this is my personal view—that progress is overdue. Aquaculture moved into the planning remit in 2007. Certainly in the Highlands, and my colleagues in other aquacultural authorities would probably say the same, we have yet to treat the portion of the marine environment that falls within our control in the same way as we do our terrestrial areas. We do not include it in our local plans in quite the same way; we do not apply constraints; we do not cross-check identification of better or less attractive areas for certain forms of development; and we do not incorporate leases from the Crown Estate into a mapping system and so forth.

I feel that movement in that direction is overdue, and it would be helpful. You mentioned bureaucracy and, sadly, this will be another plan to take into account. From a planner's perspective, a local response to the national marine plan is the direction in which we should be going, but that has not happened.

Rachael Hamilton: I move to Rachel Shucksmith. The Marine Conservation Society told the committee that the regional marine plans in the Clyde and in Shetland have been delayed for years. What effect could a lack of marine planning potentially be having on those areas?

Dr Shucksmith: There are two parts to that. Our Shetland plan went out for consultation at the end of 2019. We hope that it will be formally adopted this year, although the Shetland Islands Council already uses it as a material consideration in consenting. The implementation phase of the marine plan, rather than the writing phase, is where it is most likely to be effective. Ultimately, the delays have meant that we have not moved to the implementation phase.

Within that phase, rather than in the plan-making stage, I see a wealth of opportunity to reduce conflicts, because any plan is only as good as the use that is made of it. In Shetland, we are very much looking forward to moving to the implementation phase to be able to support developers and communities to ensure that the marine environment is used in the most sustainable manner, and to provide further information and support to do that, which, at the moment, it has not been possible to do in the way that we would have liked.

Rachael Hamilton: What do you believe are the main issues with the current marine spatial strategy? How do you think that those issues affect salmon farming in Scotland?

Dr Shucksmith: For aquaculture generally in Scotland, one of the challenges compared with, say, England is that we have an incredibly extensive sea area, but there are an awful lot of different considerations to take into account, including our rich fishing history and our wide biodiversity. Despite those constraints, there is still a lot of opportunity for development in that space. For renewable energy and aquaculture, which both increasingly occur in the offshore environment rather than inshore, being able to provide meaningful guidance that does not rapidly

go out of date as technology changes will always be a challenge.

For the renewables sector, that has proven to be a challenge, as we are now looking at floating offshore wind versus static, fixed wind turbines. In aquaculture, the advancement to offshore aquaculture could mean that, if we go for a highly zoned approach, we review only on a five-year cycle, so that advice might not be as appropriate as initially perceived. When we use a constraint-mapping approach, yet another challenge can be that those constraints can be mitigated. Therefore, a very strongly zoned approach might not necessarily identify the most appropriate areas as those technological improvements and advancements are made.

In Shetland, we have never adopted a strongly zoned approach for that reason, so that we can try to be more adaptive and responsive to change. We have tried to ensure that we provide as much data as possible on socioeconomic and environmental considerations and that we provide a policy framework to guide development to reflect the local context rather than going for a highly zoned and spatially managed approach.

However, for other areas, that might be a more appropriate option. In many parts of Scotland, we have this extensive area rather than intensive activity like you might see around England, for instance.

Rachael Hamilton: I have a quick follow-up question. You are saying, in a way, that you might agree with John Goodlad, chair of the salmon interactions working group, who said that it would be easier for the consenting regime to be "attuned to being flexible", and to allow fish farms to move offshore away from the mouth of the river. Currently, are the regional marine plans flexible enough, and how do they fit in with the national marine plan?

Dr Shucksmith: A regional marine plan goes out to 12 miles, so, regardless of whether a fish farm is in a loch or offshore, it would still be within the remit of a marine plan. The regional marine plans do not need to take a zoning approach and nor does the national marine plan. Expecting a one-size-fits-all approach to management across Scotland is unrealistic, because it is very diverse. With sea lochs on the west coast of Scotland, the community structures are very different from, say, those in the Western Isles, Orkney or Shetland. Within that, it is important that the marine regions have freedom to develop a locally appropriate response, rather than having one approach for the whole of Scotland.

Rachael Hamilton: Does what Rachel Shucksmith has just said about flexibility ring true with you, Mark?

Mark Harvey: It makes a lot of sense, and it is a reminder to planners. Local plans take a long time to come into force and are not renewed to a rapid timescale. Rachel makes a good point that we have to come to terms with technological change in aquaculture all the time. It can change the way in which aquaculture interacts with constraints. I hear exactly what Rachel is saying. You do not want a rigid plan; it has to be flexible but still able to assist the industry, the public and planners in assessing where might be best for new technology to be located. We now have the possibility of aquaculture that is further offshore and of contained aquaculture, which might be more suitable in inland situations. We need to be aware of both of those and plan accordingly.

Beatrice Wishart (Shetland Islands) (LD): My question is on the siting of salmon farms. The policy outcome in national planning framework 4 states:

> "New aquaculture development is in locations that reflect industry needs and considers environmental impacts."

Is that being delivered? Could I start with you, Mark?

Mark Harvey: Yes, I hope that it is, as that is what I am paid for.

It is all about balancing those two things, which is difficult. With planning, we now put a great deal of weight on the responses from consultees, so our main remit now will be to do with visual impact, although I should add that noise is increasingly a constraint. We never appreciated that previously, but it is an issue where farms are close to dwellings. The work of SEPA and other regulators and the advice from NatureScot are absolutely critical considerations for us, and we have to take a weighted decision on the basis of that. It is not easy, and I do not envy our members, who often have to take those decisions. By and large, though, we get them right.

It is a difficult environment. I probably do not have to say this here in this particular building but, in circumstances where there is a requirement for politicians to take decisions, if an industry is in the kind of difficult public relations situation that it would, I think, be fair to say that the aquaculture industry is in at present, it makes for quite a difficult environment in which to take carefully weighted decisions on the basis of scientific constraints and so on. It is not easy. I hope that we get it right most of the time.

Dr Shucksmith: The marine environment is uniquely a public space, and all our regulators are, for a start, charged with a presumption in favour of development. Therefore, with any constraints, consideration must still be given to the right to develop within a space, while taking a proportionate approach. Within that, there will

always be winners and losers. Most of the marine environment is appreciated or valued by someone, whether for fishing or for the scenic qualities, so it will always be a challenge to give a consent where nobody will be impacted. That is also true of building a new house or housing development. There will always be people who prefer the status quo, but that is not a reason not to consent. Dealing with the weight of those considerations is the role of the regulator or planning authority.

I have previously reviewed the decisions made by planning authorities. There will always be areas of contention between developers and communities or other users, and everyone will have a different view on whether the right balance is being struck between meeting the needs of industry and meeting the needs of other users. Therefore, it might be impossible to judge, because everyone will have a different view on whether the balance is correct, depending on whether they have been impacted or have benefited.

09:45

Ronan O'Hara: I agree with what has been said. As far as the role of Crown Estate Scotland is concerned, we seek to draw from and rely on expert input from planning authorities, SEPA and others with regard to siting. On a more conceptual level, we recognise the difficulties. Equally, given our vires, we are keen to ensure that a sustainable balance is achieved between the community perspective and ensuring that an important industry for Scotland has access to the resources in question for the greater good and for national benefit. We recognise that that is challenging.

Beatrice Wishart: I have a slightly different question, which is about the income that Crown Estate Scotland derives from salmon farms. Can you give us an indication of what that is?

Ronan O'Hara: Pricing arrangements have been reviewed since 2022. The income that we derive is a function of production and market price, but since our inception—that is, between devolution in 2017 and the end of the financial year 2022—circa £50 million has been derived in rent. Of course, under the present arrangement, all those moneys are returned to Scottish consolidated fund, after which they are passed back through local government for use in the communities.

Beatrice Wishart: Thank you—that was helpful.

Ariane Burgess: Before I go on to my main question, there is something that I am curious about. Mark, you mentioned that noise is increasingly becoming a consideration, but I also want to ask about smell, because I have been getting quite a bit of correspondence about the smell of fish farms.

Mark Harvey: I do not know whether that is a product of the change in aquaculture activities or whether it is the result of an increase in sensitivity to the activity itself—that is, to the existence of the fish farms. It is difficult to tell.

It is probably the case that more well boats are operating for longer periods of time around fish farms, which might explain the noise issue. In my experience, there is not a huge amount of evidence to identify where the smells are coming from. We have had a couple of cases, but I do not think that fish farms are inherently smelly, if I can put it that way. Obviously, there might well be instances in which problems occur. Of course, these days, people are very sensitive to environmental impacts, and they will quickly get on to their local authority if an incident occurs.

Ariane Burgess: Is that an issue that you would take into consideration?

Mark Harvey: Yes. From a planning point of view, residential amenity is right at the heart of what we do. I raised my eyebrows because, when I started off in aquaculture, the issue was rarely raised. Now that it is raised much more frequently, it represents a genuine issue for us. It is a siting issue, of course, because noise and smell diminish with distance. Therefore, it could be argued that the further away a farm is from residential properties, the better, from a constraint perspective, but that will dictate some difficult siting questions.

Ariane Burgess: Increasingly, there seems to be a noise issue with feed barges, as well as with well boats, from the tubes and the pellets moving through them.

Mark Harvey: There is always some inherent noise from farms, from diesel generators and so on. Sometimes, the feed moving through pipes can be noisy, although it depends on the design of the feed barge, because a lot of that activity can take place below deck and in acoustically sandwiched environments. Often, it is a matter of maintenance, but some odd atmospheric conditions can make the noise worse at times. Noise travels over water very differently from how it travels over land.

Ariane Burgess: You mentioned NatureScot earlier. Do you, as a council and planning authority, think that you have access to sufficient guidance on how proposed sites or expansions might interact with priority marine features and marine protected areas? Do you get enough robust advice from NatureScot? Does NatureScot have a strong enough role in the planning process?

I will bring in Rachel Shucksmith on that issue, too. I know that she is not from a planning authority, but I would love to get her opinion.

Mark Harvey: We place a great deal of weight on the advice that we get from NatureScot. We trust and respect its advice, and our approach to the marine environment is the same as it is to the terrestrial environment.

It is important to note that NatureScot's remit is to look at the national picture, so it is very focused on national impacts. In aquaculture, we come across most things most of the time. Priority marine features are a feature of most fish farm applications, and NatureScot's advice helps us identify their scale. For example, a priority marine feature can sometimes cover a vast area of sea bed, while a fish farm affects a very small area of sea bed. In order to make our argument to the public and to members, we need such advice from NatureScot, and we get it. NatureScot also helps us with the habitats regulations appraisals that we are required to do. I am more than satisfied with the work that comes back from NatureScot; indeed, I do not think that we could do our work without it.

Ariane Burgess: That is great.

I just wanted to clarify something. You have used the word "aquaculture" quite a bit, but I think that you are using it interchangeably with "salmon farms". We are focusing on salmon farms, but aquaculture covers seaweed and shellfish farming, too.

Mark Harvey: Absolutely. I am sorry—planners tend to use the word in that way, because those farms are the bit of aquaculture that very much falls within our remit. There is also shellfish, but that matter usually presents us with a very different set of constraints and issues.

Ariane Burgess: Rachel Shucksmith, what are your thoughts on getting sufficient guidance on the impact of proposed sites and expansions, and on how they interact with priority marine features and marine protected areas?

Dr Shucksmith: One of the challenges, as Mark Harvey said, is in understanding the extent of our priority marine features. The list was developed by NatureScot. Until that point, there had never been such comprehensive and clear guidance on what we wished to prioritise as a nation. The list incorporates habitats including maerl beds, which are, in effect, a non-renewable resource, and it includes species such as cod, which are not rare in and of themselves, although there are clear reasons for their being on the list.

When a developer, whether in relation to renewables or aquaculture, undertakes a baseline survey, it is not unlikely that they will come across some priority marine features, because some of the species are ubiquitous around our coast. With any decision, the challenge is in weighing up the individual and cumulative impacts on habitats or species and in considering whether the development will affect them at a national or a local scale.

That is where NatureScot is tasked with providing advice on national-scale impacts, not local-scale impacts, although there might be some nuance within that in certain localities. For instance, in Shetland, we have only one remaining seagrass bed; although it is not particularly extensive, it is locally protected because, at a local level, it is rare. On the other hand, we also have in Shetland extensive horse mussel beds all around our coast—well, we have horse mussels and patches of horse mussel beds—and that poses a challenge to our determining whether, even with a big aquaculture development, the scale of impact relative to the distribution of the species might be regarded as significant.

NatureScot provides a steer on whether issues are going to affect the national PMF at the national level. However, its remit does not include making decisions at a local level, which falls on the planning or consenting authority.

Ariane Burgess: Do you think that something is missing there? If NatureScot is looking at national things and the responsibility for making the other decisions falls—to use your term—on the local authority, is something else needed, or are you satisfied with the local authority making that decision in that nuanced way?

Dr Shucksmith: In the past, NatureScot—or Scottish Natural Heritage, which preceded it—would have provided more local advice, but its remit now is to provide national advice, and I imagine that there will be variability across Scotland with regard to the effectiveness of that change. Obviously, in order to provide advice at a local level, people with diverse experience are needed, and NatureScot as an organisation has a vast array of expertise. I do not mean to say that it is not within a local authority's capability to provide that advice; it is simply that the way in which things operate now is different to how they operated before 2010, when the organisation that became NatureScot provided a national and local steers.

Ariane Burgess: Do you know why that change was made? Why did SNH move away from giving local steers?

Dr Shucksmith: Mark Harvey might be better placed to comment on that, but I believe that that was directed to by ministers to ensure that each authority commented on its own specific area. It was part of the streamlining process to avoid

duplication of public bodies' efforts. That is my recollection, but I am happy to be corrected.

Ariane Burgess: Mark, you have been named.

Mark Harvey: I do not know whether I actually know the answer to that question. It has always been my assumption that the change provided something that is very clear cut. After all, if something at the national level is having a local impact, that probably represents unacceptable development. That is fairly clear cut.

On a practical note, I should say that we do get local advice—or advice at a local level—from NatureScot. Planners are quite good at pushing for advice on things that they do not understand, because we do not like to put our names to reports that contain incorrect information. It is not that the portcullis came down and there was no question of any interaction happening at a local level.

Sometimes, in order to understand a national impact, or whether there is a national impact, you need to understand quite a lot about the local impact, so that information is still there. Things are not quite as black and white as they might appear.

Ariane Burgess: Great. That was very helpful. Ronan, I am not going to ask you—

The Convener: I am sorry, but we have to move on. I am just very conscious of the time. We have about 30 minutes left and still have quite a number of questions to ask.

We move on to our third theme, which is siting near migratory routes, with a question from Emma Harper.

Emma Harper (South Scotland) (SNP): Good morning, and thanks for being here.

Picking up on what Rachel Shucksmith said about the precautionary principle, I note that one of the Rural Economy and Connectivity Committee's recommendations was that the precautionary principle be applied in planning of the siting of fish farms. I assume that that was because there were reasonable grounds for concern about siting a farm where it might cause harm to migrating fish.

Rachel Shucksmith mentioned it, so I will come to her first. Is a precautionary principle approach being applied to planning decisions in relation to siting farms close to migratory routes? If so, how does that work in practice?

10:00

Dr Shucksmith: In Shetland, where I am based, we do not have large migratory rivers, so I am not the best person to answer that question. I will defer to my colleagues from the Highlands, where that is an issue.

Mark Harvey: I want to say something about the precautionary principle when it comes to aquaculture. It is important to put it in context. We need to remember that, at the national level, the precautionary principle that says that there will not be any aquaculture on the north and east coasts of Scotland, where the largest stocks of migratory fish exist, has been applied. That is sometimes forgotten. A precautionary principle approach is very much taken at the national level. There are not many presumptions against forms of development in particular locations in Scottish planning; that is one of a small number.

On specific application of the precautionary principle to particular farms and migratory fish, SEPA's framework has moved that onwards a great deal. It has been able to make a modelled assessment of the likely outputs of sea lice from a fish farm and to match that against the knowledge that we have so far about migratory routes and sources. It is not just about migratory routes, however—there are also issues to do with fish associated with special areas of conservation, which might be a specific geographical identification. That has made a great difference.

A couple of applications are with me at the moment in which SEPA has been able to say that it does not expect there to be any significant impact on migratory fish. It is purely through geography that it has been able to make that assessment. That is something that we were not previously able to do and, in years gone by, SEPA or indeed NatureScot were not able to come back to us with answers with that degree of accuracy and such a scientific background. That is quite a big change that I would say is quite a precautionary approach. I am sure that the committee has spoken to SEPA; it will tell you how it goes about its work, but it works on the basis of taking a precautionary approach to risk.

We are certainly in a much better position than we were when I last spoke to the committee on the subject.

Emma Harper: You mentioned special areas of conservation. I am thinking about enhancing and conserving biodiversity. What legal duties do local authorities and the Crown Estate have when making decisions about aquaculture consents? How are those embedded in decision making as we move forward for consenting?

Mark Harvey: Where we are dealing with a special area of conservation—they used to be termed the European sites—there is a legal obligation through habitats regulations. We have first to take advice about whether there might be a significant effect; that is a precautionary principle because the threshold is very low. If it is considered that there is likely to be a significant effect, we have to engage in an appropriate

assessment, which is much more detailed and scientifically based.

We get a great deal of practical assistance from NatureScot in that area to assess whether there will be an adverse effect on site integrity—whether harm will be caused to the SAC. Most people would agree that that works effectively for the limited number of SACs, which could be salmon spawning rivers or rivers that contains freshwater pearl mussels and that sort of thing.

Ronan O'Hara: Again, from the perspective of Crown Estate Scotland, given that our role in the end-to-end consenting process is very much that of the landlord in providing an option then entering into a lease agreement, our obligations, which stem from the primary legislation, are to

"maintain and seek to enhance ... the value"

of the estate. That manifests in the form of an obligation to seek market value for commercial arrangements. As was mentioned earlier, our contribution and role mean that we seek, when it comes to siting and broader consenting considerations, to draw from and rely on expert advice from the likes of SEPA and the planning authorities, which draw on NatureScot.

However, we also have an obligation to seek to advance sustainable development. We do that and exercise it as best we can through our leasing provisions and covenants. That is reflected in the fact that, in recent years, we have sought to innovate and to bring forward sustainability reporting obligations for our tenants. We believe that that is a positive contribution.

Emma Harper: Thanks.

The Convener: The committee recently heard that there was evidence that sites are still being consented close to migratory routes, despite the policies in NPF4, and that district salmon fishery boards' views are not given enough weight. Mark Harvey, given your experience, do you recognise those comments or concerns?

Mark Harvey: It is relatively early days with the threshold, but that is certainly not my personal experience. Having moved things on to a scientific footing, we have to be careful about applying just a distance or proximity parameter. That would oversimplify SEPA's work, which is much more to do with the distribution of planktonic sea lice in an area. It is not inconceivable that a plume of sea lice that emanates from a farm might move in the opposite direction to the migratory fish, so that, despite the spatial distance being relatively small, the level of interaction might be low.

I do not have personal experience of having to deal with that. My most recent experience was simply a question in which there was a significant distance—to go back to distance—between particular farms and the route of the migratory fish, but account still needed to be taken of the direction that the sea lice would take in their movement through the water.

The Convener: Thank you. We move to the next theme, which is enforcement.

Ariane Burgess: I will pick up on a number of the recommendations that were made by the REC Committee. Recommendation 9 says:

"The Committee considers the current level of mortalities to be too high in general across the sector and it is very concerned to note the extremely high mortality rates at particular sites. It is of the view that no expansion should be permitted at sites which report high or significantly increased levels of mortalities, until these are addressed to the satisfaction of the appropriate regulatory bodies."

Throughout these evidence sessions, we have heard about high mortality. One example is of a salmon farm in Loch Seaforth in the Western Isles, where more than a million fish died in a production cycle in 2023, and the level of suffering carried on for six months without any consequences. What do you think about that?

From our evidence sessions, it seems to be the case that already high levels of mortality are increasing—possibly due to climate change but maybe for other reasons—but nobody in the process seems to be responsible for the mortalities. We cannot quite get to the bottom of it. Do you have any thoughts on that and on what we can do about it?

Mark Harvey: That is quite a difficult area. We would not normally consider that to be a material consideration in planning—and there is a good reason for that. Obviously, we take the assumption that the operator, too, wishes such mortalities to be at a minimum—preferably zero—for its own economic and cost reasons.

Undoubtedly, environmental factors are emerging, or have emerged recently, in relation to gill disease on fish. In fact, that issue has probably overtaken by a long measure the health effects of sea lice. However, it would be difficult for planning to take that into account. We talked about spatial mapping, but a lot of science would need to be done—I do not know whether it is being done—to identify the areas of the coastline that are more prone to the environmental factors that lead to gill disease and where, I assume, one would therefore not put a farm. I have to say that that is the sort of work that, first and foremost, we would expect the operators to have done, and I think that they do it.

It is difficult to see how mortality can be factored in. I do not know enough about the on-going science to identify that. Climate change issues would be a concern, because those could, of course, affect a large part of the production area.

Ariane Burgess: So, when you consent a farm, you do not have any data on mortality. You said that we might need to look at spatial mapping. At the moment, you do not have any data on the trends. I think that Rachel Shucksmith said that there is a fluid and changing picture when we are dealing with the marine space.

Mark Harvey: Yes. It would be very difficult to map it and take that into account—not least because the industry has developed techniques to overcome those problems and counter the issues to a degree. We would need to take that into account as well, as we have done with sea lice. The issue probably will not come into the planning remit. Your question was probably about which regulator the issue would fall to, and that is also a difficult question.

Ariane Burgess: The REC Committee recommended that we need to do something about the issue, and it seems to me that we are not getting anywhere on recommendation 9.

Ronan O'Hara talked about Crown Estate Scotland having sustainability reporting obligations. What does CES think about the fact that it is a landlord—or a seabedlord—to companies that have a business that brings about a high level of mortality and suffering?

Ronan O'Hara: I believe that all participants in the industry and all actors in the system of central and local government are firmly of the view that mortality does not benefit anybody and that we all collectively wish to see it being reduced. To go back to a point that was made earlier, I must say that the data that I have seen suggests that mortality is kind of static or holding steady and is fluctuating rather than worsening, but I might be looking at different data sets.

The best way to drive change is to support change, and my inclination is that the industry is already incentivised economically to want to improve mortality rates. The question is how that can be supported or aided. That will ultimately be through innovation and the application of progressive research, because it is a dynamic situation in a dynamic environment.

Therefore, I suggest that we need greater investment and collaboration across all participants, because driving down mortality is a win-win-win. Regrettably, it is a feature of all forms of farming. Obviously, it is not appropriate to draw comparisons between terrestrial farming and marine farming, or indeed across species, but the problem is common to all forms of farming.

On how Crown Estate Scotland views the issue—

10:15

Ariane Burgess: I want to pick up on that point, because if a million animals that live on land were to die—chickens or pigs—there would be an outcry.

Ronan O'Hara: I agree. That is why I said that the comparison between different sectors is not necessarily logical. However, Crown Estate Scotland would like to work with others on addressing and improving that. We have provisions to evolve our sustainability reporting over time, and doing so would provide us with an opportunity. However, ultimately, I believe that the way forward is investment in collaborative research.

Ariane Burgess: My sense is that the industry sees a high rate of mortality as the price of doing business; that is what we have heard throughout our evidence sessions. Rachel Shucksmith, do you have any thoughts about what we could do to address the mortality issue, or on how we could support the industry to improve in that area?

Dr Shucksmith: On your original point about whether there should be a standard threshold, we advise a level of caution because some mass mortality events—say, those that are driven by algae or by a jellyfish bloom—might occur at a locality then not occur again for 20 years. In Shetland, I observed that a particular species of jellyfish bloomed and caused mass mortality, but that species has never been seen to bloom again, and so it has never impacted on that locality again. Although a one-off mortality rate was very high there, preventing aquaculture at that site in future years would not have been necessary.

It might present a challenge if a relatively arbitrary trigger were to prevent restocking. Some of the challenges—such as those that are posed by hydromedusa, which is a type of jellyfish—can cause ongoing mortality for months beyond the initial bloom. I cannot comment on the example that you gave, but it can be a continuing problem for one cycle of fish.

My understanding is that the aquaculture industry has already invested heavily in the area. I have trained staff to monitor water quality and I am sure that—as has been highlighted by Crown Estate Scotland—continued scientific support would be welcomed. However, as has already suggested, the industry is very motivated to minimise mortality where possible and is investing in doing so where it can.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will ask a question or two about environmental management plans. At the meeting of this committee on 26 June 2024, Fisheries Management Scotland raised concerns about the lack of enforcement of EMPs and the

planning conditions that are designed to limit escapes. I will start by asking you, Rachel Shucksmith, to what extent are environmental management plans standard practice. What impact are they having?

Dr Shucksmith: That is not in my arena as a strategic marine planner; the question would be a better directed to Mark Harvey.

Mark Harvey: You are right that environmental management plans tend to be in two parts. They tend to deal with the monitoring of the impact of sea lice, and they also include an element about escape plans.

The introduction of the framework from SEPA has meant that environmental management plans in their current form are no longer required. Attempting to control the impacts of sea lice only by monitoring wild fish is not something that planning authorities are likely to pursue any longer. It might well be that the wild fish monitoring that SEPA has initiated to support the framework will continue, and we are still discussing how the two might cross over but, generally, you will find that environmental management plans are less likely to be used for the control of sea lice.

Escapes have always been a difficult issue. Operators are legally required to report escapes to the marine directorate. Planners incorporated that aspect into environmental management plans, largely to ensure that a proper planning approach was taken. The measures that operators were taking to ensure that their escapes were kept to a minimum was therefore in the public domain. In my experience, they did not include a great deal of information about what to do if there was an escape. Again, that was left very much to the marine directorate to deal with.

I would probably say that environmental management plans—in the form of their being attached to planning applications—are on their way out. They might be incorporated within SEPA's CAR licensing procedures.

Colin Beattie: Highland Council does not enforce any aspect of environmental management plans at this time. Is that correct?

Mark Harvey: There are two aspects to that. One aspect is to ensure that the monitoring element of the environmental management plan is carried out. We have been active in ensuring that monitoring is carried out in an appropriate manner. We have, on several occasions, taken advice on the best techniques for monitoring wild fish, the best locations for doing so, and so forth.

On monitoring outcomes, I do not think that we have had a situation in which there was enough evidence to identify that a fish farm was having an unacceptable, harmful impact on local wild fish through sea lice emissions. We never got to that point, and I have to say that that is probably the weakness of the environmental management plan. I suspect that it would be very difficult to identify enough evidence to take the matter to the enforcement stage. That is one reason why there was a crying need for SEPA's framework and a scientifically evidenced approach.

Colin Beattie: I want to check that I understand this fully. Environmental management plans still exist, but they are gradually falling into disuse.

Mark Harvey: They might not. To the extent that they are a mechanism by which wild fish are monitored for sea lice impacts and general health, they might still have a swan song, as it were, in supporting the evidence that SEPA gathers through the framework.

The framework has initially come in as a modelled approach to risk relating to sea lice and wild fish interactions, but in the background there is always a need to empirically test a modelling approach. The work that has been initiated by the EMPs might well provide that input and the empirical assessment of the health of local wild fish.

Colin Beattie: To be honest, to the layman, that sounds a bit woolly. It sounds as if there is probably something coming down the line that will, in effect, replace the environmental management plans. That has not arrived yet and you do not know the full form that it will take, but, gradually, the environmental management plans will not be used anymore.

Mark Harvey: A great deal of weight can be placed on the framework as it exists. The science behind the modelling that SEPA is using to identify where there might or might not be interactions between a fish farm and wild fish in a way that would be harmful to populations of wild fish is pretty robust. It has progressed things a good deal further than local authorities were able to through the information that came from the EMPs.

I would say that EMPs have been successful in stimulating a level of work, co-ordination and co-operation among operators, local fisheries boards, river trusts and so forth, on how best to monitor wild fish and the impact of sea lice on their health. There have therefore been some positives. However, the enforcement of the EMPs was always going to be difficult. It would be rare to come across information from an assessment in the field that was a smoking gun, indicating that a fish farm was having an unacceptable impact on wild fish. I do not think that anyone has ever delivered data of that nature.

Colin Beattie: Ronan O'Hara, do you have any input?

Ronan O'Hara: To be honest, I am not sure that I could add meaningfully to what Mark Harvey has already relayed.

The Convener: I am conscious of time. I have a brief question, and I am hoping that we will get a brief response. Are the lines of responsibility clear for planning enforcement and ensuring that the conditions are met? If there is no information sharing, is there any possibility that issues could fall between the slats?

Mark Harvey: If the condition is worded well, it is clear what parameters are needed and we can draw on other bodies in order to work them out. Ultimately, although we can serve stop notices and so forth, we would be wary of doing that unless we had very good evidence, because there are issues of compensation with commercial operations. The alternative is to go to the local courts, which are busy and tend to be less interested in the sort of actions that local authorities lodge. There is an issue there.

The Convener: To sum up, it appears that there is a lack of capacity and ability to enforce planning conditions effectively and sufficiently.

Mark Harvey: Not generally, but it is the case for environmental issues. One of SEPA's advantages is that it moved to licensing arrangements. Planning permission is granted permanently, but licences need to be renewed. That gives SEPA a strong handle on enforcement.

The Convener: We will move on to our final theme—community engagement.

Karen Adam (Banffshire and Buchan Coast) (SNP): Does the new pilot process reduce opportunities for local and community engagement by streamlining or reducing the timeframes for consenting? I will go to Mark Harvey first.

Mark Harvey: Theoretically, this is one of the attractive things for us about the pre-app process. Although there are various points at which public consultation is required before an application is made—obviously, consultation is a requirement once an application has been made—we were aware that SEPA often engages in a public consultation early in its own pre-app process. Through the pilot, we were keen as local authorities to co-ordinate the work, in order to obtain earlier input from communities.

So far, there has been a mixed picture from the examples that we have had. We have had one application that fell within the major application scale, so the operator was required to carry out a public consultation as part of the proposal of application notice—PAN—requirements. In the other cases, there was less of a community to engage directly. We are still looking in the pilot for a suitable application—for a new farm that sits close to a community, for example. That would provide an opportunity, through the pilot or the pre-app process, to co-ordinate the work of SEPA and planners. Arguably, that would improve the public consultation process.

10:30

Karen Adam: Dr Shucksmith, are there ways that local engagement could be improved, during consenting and throughout the lifetime of the development, to deliver the social contract that is envisioned by the Griggs review?

Dr Shucksmith: There are a number of things to consider on community and public engagement. For example, including people in the process makes them feel listened to and valued, and research suggests that that makes people much happier with any outcome from the process. The pre-application consultation, which occurs early in the process, is often key to ensuring that communities and people feel heard and valued.

There are a number of challenges in developing a formal social contract in terms of assuming the level of engagement the public might want. Engagement is more likely to occur where a development is controversial. The effectiveness of any social contract could be more complicated depending on the particular locality and the information detail that might be wanted. For future developments, you would hope that many of the concerns that were raised at the pre-application stage would be addressed during the consenting process so that the on-going issues would be minimal.

Karen Adam: Ronan, regarding the Crown Estate's leasing role, are there any community engagement or community benefit mechanisms associated with those decisions, and are there calls for a community benefit mechanism?

Ronan O'Hara: It is a good question. The first thing is that there are already arrangements in place whereby money flows back to the communities, but I am not sure that we take full advantage of making that transparent and communicating that effectively so that those communities can see clearly the impact of the commercial arrangements in their locality.

Crown Estate Scotland staff—my colleagues and I—very much view ourselves as serving and supporting the communities where there are assets under management, and we view those as a long, on-going and important relationships. We channel small amounts of money into initiatives such as our sustainable communities fund, which supports initiatives on the ground to enhance community opportunities. If I were to say what opportunities exist for the future, I would suggest, although it is at the discretion of others, that if

more money was retained by Crown Estate Scotland for reinvestment at a localised level, we could make that impact more meaningful, more immediate and more visible.

Edward Mountain: I will concentrate on two recommendations in the report that the Rural Economy and Connectivity Committee produced in 2018. Recommendation 51—which I am sure you will know off the top of your head, Mark, but just to remind you if you do not—was that the Scottish Government should undertake a strategic spatial planning exercise, taking into account all the affected areas. That recommendation should have been carried out. Has it been carried out? Do you use that in making your planning decisions?

Mark Harvey: That probably refers back to earlier discussion about whether we apply the same level of spatial planning.

Edward Mountain: I am asking whether there has been a map-based spatial planning exercise, carried out by the Scottish Government and produced in conjunction with SEPA, that says where fish farms should be allowed and where they should not be allowed. Do you have such a map, and are you using it?

Mark Harvey: No—no such map has been produced.

Edward Mountain: So recommendation 51 has been ignored, then, by definition.

I take you to recommendation 53, on the relocation of fish farms where it is clear that they are a problem. How many planning applications has Highland Council received, considered and actioned for the relocation of fish farms because they are a problem at their existing site?

Mark Harvey: I do not think that we have reached the first stage yet, because we have not identified where there are problematic fish farms. That is another aspect of the framework that might be particularly useful, because SEPA might well be able to identify such farms, in which case we would certainly take a view on relocation.

How different an application for relocation is from an application for a new fish farm is another matter. We do not control whether a company wants to close down an existing fish farm, although that might be what SEPA requires. We would obviously look at a fresh fish farm application in much the same way as we would any other application.

Edward Mountain: Do you know how depressing that is for me? I sat on the predecessor committee in 2018 when it recommended that poorly sited fish farms should be relocated to take away the threat in relation to their production from high mortality levels and their effect on wild fish where the farms are sited on existing migratory routes, and now you are telling me that, six years later, that has not been implemented. Would you be depressed?

Mark Harvey: Well, not so much, because relocation is not the only issue. Since I appeared before that committee, I have seen the industry become very much focused on reworking its existing units. Certainly in Highland Council, we have dealt with a surprisingly low number of applications for new fish farm sites, but a very large number of applications for reworking farm sites. Most of that is to do with making them more productive, as you say, and more environmentally sustainable.

Relocation is not the only issue—

Edward Mountain: It is certainly not the only issue, but the predecessor committee's report focused heavily on it, and the salmon farmers in Scotland said that they would consider it and put it high up on their list of priorities. I remember them saying that, and now they are saying, "We have nothing."

I will leave it there, convener, because I may get more depressed as my questioning continues.

The Convener: That concludes our witness session. I thank you all for coming along today; the session has been most helpful.

Our next item is consideration of the Welfare of Dogs (Scotland) Bill. I propose that we take a 15-minute break first.

10:37

Meeting suspended.

10:51

On resuming—

Welfare of Dogs (Scotland) Bill: Stage 2

The Convener: We will now consider the Welfare of Dogs (Scotland) Bill at stage 2. I welcome to the meeting Christine Grahame, the member in charge of the bill, who is supported by officials from the Parliament's non-Government bills unit and legal team. I also welcome Jim Fairlie, the Minister for Agriculture and Connectivity, and his supporting officials from the Scottish Government.

Before section 1

The Convener: Amendment 60, in the name of Rachael Hamilton, is grouped with amendments 63, 65, 66, 71, 73, 74 and 77.

Rachael Hamilton: Amendment 60 would require the 2010 code of practice for the welfare of dogs, which was introduced under the Animal Health and Welfare (Scotland) Act 2006, to include the animal welfare good practice that people should follow when acquiring a dog or transferring a dog to another person.

The 2010 code of practice for the welfare of dogs is centred on five areas: the need for a suitable environment; the need for a suitable diet; the need to be able to exhibit normal behavioural patterns; any need to be housed with, or apart from, other animals; and the need to be protected from suffering, injury and disease.

As currently drafted, the bill will create a new and separate code of practice alongside the existing code. As noted by the Law Society of Scotland, that could create a risk of

"overlap or contradiction between the existing code of practice"

and the one that is

"envisaged under the Bill."

Amendment 60 seeks to minimise any potential confusion among the public by incorporating the proposed code into the existing one. An amendment to that effect was suggested when the Dogs Trust told us during committee proceedings that it was

"really keen on there being streamlining, so that there is one code of practice, if possible".

The Scottish Society for the Prevention of Cruelty to Animals stated:

"Having multiple documents is not an easy way of proving that somebody has managed to grasp all that knowledge if they are required to look at various sources of information. Our plea is to keep it simple and update or revise the existing code, because it would be better from a practical point of view to prove whether a person should have had that knowledge as part of an investigation."—[*Official Report*, *Rural Affairs and Islands Committee*, 20 September 2023; c 10, 13.]

Moreover, as currently drafted, section 6 of the bill makes it clear that a breach of the new code would not be an offence in and of itself. Amendment 60 would provide for improved practical enforcement through the existing 2010 code in relation to animal welfare investigations.

Amendments 63, 65, 66, 71, 73, 74 and 77 are the relevant consequential amendments to amendment 60. They would remove all sections of the bill that would create a new and separate code.

Although my favoured option is for the code of practice to be incorporated into the 2010 code—for that to happen, it is necessary to remove sections 1 to 7 of the bill—I appreciate that my amendments might not gain support, so I will support several other amendments to sections 1 to 7, as they would improve the bill.

I look forward to hearing from the minister on the incorporation of the new code into the existing one.

I move amendment 60.

The Minister for Agriculture and Connectivity (Jim Fairlie): I thank Rachael Hamilton for explaining the purpose of her amendments, but I cannot agree with them. It is the view of the Scottish Government, which was shared by the committee at stage 1, and of Christine Grahame, that a new, stand-alone, concise and accessible code of practice that relates specifically to the acquisition of dogs should be produced after due consultation. The intention is that the new code will complement the wider advice on keeping dogs in current and future iterations of the welfare of dogs code, and that there will be clear signposting between the codes to minimise any potential confusion.

Therefore, I do not support amendments 60, 63, 65, 66, 71, 73, 74 or 77, and I ask Rachael Hamilton not to press amendment 60 or to move the other amendments.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I thank Rachael Hamilton.

As the committee knows, at stage 1, I took the position that it was important to have a separate, stand-alone, simple code that related to the acquisition of a dog or a puppy. The difference between such a code and the existing code is that the existing code is for people who already have a dog. My proposed code represents a pre-emptive strike to make sure that people have taken

account of all the welfare and accommodation issues in advance of proceeding to acquire a dog. Therefore, I do not support what Rachael Hamilton is proposing.

I have an ancillary comment. The existing code is 36 pages long, so it is pretty cumbersome. I say, with respect, that I do not think that many people will have read it. If they have read it, I think that they will have done so after they have got a dog. The code that I am looking to introduce will be on one side of A4 and will be written in simple language; it will not be complicated. I want people not to desist from reading it because it has too many pages, and to have a look at it in advance of getting a dog. Although it will be written in a similar style to the existing code, it will, I hope, be a very easy read, as it will use straightforward, conversational language. I know that that is not mentioned in my bill at the moment; we will come on to that later. I want my proposed code to be written in conversational language so that people can understand in simple terms what they will be taking on if they get a dog. That is in the best interests of the dog or puppy and, indeed, the potential owner.

Obviously, I reject Rachael Hamilton's wrecking amendment, which would completely take my bill out of the picture.

The Convener: I invite Rachael Hamilton to wind up and to press or withdraw amendment 60.

Rachael Hamilton: I am disappointed by Jim Fairlie's comments. I am disappointed that the Scottish Government does not agree that the proposed code of practice should be incorporated into the original code of practice. I have the code of practice on the welfare of dogs here in front of me; it has a great picture of a little dog on the front. As Christine Grahame said, it is fairly long—it is 28 pages long. However, it is comprehensive. The same issues will arise with regard to awareness of Christine Grahame's more concise, one-page code among people who are looking to acquire a dog as exists at the moment in relation to the current code when it comes to ensuring the highest standards of welfare.

This is all about the welfare of dogs, and it comes as no surprise to me that the Scottish Government does not want to take the sensible route of incorporating into one document the whole process of acquiring and then looking after a dog. I am incredibly disappointed. I think that what is proposed in the bill is the onerous route. Once again, the Government is not taking the practical route.

I press amendment 60.

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 60 disagreed to.

Section 1—Ministers to make code of practice

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 8, 17, 18, 29 to 31, 35 and 37.

Jim Fairlie: The amendments in this group concern the scope of the code of practice. Amendment 6 will make a minor clarification to avoid any unnecessary confusion about the scope of the code. The code should apply to all persons in the legal sense, whether individual people or legal entities such as companies and partnerships. The present wording, which includes the phrase "for people", might be taken as restricting the meaning to natural persons only, so it is proposed that "for people" be removed to avoid any uncertainty.

Amendments 8, 18, 29 to 31, 35 and 37, which are in my name, will standardise the terminology that is used in the bill by making it refer to "transferring" a dog rather than the mix of terms that are currently included in the bill.

11:00

Amendment 17 defines "transferring" as including

"selling, giving away, exchanging, bartering or arranging for the long term loan or long term fostering of a dog".

That is an inclusive definition, so any arrangement that would in effect be a transfer of a dog would be caught by the code of practice. Again, that is aimed at preventing people from arguing that they are not covered by the code.

I move amendment 6.

Christine Grahame: I welcome the amendments in this group, which will improve and strengthen the bill.

Amendment 6 agreed to.

The Convener: Amendment 7, in the name of Christine Grahame, is grouped with amendments 9 and 56.

Christine Grahame: I will move amendment 7 and speak to the other amendments in the group. Amendment 7 would delete the phrase "to keep as a pet", amendment 9 would delete the word "pet" and amendment 56 would leave out the term "as pets".

On reflection, the stage 1 debate made it clear to me that there could be a loophole or confusion if I tried to make a definitive difference between a working dog and a pet. We all know that some dogs are working dogs, such as dogs for the blind, police dogs, shepherding dogs and hearing dogs for the deaf. That is clear, but there are categories where there could be crossover. To include all dogs is not to malign or in a way criticise people who employ and acquire working dogs. I know that those people are very thorough in what they do. The issue is that there could be a loophole and that somebody could claim, "Mines is a working dog," when, in fact, it is a pet.

The change will make it easier for everyone. There cannot be any dispute, because it is just a dog. In many cases, those who acquire working dogs do what is needed anyway, so there is no harm to them. The changes are not in any way an attempt to criticise those people. They have dogs that have to earn their keep, as it were, so they know about the breeding and where the dogs have come from. The convener, Mr Fairlie and Mr Mountain are farmers, so they know what I am talking about.

The bill will be simpler if it refers simply to dogs and not to pets. I hope that I have won your heart with that, Mr Mountain.

I move amendment 7.

Jim Fairlie: I am pleased that Christine Grahame has lodged amendments 7, 9 and 56, which remove the qualification that the code applies when a dog is acquired to keep as a pet. As highlighted by the committee at stage 1, that could become a loophole for unscrupulous breeders. I urge members to support the amendments.

Amendment 7 agreed to.

Amendment 8 moved—[Jim Fairlie]—and agreed to.

Amendment 9 moved—[Christine Grahame]—and agreed to.

The Convener: Amendment 10, in the name of the minister, is grouped with amendments 11 to 14, 61, 62, 15, 16, 47, 48, 72 and 55. If amendment 62 is agreed to, I cannot call amendment 15, due to pre-emption.

Jim Fairlie: The Scottish Government is keen to develop the code of practice that is required by the bill, and the initial engagement with stakeholders has already begun. Amendment 14 will ensure that any consultation that takes place before the bill comes into force will count towards meeting the consultation requirement contained in the bill, so that the code can be finalised as soon as possible.

Amendments 10 to 13 will introduce greater flexibility for preparation of the code. The Scottish Government's view is that specifying in detail what the code should include is an unusual and unnecessary use of primary legislation. We prefer to develop the contents of the code through consultation with stakeholders.

Amendment 10 provides that the Scottish ministers must have regard to the matters set out in sections 2 and 3 when they make the code of practice, and amendments 11 and 12 change the requirement that the code must include provision giving effect to those matters to a provision that it may do so. The bill retains the requirement that the code of practice must prescribe the form of a certificate for both the acquirer and supplier of the dog to sign, in accordance with the stage 1 report's recommendations.

Amendments 47 and 48 amend section 5 to clarify that the process for developing and consulting on future revisions of the code will be the same as for the initial code.

Amendment 55 means that the bill will come into force two months after the date of royal assent, rather than the day after royal assent, as is currently provided for.

Amendment 15 increases the timescale for producing the code of practice from six months to 12 months, in line with the recommendations in the stage 1 report. The committee agreed that the requirement for a code to be made within six months of royal assent is impractical and—given the value of a consultation to inform a code—is unlikely to result in a well-drafted code that is fit for purpose. More than six months is required to allow for consultation, the development of the code and the obtaining of views on further wording or recommendations from stakeholders.

It is expected that, in addition to the content that is specified in the bill, additional guidance on other matters relating to the acquiring of a dog—such as the risks that are associated with imported rescue dogs and extreme conformations due to undesirable breeding practices—could be included in the code following consultation with stakeholders.

Amendment 16 allows for the timescale within which the code of practice must take effect to be amended by way of regulations. That amendment has been proposed in order to avoid the difficulties that sometimes occur when timescales that are fixed in legislation subsequently become unachievable. Without that power, any amendment to the timescale could be achieved only by way of primary legislation.

Rachael Hamilton: Why set a timescale of 12 months if you cannot achieve it?

Jim Fairlie: We are not saying that we cannot achieve it.

Rachael Hamilton: You have just said that you are making it flexible because you think that you will not achieve it.

Jim Fairlie: That is not what I said. What I said is that, in the event that something happens such that we could not achieve it, we would want the flexibility of having 12 months.

Rachael Hamilton: What does the Government envisage will happen?

Jim Fairlie: I have absolutely no idea. Think of Covid. Who knows what might happen? There could be any number of reasons why a code could not be concluded within the 12-month period. The proposal allows us flexibility if something does happen. We fully expect to have it done well within the 12-month period, but the proposal is a security, just to make sure.

I assure members that we consider it highly unlikely that it will be necessary to use that power, and we fully expect that the code of practice will be developed, consulted on and come into effect well within the 12-month period after royal assent, should the bill be passed. However, it is only prudent to be prepared for any unforeseen complications and to avoid having to then consider returning to primary legislation to extend the deadline, should that become necessary.

Finlay Carson's amendments 61 and 62 would require the code to be laid before Parliament for approval and would remove any timescale for preparing the code. The Scottish Government's main reason for the commitment to replace codes of practice that were made under section 37 of the 2006 act with guidance that is made under section 38 of that act is to provide a quicker, more practical method for drafting, publishing and amending good practice information for the relevant parties.

The provision of up-to-date good practice information is important if we are to support owners and keepers in maintaining the welfare of the animals in their care. In the case of dogs and the purchasing of dogs, ensuring that our good practice information is kept up to date is important in keeping up to date with the new legislation or growing trends in that area. We therefore do not want the code to be subject to a requirement to lay it before Parliament.

Rhoda Grant's amendment 72 would mean that a revised code would need to be published even if the revisions did not materially alter its effect. The Scottish Government is happy to support that amendment, as it would ensure that the public is made aware of any changes, big or small, to the code.

I move amendment 10.

The Convener: I will speak to my amendment 61 and other amendments in the group.

Amendment 61 would require the code of practice to be subject to parliamentary scrutiny under the affirmative procedure. Christine Grahame has proposed that, under the bill, the code of practice would not be subject to parliamentary scrutiny, but the delegated powers memorandum explains that she took that approach as the scope of the powers in sections 1 and 5 is

"narrowed by provisions set out on the face of the Bill",

and any other matters that are included by the Scottish ministers would be informed by their consultation exercise.

The delegated powers memorandum concluded:

"The Member considers that the core content of code will stand the test of time and that it is therefore appropriate to include it in this way. ... the substantial elements of the code will have been scrutinised by the Parliament during the passage of the Bill".

However, my amendment 61 would make the code subject to parliamentary scrutiny under the affirmative procedure.

In its stage 1 report, the Rural Affairs and Islands Committee referred to section 37 of the Animal Health and Welfare (Scotland) Act 2006, stating that

"any animal welfare code ... must be laid before, and approved by resolution of, the Scottish Parliament before it can come into effect."

The stage 1 report also referred to the stage 1 report that was produced by the Delegated Powers and Law Reform Committee, in which it concluded that the code of practice "should be subject to" parliamentary scrutiny, due to "the evidential link" between compliance with the code and

"the possible commission of an offence"

under section 6 of the bill. The DPLR Committee recommended that

"the code of practice should be subject to a parliamentary procedure"

and set out the arguments for using either the affirmative or the negative procedure. The argument that the committee saw as being in favour of the affirmative procedure was

"the evidential link of a failure to follow the code of practice to the possible commissioning of an offence; and ... the power for Ministers to revise the code after consultation. This would align the code with codes of practice made under the 2006 Act."

Once again, I ask members to support my amendment, which would mean that the code of practice would have to be scrutinised by Parliament under the affirmative procedure. That would more closely align with the 2006 act by giving ministers the power to revise the code after consultation and would address the evidential link between failure to follow the code of practice and the potential for an offence to be committed.

I call Rhoda Grant to speak to amendments 72 and other amendments in the group.

Rhoda Grant: Section 5(6) provides that Scottish ministers do not need to publish a revised code of practice if they

"consider that none of the revisions materially alters the effect of the code of practice."

My amendment 72 would remove that section from the bill, having the effect that any revised code of practice would have to be published and made available to the public. I am grateful for Government support for the amendment.

The Convener: Do any other members have anything to say on this group?

Rachael Hamilton: I listened to what the minister had to say, and we cannot support amendments 11 and 12. Amendment 11 has weaker wording and would mean that ministers would not have to "include provision giving effect" to sections 2 to 4. Amendment 12 would mean that ministers would not have to include provisions giving effect to section 4.

I am happy to support Rhoda Grant's amendment 72, and I am very happy to support Finlay Carson's amendments 61 and 62, which seem entirely sensible.

My key opposition is to amendment 16. As the bill is currently drafted, the code of practice must be published within six months of royal assent. I welcome the fact that the minister has accepted the committee's recommendation to increase that period to 12 months, to allow sufficient time for an effective consultation. However, amendment 16, which was also lodged by the minister, would allow the Scottish Government to change the date by which the code of practice must be published. That suggests—as I said when I intervened on the minister—that the Government suspects that the timescale will likely not be achievable and that the Government will fail to meet it, despite its having been increased to 12 months. I cannot support amendment 16, because it is wrong that the Scottish Government could create a loophole in the bill to give it an easy way out if it failed to keep to the required timescale.

Jim Fairlie: I ask the member why she considers that the Government would try to put a loophole in the bill. We all agree that we want the bill to pass. The Government is not trying to do anything here that would stall it or stop it. We have given a clear commitment that, all things being equal, we will get this done within the 12-month period. The amendment is meant to give us an insurance policy in case anything goes wrong, so that we do not have to start again. There is nothing underhand or untoward being done here; it is simply to give us an insurance policy.

Rachael Hamilton: Thank you for the intervention, Mr Fairlie. It would be reassuring if there had been similar amendments to other legislation, but it is not something that I have come across during the scrutiny of other legislation by the committee. It is very unusual, which is why I am highlighting it. It appears that the Government is expecting to fail. The Government should accept that I am questioning the amendment because it is unusual.

11:15

Christine Grahame: The minister says that the amendments that he has lodged—a substantial number of them—offer flexibility, but I think that they water things down a bit. Amendment 10, for example, would delete "giving effect to" and substitute it with "must have regard to". To me, that is not offering flexibility. You could call it flexibility, but it gives an awful lot more leeway to the Government than "giving effect to", which is about actually doing what the legislation says. Similarly, in changing "must" to "may", amendment 11 is a change from making something mandatory to making it discretionary. To me, that is not flexibility—that is weakening the legislation. Therefore, I do not accept those amendments.

Amendment 15 will change the six-month period to 12 months. I am not happy about it, but, if I have a consideration and an undertaking from the minister that it will be "up to" 12 months, I will not go to the wall about it. What is six months between friends if it is changed to seven months, let us say, because it is "up to" 12 months? I will be keeping an eye on that timescale.

To Finlay Carson I say that I am relaxed about what the Delegated Powers and Law Reform Committee wants to do—whether it is a case of affirmative or negative procedure. It is expert in this area, so it is a matter for that committee at the

end of the day. I do not have any issues with that, as I think I said previously to you.

To Rhoda Grant I say that I accept amendments 64, 67, 68 and 70, which change the phrasing to "must", making it mandatory—I am sorry; I think that I have jumped over a group. I knew that I would go astray. I think that I have missed one. I am just checking to make sure that I have not missed speaking to something that I intended to speak about while I have the chance.

No, I think that that is it—my apologies, convener. Thank you very much.

The Convener: Thank you, Ms Grahame. Next is the minister, to wind up.

Jim Fairlie: I have nothing further to add.

Amendment 10 agreed to.

Amendment 11 moved—[Jim Fairlie].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 11 agreed to.

Amendment 12 moved—[Jim Fairlie].

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 12 agreed to.

Amendments 13 and 14 moved—[Jim Fairlie]—and agreed to.

Amendment 61 moved—[Finlay Carson].

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 61 disagreed to.

The Convener: Amendment 62, in the name of Finlay Carson, has already been debated with amendment 10. I remind members that, if amendment 62 is agreed to, I cannot call amendment 15 due to pre-emption.

Amendment 62 moved—[Finlay Carson].

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 62 disagreed to.

Amendment 15 moved—[Jim Fairlie]—and agreed to.

Amendment 16 moved—[Jim Fairlie].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 16 agreed to.

Amendment 17 moved—[Jim Fairlie]—and agreed to.

Amendment 63 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 63 disagreed to.

Section 1, as amended, agreed to.

Section 2—Content of code: in relation to sale or transfer of dog of any age

Amendment 18 moved—[Jim Fairlie]—and agreed to.

The Convener: Amendment 64, in the name of Rhoda Grant, is grouped with amendments 67, 68, 70 and 54.

Rhoda Grant: This group of amendments deals with minor and technical aspects of the proposed legislation.

The first four amendments are technical adjustments to the bill's wording. My amendments, which were proposed by the Law Society of Scotland, seek to change certain phrases such as "is to" and "are then to" to "must", to make the bill clearer and make it easier for members of the public to understand its requirements and intentions. They would remove ambiguity and strengthen the bill.

On amendment 54, section 12, on interpretation of the legislation, sets out definitions covering central aspects of the bill, such as the word "advertise" and the phrases "first owner" and "police officer". The intention of the section is to define the meaning of those terms, but amendment 54 seeks to remove it entirely.

My amendments in this group seek to ensure that the bill is implemented as intended and to remove ambiguity of language and clear up interpretation. I ask members to support my amendments at this time.

I move amendment 64.

Jim Fairlie: I thank Rhoda Grant for the explanation of the purpose of her amendments. The intention of the bill as introduced is recognised in the policy memorandum, which states that the intention is

"to achieve behavioural change, without placing formal legal obligations on the parties involved".

There is a long-standing convention that codes of practice made under the Animal Health and Welfare (Scotland) Act 2006 generally use the word "must", when there is a directly enforceable legal requirement to do something, which will not be the case under the bill. Therefore, the Scottish Government's view is that amendments 64, 67, 68 and 70 are unnecessary and potentially misleading. I do not support the amendments and I ask the member not to press them.

Amendment 54 leaves out section 12, which is the interpretation section of the bill, because the effect of my other amendments is that all the definitions are either no longer used or are moved to sit in the operational sections to which they relate.

Christine Grahame: I was generally supportive of Rhoda Grant's amendments, but I do not have a vote.

The Convener: Thank you. I call Rhoda Grant to wind up and to press or withdraw amendment 64.

Rhoda Grant: I would be willing to withdraw amendment 64 and to hold off until stage 3 if the minister is willing to have some discussion on these points to tidy up the bill.

Jim Fairlie: I am happy to have discussions with the member.

Amendment 64, by agreement, withdrawn.

The Convener: Amendment 19, in the name of the minister, is grouped with amendments 20 to 26, 1, 27, 28 and 38.

Jim Fairlie: The amendments in my name remove the specific questions from the bill, as suggested by the committee at stage 1. The broad themes underlying the questions will continue to be listed as things that a prospective acquirer should consider before acquiring a dog. However, we fully understand and share Christine Grahame's desire to have the code and certificate written in simple and straightforward language that is easy for the public to understand. I give an assurance now that that is what we expect to be produced.

The suggestion in Ariane Burgess's amendment 1 that identifying a veterinary practice could be included within the proposed code of practice is a good one, but that sort of detail should be left to be employed by officials and stakeholders as the code is developed. Therefore, I ask her not to press that amendment.

I move amendment 19.

The Convener: I call Ariane Burgess to speak to amendment 1 and the other amendments in the group.

Ariane Burgess: The purpose of my amendment is to prompt prospective owners to register a new dog with a vet practice. Regular vet check-ups are a key part of responsible dog ownership, from puppyhood to old age. Vets also provide advice and rapid treatment in an emergency, for example by providing out-of-hours care, and a check-up can identify health issues that arise due to negligence by the breeder. It might be possible to identify other puppies at the practice from the same litter or breed and raise concerns.

Christine Grahame: I am going to acquiesce, which is new for me. The list of questions in my bill that require to be answered are clear and cover key considerations that anyone should work through before deciding whether they are able to look after a dog, including with regard to the breed and the person's situation. However, I heard what the minister said, and we now have an assurance, which is on the record in red letters, that the code will be put into plain English. I do not want words such as "acquire" or "environment" to be used, if possible. I want the code to say things such as "getting a dog" or "caring for a dog" in clear English that is simple to understand; it does not need to be complicated.

The questions that I included in my bill were just the questions that anyone would ask themselves. I appreciate that the language is not legalese. I am happy with that, and I want the code to be in conversational language.

I think that Ariane Burgess's amendment is a good one. One of the key things that she suggested is that someone might ask the vet whether they were aware of the breeder or the bitch that their dog came from. If someone went to see the vet in advance and registered with them, if they were good, they might even give advice, if the query—

Jim Fairlie: Will the member take an intervention?

11:30

Christine Grahame: Minister, I wonder if you could just let me finish my sentence—I love saying that to a minister.

Someone might be thinking of getting a certain breed of dog. Some breeds might have issues. For example, some dogs have squashed noses and others have been so overbred that they can hardly walk, poor devils. A vet can give advice on that, and even on whether someone's life circumstances are such that they would be right for a particular breed. I have had many animals, and in my experience vets are excellent and will give good advice.

I like the proposal. I did not think of it myself, so I compliment Ariane Burgess on it. Minister, you should give it a bit of thought, if I might suggest that.

I have finished, but I will let the minister intervene, and then I will say a bit more. That way, it will be an intervention. [*Laughter.*]

Jim Fairlie: I absolutely agree. I like the proposal as well. I might even go so far as to say that it should be both the acquirer and the seller who are notified about who the vet is.

I agree with everything that Ariane Burgess is saying. However, I think that the matter should be in the code, as part of the overall package of what we are trying to deliver. I am not trying to stifle the proposal, and I am more than happy to meet her between stage 2 and stage 3 in order to clarify that.

Christine Grahame: I am glad to see that there has been some movement, because I think that the issue is terribly important. Vets are the very people who do not want disasters involving an owner and their puppy or dog, or an animal that is in poor condition.

Again, we return to something that is in the shadows of the bill: puppy farming and the

importing of puppies that people buy online. People might have no idea about that. If they have a preliminary meeting with a vet, a conversation about that will open up. Although the bill does not deal directly with that aspect, sitting behind it is the current practice of people buying puppies out the back of cars, online and so on. That is the thrust of it, and I think that that makes vets the very people to be part of that information loop, if I can call it that.

The Convener: I call the minister to wind up.

Jim Fairlie: I have nothing further to add.

Amendment 19 agreed to.

Amendments 20 to 26 moved—[Jim Fairlie]—and agreed to.

The Convener: Amendment 1, in the name of Ariane Burgess, has already been debated with amendment 19.

Ariane Burgess: On the basis of the minister's offer to meet and discuss the issue further, I will not move the amendment.

Amendment 1 not moved.

Amendments 27 to 29 moved—[Jim Fairlie]—and agreed to.

Amendment 65 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 65 disagreed to.

Section 2, as amended, agreed to.

Section 3—Content of code: in relation to sale or transfer of young dog by first owner

Amendments 30 and 31 moved—[Jim Fairlie]—and agreed to.

The Convener: Amendment 32, in the name of the minister, is grouped with amendments 33, 36, 39 to 44 and 69.

Jim Fairlie: Amendments 32, 33 and 36 follow the committee's recommendation at stage 1 to ensure that the provision relating to the requirement to see a dog with its mother is worded consistently with the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021. That covers circumstances in which a dog may be separated from its biological mother for welfare reasons or if the mother is deceased. The Scottish Government agrees with the committee and the Law Society of Scotland's suggestion that responsibility for confirming that a dog is at least eight weeks old should be placed on both the acquirer and the supplier of the dog.

Since 2018, Scottish Government campaigns have consistently reinforced to prospective purchasers the importance of seeing a puppy with its mother, ideally at the breeder's or seller's premises, as well as verifying the age of the dog. Amendments 39 to 44 will place the relevant responsibility on the prospective supplier as well as on the prospective acquirer of the dog.

Finlay Carson's amendment 69 would have the same effect as my amendments 39 to 44. I therefore ask him not to move it.

I move amendment 32.

The Convener: My amendment 69 would place responsibility on both parties to confirm that the dog is at least eight weeks old. On section 3, the Rural Affairs and Islands Committee's stage 1 report states:

> "the code should set out additional requirements in relation to the sale or transfer of a dog under 12 months old by the first owner of the litter. These include a restriction on the sale of a dog under eight weeks old".

That is also highlighted in the bill, which will extend existing restrictions on the sale of a dog that is under eight weeks old from a licensed litter. The 2021 regulations provide that no puppy that is aged under eight weeks may be sold or permanently separated from its biological mother and that a puppy should be shown to a prospective purchaser only if it is with its biological mother. The only circumstances in which that does not apply are where it is necessary for the puppy's health or welfare or where the puppy's biological mother is deceased.

Amendment 69 recommends that responsibility be placed on both parties to confirm that the dog meets that age requirement. The Law Society of Scotland agrees with the amendment and recommends that section 4(4)(b) of the bill be amended so that the buyer and the seller must confirm that the puppy is at least eight weeks old.

Christine Grahame: I am content with all of the Government's amendments in the group as they will make the language in the bill clearer in a number of ways. I support the changes in relation to seeing the mother with the puppy and ensuring that the puppy is at least eight weeks old.

I listened to your comments, convener, but it seems to me that your amendment 69 duplicates what the Government is already doing. If I have got that wrong, I will be interested to hear what is said, but I do not have a vote; I am just listening to the debate.

The Convener: Minister, do you wish to wind up?

Jim Fairlie: I have nothing to add, convener.

Amendment 32 agreed to.

Amendment 33 moved—[Jim Fairlie]—and agreed to.

The Convener: Amendment 34, in the name of the minister, is grouped with amendments 49 to 53, 57 and 58.

Jim Fairlie: The amendments in the group seek to leave out sections 8 to 11 of the bill, which contain the powers to make regulations about the registration of litters, and consequentially to remove references to part 2 from the bill and its long title.

The Scottish Government is pleased that the committee agreed at stage 1 that part 2 of the bill should be removed. I understand that the member in charge of the bill accepts that on the clear understanding that we will continue working with the other Great Britain Administrations to explore improvement of the existing compulsory dog microchipping legislation, and particularly the potential for a single point of access to all dog microchip records to be created across GB and for details of dog breeders to be permanently recorded.

The existing powers to establish registration schemes under section 27 of the Animal Health and Welfare (Scotland) Act 2006 mean that new primary legislation is not needed to allow us to introduce that registration if circumstances change in the future.

I move amendment 34.

Christine Grahame: What the minister says is absolutely correct. I confirmed to the committee at stage 1 that I was content to remove part 2 of the bill. It is pretty onerous and a bit clunky, and it could be financially onerous at this time.

That said, as the committee is aware, I am very interested in having a UK-based microchipping database. That would make more sense because, ancillary to that, we could put in it dog control notices and everything else that is relevant to dogs in Scotland. I have no concerns about the deletion of part 2—given that I agreed to it earlier, I could hardly change my mind now—on the basis that we will continue to look at microchipping. We will have a debate on that later, so I will save what I want to say for then.

The Convener: I invite the minister to wind up.

Jim Fairlie: I have nothing further to add, convener.

Amendment 34 agreed to.

Amendments 35 and 36 moved—[Jim Fairlie]—and agreed to.

Amendment 66 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 66 disagreed to.

Section 3, as amended, agreed to.

Section 4—Content of code: certificate

Amendment 37 moved—[Jim Fairlie]—and agreed to.

Amendments 67 and 68 not moved.

Amendments 38 to 44 moved—[Jim Fairlie]—and agreed to.

Amendment 69 not moved.

The Convener: Amendment 2, in the name of Ariane Burgess, is grouped with amendment 3.

Ariane Burgess: Amendment 2 would add an additional requirement that a person who is acquiring a dog must seek its existing health records and the contact details of the vet practice that it is registered with. Confirmation of that would be included on the certificate. Amendment 2 is similar to amendment 1 in that it would ensure that the importance of on-going veterinary care is

reflected in the code of practice, and it would increase the chances of a prospective new owner being fully informed of any pre-existing health or behavioural conditions. If a seller cannot provide that information, it should be recognised as a clear red flag.

Amendment 3 would strengthen the requirement on both the supplier and the acquirer to provide contact information, requiring an email address and phone number in addition to the postal address. That would enhance the traceability of the breeder or original owner and the new owner. Of the 10.6 million dogs in the UK, only 33 per cent were acquired from professional breeders, and a vast majority came from online sellers. My amendment recognises that many dog adverts are online and many of the subsequent transactions take place online. The code of practice should reflect the fact that we are living in a digital age. I have had discussions with the SSPCA, which has highlighted the need to recognise that dogs are increasingly being advertised online.

11:45

Rhoda Grant: I query why a requirement for an email address should be included in the bill. Not everyone has an email address, and I wonder whether the member would consider removing that at stage 3 in case it prohibits anyone from fulfilling the terms of the bill.

Ariane Burgess: I imagine that, if people do not have an email address, they would not have to supply one, but we want to have people's contact information. The aim of amendment 3 is to point out that we increasingly live in a digital age, and most people have email addresses. I sometimes say to people that, if they can get away in this world without having an email address, they are very fortunate.

I move amendment 2.

Jim Fairlie: I thank Ariane Burgess for explaining the purpose of amendments 2 and 3. I cannot agree with the amendments, which I believe are unnecessary, because the Scottish Government's intention is to develop the details and contents of the proposed certificate with stakeholders. Specifying items in the bill would restrict what can be decided in conjunction with the stakeholders, and including a reference to additional personal information on the certificate is considered unnecessary. That is the sort of detail that is best left to the further development of the code by officials and stakeholders. Therefore, I cannot support the amendments.

Rhoda Grant's intervention demonstrates exactly why we should have these discussions when we are developing the code, rather than while we are sitting in the committee. I ask Ariane Burgess not to press amendment 2 and not to move amendment 3.

Christine Grahame: I support the policy intention behind Ariane Burgess's amendments. I am particularly interested in the provision on the transfer of any health records. That goes back to the issue that, broadly speaking—although not always—when puppies are imported from puppy farms, they have dreadful health conditions and behavioural problems. That is well documented. I very much welcome that provision, but I hear what the minister had to say. I will be interested to see what the committee decides.

Ariane Burgess: I take Rhoda Grant's point, and I take the minister's point on amendment 3 with regard to the detail that will be developed. However, I also take on board Christine Grahame's comment that there is merit in the health records being connected to the transaction, so I press amendment 2.

Amendment 2 agreed to.

The Convener: Amendment 45, in the name of the minister, is grouped with amendments 46 and 4. If amendment 46 is agreed to, I will be unable to call amendment 4, due to pre-emption.

Jim Fairlie: The amendments address the concern that arose during stage 1 that the bill could be misconstrued as creating a direct legal obligation for the acquirer to create, sign and keep the certificate and to show it to a police officer or inspector if requested. The intention is to make clear that section 4 details what the code of practice must include in relation to the certificate, which we otherwise fully support, but that section 4 does not in itself impose any direct legal obligations on the acquirer or the supplier of a dog.

As the bill does not provide for any sanctions or penalties in the event that a person does not comply with sections 2 to 4, those provisions cannot be enforced directly in practice. I understand that that was the intention when the bill was introduced, and it is recognised in the policy memorandum, which states that the intention is

"to achieve behavioural change, without placing formal legal obligations on the parties involved".

If amendments 45 and 46 are agreed to, failing to complete and hold a certificate may still be relevant to establishing a liability, as set out in section 6, for the other provisions of the code of practice and it could be taken into account by the relevant enforcement authorities when considering further action under the Animal Health and Welfare (Scotland) Act 2006 or regulations made under that act in individual cases where owners have acted irresponsibly.

The amendments will, however, avoid any misunderstanding or unnecessary anxiety for otherwise law-abiding and responsible owners who might misplace their certificate and be concerned that simply failing to retain a completed certificate to show to a police officer or an inspector would in itself be an offence that could lead to a prosecution.

Rachael Hamilton: I am concerned about amendments 45 and 46. Is the minister able to give any examples of how those provisions could compare to wildlife welfare legislation, in terms of not providing a certificate if asked?

Jim Fairlie: I am sorry, but I do not understand where you are going with that.

Rachael Hamilton: If I am reading amendment 45 correctly, the potential owner will no longer have to confirm that they understand that they must keep the certificate for the duration of the ownership of the dog, and amendment 46 provides that the certificate no longer has to be shown to the police. Is that consistent with any other welfare legislation, perhaps about wildlife rather than kept animals?

Jim Fairlie: I have not considered the matter in relation to wildlife; I am considering it specifically in the case of the bill, which, as we have stated, represents guidance rather than something that we can enforce legally. The requirement to hold a certificate might give people the impression that there is a legal requirement to do so and that they could be prosecuted if they did not have it, which would be unfair to the people whom we are asking to fill out those certificates in the first place, because there is no legal penalty for not having the ability to produce it.

Rachael Hamilton: I will press you a little more. If it is not a legal requirement for people to keep the certificate—if they do not have to produce it—then the only reason that you are putting the amendments in is because of the perception that having a certificate is actually not necessary.

Jim Fairlie: The reason why we put the certificate in is to get the proposition that the member wanted right at the start, which is that people must take due care and attention and get all the relevant details when they are going to buy or sell a dog. However, there is no legal penalty for not having the certificate. We think that requiring that the certificate be held for the rest of the dog's life is not fair from the point of view that people would then believe that they are legally bound to have it.

Rachael Hamilton: I will wait for Christine Grahame's explanation, but if a person who buys a dog gets a certificate, should they just rip it up and put it in the bin?

Thank you, convener.

The Convener: Please continue, minister.

Jim Fairlie: I will go back. The amendments will, however, avoid any misunderstanding or unnecessary anxiety for otherwise law-abiding and responsible owners who might misplace their certificate and be concerned that simply failing to retain a completed certificate to show to a police officer or an inspector would in itself be an offence that could lead to prosecution. I therefore cannot support amendment 4, which would require the certificate to be shown to a veterinary surgeon on request.

Even if my amendments were unsuccessful and section 4(5)(b) remained in the bill, it would remain the case that registered vets would not have similar enforcement powers to the police or inspectors. It is not clear whether vets, in practice, would want to become involved in investigations involving their clients and we could not mandate them to do so without thorough consultation. Their inclusion in the bill would need to be discussed and agreed with the veterinary professional bodies.

I move amendment 45.

Ariane Burgess: My amendment 4 builds on my earlier amendments by recognising the crucial role of vets in ensuring dogs' welfare. It would require an owner to show their certificate to a vet, as well as a police officer or inspector, if asked, which would help a vet to acquire all the information that was needed to effectively treat a sick dog and help a practice to trace other animals from a negligent breeder or owner that might be similarly affected. The amendment also explicitly acknowledges the crucial role that vets can play throughout the whole certificate process.

The Convener: Do any other members want to comment?

Christine Grahame: On the Government's amendments, the code of practice and the associated certificate are not legally binding.

It will help the committee if I quote the existing code of practice for the welfare of dogs. The second paragraph of the preface says:

> "Generally, there is a duty to comply with legislation. Although the Code does not have legislative effect, it is intended to promote and give examples of good practice."

Here is the killer line:

> "Failure to comply with a provision of this Code, whilst not an offence in itself, may be relied upon as tending to establish liability where a person has been accused of an offence under Part 2 of the Act."

The next sentence says:

"Equally, compliance with a provision of the Code may be relied upon as tending to negate liability by a person in any proceedings for an offence under Part 2 of the Act."

Without trying to be too boring, I note that section 6(2) of my bill says:

"In any proceedings for a relevant offence—

(a) failure to comply with a relevant provision of the code of practice may be relied on as tending to establish liability, and

(b) compliance with a relevant provision of the code of practice may be relied on as tending to negative liability."

That is lifted straight from the previous code of practice, so I do not see the problem. All that my bill does is replicate the existing code of practice. The issue is evidential and has nothing to do with perception.

Rhoda Grant: My understanding of what the minister said is that none of that is legally binding other than if it is put in the bill. Those bits are being removed because they would become crucial and people would have to comply with them or people would not comply with the code.

Christine Grahame: I am sorry—I could not quite hear all of that. All that I am putting to the committee is that my bill pretty well replicates what is in the existing code of practice under the Animal Health and Welfare (Scotland) Act 2006. In fact, section 6(1) of my bill says:

"A person's failure to comply with any provision of the code of practice does not of itself make the person liable to proceedings of any sort."

What is in my bill is almost the same as what is in the existing code of practice—word for word. I do not see what the problem is or how the bill will differ from the existing code of practice, which is in the Scottish Government's own words. In addition, asking someone to confirm that they understand the consequences of getting a dog—among other questions on the certificate—is a means of ensuring that the acquirer understands the commitment that getting a dog involves. It is important that they understand that.

As with my colleague Rachael Hamilton, my view is that there is no point in the measure if it is nothing. What is in my bill is not to do with perception; it is evidential and not punitive. It is for educational purposes, and it will show that there was engagement between the acquirer and the person transferring the dog when the transfer took place. It will show that they were both committed and had read and understood the wording.

As I said, the measure is not legally binding, but neither was what was in the code of practice. The language is exactly the same. I say right now—because this is a red line for me—that, if the Government's amendments succeed, I will bring back the provisions at stage 3. I might tweak them a little, but I will be coming back with the same thrust.

On Ariane Burgess's amendment 4, I am very sympathetic to the role of veterinary surgeons, which is extremely important.

Jim Fairlie: I have a quote from the committee, which said:

"The Committee also notes, however, Christine Grahame's objective for the Bill to educate"—

she has clarified that—

"rather than penalise, those acquiring or selling/giving away a dog and agrees with the advisory status of the certificate."

If amendments 45 and 46 are agreed to, failing to complete and hold a certificate may still be relevant in establishing liability, as set out in section 6, in relation to other provisions of the code of practice, and it could be taken into account by the relevant welfare enforcement authorities. In other words, if someone did not have a certificate, why they did not have one would be a question. Therefore, that gathers evidence for the—

Christine Grahame: Will the minister concede that my wording is lifted, word for word, from the Government's own code of practice, which says:

"Although the Code does not have legislative effect, it is intended to promote and give examples of good practice"?

Is it not the case that the bill duplicates that?

Jim Fairlie: That is from the 2010 code of practice, but we will have a separate entity, which is exactly what you, as the member, have brought forward.

12:00

Christine Grahame: That was not my question, minister. My question is: does my wording duplicate the wording in the existing code?

Jim Fairlie: I do not have the 2010 code in front of me but, if you are telling me that it does, I will accept that as your position. However, that does not alter the fact that, although we have a bill that you have brought forward and which we support, allowing people to believe that they have committed a criminal offence when they have not is not fair. I therefore think that the amendments should be agreed to.

Christine Grahame: This is rather important.

The Convener: Are you intervening on the minister?

Christine Grahame: I would like to, if I may, convener, with your leave.

Nobody is creating a criminal offence—that is patently obvious. If I might be quite frank, I think

that the problem for the minister is that we are on pretty thin ice here. I am lifting language straight from the existing code of practice, which makes it plain that it

"does not have legislative effect"

but promotes

"examples of good practice."

If I lift everything else and put it straight into my bill, I do not see the grounds for arguing that I am doing something punitive and something different from what is in an existing code of practice that the Government itself drafted.

Jim Fairlie: I point out to Christine Grahame that we are leaving the same wording in the bill—it will be there.

The Convener: I am conscious that we do not want to start a conversation here. Minister, you are winding up, and if Ms Grahame wishes to intervene, she can do so. Will you please continue?

Jim Fairlie: I have nothing further to add.

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Abstentions

Burgess, Ariane (Highlands and Islands) (Green)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 45 agreed to.

Amendments 3 and 70 not moved.

The Convener: Amendment 46, in the name of the minister, has already been debated with amendment 45. I remind members that, if amendment 46 is agreed to, amendment 4 will be pre-empted.

Amendment 46 moved—[Jim Fairlie].

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Abstentions

Burgess, Ariane (Highlands and Islands) (Green)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 46 agreed to.

Amendment 71 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 71 disagreed to.

Section 4, as amended, agreed to.

Section 5—Revision of code

Amendment 47 moved—[Jim Fairlie].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 47 agreed to.

Amendment 48 moved—[Jim Fairlie].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 48 agreed to.

Amendment 72 moved—[Rhoda Grant]—and agreed to.

Amendment 73 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 73 disagreed to.

Section 5, as amended, agreed to.

Section 6—Effect of code

Amendment 49 moved—[Jim Fairlie]—and agreed to.

Amendment 74 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 74 disagreed to.

Section 6, as amended, agreed to.

Section 7—Public awareness and understanding of code

The Convener: Amendment 75, in my name, is grouped with amendments 76 and 5.

Amendment 75 seeks to make it a statutory requirement to introduce a public awareness campaign specifically to ensure that children are made aware of the code at school.

In its stage 1 report, the Rural Affairs and Islands Committee noted that section 7 says:

"The Scottish Ministers must take reasonable steps to ensure public awareness and understanding of the code of practice",

and then referred to the policy memorandum, which states that

"For the behavioural shift envisaged to take place, effective public awareness raising will be vital in ensuring those acquiring a dog become aware of and understand the contents of the code and the associated certificate."

The report then made the point that

"All witnesses supported section 7 and strongly agreed that a public awareness campaign would be essential in order for the bill's objectives to be achieved."

The stage 1 report also referenced the Kennel Club's puppywise survey. According to that organisation, the

"survey found that a fifth of people still spend less than two hours researching whether to get a puppy ... and nearly a

third admit that they would not know how to spot a rogue breeder",

and it concluded that

"For us, the educational piece is really important because, ultimately, we need members of the public to demand better standards of breeders."

Several animal welfare organisations also talked about the challenges of awareness campaigns having a meaningful impact on public behaviour. The Dogs Trust referred to the "very low" public awareness of the existing code of practice for cats and dogs, while the SSPCA talked about

"people following their hearts, not their heads"

and how

"They know that standing in a car park with a puppy in the boot of a car is the wrong thing to do, but they think, 'I want to go and rescue that pup, because who else is going to do it?'"—[*Official Report, Rural Affairs and Islands Committee,* 20 September 2023; c 7, 17.]

That is why the amendment seeks to make a public awareness campaign a statutory requirement.

We believe that children should be made aware of this issue in schools, too. According to new pet population data released by UK Pet Food, in 2024, 56 per cent of new pet owners have children at home. As for more long-term ownership, the National Library of Medicine found that almost 20 per cent of all dog owners had a child at home. One might summarise all that by saying that a sizeable proportion of dog owners have children, and it is therefore clear that targeting a public awareness campaign at schools would reach a sizeable pet owner demographic. As a result, a public awareness campaign with the code of practice explained in simple terms would be effective.

Amendment 76 seeks to make it mandatory for the Scottish Government to consult relevant organisations on raising funds for public awareness. It is incredibly important that the Government works with and consults organisations such as the Royal Society for the Prevention of Cruelty to Animals, the Dogs Trust, the Kennel Club, the Battersea Dogs and Cats Home and the SSPCA, to ensure that any public awareness campaign is maximised. Discussions should also take place on the potential funding for public awareness campaigns.

I move amendment 75.

Ariane Burgess: My amendment 5 strengthens the requirement on ministers to raise

"public awareness ... of the code of practice."

Specifically, the Government must identify resources that are needed to effectively communicate information about the new code to the public. That could prompt consideration about the format that information is in and the format in which it reaches different groups, as well as other considerations such as provision in other languages and accessible formats.

At a time of constrained public finances, it is important to include such a requirement in primary legislation to ensure that the new code has an impact. I see that as preventative spend: if we can get people aware and informed, we can stem the tide of all the knock-on effects from what Christine Grahame is trying to do in the bill.

As for amendments 75 and 76, in the name of Finlay Carson, I agree that raising public awareness amongst school pupils is a great approach, because it is often the young people who are asking for a puppy. On amendment 76, consulting with organisations with an interest in the welfare of dogs on how they can contribute to future steps is important, too.

Jim Fairlie: I thank the convener for explaining the purpose of his amendments.

I cannot agree that amendment 75 is necessary, though, as it is the Scottish Government's intention to have a renewed publicity campaign to raise awareness of the proposed code. That will be essential in educating the public about the unscrupulous breeding and selling of dogs, the criminality behind the illegal trade and other serious welfare issues that can arise when acquiring a puppy.

Previous marketing campaigns have already carefully considered the target demographic of prospective dog buyers, and the Scottish Government wants to keep the flexibility to develop awareness campaigns in the most appropriate and cost-effective way, in conjunction with the main animal welfare organisations, without detailed requirements of that sort being specified in the bill. Although I understand the intention behind the proposal and agree that raising the awareness of children and young people is important, I think it preferable to leave the decisions about how campaigning should be targeted to the marketing professionals in that area. I therefore cannot support amendment 75 and ask the member not to press it.

I am, however, happy to support Mr Carson's amendment 76, particularly as previous campaigns on which we have worked with relevant stakeholders, including the Scottish SPCA, have proved successful in raising public awareness.

As for Ariane Burgess's amendment 5, section 7 of the bill already includes a duty on Scottish ministers to

"take reasonable steps to ensure public awareness and understanding of the code of practice."

As it is the Scottish Government's view that taking reasonable steps would, by implication, include ensuring that suitable resources were available, the amendment is unnecessary.

We expect that publicising the new code will require a significant public awareness-raising campaign, ideally with co-ordinated messaging from the main welfare organisations and enforcement agencies, and we will work with the stakeholder organisations to consider the most effective way of doing so. I hope that that reassures Ariane Burgess, and I ask her not to press her amendment.

Rachael Hamilton: In the past, the Government has had awareness campaigns, but we have no idea how effective those campaigns—

Jim Fairlie: I can you give details now of how effective those campaigns have been, if you would like to hear about them.

12:15

Rachael Hamilton: We would not be introducing further legislation if the original campaigns had been effective. I am supportive of Finlay Carson's amendments 75 and 76, and Ariane Burgess's amendment, but do you think that we should look at how effective the previous awareness campaigns have been and lodge amendments at stage 3 to reflect that?

Jim Fairlie: As I have said, we have all the facts and figures on how effective those campaigns have been, but just to pick up on one of the things that you just said, I would point out that, during the deliberations on the bill, we all accepted that the bill, in itself, would not eradicate our problems with puppy trades. The previous stuff will not eradicate the problems that we have had with puppy trades, either. This will be an on-going process, because criminals will always find a way to try to get around the law.

Emma Harper: Just reflecting on advertising and campaigns, I would say from my experience of passing my livestock worrying legislation and other awareness raising in relation to buying a puppy—I have been able to bring puppies into Parliament—that I agree with you on the need for a flexible approach to how we carry out campaigns, such as through the National Farmers Union Scotland or Police Scotland in the case of livestock worrying. I think that considering changes to how we use social media and marketing would work in your favour, and I am therefore in agreement with you that we must have a flexible approach to how we raise awareness through the campaigns.

Jim Fairlie: All I can say is that we absolutely accept everything that the bill is trying to do and the purpose behind it, and we have set out as part of the provisions that there will need to be a considerable marketing campaign to ensure that people are aware of it. The fact that the bill was passed at stage 1 will be a light-up moment for what we are trying to do here. As far as the amendments are concerned, we are happy to accept the one that we are supporting—I am just not quite sure that it is necessary for the other amendments to be included in the bill.

Christine Grahame: Rachael Hamilton has been helpful, in a sense—perhaps she did not mean to be—about the code being targeted at the point before you acquire a puppy or a dog. Any publicity campaign would simply be aimed directly at people buying online or out the back of a car or a lorry, or at people thinking that they were rescuing the dog. Those are all methods that we know that serious organised criminals use. We know that the puppies cost £3,500 or £4,000, and that there are maybe six crammed into a crate, having been taken away from their mothers and not being socialised. The code will get people to focus on that narrow aspect, because that sort of thing is still happening.

Rachael Hamilton: If we are being pedantic about this, the amendment on public awareness and understanding of the code does not specifically set out that it will deal with those issues.

Christine Grahame: I agree, but that is not the point. You cannot do that in this bill, but then we could—

Rachael Hamilton: But you have just said that, Ms Grahame.

Christine Grahame: Let me make progress, and I will answer the minister's questions, too.

The minister says quite rightly—indeed, I moaned about this before to the previous Public Audit and Post-legislative Scrutiny Committee when it carried out post-legislative scrutiny of members' bills—that a member's bill gets the air of publicity when it is introduced and when it passes. Then it is left on the shelf. My view is that, in a democratic Parliament, all bills are equal once Parliament has passed them. Therefore, a member's bill—not just mine, but any member's bill that passes in the Parliament—should have the resources and the publicity that the Government would give to its own legislation on, say, minimum unit pricing, or to UK bills on not drinking and driving.

Obviously, the Government must consult the various charities and so on, but I would be looking at who our audience was and whom we would be targeting. We would be targeting people who click a button and see a nice wee puppy, rather like the one that I have on the picture I am holding up. He

is a charming wee thing, and that is why I am against it. You never see any wrecks—you are never shown dogs that are not pretty. People see pretty dogs online. They spend longer buying a handbag; a man would spend longer buying a pair of trainers. They see the dogs and think, "Oh, that's lovely." The bill's purpose is to make them reflect and ask where the puppy is from and why they are in the car park looking at one, thinking "If I do not get that dog, it will perish." The fact is that, if they buy it out of a crate, another puppy will come off the production line to be miserable and fill its place.

I am content to go with the Government on what should be in the bill on this issue, but my point about publicity—I have been banging on about this for ages—is that I expect appropriate publicity for all members' bills, and that we should not just tell people about them when they are passed by Parliament or if something controversial happens. I know that there are police officers who do not know about the Control of Dogs (Scotland) Act 2010, which I brought through. I imagine that Emma Harper is aware of police officers who do not know about her member's bill, because it was not a Government one. To me, all bills are of equal merit once Parliament passes them.

The situation is not the minister's fault, but I have made the point to previous ministers. My message to the Government is that I want to see a change in the culture of publicising all members' bills, and not just mine.

The Convener: I intend to press amendment 75. I am sure that members are aware of the pressure that children can put on parents; whether we are talking about seat belts in cars or the smoking ban, it is often the children who put this pressure on. Indeed, the evidence that I gave earlier shows that a significant number of new dog owners—56 per cent—have children in the home.

Jim Fairlie: I completely understand the logic behind amendment 75, and I can see where the member wants to go with it but, rather than put that measure in the bill, would it not be better to leave to others the decision on where the marketing happens? The committee's stage 1 report asked the Scottish Government

"to maximise its marketing expertise".

We should allow the marketing to be done by the people who know how to do it, rather than the committee.

The Convener: As far as I can see, the amendment would not have any undesirable outcomes or be unduly burdensome on the Government to deliver. It is clear that children will play a huge part in ensuring that there is a change in our attitude towards buying pets. I will press the amendment, because it is important that reasonable steps are taken to ensure awareness and understanding of the code of practice among schoolchildren.

Rachael Hamilton: It seems that the minister is hanging his hat on the so-called expertise of the Scottish Government. With other policies that the Scottish Government has brought forward, such as minimum unit pricing, the approach has not necessarily been successful. Ariane Burgess correctly talked about a preventative agenda and ensuring that there is funding behind the bill. We should also take into account what Christine Grahame has said. It is important that we get to the root of changing the future in terms of awareness.

Your amendment is entirely sensible, convener. I understand what the Government is trying to say—that it does not want the measure in the bill—but perhaps it should be in the bill, given some of the other policies that it has brought forward and which, with hindsight, have clearly have not worked.

The Convener: I agree 100 per cent.

I will not labour the point any more. There are no issues surrounding the amendment, which suggests reasonable steps. It is clear that the majority of people realise the importance of the pressure that children could put on parents. I urge members to put aside their party-political whip and look at the amendment as a sensible one that will ensure that the marketing of the new act is done in an appropriate way.

The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against
Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 75 agreed to.

Amendment 76 moved—[Finlay Carson]—and agreed to.

Amendment 5 moved—[Ariane Burgess].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against
Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 5 disagreed to.

Amendment 77 not moved.

Section 7, as amended, agreed to.

Section 8—Registration of litters

Amendment 50 moved—[Jim Fairlie]—and agreed to.

Section 9—Regulations: supplementary

Amendment 51 moved—[Jim Fairlie]—and agreed to.

Section 10—Compliance

Amendment 52 moved—[Jim Fairlie]—and agreed to.

Section 11—Public awareness and understanding of relevant regulatory regimes

Amendment 53 moved—[Jim Fairlie]—and agreed to.

After section 11

The Convener: Amendment 59, in the name of Edward Mountain, is grouped with amendments 79 and 78.

Edward Mountain: Before I go any further, I remind members of my entry in the members' register of interests. I am a farmer and part of a farming partnership. I am also a dog owner and have recently registered puppies. I am an honorary member of the British Veterinary Association.

I will speak to amendment 59 and I will move it for three really good reasons, which I am sure that everyone will find easy to support. First, what I have proposed is good for dogs and their welfare. It would also allow the Government to carry out some post-legislative scrutiny, and it would help to address the issue of dog theft, which is subject to a separate bill that another member has proposed.

I am sure that I do not need to remind the minister that the rules for microchipping were introduced in 2016. Now, eight years on, we do not know whether microchipping works. There is a requirement to microchip a puppy at eight weeks, and owners are supposed to update the information when a dog is moved, an owner changes their address or telephone number, or the dog is sold or given to another owner. We are pretty sure that that does not happen across the country. There are thousands of strays every year that are not properly recorded on the database. I am sure that the minister will say that they are 12 properly accredited databases in Scotland, which he would be right about. There are 22 databases across the United Kingdom, so which database is being checked, which one is being kept up to date, and which is the proper one to use?

When we are farming, we have a simple situation: we have ScotEID, where we record our animals on a database and every animal has a passport. We know where the animals are and we know their history. Now, the Government has produced a poultry register. If you have one chicken at home that is scratching around your door, you must register it and record it on a database that the Government keeps. Everyone in the countryside is used to doing that with animals and we also do it if we have a car, because we have a responsibility to keep the V5C up to date and to record any changes.

I suggest that the Government should think carefully about its 2016 legislation and should consider whether it is working. I have asked the Government to review it and to check whether microchipping and the database are working properly and I have said that it should consult breeders, acquirers and owners of dogs as well as consulting veterinary practitioners.

I know that it is a step too far for some people, but I believe that vets should check dogs that come into their practice to ensure that they are properly microchipped and that the person who has brought the dog in is the correct owner. That might be a step too far for now, but I believe that it should come in due course.

Amendment 59 is a simple one. It puts an onus on the Government to check that the legislation that it brought in in 2016 is working correctly, is effective and is doing what it is meant to do, which is to look after the welfare of dogs. I do not see what people dislike about that, but I suspect that the minister is going to tell me.

I move amendment 59.

The Convener: I call Rachael Hamilton to speak to amendment 79 and other amendments in the group.

Rachael Hamilton: I thought Edward Mountain was yolking when he spoke about having to register one chicken.

Amendment 79 has been based on section 8 of the Control of Dogs (Scotland) Act 2010, which introduced a dog control database, and requires the Scottish ministers to introduce a new microchip database. As was noted in the committee's stage 1 report, some relevant stakeholder groups, such as the Scottish SPCA

"gave evidence about the challenges of checking microchip details across the different databases for different manufacturers".

Amendment 79 seeks to enhance and improve traceability by creating a microchip database. As drafted, the amendment creates an obligation for ministers to work with the UK Government, because that was recognised in the committee's stage 1 report and during the stage 1 debate as being important for workability and effectiveness. We have already heard a brief summary of that from Christine Grahame. I have the costs if the minister is interested in seeing those, but I will not go into them in detail.

Amendment 78 requires ministers to conduct a review and to publish a report every two years on whether a centralised database containing microchip details should be used to monitor the acquisition and transfer of dogs and the microchipping of puppies. The amendment also requires the Scottish Government to consult stakeholders on a centralised microchip database. Additionally, and as with amendment 79, it also creates an obligation for the Scottish Government to work collaboratively with the UK Government. I appreciated the opportunity to discuss that with Christine Grahame, who is supportive.

Jim Fairlie: I thank Edward Mountain for explaining the purpose of amendment 59 and Rachael Hamilton for explaining the purpose of amendment 78. Those amendments are very similar, so I will give the Scottish Government's views on them together.

Scottish Government officials are working with counterparts in the other UK Administrations to explore the potential for a single-point search portal for all microchip database operators across the UK, in order to provide transparency in obtaining relevant information when required. That work would incorporate the information that would be collected by the review that amendment 78 would require and could address the issue that is being raised. It is felt that resource would be better spent on working with other UK Administrations than on undertaking a review and producing a report. I therefore do not support amendments 59 and 78 and ask the members not to press them.

Rachael Hamilton: Will the minister outline what progress has been made towards working with the UK Government on a single microchip database?

Jim Fairlie: I have not had any formal discussions with the UK Government about a microchip database. However, I attended a meeting in London on Monday and had a conversation with Andrew Muir, the Northern Irish delegate for agriculture. We talked about the problem of puppies coming across from Larne and have begun a conversation about how the bill could help to inform a UK-wide approach to creating a database to allow us to get past that problem. We are taking it extremely seriously but, at this stage, because of the resources that would be needed, we would rather work UK-wide than set up a separate Scottish database.

Edward Mountain: Will the minister take an intervention?

Rachael Hamilton: Will the minister take an intervention?

Jim Fairlie: Yes.

Edward Mountain: Sorry, but who—

Jim Fairlie: Either.

The Convener: I call Edward Mountain.

Edward Mountain: Thank you, convener. You are suggesting that my amendment 59, which calls for a review, should be rejected on the basis of an informal conversation with one member of a devolved Administration and no conversations with any members of the UK Administration. Do you think that the basis for your approach—some chit-chat at a meeting—will fly with people?

Jim Fairlie: Would you like to make your point now, too, Rachael?

Rachael Hamilton: Yes, please. Thank you, minister. I indicated that I had worked with the very helpful bill team. On amendment 79, the team stated that the estimated cost of establishing a database was £140,000 in the initial year. It added that further costs are more difficult to estimate but that it seems likely that those would fall to around £100,000. Obviously, there would have to be a financial memorandum if the cost was more than half a million pounds. Would you not agree, minister, that £140,000, which is the cost estimated by the bill team, is good value compared with potentially having a long, protracted conversation with the UK Government? The Scottish Government is entirely able to create its own database and, in comparison with other things that get agreed to in this place, at a relatively small cost.

Jim Fairlie: At this stage, no, I do not want to create our own database. At this stage, I am very happy to be working with the UK Government. We have had a marked change in the attitude to how things could be developed. In our meeting, the new Secretary of State for Environment, Food and Rural Affairs was very amenable. It is quite clear that the UK Government is very keen on working with us.

Edward Mountain referred to chit-chat. It is not chit chat. We are having these conversations to progress things in a serious manner. Again, I reiterate that we are taking the idea of a UK-wide database very seriously. We are trying to achieve all the requirements that the members are putting to me, and it would be far better to do that on a UK-wide than a Scotland-only basis.

If we go ahead with these amendments, that will tie up time and resource. It will commit money that could be better spent by using a UK-wide system, which is what we are endeavouring to establish.

Rachael Hamilton: On the point—

Jim Fairlie: I am sorry, but I cannot hear you.

Rachael Hamilton: On the point about the resource and the time that it would take, in our stage 1 report we asked that the Scottish Government get back to us—

Jim Fairlie: I am sorry, but I am struggling to hear you. Could you go closer to your mic?

Rachael Hamilton: Is there something wrong with the microphone? Can you hear me?

Jim Fairlie: Yes.

Rachael Hamilton: Okay. It seems a little strange, but there you go.

In our stage 1 report, we asked the Scottish Government to come back to us with an update on progress with conversations with the UK Government. Would it be possible for the Scottish Government to come back before stage 3 with an update on what the likely costs will be, on any further conversations that it has had and on a plan as to how that could work?

I am likely to move amendment 79, just to see what support there is for it round the room. I also want to hear what Christine Grahame has to say. If the Scottish Government's approach is to fly, we need to have confidence about your costs, including in comparison with my costs. You have just said that you could do it cost effectively, but how are we to know that?

Jim Fairlie: Are you finished?

Rachael Hamilton: I am finished.

Jim Fairlie: I reiterate the point that we are keen to make sure that we progress to a UK-wide database that will work in exactly the way that people want it to.

I am happy to speak to the member between now and stage 3, and to give any updates before stage 3, if there are any to give at that point.

I reiterate the point that we are very serious about trying to get this done. It is not something that we are just trying to rush off.

The Convener: Are you concluding, minister?

Jim Fairlie: I am, yes.

The Convener: Christine Grahame has a question.

Christine Grahame: You are on to a hobby-horse of mine, Edward. You have been terribly patient and have waited until the end of the meeting. This is an important issue. I have long thought that we should have a central database for microchipping dogs. It would make common sense.

I can draw a comparison with the scheme for dog control notices, which were originally registered only in the relevant council area. That was pretty useless, because people could move their dogs from one place to another. Now we have a Scottish database and dog control notices, so that aspect has been done. I am not saying that it would be as easy to establish a microchipping database. I have no vote on the matter, because I am not a member of the committee, but I would be sympathetic to there being a preliminary review of what we already have.

I notice that, in your amendment 59, subsection (2)(b) of the proposed new section contains a list of what should be covered by such a database. I would also put dog control notices on it, because then there would be, as it were, a biography of each dog: where it came from, who acquired it, the owner, the veterinary practitioners, and whether a dog control notice had ever been issued in relation to it. That would keep people in touch with the information. At the end of the day, it is not dogs or puppies who are to blame for any of the situations that we have been discussing; it is the people who acquire them and have them for the next 15 or 16 years. They can have a wonderful relationship or, at the other end of the scale, it can be dreadful for the animal, and sometimes for the owner—although I must admit that I am more concerned about the animal because it is in the weaker position.

On the UK aspects, I wrote to Lord Douglas-Miller when he was the relevant under-secretary of state. He seemed to be a nice man, by the way; I got a nice letter back from him, dated 15 April 2024, about a UK-wide microchipping database. I will not read the whole letter—I will be happy to let

the committee see it later—but I will quote a few words from it:

"We have recently published our response. It was a consultation about a central database ... in which we committed to introducing a single point of search portal. My officials will be discussing with their counterparts in the devolved Administrations the scope to develop the portal on a UK basis."

That was in April. Since then, we have had a change of UK Government. We know that one Government cannot bind another, but it seems that, in April, that process was already in train. I get the sense that this is about agitating to get some pace and pressure behind the proposal to move it on. I think that Edward Mountain's amendment is saying that we should first see what we have and what we could improve, and the next step would be to ask how we could put that information into a UK national database.

Ariane Burgess: From what you are saying, my sense is that it would give us more confidence if the minister could take steps forward on the microchipping work at UK level and bring that back to us before stage 3 so that we are certain that something is going ahead.

Christine Grahame: Indeed. I know that it is hard for ministers, so I am going to be sympathetic here. They have heavy-duty portfolios, but if you do not set yourself a timescale, in tandem with the UK Government, the long grass will just get even longer. I am not saying that the minister can do this on his own; I know that he cannot. What he can do, in his discussions with the UK Government—after all, this is a good egg thing—is to say to the new UK minister, whoever they might be, "Let us get on with this, get our officials together and move towards establishing a UK dog microchipping database." If people move their animals about the UK, that is probably the best that we could do.

In the meantime, Edward Mountain's position represents a good first step. We should review what we have just now and see whether it is working and people update it—I am sure that they do not. As I said, I do not have a vote on the matter, but I am pleased that there is momentum behind the proposal for a microchipping database, which I have been pushing for for a long time.

Excuse me for finishing on a frivolous note, but I take it that where a single chicken is kept, as in Edward Mountain's example, its name does not go into the database and it is simply given a number. However, if it has a name, I would love to hear it. Do not tell me that its name is Hen.

That is me concluded, convener.

The Convener: I ask Edward Mountain to wind up and press or withdraw amendment 59.

Edward Mountain: We should all be thankful that the 14.5 million chickens that are in Scotland are not all kept individually on farms or at separate locations. On the other hand, there are only 680,000 dogs in Scotland, so having a database of them would make it easy to record and keep track of them.

I am absolutely surprised that the minister does not want to find out what we are talking about when it comes to having a central UK database.

Jim Fairlie: Will the member take an intervention?

Edward Mountain: I will give way in just a minute, minister.

If the Scottish Government is going to change the 2016 act on microchipping to create one central database, that will require subordinate legislation, minister, and I would be very surprised if the committee that considered that did not look at whether you had carried out any consultation.

I give way to the minister.

12:45

Jim Fairlie: The amendment that you are talking about would impose a specific new approach. It has not been consulted on in any detail during the progress of this bill, and it raises a lot of complex issues that would require much more detailed consideration. This bill was never intended as a vehicle for a microchip database reform in the first place; it is not the place in which to do that. However, we are already working on getting the UK Government's co-operation on that.

Edward Mountain: Of course, the title of the bill, which is the Welfare of Dogs (Scotland) Bill, provides the scope for me to bring in the issue that I am talking about, and which I am keen to ensure—

Rachael Hamilton: Will the member take another intervention?

Edward Mountain: Yes—just a moment, if I may.

I am delighted that the minister is having friendly chats with people, but if he is going to change the legislation in three years' time, he will be required to give evidence to the committee that considers that legislation on whom the Government has consulted and what evidence it has taken; I would be surprised if he were not.

Rachael Hamilton: I think that Jim Fairlie finds himself in quite a paradoxical position. While he has agreed that the Government should remove part 2 of the bill, the pathway to removing it is to create a position where we can look at traceability with confidence. That is the crux of the bill: it is

about understanding where those dogs, or pets, have gone. Understanding the welfare and traceability of those dogs is important to the bill.

I also raise the point that my friend and colleague Edward Mountain picked up. Gillian Martin had said that in 2022—I think that this is what Christine Grahame was referring to—the Scottish Government and the UK Conservative Government had had discussions on a consistent approach. If those conversations were had at that time, why have they not been progressed, and why does the minister not know what progress has been made from that initial conversation in 2022?

Edward Mountain: That is a very interesting question—of course, I cannot answer it because I am not privy to all the papers, but that is why it is entirely apposite for the minister to commit to amendment 59, which would require the Government to action something within three years. I struggle, as I sit here, to understand why he is reticent to do so—

Jim Fairlie: Will the member take an intervention?

Edward Mountain: Yes, I will.

The minister is reticent about preparing the way for a change to the 2016 legislation on microchipping.

Jim Fairlie: Again, I push back on the idea that we are simply having friendly chit-chats. I reiterate that we are restarting the monthly meetings between the Scottish Government and the Department for Environment Food and Rural Affairs, which have been sorely missed, given the previous UK Administration's reticence to engage. Those meetings are starting tomorrow—the new Government is engaging with us, which will allow us to take the UK system forward.

I reiterate that this is not the bill in which to introduce new legislation on microchipping. It is a bill on the welfare of dogs, and we are addressing the issues stage by stage. I think, therefore, that the amendments that we are discussing are not in the right place.

Edward Mountain: I hear what the minister says, and I thank him for his comments, but I think that putting a deadline behind the issue is important, because it will help to focus the minister's mind.

With regard to Emma Harper's Dogs (Protection of Livestock) (Amendment) (Scotland) Bill, which I considered in the Rural Economy and Connectivity Committee and which I took very seriously, we found that one issue was that there was no way to register the dogs and therefore to check their registration. I am sure that Emma Harper will support amendment 59, therefore, because it feeds nicely into the bill that she introduced.

Emma Harper: Will the member allow me to intervene?

Edward Mountain: Of course I will allow you in, Ms Harper.

Emma Harper: I have been thinking about that point. In my Dogs (Protection of Livestock) (Amendment) (Scotland) Bill, which was about preventing attacks on livestock by out-of-control dogs, I pursued the potential for having a wider national database. At that time, however, we decided not to pursue it in the bill, in the knowledge that, down the line, current legislation would be revised. I agree with the minister that the bill that we are considering today is not the place for further microchipping legislation. We need to allow the process to take its course.

Edward Mountain: I hear what you say, Ms Harper, and I am disappointed to note that.

I have made my case on why amendment 59 is good for dogs, good for the welfare of dogs, good for the Government and good for puppies. As a final comment, convener, I find it interesting that there are approved databases in Scotland that we can use—that vets in Scotland will use—

Jim Fairlie: Will the member take an intervention?

Edward Mountain: I do not think that I have time. I was winding up.

Databases are approved for use in Scotland. That does not mean that dogs that come in from other countries, where some of those puppy farms might be, will be on approved databases in Scotland. I will leave it there, convener, rather than boring the committee.

Jim Fairlie: Will the member take an intervention on that particular point?

Edward Mountain: It is up to the convener.

The Convener: Mr Mountain has the last word in that debate, and he has wound up. I just need to ask whether he is pressing or withdrawing amendment 59.

Edward Mountain: I press amendment 59.

The Convener: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 59 disagreed to.

Amendment 79 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 79 disagreed to.

Amendment 78 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 78 disagreed to.

Section 12—Interpretation

Amendment 54 moved—[Jim Fairlie]—and agreed to.

Section 13—Commencement

Amendment 55 moved—[Jim Fairlie]—and agreed to.

Section 13, as amended, agreed to.

Long title

Amendment 56 moved—[Christine Grahame]—and agreed to.

Amendments 57 and 58 moved—[Jim Fairlie]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the Welfare of Dogs (Scotland) Bill.

Meeting closed at 12:53.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

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