Passage of the

Wildlife and Natural Environment (Scotland) Bill 2010

SPPB 159
Passage of the

Wildlife and Natural Environment (Scotland) Bill 2010

SP Bill 52 (Session 3), subsequently 2011 asp 6

SPPB 159
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# Contents

<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td></td>
</tr>
<tr>
<td><em>Introduction of the Bill</em></td>
<td></td>
</tr>
<tr>
<td>Bill (As Introduced) (SP Bill 52)</td>
<td>1</td>
</tr>
<tr>
<td>Explanatory Notes (and other accompanying documents) (SP Bill 52-EN)</td>
<td>55</td>
</tr>
<tr>
<td>Policy Memorandum (SP Bill 52-PM)</td>
<td>102</td>
</tr>
<tr>
<td>Delegated Powers Memorandum (SP Bill 52-DPM)</td>
<td>144</td>
</tr>
<tr>
<td><em>Stage 1</em></td>
<td></td>
</tr>
<tr>
<td>Stage 1 Report, Rural Affairs and Environment Committee</td>
<td>165</td>
</tr>
<tr>
<td>Annexe A: Subordinate Legislation Committee Report</td>
<td>288</td>
</tr>
<tr>
<td>Annexe B: Letter from Finance Committee</td>
<td>296</td>
</tr>
<tr>
<td>Annexe C: Extracts from the Minutes</td>
<td>305</td>
</tr>
<tr>
<td>Annexe D: Oral and Associated Written Evidence</td>
<td>309</td>
</tr>
<tr>
<td>Annexe E: Other Written Evidence</td>
<td>311</td>
</tr>
<tr>
<td>Official Reports, Rural Affairs and Environment Committee</td>
<td>312</td>
</tr>
<tr>
<td>Written evidence received by the Rural Affairs and Environment Committee</td>
<td>456</td>
</tr>
<tr>
<td>Supplementary written evidence received by the Rural Affairs and</td>
<td>635</td>
</tr>
<tr>
<td>Environment Committee</td>
<td></td>
</tr>
<tr>
<td>Correspondence from the Scottish Government, 17 November 2010</td>
<td>714</td>
</tr>
<tr>
<td>Extract from the Minutes of the Parliament, 2 December 2010</td>
<td>716</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 2 December 2010</td>
<td>717</td>
</tr>
<tr>
<td><em>Before Stage 2</em></td>
<td></td>
</tr>
<tr>
<td>Correspondence from the Crown Office to the Rural Affairs and</td>
<td>736</td>
</tr>
<tr>
<td>Environment Committee, 13 December 2010</td>
<td></td>
</tr>
<tr>
<td>Scottish Government response to the Stage 1 report of the Rural and</td>
<td>738</td>
</tr>
<tr>
<td>Environment Committee, 15 December 2010</td>
<td></td>
</tr>
<tr>
<td>Scottish Government response to the report of the Subordinate</td>
<td>763</td>
</tr>
<tr>
<td>Legislation Committee, 16 December 2010</td>
<td></td>
</tr>
<tr>
<td><em>Stage 2</em></td>
<td></td>
</tr>
<tr>
<td>1st Marshalled List of Amendments for Stage 2 (SP Bill 52-ML1)</td>
<td>764</td>
</tr>
<tr>
<td>1st Groupings of Amendments for Stage 2 (SP Bill 52-G1)</td>
<td>780</td>
</tr>
<tr>
<td>Extract from the Minutes, Rural Affairs and Environment Committee, 22</td>
<td>782</td>
</tr>
<tr>
<td>December 2010</td>
<td></td>
</tr>
<tr>
<td>Official Report, Rural Affairs and Environment Committee, 22 December</td>
<td>783</td>
</tr>
<tr>
<td>2010</td>
<td></td>
</tr>
<tr>
<td>2nd Marshalled List of Amendments for Stage 2 (SP Bill 52-ML2)</td>
<td>796</td>
</tr>
<tr>
<td>2nd Groupings of Amendments for Stage 2 (SP Bill 52-G2)</td>
<td>817</td>
</tr>
<tr>
<td>Extract from the Minutes, Rural Affairs and Environment Committee, 12</td>
<td>819</td>
</tr>
<tr>
<td>Date</td>
<td>Document Description</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>January 2011</td>
<td>Official Report, Rural Affairs and Environment Committee, 12 January 2011</td>
</tr>
<tr>
<td>3rd Marshalled List of Amendments for Stage 2 (SP Bill 52-ML3)</td>
<td></td>
</tr>
<tr>
<td>3rd Groupings of Amendments for Stage 2 (SP Bill 52-G3)</td>
<td></td>
</tr>
<tr>
<td>Extract from the Minutes, Rural Affairs and Environment Committee, 19 January 2011</td>
<td></td>
</tr>
<tr>
<td>Official Report, Rural Affairs and Environment Committee, 19 January 2011</td>
<td></td>
</tr>
<tr>
<td>Bill (As Amended at Stage 2) (SP Bill 52A)</td>
<td></td>
</tr>
<tr>
<td>Revised Explanatory Notes (SP Bill 52A-EN)</td>
<td></td>
</tr>
<tr>
<td>Revised Delegated Powers Memorandum (SP Bill 52A-DPM)</td>
<td></td>
</tr>
</tbody>
</table>

**After Stage 2**

<table>
<thead>
<tr>
<th>Date</th>
<th>Document Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Correspondence from the Scottish Government to the Rural Affairs and Environment Committee, 21 February 2011</td>
<td></td>
<td>1010</td>
</tr>
<tr>
<td>Subordinate Legislation Committee report on the Bill as amended at Stage 2</td>
<td></td>
<td>1012</td>
</tr>
</tbody>
</table>

**Stage 3**

<table>
<thead>
<tr>
<th>Date</th>
<th>Document Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshalled List of Amendments for Stage 3 (SP Bill 52A-ML)</td>
<td></td>
<td>1015</td>
</tr>
<tr>
<td>Groupings of Amendments for Stage 3 (SP Bill 52A-G)</td>
<td></td>
<td>1033</td>
</tr>
<tr>
<td>Extract from the Minutes of the Parliament, 2 March 2011</td>
<td></td>
<td>1035</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 2 March 2011</td>
<td></td>
<td>1037</td>
</tr>
<tr>
<td>Bill (As Passed) (SP Bill 52B)</td>
<td></td>
<td>1091</td>
</tr>
</tbody>
</table>
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The written and oral evidence received by the Rural Affairs and Environment Committee was originally published on the web only. This material is included in this volume after the Stage 1 Report.
Wildlife and Natural Environment (Scotland) Bill
[AS INTRODUCED]

CONTENTS

Section

PART 1
Defined expressions

1 Defined expressions in this Act

PART 2
Wildlife under the 1981 Act

Wild birds, their nests and eggs

2 Application of the 1981 Act to game birds
3 Protection of game birds etc. and prevention of poaching
4 Areas of special protection for wild birds
5 Sale of live or dead wild birds, their eggs etc.

Wild hares, rabbits etc.

6 Protection of wild hares etc.
7 Prevention of poaching: wild hares, rabbits etc.
8 Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully
9 Wild hares, rabbits etc.: licences
10 Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons
11 Wild hares and rabbits: miscellaneous

Wild birds, hares, rabbits etc.: single witness evidence

12 Single witness evidence in certain proceedings under the 1981 Act

Snares

13 Snares

Non-native species

14 Non-native species etc.
15 Non-native animals and plants: code of practice
16 Species control orders etc.
17 Non-native species etc.: further provision

Species licences

18 Licences under the 1981 Act
19 Amendment of Schedule 6 to the 1981 Act
Enforcement

Repeals relating to Part 2 and game licensing

20 Wildlife inspectors etc.

Repeals relating to Part 2 and game licensing

21 Repeals relating to Part 2 and game licensing

PART 3

DEER

22 Deer management etc.
23 Deer management code of practice
24 Control agreements and control schemes etc.
25 Deer: close seasons etc.
26 Register of persons competent to shoot deer etc.

PART 4

OTHER WILDLIFE ETC.

Protection of badgers

27 Protection of badgers

Muirburn

28 Muirburn

PART 5

SITES OF SPECIAL SCIENTIFIC INTEREST

29 Combining sites of special scientific interest
30 Denotification of SSSIs: damage caused by authorised operations
31 SSSIs: operations requiring consent
32 SSSI offences: civil enforcement

PART 6

GENERAL

33 Crown application
34 Ancillary provision
35 Commencement and short title

Schedule—Repeals relating to Part 2 and game licensing
Wildlife and Natural Environment (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in connection with wildlife and the natural environment; and for connected purposes.

PART 1

DEFINED EXPRESSIONS

1 Defined expressions in this Act

In this Act—

“the 1946 Act” means the Hill Farming Act 1946 (c.73),
“the 1981 Act” means the Wildlife and Countryside Act 1981 (c.69),
“the 1992 Act” means the Protection of Badgers Act 1992 (c.51),
“the 1996 Act” means the Deer (Scotland) Act 1996 (c.58),
“the 2004 Act” means the Nature Conservation (Scotland) Act 2004 (asp 6).

PART 2

WILDLIFE UNDER THE 1981 ACT

Wild birds, their nests and eggs

2 Application of the 1981 Act to game birds

In section 27(1) of the 1981 Act (interpretation of Part I)—
(a) the definition of “game bird” is repealed,
(b) in the definition of “wild bird”, the words “or, except in sections 5 and 16, any game bird” are repealed.

3 Protection of game birds etc. and prevention of poaching

(1) The 1981 Act is amended as follows.
(2) In the italic heading before section 1 (protection of wild birds, their nests and eggs), at the end add “and prevention of poaching”.

(3) In that section, for subsection (6) (“wild birds” in section 1 does not include birds shown to have been bred in captivity), substitute—

“(6) For the purposes of this section, the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless—

(a) it has been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme; or

(b) it is a mallard, grey or red-legged partridge, common pheasant or red grouse which is no longer in captivity and is not in a place where it was reared.”.

(4) In section 2 (exceptions to section 1)—

(a) in the title, at the end add “: acts by certain persons outside close season”,

(b) in subsection (1), after “this section,” insert “where subsection (1A) applies”,

(c) after that subsection insert—

“(1A) This subsection applies where—

(a) the person who kills or injures had—

(i) a legal right to kill such a bird; or

(ii) permission, from a person who had a right to give permission, to kill such a bird; or

(b) the person who takes had—

(i) a legal right to take such a bird; or

(ii) permission, from a person who had a right to give permission, to take such a bird.”,

(d) in subsection (3), after “Christmas Day” insert “in relation to those birds included in Part I of Schedule 2 which are also included in Part IA of that Schedule”,

(e) after subsection (3), insert—

“(3A) Subject to the provisions of this section, where subsection (3B) applies a person does not commit an offence under section 1 by reason of the taking for the purposes of breeding of—

(a) a mallard, partridge, pheasant or red grouse included in Part I of Schedule 2; or

(b) an egg of such a bird.

(3B) This subsection applies where—

(a) the person who takes does so during the period of 14 days commencing with the first day of the close season for the bird; and

(b) the person who takes had—

(i) a legal right to take such a bird; or

(ii) permission, from a person who had a right to give permission, to take such a bird.
(3C) Subsection (3A) does not apply to any such person who takes a mallard in or over any area below high-water mark of ordinary spring tides.”,

(f) in subsection (4)—

(i) after paragraph (b) insert—

“(ba) in the case of pheasant, the period in any year commencing with 2nd February and ending with 30th September;

(bb) in the case of partridge, the period in any year commencing with 2nd February and ending with 31st August;”,

(ii) after paragraph (c) insert—

“(ca) in the case of black grouse, the period commencing with 11th December in any year and ending with 19th August in the following year;

(cb) in the case of ptarmigan and red grouse, the period commencing with 11th December in any year and ending with 11th August in the following year;”,

(g) in subsection (7)—

(i) for “a person” substitute “such persons”,

(ii) at the end add “as he considers appropriate”.

(5) In Schedule 2, Part I (birds which may be killed or taken outside the close season)—

(a) before the entries relating to the bird with the common name “Mallard” insert in columns 1 and 2 the following entries—

“Grouse, Black Tetrao tetrix
Grouse, Red Lagopus lagopus scoticus”,

(b) after the entries relating to the bird with the common name “Moorhen” insert in columns 1 and 2 the following entries—

“Partridge, Grey Perdix perdix
Partridge, Red-legged Alectoris rufa
Pheasant, Common Phasianus colchicus”,

(c) after the entries relating to the bird with the common name “Pochard” insert in columns 1 and 2 the following entries—

“Ptarmigan Lagopus mutus”.

(6) In Schedule 2, after Part I insert—

“PART IA

EXCEPTION: BIRDS INCLUDED IN PART I WHICH MAY NOT BE KILLED OR TAKEN ON SUNDAYS OR CHRISTMAS DAY

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coot</td>
<td>Fulica atra</td>
</tr>
<tr>
<td>Duck, Tufted</td>
<td>Aythya fuligula</td>
</tr>
<tr>
<td>Gadwall</td>
<td>Anas strepera</td>
</tr>
</tbody>
</table>
| Goldeneye        | Bucephala clangula
Goose, Canada  Branta canadensis
Goose, Greylag   Anser anser
Goose, Pink-footed  Anser brachyrhynchus
Mallard  Anas platyrhynchos
Moorhen  Gallinula chloropus
Pintail  Anas acuta
Plover, Golden  Pluvialis apricaria
Pochard  Aythya ferina
Shoveler  Anas clypeata
Snipe, Common  Gallinago gallinago
Teal  Anas crecca
Wigeon  Anas penelope
Woodcock  Scolopax rusticola”.

4  Areas of special protection for wild birds

(1) The 1981 Act is amended as follows.
(2) Section 3 (areas of special protection) is repealed.
(3) In section 4 (exceptions to sections 1 and 3)—
    (a) for the title, substitute “Further exceptions to s. 1”,
    (b) in subsection (1) the words “or in any order made under section 3” are repealed,
    (c) in subsections (2) and (3) the words “or any order made under section 3” are repealed.
(4) In section 16 (power to grant licences)—
    (a) in subsection (1) the words “and orders under section 3” are repealed,
    (b) in subsection (2) for “and orders under section 3 do” substitute “does”.
(5) In section 26 (regulations, orders, notices etc.)—
    (a) in subsection (2) “3,” is repealed,
    (b) in subsection (4)(a) the words from “, except” to “3,” are repealed.

5  Sale of live or dead wild birds, their eggs etc.

(1) The 1981 Act is amended as follows.
(2) In section 2—
    (a) in subsection (4) (close seasons), for “this section and section 1” substitute “section 1, this section and section 6”,
    (b) in subsection (6) (period of special protection forms part of close season), for “this section and section 1” substitute “section 1, this section and section 6”.
(3) In section 6 (sale etc. of live or dead wild birds, eggs etc.)—
Part 2—Wildlife under the 1981 Act

(a) in subsection (1)(a)—

(i) the words from “other” to “3” are repealed,

(ii) after “egg” where it second occurs insert “other than—

(i) a bird included in Part I of Schedule 3 (see also subsection (5));

(ii) a bird included in Part 1A of that Schedule to which subsection (1A) applies; or

(iii) an egg to which subsection (1B) applies or any part of such an egg”,

(b) after subsection (1) insert—

“(1A) This subsection applies to a bird which—

(a) was bred in captivity and remained in captivity or a place where it was reared; or

(b) was a wild bird for the purposes of section 1 (see section 1(6)) and was taken by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird—

(i) outside the close season for the bird; or

(ii) during the period of 14 days which commences with the first day of its close season.

(1B) This subsection applies to the following eggs—

(a) an egg of a bird included in Part 1A of Schedule 3 to which subsection (1A) applies; or

(b) an egg of a bird included in Part 1A of Schedule 3 to which that subsection does not apply if the egg was taken—

(i) outside the close season for the bird or during the period of 14 days commencing with the first day of its close season; and

(ii) by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird.”,

(c) in subsection (2)(a)—

(i) after “Part II” insert “, IIA”,

(ii) after “Schedule 3” insert “(see also subsections (5B) and (6))”,

(d) for subsection (5) substitute—

“(5) Any reference in this section to any bird included in Part I of Schedule 3 is a reference to any bird included in that Part which—

(a) was bred in captivity;

(b) has been ringed or marked in accordance with regulations made by the Scottish Ministers; and

(c) has not been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme.
(5A) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.

(e) after subsection (5A) (as inserted by paragraph (d)) insert—

“(5B) Any reference in this section to any bird included in Part IIA of Schedule 3 is a reference to any bird included in that Part which was killed outside the close season for the bird by a person who had a legal right to kill such a bird or permission, from a person who had a right to give permission, to kill such a bird.”,

(f) for subsection (6), substitute—

“(6) Any reference in this section to any bird included in Part III of Schedule 3 is a reference, during the period commencing with 1st September in any year and ending with 28th February of the following year, to any bird included in that Part.”.

(4) In Schedule 3 (birds which may be sold)—

(a) after Part I insert—

"PART I A

ALIVE IF TAKEN IN CAPTIVITY OR BY CERTAIN PERSONS OUTSIDE CLOSE SEASON OR DURING FIRST 14 DAYS OF CLOSE SEASON

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
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<tr>
<td>Grouse, Red</td>
<td>Lagopus lagopus scoticus</td>
</tr>
<tr>
<td>Mallard</td>
<td>Anas platyrhynchos</td>
</tr>
<tr>
<td>Partridge, Grey</td>
<td>Perdix perdix</td>
</tr>
<tr>
<td>Partridge, Red-legged</td>
<td>Alectoris rufa</td>
</tr>
<tr>
<td>Pheasant, Common</td>
<td>Phasianus colchicus&quot;,</td>
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</tbody>
</table>

(b) after Part II insert—

"PART IIA

DEAD IF KILLED OUTSIDE CLOSE SEASON BY CERTAIN PERSONS

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
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<td>Fulica atra</td>
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<td>Duck, Tufted</td>
<td>Aythya fuligula</td>
</tr>
<tr>
<td>Grouse, Black</td>
<td>Tetrao tetrix</td>
</tr>
<tr>
<td>Grouse, Red</td>
<td>Lagopus lagopus scoticus</td>
</tr>
<tr>
<td>Mallard</td>
<td>Anas platyrhynchos</td>
</tr>
<tr>
<td>Partridge, Grey</td>
<td>Perdix perdix</td>
</tr>
<tr>
<td>Partridge, Red-legged</td>
<td>Alectoris rufa</td>
</tr>
<tr>
<td>Pheasant, Common</td>
<td>Phasianus colchicus</td>
</tr>
<tr>
<td>Pintail</td>
<td>Anas acuta</td>
</tr>
<tr>
<td>Plover, Golden</td>
<td>Pluvialis apricaria</td>
</tr>
</tbody>
</table>
Part 2—Wildlife under the 1981 Act

Wildlife and Natural Environment (Scotland) Bill

(c) in Part III (birds which may be sold dead from 1st September to 28th February), the entries relating to birds with the following common names are repealed—

- Coot
- Duck, Tufted
- Mallard
- Pintail
- Plover, Golden
- Pochard
- Shoveler
- Snipe, Common
- Teal
- Wigeon
- Woodcock.

Protection of wild hares etc.

The 1981 Act is amended as follows.

After section 10, insert—

"10A Protection of wild hares etc.

(1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 5A in the close season for the animal is guilty of an offence.

(2) In this section, “close season” means—

(a) in the case of a mountain hare, the period in any year beginning with 1st March and ending with 31st July;

(b) in the case of a brown hare, the period in any year beginning with 1st February and ending with 30th September.

(3) The Scottish Ministers may by order vary the close season for any wild animal included in Schedule 5A which is specified in the order."
(4) If it appears to the Scottish Ministers expedient that any wild animals included in Schedule 5A should be protected during any period outside the close season for those animals, they may by order declare any period not exceeding 14 days as a period of special protection for those animals.

(5) Before making an order under subsection (4), the Scottish Ministers must consult such persons appearing to them to be representative of persons interested in the killing or taking of animals of the kind proposed to be protected by the order as they consider appropriate.

(6) Where an order is made under subsection (4), this section has effect as if any period of special protection declared by the order forms part of the close season for those animals.

(7) An order under subsection (3) or (4) may be made as respects the whole of Scotland or any part of Scotland specified in the order.

(8) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

10B Exceptions to s. 10A

(1) A person is not guilty of an offence under section 10A(1) by reason of the killing of an animal included in Schedule 5A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.

(2) A person is not guilty of an offence under section 10A(1) by reason of taking any such animal if he shows that—

(a) he had a legal right to take such an animal or permission, from a person who had a right to give permission, to take such an animal; and

(b) the animal—

(i) had been disabled otherwise than by his unlawful act; and

(ii) was taken solely for the purpose of tending it and releasing it when no longer disabled.

(3) An authorised person is not guilty of an offence under section 10A(1) by reason of the killing or injuring of an animal included in Schedule 5A if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

(4) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action if—

(a) it had become apparent, before the action was taken, that it would prove necessary for the purpose mentioned in that subsection; and

(b) either—

(i) a licence under section 16 authorising the action had not been applied for as soon as reasonably practicable after that fact had become apparent; or

(ii) an application for such a licence had been determined.
(5) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action unless he notified the appropriate authority as soon as reasonably practicable after the action was taken that he had taken it.

(6) In subsection (5), “the appropriate authority” has the same meaning as in section 16(9).”.

(3) In section 26(2) (regulations, orders, notices etc.), after “5” insert “, 10A(4)”.  
(4) In the title of Schedule 5 (animals which are protected), at the end add “under section 9”.

(5) After that Schedule, insert—

“SCHEDULE 5A
(introduced by sections 10A and 22)
ANIMALS WHICH ARE PROTECTED UNDER SECTION 10A IN THEIR CLOSE SEASON

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hare, mountain</td>
<td>Lepus timidus</td>
</tr>
<tr>
<td>Hare, brown</td>
<td>Lepus europaeus</td>
</tr>
</tbody>
</table>

7 Prevention of poaching: wild hares, rabbits etc.

(1) The 1981 Act is amended as follows.

(2) In the italic heading before section 9 (protection of certain wild animals), at the end add “and prevention of poaching”.

(3) After section 11D (inserted by section 13(3)), insert—

“11E Prevention of poaching: wild hares, rabbits etc.

(1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 6A is guilty of an offence.

(2) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

11F Exceptions to s. 11E

(1) A person is not guilty of an offence under section 11E(1)—

(a) by reason of the killing of an animal included in Schedule 6A if he had a legal right, or permission from a person who had a right to give permission, to kill such an animal; or

(b) by reason of the taking of such an animal if he had a legal right, or permission from a person who had a right to give permission, to take such an animal.

(2) A person is not guilty of an offence under section 11E(1) by reason of the killing of an animal included in Schedule 6A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.”.

(4) After Schedule 6, insert—
“SCHEDULE 6A
(introduced by sections 11E and 22)

ANIMALS NOT TO BE POACHED

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hare, mountain</td>
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</tr>
<tr>
<td>Hare, brown</td>
<td>Lepus europaeus</td>
</tr>
<tr>
<td>Rabbit</td>
<td>Oryctolagus cuniculus</td>
</tr>
</tbody>
</table>

8 Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

(1) The 1981 Act is amended as follows.

(2) After section 11F (inserted by section 7(3)), insert—

“11G Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

(1) Any person who does any of the following is guilty of an offence —

(a) has in his possession or control any live or dead wild animal which has been killed or taken in contravention of section 10A or 11E, or any part of or anything derived from such an animal;

(b) sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale any such animal or any part of or anything derived from such an animal; or

(c) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells or intends to buy or sell any of those things.

(2) A person is not guilty of an offence under subsection (1) in relation to an activity mentioned in that subsection if he shows that he carried out the activity concerned with reasonable excuse.

(3) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.”.

9 Wild hares, rabbits etc.: licences

In section 16 of the 1981 Act (certain offences not committed if activity done in accordance with licence)—

(a) in subsection (3)—

(i) after “9(1), (2), (4) and (4A),” insert “10A(1),”;

(ii) after “11C” (inserted by section 13(4)) insert “, 11E(1),”

(b) in subsection (4)(b) after “9(5)” insert “, 11G(1).”

10 Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons

In section 22 of the 1981 Act (power to vary schedules and prescribe close seasons)—

(a) in subsection (1)(b), for “or 6” substitute “, 5A, 6 or 6A”,

(10)
Wildlife and Natural Environment (Scotland) Bill
Part 2—Wildlife under the 1981 Act

(b) after subsection (2), insert—

“(2ZA) An order under subsection (1) adding any animal to Schedule 5A may prescribe a close season in the case of that animal for the purposes of section 10A.”.

5 11 Wild hares and rabbits: miscellaneous

(1) The 1981 Act is amended as follows.

(2) Before section 12 (protection of certain mammals), insert—

“12YA Relaxation of restriction on night shooting of hares and rabbits

Schedule 7, which amends certain Acts prohibiting night shooting of hares and rabbits by occupiers of land etc., has effect.”.

10 (3) Section 12 (protection of certain mammals) is repealed.

(4) In Schedule 7—

(a) for the title substitute “Amendment of Acts In Relation To Night Shooting of Hares and Rabbits”,

(b) in the section reference after the Schedule title for “12” substitute “12YA”.

Wild birds, hares, rabbits etc.: single witness evidence

12 Single witness evidence in certain proceedings under the 1981 Act

In section 19A of the 1981 Act (single witness evidence in Scotland as to taking or destruction of eggs)—

(a) in the section title for “as to taking or destruction of eggs” substitute “in certain proceedings”,

(b) for the words from “an” to “Act” substitute “any of the following offences”,

(c) at the end insert “—

(a) an offence under section 1(1)(a) in relation to a grouse, partridge, pheasant or ptarmigan included in Part I of Schedule 2;

(b) an offence under section 1(1)(c);

(c) an offence under section 6(1) in relation to a grouse, partridge or pheasant included in Part IA of Schedule 3;

(d) an offence under section 6(2) in relation to a grouse, partridge, pheasant or ptarmigan included in Part IIA of that Schedule;

(e) an offence under section 10A(1), 11E(1) or 11G(1)”.

Snares

13 Snares

(1) The 1981 Act is amended as follows.

(2) In section 11 (prohibition of certain methods of killing or taking wild animals)—

(a) after subsection (1), insert—
“(1A) For the purposes of subsection (1)(aa), a snare which is of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it includes—

(a) where the person who sets in position or otherwise uses the snare does so to catch any animal other than a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 13 centimetres;

(b) where the person who sets in position or otherwise uses the snare does so to catch a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 23 centimetres;

(c) a snare which is neither—

(i) staked to the ground; nor
(ii) attached to an object,

in a manner which will prevent the snare being dragged by an animal caught by it; and

(d) a snare which is set in a place where an animal caught by the snare is likely to—

(i) become fully or partially suspended; or
(ii) drown.”

(b) subsections (3) to (3B) and (3D) are repealed.

(3) After that section, insert—

“11A Snares: training, identification numbers, tags etc.

(1) Any person who sets a snare in position must have an identification number (see also subsections (3), (4) and (7) in relation to identification numbers and training).

(2) Any person who sets in position or otherwise uses a snare must ensure—

(a) that a tag is fitted on the snare in such a manner that it is not capable of being easily removed from the snare;

(b) that there is displayed on the tag (in a manner in which it will remain readable) the identification number of the person who set the snare in position; and

(c) where the snare is intended to catch the following types of animal—

(i) brown hares or rabbits; or
(ii) foxes,

that there is also displayed on the tag (in a manner in which it will remain readable) a statement that it is intended to catch the type of animal in question.

(3) The identification number of a person who sets a snare in position is the identification number issued to him by a chief constable.

(4) A chief constable—
(a) on receipt of an appropriate application from any person for an identification number for the purpose of setting snares in position in the chief constable’s police area; and

(b) on being satisfied that the applicant has been trained to set a snare in position,

must grant the application and issue the applicant with an identification number.

(5) Any person who fails to comply with subsection (1) is guilty of an offence.

(6) Any person who—

(a) has an identification number and sets in position or otherwise uses a snare; but

(b) fails to comply with subsection (2) in any respect,

is guilty of an offence.

(7) Where an identification number has been issued by a chief constable under subsection (4), the person to whom it is issued—

(a) may use it also for tags fitted on any snares which he sets in position in any other chief constable’s police area; and

(b) need not apply to any other chief constable for a separate identification number in relation to setting any such snare in position.

(8) The Scottish Ministers may by order make provision as regards—

(a) when a person has been trained to set a snare in position;

(b) how a chief constable is to be satisfied that an applicant for an identification number has been so trained;

(c) the manner in which a tag is to be fitted for the purposes of subsection (2)(a) (including the material from which a tag is to be made);

(d) the manner in which an identification number is to appear on a tag for the purposes of subsection (2)(b), and in which a statement is to be displayed on a tag for the purposes of subsection (2)(c);

(e) the form of and manner of making an application for an identification number;

(f) the determining by the Scottish Ministers, or by chief constables in accordance with the order, of any fee to accompany the application and the charging of any such fee;

(g) the issuing of identification numbers under subsection (4);

(h) the keeping of records of identification numbers issued, the persons to whom they are issued and the sharing of information from such records;

(i) such other matters in relation to training, tags or identification numbers (including the making of an application for, or the issuing of, an identification number) as they consider appropriate.

(9) In this section—

“appropriate application” means an application made in accordance with the provisions of an order under subsection (8);
“chief constable” means a chief constable of a police force appointed under section 4(1) of the Police (Scotland) Act 1967;
“chief constable’s police area” means the police area for which the police force of which the chief constable is such officer is maintained; and “police area” is to be construed in accordance with section 50 of that Act.

11B Snares: duty to inspect etc.

(1) Any person who sets a snare in position must while it remains in position inspect it or cause it to be inspected, at least once every day at intervals of no more than 24 hours, for the following purposes—
(a) to see whether any animal is caught by the snare; and
(b) to see whether the snare is free-running.

(2) Any person who while carrying out such an inspection—
(a) finds an animal caught by the snare must, during the course of the inspection, release or remove the animal (whether it is alive or dead); and
(b) finds that the snare is not free-running must remove the snare or restore it to a state in which it is free-running.

(3) Subject to the provisions of this Part, any person who—
(a) without reasonable excuse, contravenes subsection (1); or
(b) contravenes subsection (2),
is guilty of an offence.

(4) For the purposes of this section, a snare is “free-running” if—
(a) it is not self-locking;
(b) it is not capable (whether because of rust, damage or other condition or matter) of locking; and
(c) subject only to the restriction on such movement created by the stop fitted in accordance with section 11(1A)(a) to (c), the noose of the snare is able at all times freely to become wider or tighten (and is not prevented from doing so whether because of rust, damage or other condition or matter other than the stop).

11C Snares: authorisation from landowners etc.

Subject to the provisions of this Part, any person who without reasonable excuse—
(a) while on any land has in his possession any snare without the authorisation of the owner or occupier of the land; or
(b) sets any snare in position on any land without the authorisation of the owner or occupier of the land,
is guilty of an offence.
**11D Snares: presumption arising from identification number**

The identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position.”.

(4) In section 16(3) (certain offences not committed if activity done in accordance with licence), after “11(1), (2) and (3C)(a)” insert “, 11C”.

(5) In section 17 (false statements made for obtaining registration or licence etc.)—

(a) in the title, after “registration” insert “, identification number”,

(b) after “7(1)” insert “, an identification number under section 11A(4)”.

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**14 Non-native species etc.**

(1) The 1981 Act is amended as follows.

(2) In section 14 (introduction of new species etc.)—

(a) for subsections (1) to (2) substitute—

“(1) Subject to the provisions of this Part, any person who—

(a) releases, or allows to escape from captivity, any animal—

(i) to a place outwith its native range; or

(ii) of a type the Scottish Ministers, by order, specify; or

(b) otherwise causes any animal outwith the control of any person to be at a place outwith its native range,

is guilty of an offence.

(2) Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.

(2A) Subsection (1) does not apply to the following animals where those animals are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting—

(a) common pheasant;

(b) red-legged partridge.

(2B) The Scottish Ministers may, by order, specify—

(a) other types of animals to which subsection (1)(a)(i) or (1)(b) does not apply; and

(b) types of plants to which subsection (2) does not apply.

(2C) An order under subsection (1)(a)(ii) or (2B) may make different provision for different cases and, in particular, for—

(a) different types of animal or plant;

(b) different circumstances or purposes;

(c) different persons;
(d) different times of the year; and
(e) different areas or places.”,
(b) in subsection (3), for “prove” substitute “show”,
(c) subsections (5) and (6) are repealed.

(3) After section 14ZB (codes of practice in connection with invasive non-native species: England and Wales) insert—

“14ZC Prohibition on keeping etc. of invasive non-native animals or plants

(1) Subject to the provisions of this Part, any person who keeps, has in the person’s possession, or has under the person’s control—

(a) any invasive animal of a type which the Scottish Ministers, by order, specify; or
(b) any invasive plant of a type so specified,

is guilty of an offence.

(2) An order under subsection (1) may make different provision for different cases and, in particular, for—

(a) different types of invasive animal or invasive plant;
(b) different circumstances or purposes;
(c) different persons;
(d) different times of the year; and
(e) different areas or places.

(3) Subject to subsection (4), it is a defence to a charge of committing an offence under subsection (1) to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing, the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person’s possession.

(5) The Scottish Ministers may, in an order under subsection (1), make provision for or in connection with the compensation of persons who, at the time of the coming into force of the order, may no longer keep, have in their possession or have under their control, an animal or plant.”.

(4) In section 14A (prohibition on sale etc. of certain animals or plants)—

(a) in the title, for “certain” substitute “invasive”,
(b) for subsection (1) substitute—

“(1) This section applies to—

(a) any type of invasive animal; or
(b) any type of invasive plant,

the Scottish Ministers, by order, specify.”,
(c) for subsection (3) substitute—

“(3) An order under subsection (1) may make different provision for different cases and, in particular, for—

(a) different types of invasive animal or invasive plant;
(b) different circumstances or purposes;
(c) different persons;
(d) different times of the year; and
(e) different areas or places.”.

(5) For section 14B (guidance: non-native species) substitute—

“14B Notification of presence of invasive non-native animals or plants etc.

(1) The Scottish Ministers may, by order, make provision about the notification of the presence of—

(a) invasive animals; or
(b) invasive plants,

at any specified place outwith their native range where persons are, or become, aware of the presence of such animals or plants.

(2) An order under subsection (1) may make provision for, or in connection with—

(a) the persons (or types of persons) who must make a notification;
(b) the circumstances in which a notification must be made;
(c) the times of the year when a notification must be made;
(d) the persons to whom a notification must be made;
(e) the form and method of any notification; and
(f) the period within which any notification must be made.

(3) An order under subsection (1) may make different provision for different cases and, in particular, for—

(a) different types of invasive animal or invasive plant;
(b) different circumstances or purposes;
(c) different persons;
(d) different times of the year; and
(e) different areas or places.

(4) A person who, without reasonable excuse, fails to make a notification in accordance with the requirements of an order made under subsection (1) is guilty of an offence.”.

15 Non-native animals and plants: code of practice

After section 14B (notification of presence of non-native species etc.) of the 1981 Act insert—
“14C Non-native species etc.: code of practice

(1) The Scottish Ministers may issue a code of practice for the purpose of providing practical guidance in respect of—

(a) the application of any of sections 14, 14ZC, 14A and 14B;

(b) the application of any order made under any of those sections; or

(c) licences granted under section 16(4)(c).

(2) A code of practice issued under this section may, in particular, provide guidance on—

(a) which species, sub-species, varieties or races of animal or plant, or hybrids of animals or plants, are considered to be particular types of animals or plants for the purposes of—

(i) this section;

(ii) section 14, 14ZC, 14A or 14B;

(iii) any order made under any of those sections;

(iv) the code;

(b) the native range of any type of animal or plant;

(c) the circumstances in which any type of animal is considered to be—

(i) in captivity; or

(ii) under the control or otherwise of a person at a place outwith its native range;

(d) the circumstances in which a type of plant is considered to be growing in the wild outwith its native range, and conduct that would cause any type of plant to grow in the wild;

(e) the circumstances in which a type of invasive animal or plant is considered to be kept in a person’s possession or under a person’s control;

(f) which types of animals or plants are invasive and the circumstances (if any) in which any such type of animal or plant is not considered to be invasive;

(g) best practice (where permitted) for—

(i) keeping animals or plants of any type at places outwith their native range;

(ii) releasing animals of any type from captivity; and

(iii) planting, or otherwise causing to grow, any type of plant in the wild.

(3) The Scottish Ministers may revoke, replace or revise a code of practice issued under this section.

(4) A draft code of practice (or replacement code) issued under this section (or a draft revised code) must be laid before the Scottish Parliament at least 30 days before it is issued.
(5) Before making, revoking, replacing or revising a code of practice issued under this section, the Scottish Ministers must consult—

(a) Scottish Natural Heritage; and
(b) any other person appearing to them to have an interest in the code.

(6) A person’s failure to comply with a provision of a code of practice issued under this section—

(a) does not of itself render the person liable to proceedings of any sort; but
(b) may be taken into account in determining any question in any such proceedings.

(7) In any proceedings for an offence under section 14, 14ZC, 14A or 14B—

(a) failure to comply with a relevant provision of a code of practice issued under this section may be relied upon as tending to establish liability;
(b) compliance with a relevant provision of such a code of practice may be relied upon as tending to negative liability.”.

16 Species control orders etc.

After section 14C of the 1981 Act (non-native species etc.: code of practice) (inserted by section 15) insert—

“14D Power to make species control orders

(1) A relevant body may make an order (a “species control order”) in respect of premises where—

(a) it is satisfied of the presence on the premises of—

(i) an invasive animal at a place outwith its native range; or
(ii) an invasive plant at a place outwith its native range; and
(b) any of subsections (2) to (4) applies.

(2) This subsection applies where—

(a) the relevant body has offered to enter into an agreement with the owner or, as the case may be, occupier of the premises to control or eradicate—

(i) invasive animals outwith their native range; or
(ii) invasive plants outwith their native range,

on the premises (referred to in this section as a “species control agreement”);
(b) 42 days have elapsed since the date of the offer; and
(c) the owner or occupier has refused or otherwise failed to enter into the agreement.

(3) This subsection applies where—

(a) a person has entered into a species control agreement with the relevant body; and
(b) the person has failed to comply with the terms of the agreement.
(4) This subsection applies where the relevant body has failed to ascertain the name or address of any owner or occupier of the premises (having made reasonable efforts to do so) and accordingly has not been able to offer to enter into a species control agreement.

(5) Subsection (4) does not apply unless—

(a) the relevant body has given notice in accordance with subsection (6) stating that it wishes to offer to enter into a species control agreement;

(b) 48 hours have passed since the notice was given; and

(c) no owner or occupier of the premises has identified themselves to the relevant body.

(6) A notice under this subsection must be addressed to “The owners and any occupiers” of the premises (describing it) and a copy of it must be affixed to some conspicuous object on the premises (in so doing the relevant body is to be treated as having provided notice to each owner or occupier whose name and address is unknown).

14E Emergency species control orders

(1) Where a relevant body considers that the making of a species control order is urgently necessary, the relevant body may, despite section 14D(1)(b), make a species control order whether or not any of subsections (2) to (4) of section 14D apply (such an order is referred to in this Part as an “emergency species control order”).

(2) An emergency species control order expires 49 days after it is made.

14F Content of species control orders

(1) A species control order must—

(a) describe the premises to which it relates;

(b) be accompanied by a map on which the premises to which it relates are delineated;

(c) specify the type of invasive animal or plant in question;

(d) specify—

(i) any operations which are to be carried out on the premises for the purpose of controlling or eradicating the type of invasive animal or plant in question;

(ii) the person who is to carry out the operations; and

(iii) how and when the operations are to be carried out;

(e) specify any operations which must not be carried out on the premises (referred to in this Part as “excluded operations”);

(f) specify the date on which the order is to come into effect and the period for which it is to have effect; and

(g) set out the circumstances in which an appeal may be made under section 14H against either the decision to make the order or the terms of the order.
(2) A species control order—
   (a) may provide for the making of payments by the relevant body making the order;
   (b) other than an emergency species control order, may provide for the making of payments by the owner or occupier of the premises to which the order relates,

   to any person in respect of reasonable costs incurred by a person carrying out an operation under the order.

14G Notice of species control orders

(1) A relevant body making a species control order must give notice of the making of the order—
   (a) to the owner, or as the case may be, occupier, of the premises to which the order relates; and
   (b) where the relevant body is a body other than the Scottish Ministers, to the Scottish Ministers.

(2) Notice must—
   (a) be in writing;
   (b) specify the relevant body’s reasons for making the order;
   (c) attach a copy of the order; and
   (d) where the order is an emergency species control order, state that fact.

14H Appeals in connection with species control orders

(1) Any owner or occupier of premises to which a species control order relates may appeal to the sheriff if aggrieved by—
   (a) a decision of a relevant body to make the species control order; or
   (b) the terms of such an order.

(2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the relevant body gave notice to the appellant of the decision being appealed.

(3) The sheriff may suspend any effect of an emergency species control order pending the determination of an appeal.

(4) The sheriff must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—
   (a) affirming the order in question;
   (b) directing the relevant body to amend the order in such manner as the sheriff may specify;
   (c) directing the relevant body to revoke the order; or
   (d) making such other order as the sheriff thinks fit.

(5) A decision of the sheriff on appeal is final except on a point of law.
14I  **Coming into effect of species control orders**

Unless a species control order specifies a later date under section 14F(1)(f), such an order has effect from—

(a) in the case where an order is an emergency species control order, the giving of notice in accordance with section 14G;

(b) in any other case—

   (i) the expiry of the time limit for appealing against the decision to make the order; or

   (ii) where such an appeal is made, its withdrawal or final determination.

14J  **Review of species control orders**

(1) A relevant body which has made a species control order may, when it thinks fit, review the order prior to its expiry for the purposes of determining whether it should make an order revoking the order.

(2) If, on completion of a review, the relevant body decides that the species control order should be revoked, it may make an order to that effect.

(3) The making of an order to revoke a species control order does not prevent a relevant body subsequently making a species control order in relation to the same premises.

14K  **Offences in relation to species control orders**

(1) Any person who, without reasonable excuse, fails to carry out, in the manner required by a species control order, an operation which the person is required by the order to carry out is guilty of an offence.

(2) Any person who intentionally obstructs any person from carrying out an operation required to be carried out under a species control order is guilty of an offence.

(3) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, any excluded operation is guilty of an offence.

14L  **Enforcement of operations under species control orders**

(1) This section applies where a relevant body considers—

   (a) that any operation required to be carried out by a species control order it has made has not been carried out within the period or by the date specified in it; or

   (b) that any such operation has been carried out otherwise than in the manner required under the order.

(2) The relevant body—

   (a) may carry out the operation, or such further work as is necessary to ensure that it is carried out, in the manner required under the order;
is not required to make any payment (and may recover any payments made) in pursuance of the species control order in relation to the operation in question; and

may recover from the person whom the species control order required to carry out the operation any expenses reasonably incurred by it in doing so (less any payment which the relevant body is required to make in relation to the carrying out of the operation under the order by virtue of section 14F(2)(a)).

14M Species control orders: powers of entry

(1) A person authorised in writing by a relevant body may enter any premises for any of the following purposes—

(a) to determine whether or not to offer to enter into a species control agreement with the owner or, as the case may be, occupier of the premises;

(b) to determine whether or not to make or revoke a species control order;

(c) to serve notice to an owner or occupier of premises in accordance with section 14D(5)(a) or 14G;

(d) to ascertain whether an offence under section 14K is being, or has been, committed in relation to an order made by the relevant body;

(e) to carry out an operation or other work in pursuance of section 14L(2)(a).

(2) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless—

(a) the entry is for a purpose mentioned in subsection (1)(a) or (b) and at least 24 hours’ notice of the intended entry has been given;

(b) the entry is for a purpose mentioned in subsection (1)(c) or (d); or

(c) the entry is for a purpose mentioned in subsection (1)(e) and at least 14 days’ notice of the intended entry has been given.

(3) Subsection (2) does not apply in relation to entry in connection with an emergency species control order.

(4) Nothing in this section authorises any person to break any lock barring access to premises which the person is authorised to enter.

14N Species control orders: entry by warrant etc.

(1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for a person authorised by a relevant body to enter premises for a purpose mentioned in section 14M(1) and that—

(a) admission to the premises has been refused;

(b) such refusal is reasonably apprehended;

(c) the premises are unoccupied;

(d) the occupier is temporarily absent from the premises;
(e) the giving of notice under section 14M(2) would defeat the object of the proposed entry; or

(f) the situation is one of urgency,

the sheriff or justice may grant a warrant authorising the person to enter premises (including lockfast places), if necessary using reasonable force.

(2) In the cases of a warrant under subsection (1)(a) to (d), a sheriff or justice must not grant a warrant unless satisfied that notice of the intended entry has been given in the manner described in section 14M.

(3) A warrant under this section—

(a) may be executed without notice; and

(b) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(4) Any person authorised by a warrant to enter any premises must, if required to do so by the owner or occupier or anyone acting on the owner or occupier’s behalf, show that person the warrant.

(5) Any person authorised by a warrant to use reasonable force—

(a) must be accompanied by a constable when doing so; and

(b) may not use force against an individual.

14O Species control orders: powers of entry: supplemental

(1) Any person who exercises a power of entry to premises in accordance with section 14M or 14N may—

(a) be accompanied by any other person; and

(b) take any machinery, other equipment or materials on to the premises, for the purpose of assisting the person in the exercise of that power.

(2) A power specified in subsection (1) which is exercisable under a warrant is subject to the terms of the warrant.

(3) Any person leaving any premises which have been entered in exercise of a power conferred by section 14M or a warrant granted under section 14N, being either unoccupied premises or premises from which the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as the person found the premises.

(4) A relevant body must compensate any person who has sustained damage by reason of—

(a) the exercise by a person authorised by the relevant body of any powers of entry conferred on the person by section 14M or a warrant granted under section 14N; or

(b) the failure of a person so authorised to perform the duty imposed by subsection (3),

unless the damage is attributable to the fault of the person who sustained it.
(5) Any dispute as to a person’s entitlement to compensation, or to the amount of such compensation, is to be determined by arbitration.

### 14P Interpretation of sections 14 to 14O

(1) This section applies to sections 14 to 14O only.

(2) Any reference to the native range of an animal or plant, or a type of animal or plant, is a reference to the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.

(3) The native range of a hybrid animal or plant is any locality within the native range of both parents of the hybrid animal or plant.

(4) Any reference to an invasive animal or invasive plant, or type of such an animal or plant, is a reference to an animal or plant of a type which if not under the control of any person, would be likely to have a significant adverse impact on—

- biodiversity;
- other environmental interests; or
- social or economic interests.

(5) Any reference to premises—

- includes reference to land (including lockfast places and other buildings), movable structures, vehicles, vessels, aircraft and other means of transport; but

- does not include reference to dwellings.

(6) Any reference to a relevant body is a reference to—

- the Scottish Ministers;
- Scottish Natural Heritage;
- the Scottish Environment Protection Agency; or
- the Forestry Commissioners.

(7) Any reference to an animal includes a reference to ova, semen and milt of the animal.

(8) “Plant” includes fungi and any reference to a plant includes a reference to—

- bulbs, corms and rhizomes of the plant; and
- notwithstanding section 27(3ZA), seeds and spores of the plant.”.

### 17 Non-native species etc.: further provision

(1) The 1981 Act is amended as follows.

(2) In section 16 (power to grant licences), in subsection (4)(c), after “14” insert “, 14ZC”.

(3) In section 21 (penalties, forfeitures etc.)—

- in subsection (1) after “13” insert “, 14B”,
- in subsection (4)—
(i) after “14” insert “, 14ZC”,
(ii) in paragraph (a), for “six” substitute “12”,
(c) after that subsection insert—
“(4ZA) Any person guilty of an offence under section 14K is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £40,000, or to both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”,
(d) in subsection (6)(b) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”.

(4) In section 22(1) (power to vary schedules)—
(a) in paragraph (b) the words “or Part I of Schedule 9” are repealed,
(b) in paragraph (c) the words “or Part II of Schedule 9” are repealed.

(5) In section 24 (functions of GB conservation bodies), after subsection (4) insert—
“(4A) The functions of Scottish Natural Heritage include the power to advise or assist—
(a) another relevant body exercising functions under section 14L(2)(a); and
(b) a person authorised to enter premises under section 14M exercising functions under that section.”.

(6) In section 26 (regulations, orders, notices etc.)—
(a) in subsection (1), for “this Part” substitute “a provision of this Part other than section 14D”,
(b) in subsection (4)—
(i) for “this Part” substitute “a provision of this Part other than section 14D”,
(ii) in paragraph (a), after “2(6)” insert “, 14, 14ZC, 14A or 14B”,
(iii) in paragraph (b), after “section” insert “14, 14ZC, 14A, 14B,”,
(c) after that subsection, insert—
“(4A) The Scottish Ministers may make an order under section 14, 14ZC or 14A only where they have consulted—
(a) Scottish Natural Heritage; and
(b) any other person appearing to them to have an interest in the making of the order.

(4B) Subsection (4A) does not apply where the Scottish Ministers consider it necessary to make the order urgently and without consultation.”.

(7) In section 70A (service of notices), after subsection (2) insert—
“(2A) Subsection (1)(cc) of the said section 271 shall not apply to a notice required to be served under section 14G.

(2B) Subsection (2) of the said section 271 shall not apply to a notice required to be served under section 14D(5)(a).”.

(8) Schedule 9 (animals and plants to which section 14 applies) is repealed.
Species licences

18 Licences under the 1981 Act

(1) The 1981 Act is amended as follows.

(2) In section 16 (power to grant licences)—

(a) in subsection (3)—

(i) the word “or” immediately after paragraph (g) is repealed,

(ii) after paragraph (h) insert “; or

(i) for any other social, economic or environmental purpose,”,

(b) after subsection (3) insert—

“(3A) The appropriate authority shall not grant a licence under subsection (3)(i) unless it is satisfied—

(a) that undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and

(b) that there is no other satisfactory solution.”,

(c) subsection (8B) is repealed,

(d) for subsections (9) to (9ZC) substitute—

“(9) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 16A.

(9ZA) The Scottish Ministers must consult Scottish Natural Heritage before granting or modifying a licence under any of subsections (1) to (5).

(9ZB) Subsection (9ZA) does not apply in relation to licences granted under—

(a) paragraph (i), (j) or (k) of subsection (1);

(b) paragraph (f), (g) or (h) of subsection (3); or

(c) paragraph (c) of subsection (4).”,

(e) subsection (13) is repealed.

(3) After that section insert—

“16A Delegation of licence-granting power: Scotland

(1) The Scottish Ministers may delegate their functions in relation to licences under section 16 to—

(a) Scottish Natural Heritage; or

(b) a local authority.

(2) A delegation may be, to any degree, general or specific and may in particular relate to—

(a) specific species of bird, other animal or plant;

(b) a particular licence or type of licence;

(c) a particular area.
(3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.

(4) A delegation to—

(a) Scottish Natural Heritage under subsection (1)(a) is to be made by written direction;

(b) a local authority under subsection (1)(b) is to be made by order.

(5) A local authority which is delegated a function under subsection (1)(b) must, before granting or modifying a licence, consult Scottish Natural Heritage.

(6) The Scottish Ministers may modify or revoke a direction under subsection (4)(a).

(7) Where a direction or order under subsection (4) is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).”.

(4) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (4)—

(i) after paragraph (a) insert—

“(aa) in the case of an order under section 16A(4)(b), shall consult Scottish Natural Heritage;”,

(ii) in paragraph (b), after “14B,” (as inserted by section 17(6)(b)(iii)) insert “16A(4)(b) or”,

(iii) in paragraph (c) after “may,” insert “except in the case of an order under section 16A(4)(b),”;

(b) in subsection (5) after “Part” insert “, other than an order under section 16A(4)(b),”.

19 Amendment of Schedule 6 to the 1981 Act

In Schedule 6 to the 1981 Act (animals which may not be killed or taken by certain methods) the entries relating to the animals with the following common names are repealed—

Bats, Horseshoe (all species),
Bats, Typical (all species),
Cat, Wild,
Dolphin, Bottle-nosed,
Dolphin, Common,
Dormice (all species),
Marten, Pine,
Otter, Common,
Polecat,
Porpoise, Harbour (otherwise known as Common Porpoise).
Enforcement

20 Wildlife inspectors etc.

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.) subsections (9) and (10) are repealed.

(3) In section 7 (registration etc. of certain captive birds) subsections (6) and (7) are repealed.

(4) In section 19ZC (wildlife inspectors: Scotland)—
   (a) in subsection (3)—
      (i) in paragraph (a), after “9(5)” insert “, 11G(1)”,
      (ii) in paragraph (d) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”,
      (iii) in paragraph (e) for the words from “verifying” to the end substitute “—
      (i) verifying any statement or representation made, or document or information supplied, by an occupier in connection with an application for, or the holding of, a relevant registration or licence; or
      (ii) ascertaining whether a condition to which a relevant registration or licence was subject to has been complied with.”,
   (b) in subsection (5) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC, 14A, 14B or 14K”,
   (c) in subsection (9), in the definition of “relevant registration or licence” in paragraph (b) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC or 14A”.

(5) In section 19ZD (power to take samples: Scotland)—
   (a) in subsections (3) and (4) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC, 14A, 14B or 14K”,
   (b) in subsection (10) after paragraph (b) insert—
       “(c) “tissue” means any type of biological material other than blood.”.

(6) In section 24 (functions of GB conservation bodies), in subsection (4)—
   (a) immediately after paragraph (a) insert “or”,
   (b) the word “or” immediately after paragraph (b) is repealed, and
   (c) paragraph (c) is repealed.

Repeals relating to Part 2 and game licensing

21 Repeals relating to Part 2 and game licensing

The enactments mentioned in the first column of the schedule are repealed to the extent specified in the second column.
22 Deer management etc.

(1) The 1996 Act is amended as follows.

(2) In section 1(2) (SNH’s deer functions)—
   (a) the word “and” immediately after paragraph (b) is repealed,
   (b) after paragraph (c) insert “; and
       (d) the interests of public safety; and
       (e) the need to manage the deer population in urban and peri-urban areas.”.

(3) In section 3 (power of SNH to facilitate exercise of functions)—
   (a) in subsection (1)—
       (i) the word “and” immediately after paragraph (a) is repealed,
       (ii) after paragraph (b) insert “; and
       (c) to assist any person or organisation in reaching agreements with third
           parties,”,
   (b) after subsection (2) insert—
       “(3) A public body or office-holder issued guidance or advice under subsection
           (1)(a) must have regard to such guidance or advice in exercising any functions
           to which the guidance relates.”.

(4) In section 4(1) (appointment of panels), the words “, not exceeding nine,” are repealed.

23 Deer management code of practice

(1) After section 5 of the 1996 Act insert—

“Code of practice on deer management

25 Code of practice on deer management

(1) SNH must draw up a code of practice for the purpose of providing practical
    guidance in respect of deer management.

(2) The code of practice may, in particular—
   (a) recommend practice for sustainable deer management;
   (b) make provision about collaboration in deer management;
   (c) set out examples of circumstances in which SNH may seek to secure a
       control agreement or make a control scheme;
   (d) make different provision for different cases and, in particular, for
       different circumstances, different times of the year or different areas.

(3) SNH may replace or revise the code of practice.

(4) Before drawing up, revising or replacing the code, SNH must consult any
    person appearing to them to have an interest in the code.

(5) SNH must submit a proposed code of practice (or a proposed revision) to the
    Scottish Ministers and, on receiving it, the Scottish Ministers may—
(6) Where the Scottish Ministers reject a proposed code of practice (or a proposed revision) under subsection (5)(b) above they may either instruct SNH to submit a new code (or revision) or they may substitute a new code (or revision) of their own devising.

(7) The code of practice (or any revision) approved under subsection (5)(a) above or substituted under subsection (6) above must be laid before the Scottish Parliament.

(8) The code of practice (or any revision) comes into operation on such date as the Scottish Ministers fix.

(9) SNH must—
   (a) monitor compliance with a code of practice drawn up under this section; and
   (b) have regard to such a code in exercising its functions under this Act.”.

(2) In section 45(1) (interpretation) of the 1996 Act, after the definition of “animal foodstuffs” insert—
   “code of practice on deer management” means the code of practice laid before the Scottish Parliament under and currently in operation in pursuance of section 5A of this Act;”.

24 Control agreements and control schemes etc.

(1) The 1996 Act is amended as follows.

(2) In section 7 (control agreements)—
   (a) in subsection (1)—
      (i) after “SNH” insert “, having had regard to the code of practice on deer management,”,
      (ii) the word “deer”, where first occurring, is repealed,
      (iii) in paragraph (a)—
         (A) at the beginning insert “deer or steps taken or not taken for the purposes of deer management”,
         (B) in sub-paragraph (i), after “foodstuffs,” insert “to the welfare of deer”,
         (C) the word “or” immediately after sub-paragraph (i) is repealed,
         (D) after that sub-paragraph insert—
            “(ia) damage to public interests of a social, economic or environmental nature; or”,
      (iv) in paragraph (b), at the beginning insert “deer”,
      (v) for the words “the deer in that locality should be reduced in number” substitute “or for the remedying of such damage, measures require to be taken in relation to the management of deer”,
      (vi) the words “for that reduction in number” are repealed,
(b) in subsection (3) after “SNH” insert “, having had regard to the code of practice on deer management,”,

(c) in subsection (4)—
   (i) after “After” insert “it has given notice to such owners and occupiers of land as it considers to be substantially interested that”,
   (ii) for the words from first “such” to “interested” substitute “those owners or occupiers”,

(d) in subsection (5)—
   (i) the word “and” immediately after paragraph (d) is repealed,
   (ii) after paragraph (e) insert “; and
   (f) set out measures, or steps towards taking such measures, which the owners or occupiers are to take during each 12 month period for which the agreement has effect,”,

(e) after subsection (6) insert—
   “(7) SNH must, on at least an annual basis, review a control agreement for the purpose of assessing compliance with its provisions.”.

(3) In section 8 (control schemes)—
   (a) for subsection (1) substitute—
   “(A1) This subsection applies where SNH has given notice under subsection (4) of section 7 of this Act and—
   (a) either—
      (i) SNH is satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out; or
      (ii) 6 months have elapsed since SNH gave the notice and no agreement has been reached on the matters mentioned in that subsection; and
   (b) SNH continues to have the view that required it to consult under that subsection.

   (1) Where subsection (A1) above applies and SNH, having had regard to the code of practice on deer management, is satisfied that action is necessary for the purposes mentioned in subsection (1) or, as the case may be, subsection (3) of section 7 of this Act, it shall make a scheme (a “control scheme”) for the carrying out of such measures as it considers necessary for those purposes.”,

(b) in subsection (2)—
   (i) for “Subsection (1) above does” substitute “Subsections (A1) and (1) above do”,
   (ii) at the end insert “(except where a purpose of the control agreement is to remedy damage caused, directly or indirectly, by deer or by steps taken or not taken for the purposes of deer management).”,

(c) subsection (5) is repealed, and

(d) after subsection (7) insert—
“(7A) Where any control scheme has been confirmed, SNH must, on at least an annual basis, review it for the purpose of assessing compliance with its provisions.”.

(4) In section 10 (emergency measures)—

(a) in sub-paragraph (i) of subsection (1)(a) the word “serious” is repealed,

(b) after that sub-paragraph insert “or

(iia) are causing damage to their own welfare or the welfare of other deer;”.

(5) In section 11 (application of section 10 to natural heritage), the word “serious” is repealed.

25 Deer: close seasons etc.

(1) The 1996 Act is amended as follows.

(2) In section 5 (close season authorisations)—

(a) in subsection (6)—

(i) the words from the beginning to “and” where it first occurs are repealed,

(ii) for paragraphs (a) and (b) substitute—

“(a) the taking or killing is necessary—

(i) to prevent damage to any crops, pasture or human or animal foodstuffs on any agricultural land which forms part of that land; or

(ii) to prevent damage to any enclosed woodland which forms part of that land; or

(b) the taking or killing is necessary—

(i) to prevent damage to any unenclosed woodland which forms part of that land; or

(ii) to prevent damage, whether directly or indirectly, to the natural heritage generally; or

(iii) in the interests of public safety,

and no other means of control which might reasonably be adopted in the circumstances would be adequate.”,

(b) after subsection (7), add—

“(8) An authorisation under subsection (6) or (7) above—

(a) may be, to any degree, general or specific (including as regards the land in relation to which it is granted);

(b) may be granted to a particular person or to a category of persons.”.

(3) In section 26 (right of occupier in respect of deer causing serious damage)—

(a) in subsection (1), the words from “Notwithstanding” to “Act,” are repealed,

(b) after that subsection insert—
“(1A) Subsection (1) above does not apply during any period fixed by order under section 5(1) of this Act in relation to the sex and species of the deer concerned.”.

(4) In section 37 (restrictions on granting of certain authorisations)—

(a) in subsection (1), at the beginning insert “Except as mentioned in subsection (1A) below,”;

(b) after that subsection, insert—

“(1A) Subsection (1) above does not apply to an authorisation under section 5(6) of this Act to any of the following persons to take or kill, for the purpose of preventing any damage mentioned in section 5(6)(a), any deer found on land falling within section 26(1)(a) or (b) of this Act (“section 26 land”)—

(a) the occupier of the section 26 land; or

(b) if authorised by the occupier—

(i) the owner of the section 26 land;

(ii) an employee of the owner; or

(iii) an employee of the occupier, or any other person normally resident on, the section 26 land.”.

(5) In section 45 (interpretation), after subsection (2) insert—

“(3) References in this Act, however expressed, to a period fixed by order under section 5(1) of this Act are to be read, in relation to the deer to which paragraph 2 of Schedule 6 to this Act applies, as a reference to the periods fixed by that paragraph.”.

26 Register of persons competent to shoot deer etc.

(1) The 1996 Act is amended as follows.

(2) Before section 17, insert the following italic heading—

“Unlawful killing, taking and injuring of deer”.

(3) In section 17 (unlawful killing, taking and injuring of deer), subsection (4) is repealed.

(4) After that section, insert—

“Register of persons competent to shoot deer

17A Register of persons competent to shoot deer

(1) The Scottish Ministers may by regulations—

(a) make provision for the establishment and operation of a register of persons competent to shoot deer in Scotland;

(b) prohibit any person from shooting deer unless the person is—

(i) registered; or

(ii) supervised by a registered person;

(c) provide that being a registered person is sufficient to meet the requirements as to fitness and competence under section 26(2)(d) and 37(1);
(d) require registered persons or owners or occupiers of land to submit cull returns to SNH.

(2) Regulations under subsection (1) above—

(a) may make such supplementary, incidental or consequential provision as the Scottish Ministers think fit and may, in particular, make provision (or allow SNH to make provision) in relation to—

(i) who is to keep and maintain the register;

(ii) applications for registration (or for amendment of, or removal from, the register);

(iii) the determination of applications for registration (including the criteria to be used to determine whether a person is competent to shoot deer);

(iv) the imposition of conditions on the granting of an application (including conditions about compliance with any requirement for a registered person to submit a cull return);

(v) the amendment of the register;

(vi) the removal of a person from the register (including by revocation of registration);

(vii) the charging of fees in connection with registration;

(viii) appeals against decisions to—

(A) refuse to register a person;

(B) impose conditions on the granting of an application;

(C) remove a person from the register;

(ix) circumstances in which a person shooting deer is to be regarded as being, or not being, supervised by a registered person;

(x) the information to be included in cull returns;

(xi) the periods in respect of, and within, which cull returns are to be submitted;

(xii) the form and manner in which cull returns are to be submitted;

(xiii) the repeal of section 40; and

(xiv) consequential modification of any of sections 5, 16, 18, 26 or 37 of, or Schedule 3 to, this Act; and

(b) may make different provision for different purposes.

(3) Any person who shoots a deer on any land in contravention of regulations made under subsection (1)(b) above is guilty of an offence.

(4) Subsection (3) above does not apply where a person shoots a deer for the purpose mentioned in section 25 of this Act.

(5) Any person who—

(a) fails without reasonable cause to submit a cull return in accordance with regulations made under subsection (1)(d) above; or
(b) knowingly or recklessly provides any information in a cull return so submitted which is, in a material particular, false or misleading, is guilty of an offence.

(6) In this section, “cull return”—

(a) when required to be submitted by a registered person, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been killed; and

(b) when required to be submitted by an owner or occupier of land, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been taken or killed on the land.

17B Review of competence etc. by SNH

(1) SNH must carry out a review of the following matters if the power in section 17A(1) is not exercised by 1st April 2014—

(a) levels of competence among persons who shoot deer in Scotland;

(b) the effect of such levels of competence on deer welfare.

(2) In any such review, the matters SNH must consider include—

(a) the extent to which such persons have been trained to shoot deer and the availability and nature of such training;

(b) any available evidence as regards any effect of the absence of such training, or the nature of such training, on the welfare of deer which have been shot.

(3) If SNH carries out a review, it must—

(a) when doing so consult such persons and organisations as it considers have an interest in the review; and

(b) publish a report of the review.”.

(5) Before section 18, insert the following italic heading—

“Other offences and attempts to commit offences”.

(6) In section 30 (power to convict of alternative offence), after “17” insert “, 17A(3)”.

(7) In section 31(4) (forfeiture of deer), after “17(1), (2) or (3)” insert “, 17A(3)”.

(8) In section 45(1) (interpretation)—

(a) after the definition of “red deer” insert—

““registered person” means a person registered in accordance with regulations under section 17A(1);”,”

(b) after the definition of “roe deer” insert—

““shoot” means discharge a firearm of a class prescribed in an order under section 21(1) of this Act; and “shooting” is to be construed accordingly;”.

(9) In Schedule 3 (penalties), after the entry for section 17(3) insert—
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<thead>
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<th>Section</th>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>17A(3)</td>
<td>Shooting deer when not registered or supervised</td>
<td>a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or 3 months imprisonment or both</td>
</tr>
<tr>
<td>17A(5)</td>
<td>Failure to submit cull return, or making false or misleading, cull return</td>
<td>a fine of level 3 on the standard scale or 3 months imprisonment or both</td>
</tr>
</tbody>
</table>

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## Part 4

### Other Wildlife etc.

#### Protection of Badgers

27 Protection of badgers

(1) The 1992 Act is amended as follows.

(2) In section 1 (taking, killing or injuring badgers) after subsection (5) add—

“(6) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) or (3) above.”.

(3) In section 2 (cruelty) after subsection (2) add—

“(3) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(4) In section 4 (selling and possession of live badgers)—

(a) the existing text becomes subsection (1),

(b) after that subsection add—

“(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(5) In section 5 (marking and ringing)—

(a) the existing text becomes subsection (1),

(b) after that subsection add—

“(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(6) In section 10 (licences)—

(a) in subsection (1) for “conservation body” substitute “authority”,

(b) in subsection (2)—

(i) the words from the beginning to the second “licence” are repealed,

(ii) paragraphs (a) to (d) become paragraphs (g) to (j) of subsection (1),

(c) in subsection (3)—
Wildlife and Natural Environment (Scotland) Bill  
Part 4—Other wildlife etc.  

(i) the words from the beginning to the second “licence” are repealed,

(ii) the remaining words becomes paragraph (k) of subsection (1),

(d) for subsection (4) substitute—

“(4) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 10A below.”,

(e) subsection (5) is repealed,

(f) for subsection (6) substitute—

“(6) The Scottish Ministers must consult Scottish Natural Heritage before granting a licence under subsection (1) above.”,

(g) subsection (7) is repealed,

(h) in subsection (8), after the word “be” insert “modified or”;

(i) in subsection (10), for “subsection (2)(a)” substitute “subsection (1)(g)”.

(7) After that section insert—

“10A Delegation of licence-granting power: Scotland

(1) The Scottish Ministers may delegate their functions in relation to licences under section 10 above to—

(a) Scottish Natural Heritage; or
(b) a local authority.

(2) A delegation may be, to any degree, general or specific and may in particular relate to—

(a) a specific badger or badger sett;
(b) a particular licence or type of licence;
(c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.

(4) A delegation to—

(a) Scottish Natural Heritage under subsection (1)(a) above is to be made by written direction;
(b) a local authority under subsection (1)(b) above is to be made by order made by statutory instrument.

(5) A local authority which is delegated a function under subsection (1)(b) above must, before granting or modifying a licence, consult Scottish Natural Heritage.

(6) The Scottish Ministers may modify or revoke a direction under subsection (4)(a) above.

(7) Where a direction or order under subsection (4) above is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).
(8) A statutory instrument containing an order under subsection (4)(b) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(9) Before making an order under subsection (4)(b) above, the Scottish Ministers must consult—

(a) the local authority to which functions are to be delegated under the order;

(b) Scottish Natural Heritage; and

(c) any other persons the Scottish Ministers consider are affected by the making of the order.

(10) The Scottish Ministers must give consideration to any proposals for the making by them of an order under subsection (4)(b) above with respect to any area which may be submitted to them by a local authority whose area includes that area.”.

(8) In section 11A (attempts), in subsection (3)—

(a) after “above” insert “or section 1(6) above”,

(b) after “consisting of” insert “or involving”,

(c) for “the accused” substitute “a person”.

(9) In section 12 (penalties and forfeiture)—

(a) in subsection (1)—

(i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1ZA) below”,

(ii) after “section 5” insert “(1) or (2))”,

(b) after that subsection insert—

“(1ZA) The provisions referred to in subsection (1) above are—

(a) section 2(1)(d) above or section 2(3) above (in relation to an act made unlawful by section 2(1)(d) above); and

(b) section 3(1)(a) to (c) or (e) above or section 3(2) (in relation to an act made unlawful under section 3(1)(a) to (c) or (e) above).”.

(c) in subsection (1A)—

(i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1B) below”, and

(ii) in paragraph (a)—

(A) for “six” substitute “12”, and

(B) for “level 5 on the standard scale” substitute “the statutory maximum”, and

(d) after that subsection insert—

“(1B) The provisions referred in subsection (1A) above are—

(a) section 1(1), (3) and (6);

(b) section 2(1)(a) to (c) above and section 2(3) above (in relation to an act made unlawful by section 2(1)(a) to (c) above);
(c) section 3(1)(d) above or section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above); and
(d) section 4(1) and (2) above.”.

(10) In section 12A (time limit for bringing summary proceedings), in subsection (1), for “section 1(1), 2, 3, 5” substitute “any of sections 1 to 5”.

(11) In section 13 (powers of court where dog used or present at commission of offence) after “1(1)” insert “or (6) (in relation to an act made unlawful by section 1(1))”.

Muirburn

28  Muirburn

(1) The 1946 Act is amended as follows.

(2) For section 23 (prohibition of muirburn at certain times) substitute—

“Muirburn season

(1) A person may make muirburn on land only during the muirburn season.

(2) The muirburn season consists of—

(a) the standard muirburn season; and
(b) the extended muirburn season.

(3) The standard muirburn season is the period of time from 1 October in any year to 15 April in the following year.

(4) The extended muirburn season is the period of time from 16 April to 30 April in any year.

(5) A person may make muirburn in the extended muirburn season only if the person is—

(a) the proprietor of the land; or
(b) authorised in writing by, or on behalf of, the proprietor of the land.”.

(3) In section 23A (power to vary permitted times for making muirburn)—

(a) in subsection (1), for the words from “subsection (1)” to the end substitute “subsection (3) or (4) of that section such other dates as they consider appropriate so as to extend, reduce or vary the standard muirburn season or extended muirburn season”;

(b) after that subsection insert—

“(1A) An order under subsection (1) may make different provision for different purposes and, in particular, for—

(a) different land (for example, for land at different altitudes);
(b) standard muirburn seasons or extended muirburn seasons in different years.”,

(c) in subsection (2)—

(i) the words “in relation to climate change” become paragraph (a),
(ii) after that paragraph insert—
“(b) for the purposes of conserving, restoring, enhancing or managing the
natural environment; or
(c) for the purposes of public safety.”,
(d) in subsection (3) from the word “immediately” to the end substitute “on the
coming into force of section 28 of the Wildlife and Natural Environment
(Scotland) Act 2010 (asp 00).”.

(4) After that section insert—

“23B  Muirburn licences

(1) The Scottish Ministers may grant a licence to a person to make muirburn (a
“muirburn licence”) during any period, other than the muirburn season,
specified in the licence.

(2) A muirburn licence may, in particular, make provision for—
(a) the land on which the muirburn may be made; and
(b) the persons or types of persons who may make the muirburn.

(3) A muirburn licence may—
(a) relate to only part of the land to which the application relates;
(b) be subject to any specified conditions (including conditions about the
giving of notice).

(4) A muirburn licence may be granted only for the purposes of—
(a) conserving, restoring, enhancing or managing the natural environment;
(b) research; or
(c) public safety.

(5) The Scottish Ministers may modify or revoke a muirburn licence.

(6) The Scottish Ministers may delegate their power to grant, modify and revoke
muirburn licences to Scottish Natural Heritage.

(7) A delegation—
(a) must be made by written direction; and
(b) may be, to any degree, general or specific and may in particular relate
to—
(i) a particular licence or type of licence;
(ii) a particular area.

(8) Unless it specifies otherwise, a delegation relating to a particular type of
licence includes the power to modify or revoke licences of that type which
were granted before the delegation.

(9) The Scottish Ministers may modify or revoke a direction under subsection (7).

(10) Where a direction is revoked, any existing licence granted under the direction
continues to have effect (unless the revoking direction provides otherwise).

(11) The Scottish Ministers may, by regulations, make further provision for, or in
connection with, muirburn licences.
(12) The power conferred by subsection (11) must be exercised by statutory instrument.

(13) A statutory instrument containing regulations under subsection (11) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(5) In section 25 (regulation of muirburn)—

(a) before paragraph (a) insert—

“(za) makes muirburn or causes or procures the making of muirburn on any land otherwise than—

(i) during the muirburn season in accordance with section 23; or

(ii) in accordance with a licence granted under section 23B;”,

(b) paragraph (c) is repealed.

(6) In section 26 (notices as to muirburn) for subsections (1) and (2) substitute—

“(1) A person may make muirburn during a muirburn season only if the person has given notice in accordance with this section.

(2) Notice must be given to—

(a) the proprietor of the proposed muirburn site (if different from the person making the muirburn); and

(b) any occupier of land situated within 1 kilometre of the proposed muirburn site,

in accordance with the requirements of section 26A.

(3) Notice need not be given to a person under subsection (2) if the person has given notice in writing that the person wishes not to be notified of any intention to make muirburn.

(4) Where there are 10 or more occupiers of land situated within 1 kilometre of the proposed muirburn site, the person making muirburn may, instead of giving notice to each occupier separately in accordance with section 26A, notify those persons collectively by placing a notice in at least one newspaper circulating in the area which includes the proposed muirburn site.

(5) The notice must—

(a) be given—

(i) after the expiry of the previous muirburn season; and

(ii) not less than 7 days before the muirburn is made;

(b) specify the land on which the muirburn is intended to be made;

(c) specify that the person being notified may, before the muirburn is made, require further information in relation to—

(i) the dates on or between which the muirburn is intended to be made;

(ii) the places at which the muirburn is intended to be made; and

(iii) the approximate extent of the proposed muirburn.

(6) Any notice required to be given by virtue of subsection (2) of this section or subsection (2) of section 24 must be in writing.
Part 4—Other wildlife etc.

(7) Where either the proprietor of the land or an occupier of land situated within 1 kilometre of the proposed muirburn site requests any of the further information mentioned in subsection (5)(c), the person intending to make the muirburn must make reasonable efforts to comply with the request not later than the end of the day before the muirburn is made.

(8) The requirements of this section do not affect the duties of tenants to give notice to proprietors of land under section 24(2).

(9) Any notice required to be given to proprietors of land under this section or section 24(2) may be given to any person purporting to be authorised by the proprietor to receive the notice.

(10) Any person who fails to comply with the requirements of this section is guilty of an offence.”.

(7) After that section insert—

“26A Giving of muirburn notices

(1) Subject to the provisions of this section, any written notice required to be given to a person under section 24 or 26 may be given—

(a) by delivering it to the person personally;

(b) by leaving it at, or posting it to, the usual or last known address of the person in the United Kingdom, or in a case where an address has been given by the person, at or to that address;

(c) where the person is—

(i) a body corporate, by leaving it at or posting it to the address of the registered or principal office of the body in the United Kingdom;

(ii) a partnership, by leaving it at or posting it to the principal office of the partnership in the United Kingdom;

(d) to the person by electronic communication of any particular form if—

(i) the person has agreed to be notified in that form;

(ii) the person has supplied the person who is to send the notice with the person’s electronic address or number; and

(iii) the electronic communication is capable of being accessed and understood by the person.

(2) Where, after reasonable inquiry, the identity of an occupier cannot be ascertained for the purposes of giving notice under section 26, notice may be given by—

(a) addressing the notice to “Any occupiers of the land” (describing it); and

(b) affixing it to some conspicuous object on the land.

(3) Unless the contrary is shown, a notice given in accordance with subsection (1)(d) is taken to have been received 48 hours after it is given.”.

(8) In section 27 (offences as to muirburn) for the words “twenty-three or section twenty-five” substitute “25 or 26(10)”.

45
PART 5

SITES OF SPECIAL SCIENTIFIC INTEREST

29 Combining sites of special scientific interest

(1) The 2004 Act is amended as follows.

(2) After section 5 insert—

“5A Combining sites of special scientific interest

(1) Where SNH considers that two or more sites of special scientific interest should be combined, it may notify that fact to the persons who are the interested parties in relation to the sites in question.

(2) Subsections (4) to (7) of section 3 apply in relation to a notification under subsection (1) as they apply to a notification under section 3(1), but as if—

(a) references in section 3(4)(a)(ii) and (iii) to a natural feature were references to the natural features by reason of which SNH considers the original sites to be of special interest, and

(b) section 3(4) required the notification to also be accompanied by a revised site management statement prepared in relation to the combined site of special scientific interest.

(3) Accordingly, from the date when notification is given under subsection (1)—

(a) that notification is an “SSSI notification” for the purposes of this Act,

(b) the combined site of special scientific interest is a single “site of special scientific interest” for the purposes of this Act, and

(c) the original SSSI notifications cease to have effect.

(4) SNH must give public notice describing the general effect of an SSSI notification given by virtue of subsection (1) in such manner (including on the internet or by other electronic means) as SNH thinks fit.

(5) Nothing in this section allows SNH to—

(a) include any land in a combined site of special scientific interest which was not included in at least one of the original sites of special scientific interest,

(b) add to the operations requiring consent specified in the original SSSI notifications (otherwise than by extending the original area to which any such operation requiring consent related so as to include any land in the combined site of special scientific interest).”.

(3) In section 48(11)(a) (notices etc.), after “5(1)” insert “, 5A(1)”.

(4) In section 58(1) (interpretation)—

(a) in the definition of “site of special scientific interest”, after “3(6)” insert “(read, where necessary, together with section 5A(3)(b))”,

(b) in the definition of “SSSI notification”, after “3(5)” insert “(read, where necessary, together with section 5A(3)(a))”.

46
Denotification of SSSIs: damage caused by authorised operations

In section 9 (denotification of SSSIs) of the 2004 Act, after subsection (4) insert—

“(5) This subsection applies where—

(a) a public body or office-holder (after consulting SNH in accordance with any enactment) permits the carrying out of an operation,

(b) the carrying out of the operation in pursuance of that permission damages a natural feature specified in an SSSI notification,

(c) SNH, because of that damage, gives notification under subsection (1) of its intention to revoke or modify the SSSI notification, and

(d) the explanation given by virtue of subsection (4)(a)(ii) in the document accompanying the notification under subsection (1)—

(i) states that SNH considers that all or part of the site of special scientific interest is no longer of special interest by reason of the damage caused by the carrying out of the permitted operation, and

(ii) explains the effect of subsection (6)(b).

(6) Where subsection (5) applies—

(a) section 11, and paragraphs 3 to 15 of schedule 1, do not apply in relation to the notification under subsection (1), and

(b) the relevant SSSI notification is revoked or, as the case may be, modified when the notification is given under subsection (1).”.

SSSIs: operations requiring consent

(1) The 2004 Act is amended as follows.

(2) In section 13(1) (SNH consent required for operations carried out by public bodies), after “out” insert “, or cause or permit to be carried out on land owned or occupied by the public body or office-holder,.”.

(3) In section 14 (SNH consent not required for certain operations)—

(a) in subsection (1)—

(i) after paragraph (c) insert—

“(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,

(ii) the word “or” immediately following paragraph (d) is repealed,

(iii) after paragraph (e) insert “, or

(f) if that operation is of a type described by order made by the Scottish Ministers.”,

(b) in subsection (2), after second “out” insert “or cause or permit to be carried out”,

(c) in subsection (3)—

(i) in paragraph (a)(i), for “proposes to commence the operation” substitute “is proposed that the operation be commenced”,

(ii) in paragraph (b), after “way” insert “, or causes or permits the operation to be carried out only in such a way,”,
(iii) in paragraph (c), after “operation” insert “or, as the case may be, in causing or permitting the carrying out of the operation,”,

(d) in subsection (4)(a), for “an operation for” substitute “or causes or permits the carrying out of an operation in circumstances in”.

(4) In section 17 (SNH consent not required for certain operations)—

(a) in subsection (1)—

(i) after paragraph (c) insert—

“(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,

(ii) the word “or” immediately following paragraph (d) is repealed,

(iii) after paragraph (e) insert “, or

(f) if that operation is of a type described by order made by the Scottish Ministers.”.

(b) in subsection (4), for the words from “owner” to “functions” substitute “operation in respect of which section 13 applies.”.

32  SSSI offences: civil enforcement

(1) The 2004 Act is amended as follows—

(a) after section 20 insert—

“Restoration notices

20A Restoration notices

(1) SNH may propose to give a restoration notice where it is satisfied that a person (the “responsible person”)—

(a) has committed an offence under section 19(1), or

(b) has committed an offence under section 19(3) in respect of an operation which has damaged a natural feature specified in an SSSI notification.

(2) A restoration notice is a notice which requires the responsible person to carry out such operations as may be specified in the notice, within such periods from the notice taking effect as may be so specified, for the purpose of restoring, so far as is reasonably practicable, the damaged natural feature to its former condition.

(3) A proposal under subsection (1) must be made to the responsible person and must—

(a) explain why SNH proposes to give the restoration notice,

(b) be accompanied by a draft of the proposed restoration notice,

(c) explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question,

(d) explain that the responsible person has the right to make representations to SNH about the proposal within the period of 28 days from the date on which the proposal is made.
(e) specify the manner in which such representations must be made.

(4) SNH may, after the period for making representations about a proposal has expired, give the restoration notice (with or without modifications) to the responsible person.

(5) A restoration notice has effect only if the responsible person gives SNH notice of intention to comply with it within 28 days of it being given.

(6) SNH may by giving notice to a responsible person in respect of whom a restoration notice has effect—

(a) extend the period specified in the restoration notice within which operations are to be carried out, or

(b) otherwise modify the restoration notice in such manner as SNH considers appropriate.

(7) A notice may be given under paragraph (b) of subsection (6) only where the responsible person has consented to the modification.

(8) SNH may withdraw a restoration notice (by giving notice to the responsible person) where it is satisfied on the basis of information subsequently obtained that the restoration notice should not have been given to the responsible person.

(9) Where a restoration notice is withdrawn, SNH must compensate the responsible person for any expenses reasonably incurred in complying with the restoration notice.

(10) Proceedings against the responsible person may not be commenced or continued for an offence in relation to which the restoration notice has effect (even if the restoration notice is subsequently withdrawn).

(11) If, within the period specified in a restoration notice, the responsible person to whom it is given fails, without reasonable excuse, to comply with it, the responsible person is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding £40,000,

(b) on conviction on indictment, to a fine.

(12) If, within the period specified in a restoration notice, any operations so specified have not been carried out in accordance with the restoration notice, SNH may—

(a) carry out those operations, and

(b) recover from the responsible person any expenses reasonably incurred by it in doing so.

(b) in section 14(1) (SNH consent not required for certain operations by public bodies), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”;

(c) in section 17(1) (SNH consent not required for certain operations by owners or occupiers), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”;

(d) in section 44(1) (powers of entry), after paragraph (b) insert—
“(ba) to ascertain whether an operation required to be carried out by a restoration notice given under section 20A(4) has been carried out in accordance with the notice,

(bb) to carry out operations in pursuance of section 20A(12),”;

(c) in paragraph 1(1)(b) (duty to give notice before entering occupied premises) of schedule 4, for “(1)(h)” substitute “(1)(bb), (h)”.

(2) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows—

(a) in section 69(7) (notice of previous alternative disposals), after paragraph (b) insert “;

(c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”;

(b) in section 101 (previous convictions)—

(i) in subsection (10), after paragraph (b) insert “;

(c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”;

(ii) in subsection (11)—

(A) the word “or” immediately following paragraph (b) is repealed,

(B) after paragraph (c) insert “; or

(d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”;

(C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”;

(c) in section 166 (previous convictions: summary proceedings)—

(i) in subsection (10), after paragraph (b) insert “;

(e) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”;

(ii) in subsection (11)—

(A) the word “or” immediately following paragraph (b) is repealed,

(B) after paragraph (c) insert “; or

(d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”;

(C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”.
Part 6
General

33 Crown application
The modifications of enactments made by this Act bind the Crown to the extent the enactments bind the Crown.

34 Ancillary provision
(1) The Scottish Ministers may by order made by statutory instrument make such incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) A statutory instrument containing an order under subsection (1) is (except where subsection (4) applies) subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

35 Commencement and short title
(1) The provisions of this Act (other than section 1 and this Part) come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) An order under subsection (1) may—
(a) make different provision for different purposes,
(b) make such transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

(3) This Act may be cited as the Wildlife and Natural Environment (Scotland) Act 2010.
### SCHEDULE
(introduced by section 21)

**REPEALS RELATING TO PART 2 AND GAME LICENSING**

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Game (Scotland) Act 1772 (c.54)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Night Poaching Act 1828 (c.69)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Act 1831 (c.32)</td>
<td>The provisions of the Act extended to Scotland by section 13 of the Game Licenses Act 1860 (c.90).</td>
</tr>
<tr>
<td>Game (Scotland) Act 1832 (c.68)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Night Poaching Act 1844 (c.29)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Hares (Scotland) Act 1848 (c.30)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Licences Act 1860 (c.90)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Poaching Prevention Act 1862 (c.114)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Laws Amendment (Scotland) Act 1877 (c.28)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Ground Game Act 1880 (c.47)</td>
<td>Section 4.</td>
</tr>
<tr>
<td>Customs and Inland Revenue Act 1883 (c.10)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Hares Preservation Act 1892 (c.8)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Finance Act 1924 (c.21)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Destructive Imported Animals Act 1932 (c.12)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Finance Act 1937 (c.54)</td>
<td>Section 5.</td>
</tr>
<tr>
<td>Agriculture (Scotland) Act 1948 (c.45)</td>
<td>Second Schedule.</td>
</tr>
<tr>
<td>Local Government (Scotland) Act 1966 (c.51)</td>
<td>Section 53.</td>
</tr>
<tr>
<td>Game Act 1970 (c.13)</td>
<td>Section 44. In Schedule 4, Part II, the entries relating to the Game Licences Act 1860 and the Customs and Inland Revenue Act 1883.</td>
</tr>
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<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Import of Live Fish (Scotland) Act 1978 (c.35)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Deer (Scotland) Act 1996 (c.58)</td>
<td>Section 38.</td>
</tr>
<tr>
<td>Protection of Wild Mammals (Scotland) Act 2002 (asp 6)</td>
<td>In the schedule, paragraphs 1 and 2.</td>
</tr>
<tr>
<td>Marine (Scotland) Act 2010 (asp 5)</td>
<td>Section 104.</td>
</tr>
</tbody>
</table>
Wildlife and Natural Environment (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in connection with wildlife and the natural environment; and for connected purposes.

Introduced by: Richard Lochhead
On: 9 June 2010
Supported by: Roseanna Cunningham
Bill type: Executive Bill
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Wildlife and Natural Environment (Scotland) Bill introduced in the Scottish Parliament on 9 June 2010:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 52–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – BACKGROUND AND OVERVIEW

4. The Bill makes a range of provision about wildlife and the natural environment. It consists of six Parts and a schedule, which make provision as explained below.

5. The following expressions are used throughout these Notes:
   “The 1946 Act” means the Hill Farming Act 1946;
   “The 1996 Act” means the Deer (Scotland) Act 1996;
   “The 2004 Act” means the Nature Conservation (Scotland) Act 2004;
   “DCS” means the Deer Commission for Scotland, established under the 1996 Act and to be dissolved and its functions transferred to SNH on the commencement of section 1 of the Public Sector Reform (Scotland) Act 2010; and
   “SNH” means Scottish Natural Heritage, established under the Natural Heritage (Scotland) Act 1991.

Part 1

6. Part 1 contains defined expressions for the statutes amended by the Bill.
Part 2 – Wildlife under the 1981 Act

7. Part 2 of the Bill makes amendments to Part 1 of the Wildlife and Countryside Act 1981. Part 1 of that Act regulates the taking, killing, sale and possession of all wild birds and of the species of animals and plants which are specified in Schedules to the Act. Certain other species of animals and plants are protected separately under the Conservation (Natural Habitats & c.) Regulations 1994 (S.I.1994/2716). Part 1 of the 1981 Act also prohibits certain methods of taking and killing birds and animals and regulates the use of other methods (including snares). It also regulates the introduction of non-native species. Most activities prohibited under Part 1 are capable of being licensed for certain purposes under section 16 of that Act.

8. The amendments in Part 2 of the Bill add provisions about the protection and poaching of game species to the 1981 Act, abolish “areas of special protection” established under section 3 of that Act, impose restrictions on the use of snares to catch animals, replace the regime for controlling invasive species, amend and enable the delegation of, licensing functions under the Act and make consequential changes to the powers of wildlife inspectors.

Part 3 - Deer

9. Part 3 of the Bill amends the Deer (Scotland) Act 1996. Part I (sections 1 to 4) of the 1996 Act places a duty on DCS to further the conservation, control and sustainable management of deer. Part II of that Act (sections 5 to 16) provides for the setting of close seasons and creates mechanisms for DCS to work with landowners to manage deer numbers. Part III (sections 17 to 26) of that Act creates offences in relation to deer, including poaching offences which make it an offence to kill deer without the legal right to do so. Part IV (sections 27 to 48) regulates venison dealing and contains enforcement and other miscellaneous provisions.

10. The functions of DCS under the 1996 Act are to be transferred to SNH by section 1 of the Public Services Reform (Scotland) Act 2010. Schedule 1 to the 2010 Act makes a large number of consequential amendments to the 1996 Act. These have been taken into account in drafting the Bill, which refers to SNH throughout. The same approach has been taken in these Notes.

11. Part 3 of the Bill amends the 1996 Act to change the provisions which allow certain occupiers of land to shoot deer during close seasons. It requires SNH to prepare a code of practice in relation to deer management. It revises the purposes for and the circumstances in which SNH can exercise powers in relation to control agreements, control schemes and emergency measures to manage deer. It also enables Ministers to make provision by order to require persons who shoot deer to be registered as competent to do so. Such orders may also be used to make consequential changes to the arrangements for collecting data about numbers of deer killed (known as “cull returns”).

Part 4 – Other wildlife etc.

12. Section 27 of the Bill amends the Protection of Badgers Act 1992. The 1992 Act prohibits a range of activities in relation to badgers, including the killing, taking and sale of badgers and disturbance to their setts. Some of these activities can be licensed for certain purposes. The Bill creates a number of new offences under the 1992 Act and provides for certain offences to be triable on indictment as well as under summary procedure. It also makes provision for the delegation of licensing functions under the 1992 Act.
13. Section 28 of the Bill amends the Hill Farming Act 1946. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland, which is defined in section 39 of that Act as including “setting fire to or burning heath or muir”. The Bill replaces periods during which muirburn is prohibited with a positive season during which it is permitted. It also expands the power to amend muirburn seasons by order and provides for a new licensing regime in respect of out of season muirburn. Finally it reforms requirements to inform neighbours of intentions to make muirburn.

Part 5 – Sites of Special Scientific Interest

14. Part 5 of the Bill amends the 2004 Act to make provision for the combination and denotification of sites of special scientific interest (“SSSIs”), operations which affect SSSIs and alternative procedure for securing reparation to SSSIs following illegal damage.

Part 6 - General

15. Part 6 of the Bill contains general provision on Crown application and commencement.

Schedule

16. The schedule contains repeals. These include the repeals of the 18th and 19th century statutes known as the Game Acts, which set close seasons for game birds, create poaching offences and establish requirements for game licences. The close seasons and poaching offences are replaced by provision under Part 2 of the Bill. The game licensing regime is repealed and not replaced, although it will be possible to grant licences in relation to game species for other purposes under the 1981 Act.

THE BILL – SECTION BY SECTION

PART 1 – DEFINITIONS

17. Part 1 consists of section 1, which contains defined expressions used throughout the Bill.

PART 2 – WILDLIFE UNDER THE 1981 ACT

Section 2 – Application of the 1981 Act to game birds

18. This section amends definitions in section 27(1) of the 1981 Act. Paragraph (b) amends the definition of “wild bird” to remove the exception in relation to game birds. This means that game birds (pheasants, partridges, red and black grouse and ptarmigan) will be covered by the offences in the 1981 Act which relate to wild birds. The amendment should be read with section 21 and the schedule, which repeal the older legislation which restricts the killing, taking and sale of game birds. Paragraph (a) is consequential on the other amendments to the 1981 Act. It repeals the definition of “game bird”, a term which is not used in the amended provisions in relation to wild birds.
Section 3– Protection of game birds etc. and prevention of poaching

19. This section amends sections 1 and 2 of and Schedule 2 to the 1981 Act. Section 1 of the 1981 Act creates offences of killing, taking and injuring any wild bird. Section 2 of that Act creates exceptions to those offences, which allow certain species (those listed in Schedule 2) to be taken and killed outside close seasons.

20. The amendment to section 1 ensures that the offences under that section will apply to partridges, pheasants, mallards and red grouse which are bred in captivity and released for shooting.

21. The amendments to section 2 and to Schedule 2 extend the exceptions to cover the game birds which are brought within the 1981 Act by virtue of the amendment to the definition of “wild bird” under section 2. The amendments set close seasons for those game birds. They also amend the exceptions so that these may only be relied on by people with a legal right (at common law or otherwise) to kill or take the birds. These amended exceptions replace the poaching offences in older legislation which relates to game birds and which is repealed by section 21 and the schedule.

22. Subsection (2) amends the italic heading of sections 1 to 8 of the 1981 Act (which relate to birds) to add a reference to poaching. The new heading takes account of the inclusion of poaching offences in the 1981 Act.

23. Subsection (3) amends section 1(6) of the 1981 Act. Section 1(6) of that Act excludes birds bred in captivity from the definition of “wild bird”. The amendment qualifies section 1(6) in two respects. First, to ensure that birds bred in captivity and lawfully released for conservation purposes are protected as wild birds after release. Second, to ensure that a captive bred mallard, grey or red-legged partridge, common pheasant or red grouse will be treated as a wild bird if it is no longer in captivity and not in a place in which it was reared. This subsection ensures that the birds that are most often bred in captivity for sporting purposes are covered by the offences under section 1 and the exceptions under section 2 of the 1981 Act when they are released.

24. Subsection (4)(a) to (c) amends section 2 of the 1981 Act, which creates exceptions to section 1 of the 1981 Act. The effect in the amendments is to provide that it is not an offence for a person to kill or take a bird listed on Part 1 of Schedule 2 to that Act outside the close season for that bird, provided that the person had the legal right to kill or take the bird, or had permission to do so. A legal right to kill or take wild birds may arise automatically under the common law (e.g. as a consequence of landownership), under a lease or another contract or under statute. Whether a person with a legal right to kill or take the bird has the authority to grant permission to someone else will depend on the nature of their legal right. The Bill does not alter legal rights to kill or take birds or confer new powers to grant permission to others. It remains an offence to take or kill any other wild bird which is not listed in Part 1 of Schedule 2, unless otherwise authorised by means of a licence issued under section 16 of the 1981 Act.

25. Subsections (4)(d) and (6) inserts a new Part 1A into Schedule 2 to the 1981 Act which lists the birds which are not to be killed or taken on Sundays or Christmas Day. The restriction in
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relation to Sundays and Christmas Day does not apply to game birds (pheasants, partridges, red and black grouse and ptarmigan).

26. Subsection (4)(e) inserts new subsections (3A) to (3C) into section 2 of the 1981 Act. Subsections (3A) and (3B) provide that it is not an offence to take live mallard, partridge, pheasant or red grouse, or the eggs of those birds for breeding purposes during a period of 2 weeks after the start of the close season for those birds, provided that the person taking the birds or eggs has the legal right or permission to do so. This process is sometimes referred to as “catching up”. As with subsection (4)(e), the amendment does not alter legal rights to take birds or confer power to grant permission to others.

27. Subsection (3C) provides that catching up of mallards or mallards’ eggs is not permitted on the foreshore, below the high-water mark of ordinary spring tides.

28. Subsection (4)(f) amends section 2(4) of the 1981 Act to create close seasons for pheasant, grey and red-legged partridge, black grouse, red grouse and ptarmigan. The provision should be read with section 21 and the schedule, which repeals the close seasons set for those species under the Game (Scotland) Act 1772.

29. Subsection (5) amends Part 1 of Schedule 2 of the 1981 Act to add the game bird species (black grouse, red grouse, grey partridge, red-legged partridge, common pheasant, and ptarmigan) to the list of birds which may be killed or taken outside the close season.

Section 4 – Areas of Special Protection

30. Section 4 of the Bill repeals section 3 of the 1981 Act, which enabled the Scottish Ministers to declare areas of special protection for wild birds, their nests, and their young. Eight Scottish areas of special protection created by order under the Protection of Birds Act 1954 (where they are described as “bird sanctuaries”), which was repealed and re-enacted by the 1981 Act, will be abolished as a consequence of that repeal.

Section 5 – Sale of live or dead wild birds, their eggs etc.

31. This section amends sections 2 and 6 of and Schedule 3 to the 1981 Act. Section 6 creates offences in relation to the sale of birds and their eggs. These offences are subject to exceptions which apply to certain species of bird which are listed in Schedule 3 to the Act.

32. The amendments to section 6 and Schedule 3 extend the exceptions to cover the sale of dead game birds (grouse, partridge, pheasant and ptarmigan) which are killed legally outside the close season. These provisions should be read with section 21 and the schedule, which repeal older restrictions on the sale of game birds. The amendments to section 2(6) are consequential on these changes.

33. The amendments to section 6 and Schedule 3 also extend the exceptions in section 6 to permit the sale of live birds and eggs of species which are taken or collected in accordance with the “catching up” provisions in section 2(3A) to (3C), as inserted by section 3.
34. The amendments to Schedule 3 also remove the restrictions on selling certain birds between 28 February and 1 September by moving the species currently listed in Part III of Schedule 3 to a new Part of that Schedule.

35. Subsection (2) amends section 2(6) of the 1981 Act so that if the Scottish Ministers declare a period of special protection for a bird species, this period of special protection would be treated as part of the close season for the purposes of assessing whether it was an offence to sell a bird or egg of that species under section 6(5A) or (5B).

36. Subsections (3)(a) and (b) and (4)(a) deal with the sale of live birds and eggs. Subsection (3)(a) and (b) amends section 6(1) of the 1981 Act and inserts a new section 6(1A) and (1B), while subsection (4)(a) inserts a new Part IIA into Schedule 3 of that Act. The effect is to allow birds and eggs of the species listed in the new Part of the Schedule (red grouse, grey partridge, red-legged partridge, common pheasant and mallard) to be sold alive if they are bred in and remain in captivity or if they taken legally outside close seasons or during the catching up period provided under section 2(3A) and (3B) (as inserted by section 3).

37. Subsection (3)(d) replaces section 6(5) of the 1981 Act with a new section 6(5) and (5A). The effect of the changes made by the subsection is that the offence in section 6(1) of that Act applies to birds bred in captivity and lawfully released for conservation purposes. Section 6(5A) re-enacts the enabling power in section 6(5) of the Act.

38. Subsections (3)(c) and (e) and (4)(b) and (c) amend provisions which deal with the sale of dead birds. They amend subsection (2) of section 6 of the 1981 Act, insert a new subsection (5B), insert a new Part IIA into Schedule 3 and repeal all the entries in Part III of that Schedule. The new Part IIA of Schedule 3 lists game species (grouse, partridge, pheasant and ptarmigan) as well as the species previously listed in Part III of the Schedule. The effect of the changes is to allow birds of all species listed in Part IIA to be sold dead at any time provided that they are killed outside the close season by someone with the legal right to do so.

39. Subsection (3)(f) makes a consequential amendment to section 6 of the 1981 Act. It replaces subsection (6) of that section to remove a redundant reference to Part II of Schedule 3.

Section 6 – Protection of wild hares etc.

40. Section 6 inserts new sections 10A and 10B and Schedule 5A into the 1981 Act. These provisions set close seasons for wild mountain hares and brown hares and create related offences. The new sections are inserted by subsection (2) and the Schedule by subsection (5).

Inserted section 10A of the 1981 Act

41. Inserted section 10A of the 1981 Act sets close seasons and creates offences in relation to hares. Subsection (1) of that section specifies that it is an offence to intentionally or recklessly kill, injure or take any animal on Schedule 5A outside the close season. The species listed on Schedule 5A are the brown hare and the mountain hare.
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

42. Subsection (2) of new section 10A specifies separate close seasons for mountain hares and brown hares. The close seasons are 1 March to 31 July and 1 February to 30 September, respectively. Subsection (3) of new section 10A allows Scottish Ministers to vary these close seasons by order.

43. Subsections (4) to (7) of new section 10A allow periods of special protection to be set outside the close season for animals on Schedule 5A. The provisions are similar to the provisions for setting periods of special protection in respect of wild birds, under section 2(6) and (7) of the 1981 Act. Subsections (4) and (7) allow Ministers to set such periods by order for all or any part of Scotland, subject to compliance with the consultation requirements in subsection (5). Subsection (6) provides that a period of special protection has effect as if it was part of the close season. Section 6(3) of the Bill amends section 26(2) of the 1981 Act to provide that orders setting periods of special protection for animals under new section 10A(4) will not be subject to parliamentary procedure. Section 26(2) of the 1981 Act already makes similar provision for orders setting periods of special protection for wild birds.

44. Subsection (8) of new section 10A creates a presumption in relation to any offence under subsection (1) that the animal in question was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and in new section 11E(2), as inserted by section 7 of the Bill.

Inserted section 10B of the 1981 Act

45. Inserted section 10B of the 1981 Act creates exceptions to the offences of killing, injuring or taking an animal during the close season under section 10A.

46. Subsection (1) of new section 10B provides a defence to the offence of killing an animal during its close season if the accused can show that the animal in question was too seriously disabled to recover. That defence will only apply if the disability to the animal was not caused by an unlawful act of the accused.

47. Subsection (2) of new section 10B provides a defence to the offence of taking an animal during its close season if the accused is able to show that the animal had been disabled and was taken for the purpose of tending it and releasing it once it had recovered. The defence can only be relied on by someone who, apart from the close season, had a legal right or permission to take the animal and if the disability to the animal had not been caused by an unlawful act of the accused.

48. Subsections (3) to (6) of new section 10B provide a defence to the offence of killing or injuring an animal during its close season. The defence can only be relied on by an “authorised person”, which is defined in section 27 of the 1981 Act to include the owner or occupier of the land involved and persons authorised by the local authority. The defence allows an authorised person to kill or injure an animal listed on Schedule 5A, in cases where subsections (4) and (5) do not apply and if he shows that the action was necessary to prevent serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

49. Subsection (4) prevents an authorised person from relying on the defence if it became apparent in advance that it would be necessary to kill or take the animal and either the person failed to apply for an appropriate licence under section 16 of the Act as soon as practicable or a licence application had already been determined. Subsection (5) prevents an authorised person from relying on the defence if he failed to inform the licensing authority (the “appropriate authority” under section 16(9) of the 1981 Act) as soon as practicable after the animal was killed or injured.

Section 7 – Prevention of poaching: wild hares, rabbits etc.

50. Section 7 inserts new sections 11E and 11F and Schedule 6A into the 1981 Act (sections 11A to 11D being inserted into the 1981 Act by section 13 of the Bill, which relates to snaring). These provisions create offences in relation to killing and taking hares and rabbits without a legal right to do so. This type of offence is more commonly described as poaching. The provisions should be read with section 21 and the schedule, which repeals the older legislation which creates poaching offences in relation to hares and rabbits (which are referred to in that context as “ground game”).

51. Subsection 7(3) inserts a new section 11E into the 1981 Act. Section 11E(1) creates an offence of intentionally or recklessly killing injuring or taking a wild animal listed in Schedule 6A of the Act. Schedule 6A is inserted by subsection (4) and lists rabbits, mountain hares and brown hares. Section 11E(2) creates a presumption that the animal in question in relation to an offence under section 11E(1) was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and section 10A(8), as inserted by section 6 of the Bill.

52. New section 11F of the 1981 Act creates defences to the offence of taking, killing or injuring an animal listed in Schedule 6A. Section 11F(1) allows a person with a legal right or permission to kill or take the animal. A legal right to kill or take wild animals may arise automatically under the common law (e.g. as a consequence of landownership), under a lease or another contract or under statute. Whether a person with a legal right to kill or take the bird has the authority to grant permission to someone else will depend on the nature of their legal right. The Bill does not alter legal rights to kill or take animals or confer new powers to grant permission to others.

53. Section 11F(2) provides that it is not an offence to kill an animal listed in Schedule 6A if the accused shows that the animal in question was so seriously disabled that there was no reasonable chance of its recovering and that the animal was not disabled by any unlawful act of the accused.

Section 8 – Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

54. Subsection 8 inserts a new section 11G into the 1981 Act. Section 11G(1) makes it an offence to possess, control, sell or offer to sell, possess or transport for the purpose of selling any wild animal or part of a wild animal which has been killed or taken in contravention of section 10A or 11E.

55. Section 11F(2) provides a defence if the accused shows he had a reasonable excuse.
56. 11F(3) creates a presumption that the animal in question in relation to an offence under section 11F(1) was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and sections 10A(8) and 11E(2), as inserted by sections 6 and 7 of the Bill.

Section 9 – Wild hares, rabbits etc.: licences

57. Section 9 makes consequential amendments to section 16(3) of the 1981 Act which allow the activities covered by the offences at new sections 10A(1) (killing of animals listed on Schedule 5A in the close season) and 11E(1) (poaching of hares, rabbits etc.) to be licensed under that section.

Section 10 – Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close season

58. This section extends the enabling power in section 22 of the 1981 Act to allow the Scottish Ministers to add to or remove animals from the lists in new Schedules 5A and 6A by order. It also allows such orders to set close seasons for any animal added to Schedule 5A by order.

Section 11 – Wild hares and rabbits: miscellaneous

59. Section 10 replaces section 12 of the 1981 Act with section 12YA and amends the title of Schedule 12 to clarify the content of Schedule 12. Schedule 12 concerns the protection from the noise of shooting hares and rabbits animals at night.

Section 12 – Single witness evidence in certain proceedings under the 1981 Act

60. Section 12 amends section 19A of the 1981 Act to extend the admissibility of single witness evidence to cover offences in relation to the unlawful taking, killing or injuring of game birds (grouse, partridge, pheasant,) and wild hares and rabbits. The provision reflects the position under the Game Acts, which are repealed in the Schedule but which permitted conviction on the evidence of a single witness for offences in relation to game birds and ground game.

Section 13 - Snares

61. Section 13 deals with the use of snares. Subsection (2) amends section 11 of the 1981 Act to insert a new subsection (1A). Subsection (3) inserts new sections 11A to 11D into that Act. As well as setting new requirements in relation to snaring, the amendments replace provisions in the Snares (Scotland) Order 2010 (S.S.I 2010/8), which set requirements about snare stops and anchors and checks of whether snares are free-running. The amendments also reorganise some existing provisions from section 11 into new sections 11B and 11C. These relate to inspecting snares and obtaining authorisation from landowners.
Snares calculated to cause unnecessary suffering

62. Inserted section 11(1A) of the 1981 Act sets out circumstances in which a snare is to be considered to be of a nature or set in a way calculated to cause unnecessary suffering for the purpose of the offence in section 11(1)(aa). It requires snares to be fitted with stops (subsection (1A)(a) and (b)), attached to the ground or an object to prevent them being dragged (subsection (1A)(d)) and not set in a place which is likely to cause an animal to become suspended or drown (subsection (1A)(e)). These provisions replace those in the Snares (Scotland) Order 2010.

Training, identification numbers and tags

63. Inserted section 11A of the 1981 Act requires people who set snares to be trained and to label their snares. It does so by requiring anyone who sets a snare to have an identification number (section 11A(1)). Failure to do so is an offence (section 11A(5)). Such numbers must be obtained from the police (section 11A(3) and (4)) and can only be issued to persons who have been trained to set snares (section 11A(4)(b)).

64. Identification numbers must be shown on tags which must be attached to snares (section 11A(2)). Tags must also indicate whether a snare is intended to catch brown hares or rabbits, or foxes. It is an offence to set or use a snare without a compliant tag (section 11A(6)). Section 11A(8) enables the Scottish Ministers to specify training requirements and other elements of the identification number and tagging regime by order.

65. Inserted section 11B of the 1981 Act requires a person who sets a snare to ensure that it is inspected at least every 24 hours to see whether there is an animal caught in the snare and whether the snare is free-running (as defined in section 11B(4)). If an animal is found to be caught then it must be released or removed. If the snare is found not to be free-running then it must be removed or mended to make it free-running. It is an offence to fail to comply with these requirements. The requirements in relation to whether the snare is free-running are new. The Bill moves the requirements in relation to animals caught in snares from section 11(3), (3A) and (3B) of the 1981 Act but does not alter their effect.

66. Inserted section 11C of the 1981 Act provides that it is an offence for a person to set, or have in their possession, a snare without permission of the owner of the land which the person is on. The Bill moves this provision from section 11(3D) of the 1981 Act but does not alter its effect.

67. Inserted section 11D of the 1981 Act creates a presumption that the identification number appearing on a tag fitted to a snare is that of the person who set the snare. This applies to all snaring offences under the 1981 Act.

Section 14 – Non-native species etc.

68. Section 14 amends sections 14 and 14A of the 1981 Act and inserts new sections 14ZC and 14B of that Act.

Introduction of new species etc.
69. Subsection (2) inserts section 14(1) to 14(2B) of the 1981 Act.

70. It is an offence under inserted section 14(1)(a)(i) to release or allow to escape from captivity any animal to a place outwith its native range. This replaces the former offence which relates to the release or escape into the wild of an animal which is of a kind not ordinarily resident in and is not a regular visitor to Great Britain in a wild state. Section 14P(2) and (3) of the 1981 Act, as inserted by section 15 of the Bill, provides for the meaning of the native range of animals and plants.

71. It is an offence under inserted section 14(1)(a)(ii) to release or allow to escape from captivity any other animal specified in an order made by the Scottish Ministers under that section and inserted section 14(2C). This replaces the former offence which relates to an animal of a kind listed in Schedule 9 to the 1981 Act. The new power relates to release of an animal within its native range. For example, it might enable Ministers to control the release of a raptor within its native range to prevent harm to the wild population from increased competition for food.

72. It is an offence under inserted section 14(1)(b) of the 1981 Act to cause any animal outwith the control of any person to be at place outwith its native range. The offence applies where an animal that is not in captivity for the purposes of inserted section 14(1) is enabled by some act or omission to move to a new place outwith its native range.

73. Inserted section 14(2A) has the effect that an offence is not committed under inserted section 14(1) if the common pheasant or red-legged partridge are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting. A release of any other non-native bird or for any other purpose is unlawful, unless authorised by an order made by the Scottish Ministers under inserted section 14(2B), or by a licence granted under section 16 of the 1981 Act.

74. It is an offence under new section 14(2) of the 1981 Act to plant or otherwise cause to grow any plant in the wild outwith its native range. This replaces the former offence which relates to a plant of a kind listed in Schedule 9 to the 1981 Act.

75. Inserted section 14(2B) and (2C) of the 1981 Act enables the Scottish Ministers to specify a plant or animal to which the offences in inserted section 14(1) and (2) do not apply. The power can be used to make lawful the release of animals outwith their native range. For example, an order might make possible the re-introduction into any part of Scotland of a formerly native animal such as the European beaver.

76. Subsection (2)(b) amends the defence in section 14(3) of the 1981 Act to make it consistent with the other statutory defences in Part 1 of the 1981 Act. The accused must show that he took all reasonable steps and exercised all due diligence to avoid committing the offences in inserted sections 14(1) and (2).

77. Subsection (2)(c) repeals the provisions enabling the Scottish Ministers to authorise persons to enter any land to ascertain whether an offence in section 14 of the 1981 Act is being, or has
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

been, committed. A wildlife inspector appointed by Ministers under section 19ZC of the 1981 Act has the same power, so the repeal removes an unnecessary duplication.

Prohibition on keeping etc. of invasive animals or plants

78. Subsection (3) of the Bill inserts new section 14ZC into the 1981 Act, which enables the Scottish Ministers to prohibit the keeping of invasive animals or plants. Inserted section 14P(4) provides for the meaning of invasive. It is an offence to keep a prohibited animal, and a defence for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence. An order can provide for the payment of compensation to people who can no longer keep an animal or plant as a result of the making of an order. Keeping, and release, measures have been taken under the Destructive Imported Animals Act 1932 and the Import of Live Fish (Scotland) Act 1978, both repealed by the Schedule.

Prohibition on sale etc. of certain animals or plants etc

79. Subsection (4) changes the powers of the Scottish Ministers in section 14A of the 1981 Act to prohibit the sale and marketing of certain animals and plants. The amended power is exercisable in respect of an invasive animal or plant and not as before in respect of the release of the animal or plant that is prohibited under section 14 of that Act.

Notification of presence of non-native animals or plants etc.

80. Subsection (5) revokes the existing section 14B (guidance: non-native species) of the 1981 Act and inserts a new section 14B into that Act. Inserted section 14B enables the Scottish Ministers to require notification of the presence of an invasive animal or invasive plant at a place outwith the native range of the plant or animal. It is an offence to fail without reasonable excuse to notify the presence of a plant or animal as required under the inserted section.

Section 15 – non-native animals and plants: code of practice

81. Section 15 inserts new Section 14C into the 1981 Act. Section 14C enables the Scottish Ministers to issue codes of practice for the purpose of providing practical guidance in respect of the release, keeping, sale and notification offences in the 1981 Act, and related matters. For example, a code could offer guidance on how far an animal temporarily released by any person (such as a raptor in a falconry display) remains under the control of that person for the purposes of the release offence.

82. The Scottish Ministers must consult with Scottish Natural Heritage and any other persons appearing to them to have an interest before making (or modifying) a code. A draft code (or modification) must be laid before the Scottish Parliament at least 30 days before it is issued, and has effect.

83. Guidance in a code of practice issue under section 14C is not binding. It can however be taken into account in determining any question in any proceedings and in a criminal prosecution for a relevant offence the court may have regard to compliance with the code when deciding whether or not the accused is liable for the offence.
Section 16 - Species control orders etc.

84. Section 16 inserts new sections 14D to 14P of the 1981 Act. Sections 14D to 14O of the 1981 Act provide for species control orders and section 14P provides for the interpretation of terms used in sections 14 to 14O of that Act.

Power to make species control orders

85. Inserted section 14D of the 1981 Act enables any of the Scottish Ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency or the Forestry Commissions (each of which is a ‘relevant body’ as defined in inserted section 14P(6)) to make a species control order for premises when the relevant body is satisfied of the presence on the premises of an invasive animal or plant at a place outwith its natural range.

86. The relevant body must give any owner or occupier it has identified at least 42 days in which to enter into a voluntary agreement before it can make a species control order. If such an agreement is entered into then an order can only be made on default. Section 14D also provides for a statutory notice where an owner or occupier cannot be identified.

Emergency species control orders

87. Inserted section 14E enables a relevant body to make a species control order without agreement or notice under section 14D where the body is satisfied that the making of the order is urgently necessary. Any such emergency order expires 49 days after it is made.

Content of species control orders

88. Inserted section 14F provides for the contents of species control orders. It enables a relevant body to specify what must be done by whom and by when in order to control or eradicate an invasive species, such as the removal of Japanese knotweed. It enables the body to specify preventative measures (an ‘excluded operation’), such as a ban on strimming knotweed that might be needed due to a high risk that such an operation would cause the plant to spread. Lastly, it enables the relevant body to provide for who is to pay for control and eradication measures, which might include the owner or occupier of the premises subject to the order.

Notice of species control orders

89. Inserted section 14G provides for notice of the making of a species control order to be given to the owner or occupier of premises, and if appropriate by a relevant body to the Scottish Ministers. The notice must give reasons for the making of the species control order, and set out where applicable that the order is an emergency order.

Appeals in connection with species control orders

90. Inserted section 14H enables an owner or occupier whose premises are subject to a species control order to appeal to the sheriff within 28 days of being given notice of the making of the
order. The sheriff must consider the merits of the order, may suspend any effect of an emergency order, and will dispose of the appeal as he or she thinks fit. Further appeal from the decision of the sheriff is on a point of law only.

Effect of species control orders

91. Inserted section 14I provides that an emergency species control order has effect on the giving of notice under section 14G, and any other order has effect either on the expiry of the 28 day period for appeal under section 14H or where an appeal is made or the withdrawal or determination of the appeal.

Review of species control orders

92. Inserted section 14J enables a relevant body to review a species control order made by the body, and if appropriate revoke the order. An order might be revoked because it has been complied with before it would otherwise expire, or because an operation or excluded operation will for any reason no longer deliver the intended outcome (in which case it might be replaced by a subsequent order).

Offences in relation to species control orders

93. Inserted section 14K makes it an offence to fail without reasonable excuse to carry out an operation required under a species control order, to carry out an excluded operation, or to intentionally obstruct any person carrying out an operation required to be carried out under an order. Section 17(3)(d) of the Bill inserts new section 21(4ZA) of the 1981 Act which provides for penalties on conviction for such an offence.

Enforcement of operations under species control orders

94. Inserted section 14L enables a relevant body on default to carry out an operation required by a species control order. The body is not required to make any payment that would otherwise be required under the order, and may recover such payments and any additional costs incurred by the body in enforcing the order.

Species control orders: powers of entry

95. Inserted section 14M enables persons authorised by a relevant body to enter premises, giving notice where required, for the purposes of determining whether to enter into a species control order, whether to make or revoke an order, to serve any required notice, to ascertain whether an offence is being or has been committed, and to carry out operations required in connection with the order.

96. Inserted section 14P(5) defines premises for the purposes of sections 14 to 14O, with the effect that the powers of entry do not include power to enter a dwelling.
Species control orders: entry by warrant etc.

97. Inserted section 14N sets out when a sheriff must grant a warrant to an authorised person to use a power of entry that is otherwise authorised under section 14I, and the effect of such a warrant.

Species control orders: powers of entry: supplemental

98. Inserted section 14O sets out who may accompany an authorised person taking entry under a warrant granted under section 14N, and what that person may take on to the premises. It also provides for compensation to be paid for damage caused when entry is taken, unless the damage is attributable to the person who sustained it.

Interpretation of sections 14 to 14O of the 1981 Act

99. Inserted section 14P provides for the meanings of native range, invasive, premises and relevant body. It also makes further provision for the meanings of animal and plant.

Section 17 – Non-native species etc.: further provision

100. Section 17 amends the 1981 Act in connection with the changes made to that Act by section 15 of the Bill.

101. Subsection (2) has the effect the keeping measures in inserted section 14ZC do not apply to anything done under and in accordance with a licence granted by the Scottish Ministers under section 16 of the 1981 Act.

102. Subsection (3) amends section 21 of the Act to provide for penalties on conviction for a keeping, notification or species control order offence, and for forfeiture of any animal or plant which is of the same kind as that in respect of which a ‘species’ offence is committed. It provides expressly that the maximum period of imprisonment on summary conviction of an offence under sections 14, 14A and 14ZC is 12 months. That maximum was increased from 6 months to 12 months in respect of sections 14 and 14A by virtue of the ‘gloss’ in section 45 of Criminal Proceedings Etc. (Reform) (Scotland) Act 2007.

103. Subsections (4) and (8) repeal references to Schedule 9 to the 1981 Act and that Schedule respectively.

104. Subsection (5) enables Scottish Natural Heritage to advise any other relevant body carrying out operations under a species control order, or a person authorised to enter premises in connection with an order.

105. Subsection (6) has the effect that the making of a release, keeping, sale or notification order by the Scottish Ministers can be annulled by the Scottish Parliament. Ministers must consult with Scottish Natural Heritage and other persons before making a release, keeping or sale order.
106. Subsection (7) makes further provision for notice preparatory to, or the making of, a species control order. It has the effect that a notice of a species control order under section 14G cannot be served by electronic means, and that the general rule in the 1981 Act for service of notices on persons who cannot be identified do not apply to notice of a species control order under section 14D.

Section 18 – Licences under the 1981 Act

107. Section 18 amends section 16 of the 1981 Act, which allows the licensing of activities prohibited under Part 1 of that Act.

108. Subsection (2)(a) and (b) amends section 16(3) and inserts a new section 16(3A) into the 1981 Act. The effect of this is to allow the licensing authority to grant a licence to carry out activities which would otherwise be prohibited in relation to animals and plants protected by Part 1 of the 1981 Act. The licence must be for a social, economic or environmental purpose. Inserted section 16(3A) also requires the licensing authority to be satisfied that the conduct authorised will give rise to or contribute towards social, economic or environmental benefit and that there is no other satisfactory solution.

109. Subsection (2)(c) to (e) amends section 16 of the 1981 Act to provide that the Scottish Ministers are the licensing authority (“the appropriate authority”) for all types of licence under section 16, except where they delegate licensing functions to SNH or a local authority as set out below.

110. Subsection (3) inserts a new section 16A into the 1981 Act. This enables Scottish Ministers to delegate licensing functions to SNH by direction or to local authorities by order. It also sets consultation requirements and makes other technical provisions in relation to such delegations. Subsection (4) makes consequential modifications to section 26 of the 1981 Act in relation to the new power to delegate by order in section 16A.

Section 19 – Amendment of Schedule 6 to the 1981 Act

111. Section 19 amends Schedule 6 of the 1981 Act to remove duplication in relation to species which are also protected by the Conservation (Natural Habitats &c.) Regulations 1994 (S.I.1994/2716).

Section 20 – Wildlife inspectors etc.

112. Section 20 amends the 1981 Act so that a wildlife inspector appointed by the Scottish Ministers under section 19ZC of the 1981 Act is authorised to take enforcement action in respect of the keeping, notification and species control order offences created by the Bill.

113. Subsections (2) and (3) repeal the provisions in sections 6 (sale etc. of live or dead wild birds, eggs etc.) and 7 (registration etc. of certain captive birds) of the 1981 Act that enable the Scottish Ministers to authorise persons to enter any land to ascertain whether an offence under those sections is being, or has been, committed. A wildlife inspector appointed by Ministers
under section 19ZC of the 1981 Act has the same power, so the repeal removes unnecessary duplication.

114. Subsection (4) enables a wildlife inspector to enter and inspect any premises to ascertain whether or not an offence in respect of the sale etc. of wild hares or rabbits (inserted section 11G of the 1981 Act), the keeping or notification of an invasive plant or animal (inserted sections 14ZC and 14B), or a species control order (inserted section 14K), (the “new offences” in paragraph (a)) is being or has been committed. It enables a wildlife inspector to require in connection with the new offences that a specimen is made available for examination by the inspector. It enables a wildlife inspector to enter premises to check for compliance with a condition of a registration or licence granted under Part 1 of the 1981 Act as amended by the Bill, as well as before to in connection with verifying statements made in connection with an application for or the holding of a licence or registration.

115. Subsection (5) enables a wildlife inspector to require the taking of a sample of blood or tissue from a specimen found when taking entry under section 19ZC in respect of the new offences, or any connected specimen, in order to determine the origin, identity or ancestry of the first specimen. It also provides a new definition of “tissue” in section 19ZD (power to take samples: Scotland) of the 1981 Act.

116. Subsection (6) repeals the function of a GB conservation body under the 1981 Act to advice or assist a person not being a wildlife inspector authorised to enter premises in connection with an offence under sections 6, 7 and 14 of that Act.

**Section 21 – Repeals relating to Part 2 and game licensing**

117. This section repeals part, or all, of the various Acts in the Schedule. These mainly relate to game laws. The repeals of the Game Licences Act 1860 and the Game Act 1831, together with consequential repeals of related legislation, have the effect of abolishing the game licensing regime.

**PART 3 – DEER**

**Section 22 – Deer management**

118. Section 22 amends SNH’s general functions and duties in relation to deer management under sections 1, 3 and 4 of the Deer (Scotland) Act 1996. Subsection (2) amends section 1 of the 1996 Act to require SNH to take into account the interests of public safety and the need to manage the deer population in urban and per-urban areas when exercising its functions. This adds to the current factors that must be taken into account (size and density of the deer population and its impact on natural heritage, the needs of agriculture and forestry and the interests of owners and occupiers of land).

119. Subsection (3)(a) amends section 3(1) of the 1996 Act to confer power on SNH to assist any person or organisation in reaching agreements with third parties. This adds to the powers currently set out in section 3 of the 1996 Act.
120. Subsection (3)(b) inserts a new section 3(3) into the 1996 Act. This imposes a duty on public bodies and office holders to have regard in exercising their functions to any guidance or advice issued by SNH relating to the conservation, control or sustainable management of deer or to any other aspect of the SNH’s deer functions.

121. Subsection (4) amends section 4(1) of the 1996 Act to remove a limit on the number of members of a panel appointed under that section.

Section 23 – Deer management code of practice

122. Section 23 inserts a new section 5A into the 1996 Act. This imposes a duty on SNH to draw up a Code of Practice for the purpose of providing practical guidance in respect of deer management. Section 5A(1) and (2) sets out the purpose and general content of the code. Section 5A(3) to (8) sets procedural requirements for the preparation and entry into force of the code as well as its replacement or revision. These include requirements for public consultation, approval by Scottish Ministers and laying before the Scottish Parliament. Section 5A(9) requires SNH to monitor compliance with the code and to have regard to it in carrying out its own functions.

Section 24 - Control agreements and control schemes etc

123. Section 24 amends sections 7, 8, 10 and 11 of the 1996 Act. Section 7 of that Act allows SNH to initiate control agreements where deer are causing certain kinds of damage. These agreements relate to “measures” to manage deer. Section 8 allows SNH to make control schemes where control agreements have failed. Schedule 2 of the 1996 Act sets out the procedure for Ministers to confirm control schemes. Sections 10 and 11 confer powers to take emergency action where deer are causing serious damage and control agreements or schemes are not an option.

124. Subsection (2) amends section 7 of the 1996 Act, which relates to control agreements. The effect of the amendments is to require SNH to have regard to the code of practice when deciding whether to exercise its functions. The amendments also expand the types of damage which can be relied on as a basis for SNH seeking a control agreement, the purposes of such agreements and the types of measures they can cover. The amended section 7 will cover damage as a result of steps taken or not taken for the purposes of deer management as well as damage by deer themselves. It will also cover damage to deer welfare or to public interests of a social, economic or environmental nature. It will allow SNH to seek a control agreement for the purpose of remediying existing damage (as well as preventing further damage in future). The amendments will also allow control agreements to provide for a wider range of measures than those to reduce deer numbers. The amended section will also state that control agreements may set out steps to be taken in each 12 month period within any control agreement. SNH will be required to review compliance with control agreements on an annual basis.
125. Subsection (3) amends section 8 of the 1996 Act, which relates to control schemes. The effect of the amendments is to ensure that, with one exception, the tests which allow SNH to make a control scheme are the same as those which would allow it to seek a control agreement. The exception is that SNH cannot make a control scheme in relation to a control agreement which was concluded for the purpose of altering or enhancing the natural heritage. The amendments also set deadlines for concluding that control agreements have failed. SNH will be required to review compliance with control schemes.

126. Subsections (4) and (5) amend sections 10 and 11 of the 1996 Act, which relate to emergency measures to control deer. The amendments will allow emergency measures to be taken in relation to any damage, including damage to deer welfare.

Section 25 - Deer: close seasons

127. Section 25 amends sections 5, 26 and 37 of the 1996 Act. Under section 26, occupiers will retain the right to take or kill deer but will require an authorisation under section 5 if they wish to do so during the close seasons. SNH will be able to grant authorisations under section 5 for the purposes of preventing damage to crops, pasture, human or animal foodstuffs or enclosed woodland. It will be possible to issue general authorisations to classes of people (e.g. occupiers) or in respect of types of land (e.g. arable land). The requirement to consider fitness and competence under section 37 will continue to apply except when considering authorisations to occupiers for the purposes of preventing damage to crops, pasture, human or animal foodstuffs or enclosed woodland.

Section 26 – Register of persons competent to shoot deer

128. Section 26 inserts new sections 17A and 17B into the 1996 Act. Section 17A (inserted by subsection (4)) contains an enabling power which permits Ministers to introduce a requirement that any person shooting deer, or supervising the shooting of deer, must be named on a register as competent to do so. Section 17A(3) creates an offence of shooting deer in contravention of requirements set under the enabling power. This is subject to an exception (in section 17A(4)) which allows the killing of a deer which is injured or diseased or killing dependant young which has been, or is about to be, deprived of its mother.

129. Regulations made under the enabling power may also provide that persons who are registered as competent can be considered “fit and competent” for the purposes of authorisations to shoot deer at night, or during close seasons (section 17A(1)(c)).

130. In the event that a competence requirement is introduced, regulations may also require those persons named on the competence register to submit a regular cull return (section 17A(1)(d)). “Cull return” is defined in section 17A(6) as a return showing the number of deer of each species and of each sex which have been killed. Section 17A(5) creates an offence of failing to submit a cull return in accordance with regulations or submitting a return which is materially false or misleading. This offence would replace the offence under section 40(4) of the 1996 Act.
131. Section 17A(2) allows regulations to include supplementary, incidental or consequential provision and lists examples of the type of provision this might include.

132. Subsection (9) of section 26 sets maximum penalties for the new offences in section 17(A)(3) and (5). Subsections (2), (3) and (5) to (8) make further amendments to the 1996 Act in consequence of the new section 17A.

133. Section 17B (inserted by subsection (4)) requires SNH to conduct and publish a review of competence in deer stalking and its effect on deer welfare if the enabling power in section 17A has not been exercised by 1 April 2014.

PART 4 – OTHER WILDLIFE ETC.

Section 27 – Protection of badgers


Offences

135. The 1992 Act provides for five separate offences in relation to badgers: taking, injuring or killing (section 1); cruelty (section 2); interfering with badger setts (section 3); selling and possession of live badgers (section 4) and marking and ringing (section 5).

136. It is already an offence to knowingly cause or permit interference with a badger sett (section 3(2) of the 1992 Act). Section 27(2) to (5) creates new offences of knowingly causing or permitting any of the other offences in the 1992 Act, except the offence of wilfully remaining on land or refusing to give a full name or address under section 1(5) of the 1992 Act.

Licences

137. Under the 1992 Act as originally enacted, licensing functions were split between SNH and Scottish Ministers based on the reason for granting the licence. Subsection (6) amends section 10 of the 1992 Act to provide that the Scottish Ministers are the licensing authority (“the appropriate authority”) with power to grant a licence for any of the listed reasons, except where they delegate licensing functions to SNH or a local authority as set out below. Before granting a licence, the Scottish Ministers are required to consult SNH.

138. Subsection (7) inserts a new section 10A into the 1992 Act. This section allows Scottish Ministers to delegate their licensing functions to SNH by written direction, or to a local authority by order following consultation with the local authority, SNH and anyone else affected by the making of the order. If a local authority has been delegated licensing functions, they must consult SNH before granting or modifying a licence.
Attempts to kill, injure or take badgers

139. Subsection (8) amends section 11A(3) of the 1992 Act. This section creates a presumption that a person was attempting to do kill injure or take a badger where there is evidence from which it can be reasonably concluded that this is what they were attempting to do. The amendment applies the presumption to the new offence of knowingly causing or permitting the killing, injuring or taking of a badger.

Penalties

140. Under section 12(1A) of the 1992 Act, certain offences can be prosecuted either on indictment or summarily. These offences are primarily those related to badger digging and baiting and include the offences of causing a dog to enter a sett and selling a live badger. These offences are “relevant offences” within the meaning of sections 45(6) and 47(6) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, which means that the maximum penalties on summary conviction are a 12 month sentence of imprisonment and/or a fine of the statutory maximum (which is set under section 225(8) of the Criminal Procedure (Scotland) Act 1995 and is currently £10,000). The maximum penalty for conviction on indictment is a 3 year sentence of imprisonment and/or an unlimited fine. Offences covered by section 12(1) of the 1992 Act can only be prosecuted summarily. The maximum penalties for these offences range from a fine of level 3 on the standard scale (for offences under section 1(5) of the 1992 Act) to a level 5 fine (currently set at £5,000 by section 225(2) of the Criminal Procedure (Scotland) Act 1995) and/or a six month sentence of imprisonment (for the offence of killing a badger as well as for most other offences under the 1992 Act).

141. Subsection (9) amends section 12 of the 1992 Act to extend the list of offences which can be prosecuted either on indictment or summarily. The effect is to allow the offences of illegally killing, injuring or taking a badger, possessing all or part of a dead badger, knowingly permitting or causing these offences, knowingly permitting or causing cruelty to a badger and knowingly permitting or causing the sale or possession of a live badger to be prosecuted summarily or on indictment.

142. Subsection (9) also amends section 12 of the 1992 Act to state that the maximum penalties for summary conviction for offences which can be tried either summarily or on indictment are a 12 month sentence of imprisonment and/or a fine of the statutory maximum. The effect is to ensure that the new offences which can be tried either way will be subject to the same penalties as the existing either way offences under the 1992 Act.

Time Limits

143. Subsection (10) extends the application of the time limits prescribed in the 1992 Act for bringing summary proceedings to cover all of the offences in the 1992 Act. The effect is that summary proceedings for any offence under the 1992 Act must be brought within 6 months of the date on which the prosecutor has sufficient evidence to initiate proceedings. In addition summary proceedings cannot be brought more than 3 years after the commission of the offence or, where the offence is an ongoing one, more than 3 years after the last date on which the offence was committed.
Powers of court where dog used or present at commission of offence

144. Subsection (11) makes a consequential amendment to section 13 of the 1992 Act to include the new offence of knowingly causing or permitting someone to unlawfully kill, injure or take a badger. This means that a court can disqualify a person found guilty of this offence from having custody of a dog.

Section 28 - Muirburn

Muirburn Season

145. Section 28 amends the Hill Farming Act 1946. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland.

146. Subsection (2) replaces section 23 of the 1946 Act which deals with the permitted times for making muirburn. The substituted section 23 establishes a positive muirburn season, consisting of a “standard muirburn season” (1 October until 15 April) and “extended muirburn season” (16 April until 30 April) (see section 23(2) to (4)). Muirburn may only be made during the extended muirburn season with the proprietor’s permission (section 23(5)).

147. The new section 23 removes the ability to make muirburn between 1 and 15 May on land situated more than 450 metres above sea level which had previously been possible with the proprietor’s permission. Under the new section 23, the last date of the “extended muirburn season” at all altitudes is 30 April.

148. The new section 23 also removes a power for Scottish Ministers to make limited extensions to the muirburn season in the spring by direction. This is replaced by an extension to the order making power in section 23A of the 1946 Act.

149. Subsection (3) amends section 23A of the 1946 Act, which was inserted by section 58 of the Climate Change (Scotland) Act 2009. Subsection (3)(b) and (c) extends the purposes for which the muirburn season may be varied (to include conserving, restoring, enhancing or managing the natural environment, or for public safety) and allows the dates to be varied on a geographical or phased basis. Subsection (3)(a) and (d) make changes to section 23A in consequence of the changes to section 23 of the 1946 Act, which sets the dates of the muirburn season.

Muirburn Licences

150. Subsection (4) inserts a new section 23B into the 1946 Act. This allows Scottish Ministers to license out of season muirburn for the purposes of conserving, restoring, enhancing or managing the natural environment, for research or for public safety. Muirburn licences may be granted subject to conditions. Scottish Ministers may delegate this licensing power to SNH. Inserted section 23B(11) enables Scottish Ministers to make further provision in regulations about muirburn licences. Such regulations are subject to negative procedure in the Scottish Parliament.
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

Muirburn Offences

151. Subsection (5)(a) amends section 25 of the 1946 Act to create an offence of making muirburn outwith the muirburn season and otherwise than in accordance with a muirburn licence. This replaces the offence under the previous version of section 23(4) of the 1946 Act and is consequential on the changes to section 23 and the insertion of section 23B.

Notifications in relation to muirburn

152. Subsection (6) amends section 26 of the 1946 Act to set new notification requirements in relation to muirburn. Subsection (7) inserts a new section 26A regarding the permitted methods for giving muirburn notices. Subsection (5)(b) repeals the previous notification requirements set under section 25(c) of the 1946 Act.

153. Under the amended section 26 of the 1946 Act it is an offence to make muirburn without having provided the proprietor of the land, and the occupiers of land within 1 km of the proposed muirburn site, with written notification of the intention to burn during that muirburn season (see section 26(1), (2) and (10). Notice does not require to be given to those who have indicated in writing that they do not wish to be notified (section 26(3)).

154. Amended section 26(4) to (7) makes provision about timescales, content and permitted methods of notification. Notice of intention to burn must be given after the end of the previous muirburn season, and at least 7 days before burning (section 26(5)(a)). It must indicate the places where burning is planned and specify that further information about the intended dates, location and approximate extent of burns may be requested (section 26(5)(b) and (c)). When such a request is made, the person intending to make the muirburn must make reasonable efforts to comply with this request not later than the day before the muirburn is made (section 26(7)). Where there are 10 or more occupiers within 1km of the proposed muirburn site, notification may alternatively be made by placing a notice in a local newspaper (section 26(4)).

155. Inserted section 26A of the 1946 Act specifies the permitted methods for giving muirburn notices. In addition to delivering (section 26A(1)(a)), leaving or posting (section 26A(1)(b) and (c)) written messages, it permits the use of electronic communications (including email, text message and fax) where the person to be notified has agreed to be notified in that way (section 26A(1)(d)). Notices given by electronic communications are deemed to have been received 48 hours after they are sent (section 26A(3)). Where it is not possible to ascertain the identity of an occupier who requires to be notified, fixing a notice to a conspicuous object on their land is a permitted form of notification (section 26A(2)).

PART 5 – SITES OF SPECIAL SCIENTIFIC INTEREST

Section 29 - Combining SSSIs

156. Section 29 inserts new section 5A into the 2004 Act which provides for the combination of SSSIs. Subsections (1) to (4) provide procedure relating to the notification and advertisement of combined SSSIs and the revision of the management statement for the combined site. From
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

the date of notification of the combined SSSI, the component SSSI notifications cease to have effect under subsection (3)(c). Subsection (5) clarifies that SNH may not include any land in the new combined site which was not already part of one of the component sites and may not add a new operation requiring consent as a result of this procedure.

Section 30– Denotification of SSSIs; damage caused by authorised operations

157. Section 30 inserts provision into section 9 of the 2004 Act for the streamlining of denotification of SSSIs in certain circumstances, i.e. when all or any part of an SSSI is no longer of special interest due to damage to, or destruction of, a natural feature when that damage or destruction is a consequence of an authorised operation and when the public body or office holder has already consulted SNH before permitting the operation.

Section 31 – SSSIs: Operations Requiring Consent

158. Section 31 amends sections 13 and 14 of the 2004 Act such that existing provision relating to operations carried out by public bodies is also applied to operations which are caused or permitted by public bodies (when such operations occur on land which is owned or occupied by the public body).

159. Subsections (3)(a)(i) and (4)(a)(i) amend sections 14 and 17 of the 2004 Act such that SNH consent is not required when an operation is in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996. Subsections (3)(a)(iii) and 4(a)(iii) insert new paragraphs into section 14(1) and 17(1) such that SNH consent is not required for operations which are specified in an order made by the Scottish Ministers.

Section 32 – SSSI Offences: civil enforcement

160. Section 32 inserts a new section 20A into the 2004 Act which provides for the giving of restoration notices. Such notices may be given by SNH. The procedure has a preliminary step covered by subsections (1) and (3). Subsection (1) allows SNH to propose to give a restoration notice to the responsible person if it is satisfied that that person has committed an offence under section 19(1) or 19(3) of the 2004 Act. Subsection (3) specifies how the proposal is to be made (i.e. it must explain why SNH proposes to give the restoration notice, be accompanied by a draft of the proposed restoration notice, explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question, explain that the responsible person has the right to make representations to SNH within 28 days from the date on which the proposal was made and specify the manner in which such representations are to be made).

161. Subsection (2) explains what is meant by the term “restoration notice”. Subsection (4) enables SNH to give a restoration notice after the period for making representations (28 days) has expired. Subsection (5) gives effect to a restoration notice only if the responsible person gives SNH notice of intention to comply with it within 28 days of the notice being given. Subsection (6) allows SNH to extend the period for operations to be carried under the notice or otherwise modify the notice as SNH considers appropriate. Subsection (7) clarifies that SNH may only modify the notice under (6)(b) where the responsible person has consented to such a
modification. Subsection (8) allows SNH to withdraw a restoration notice should it become satisfied that the restoration notice should not have been given to the responsible person. Subsection (9) requires SNH to compensate the responsible person for any expenses reasonably incurred in complying with a notice which is withdrawn. Subsection (10) prevents proceedings being commenced or continued for an offence in relation to which a restoration notice has effect even if the notice is subsequently withdrawn.

162. Section 20A(11) provides that failing to comply with a restoration notice will itself be an offence. In the event of the requirements of a restoration notice not being carried out, subsection (12) allows SNH to carry out the operations and recover costs from the responsible person.

163. Section 32 also amends sections 14(1) and 17(1) of the 2004 Act such that SNH consent is not required for operations carried out by public bodies or owner occupiers when such operations are in accordance with the requirements of a restoration notice. Section 44(1) of the 2004 Act is amended so as to grant a new power of entry to SNH for the purposes of it ascertaining whether an operation as required by a restoration notice has been carried out in accordance with the notice. Section 32(2) makes consequential amendments of the Criminal Procedure (Scotland) Act 1995.

FINANCIAL MEMORANDUM

INTRODUCTION

Background

164. This document sets out the financial implications of the Wildlife and Natural Environment (Scotland) Bill. It should be read in conjunction with the Policy Memorandum and the Bill itself. The Policy Memorandum explains in detail the policy intentions of the Bill.

165. The main aim of the Wildlife and Natural Environment (Scotland) Bill is to deliver a package of measures to ensure wildlife and natural environment legislation is fit for purpose. The Bill modernises outdated statute, addresses anomalies and recognised weaknesses in existing legislative provision and implements new policy objectives. Overall the Bill builds on and modifies existing legislation and established structures.

166. A key driver for the Bill is to ensure that existing resources are deployed as efficiently and effectively as possible, with the intended result that improvements in the legal framework for wildlife and the natural environment will be achieved within the same financial parameters. The Scottish Government aims to support sustainable economic activity by ensuring wildlife and natural environment legislation is efficient, effective and proportionate. The Bill is intended to support this objective.
Summary of the Financial Memorandum

167. The Financial Memorandum sets out the Scottish Government’s expectations of the financial consequences of the substantive parts of the Bill. This information is provided for each policy area and produced in a summary table at the end of this document.

168. The Bill is not intended to give rise to any significant financial consequences for the Scottish Administration, local authorities or other bodies, individuals and businesses. The financial implications are expected to be marginal, consistent with the Scottish Government’s aim of improving the effective operation of existing structures and processes. Limited recurring costs are expected to arise in relation to the administration of licensing systems. Non-recurring costs may arise where discretionary powers are exercised, such as in relation to ensuring effective collaboration between landowners in relation to deer management. Other non-recurring costs such as snare operators undertaking training, and being issued with identification numbers will arise. Where appropriate these recurring and non-recurring costs are identified and costed.

169. It is important to note that the legislative provisions in the Bill are also expected to have positive long-term financial benefits both to the public purse and to private individuals. This is demonstrated most clearly in the case of invasive and non-native species (INNS). The new legislative provisions are designed to stop the release of non-native species. Non-native species that have previously been released and are established, can cost a significant amount to address.

Consultation

170. In June 2009 the Scottish Government published a consultation document to obtain views on potential reform to a number of areas of wildlife and natural environment legislation. This consultation has informed the development of the Bill. 456 responses were received to the consultation from both individuals and organisations.

171. Where relevant, this Financial Memorandum identifies areas where there was a significant response from consultation respondents on the financial implications of the provisions.

172. A Liaison Group consisting of representatives from public bodies (Convention of Scottish Local Authorities, Deer Commission for Scotland, Forestry Commission Scotland, Scottish Environment Protection Agency, Scottish Natural Heritage) and the Scottish Government has met on several occasions to ensure that public bodies were involved in the development of the Bill and the Bill’s financial consequences.

Structure of the Bill

173. A summary of the main provisions of the Bill is set out below:

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1 Analysis of Responses to the Consultation on the Wildlife and Natural Environment Bill, Envirocentre Ltd and CAG Consultants, February 2010 - Available at http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/WildNatEnvBill/Analysis.
• **Game law** – Repeal of outdated licensing systems, and the modernisation of ancient poaching statute.

• **Areas of Special Protection (ASP)** – Repeal of ASPs, defunct due to more recent legislation.

• **Snaring** – Implementation of Ministerial commitments on snaring by creating a training requirement for those who wish to set snares and the fitting of ID tags to all snares.

• **Invasive and non-native species** – Creation of a clearer ‘no release’ presumption for non-native species, and the creation of new powers to enable effective control and eradication of species problems where they arise.

• **Species licensing** – Flexibility to place the administration of species licences with the public body best placed to carry out the function, and providing for circumstances in which UK protected species can be disturbed for social, economic or environmental purposes (EU protected species can already be disturbed for such purposes).

• **Deer** – Modernisation of the Deer (Scotland) Act 1996, in particular through the creation of a statutory Code of Practice for deer management.

• **Badgers** – Minor changes to badger offence provisions and flexibility to transfer the administration of badgers licences to the public bodies best placed to carry out the function.

• **Muirburn** – Increased flexibility (e.g. out of season licensing) in how muirburn can be carried out.

• **SSSIs/ASPs** – Technical changes to improve the operation of SSSI legislation and the repeal of defunct Areas of Special Protection legislation.

**GAME LAW**

**Background**

174. The Bill proposes to repeal game-shooting and game-dealing licensing systems which are considered redundant, and which have been repealed in England and Wales. The Bill also proposes to replace outdated game-poaching legislation (which deals with offences and penalty and enforcement provisions relating to the illegal taking of game birds and ground game).

*Game-licensing*

175. Anyone wishing to hunt game must obtain a licence before doing so. Anyone wishing to deal in game must take out two licences before doing so. The licensing systems are established under the Game Licences Act 1860 and the Game Act 1831. Compliance rates are believed to be low, and the licences are considered to serve little useful purpose. The Bill therefore proposes that they be repealed. It is also proposed that the current restriction on when game can be sold is removed.

*Game-poaching*

176. Game-poaching legislation also dates to the 18th and 19th centuries. The legislation is widely recognised as being outmoded, difficult to understand and containing anomalous provision. The Bill therefore proposes to restate the main elements of poaching legislation
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

(offence, penalty and enforcement provisions) in modern form. Accordingly, the modernisation would not create new financial burdens and none are recorded in this Financial Memorandum.

Costs to the Scottish Administration

177. The Scottish Government does not currently bear any direct costs relating to the administration of the game-licensing systems. Repeal of the licensing systems would not create any new burden on the Scottish Administration.

Costs to local authorities

178. Revenues from the game-licensing systems currently accrue to individual local authorities according to where the licences were purchased.

179. The costs of hunting-licences are very low, ranging from £2 to £6. Accordingly the amount of money generated by the hunting licences is modest and in the last period figures were collated (for 2005/06) amounted to £13,306 across Scotland.

180. Current legislation requires game-dealers to obtain two licences – a local authority licence and an excise licence. The cost of the local authority licence is set by individual local authorities and varies between £4 and £125. The excise licence is set at £4. Again, the amount of revenue generated by these licences is modest. It is not possible to obtain accurate information on how much revenue is created by the local authority licence but it appears that on average individual Scottish local authorities receive less than £600 annually from the local authority licence and the excise licence. This figure is a composite of the average income from the two licences.

181. Repeal of the licensing systems would result in the loss of this marginal revenue flow to local authorities. The amount of money generated by licences does not take into account the administration costs to the local authority in issuing the licences. Therefore although the loss of income from licences is shown as the cost to local authorities, this is the maximum sum lost, and if administration costs were taken into account this would result in a saving.

Costs on other bodies, individuals and business

182. The costs of hunting-licences and dealing-licences fall to individual hunters and game-dealers. Repeal of the licensing systems would mean that the sums noted above would no longer have to be paid by these individuals and organisations. No new financial burden would fall on these individuals and organisations as a result of the repeal of these systems.

183. Hunting licences and excise licences are currently issued by the Post Office, with income defrayed on to the relevant local authority. The British Association for Shooting and Conservation (BASC) currently offers a service whereby for a nominal fee of £1 it will obtain and send a game licence to stalkers. BASC are supportive of removing the licensing requirements.
Summary of Benefits and Costs

184. The repeal of the game-licensing systems will remove a layer of redundant regulation. It will result in around £30,000 savings per year to the game sector, with a corresponding loss in revenue for local authorities.

185. The £30,000 figure is a composite of the £13,306 generated by hunting licences and £600 x 32 local authorities generated by local authority and excise licences. The total is shown as circa £30,000 (rather than £32,506) as it appears that individual authorities receive less than £600 annually so it is a best estimate.

186. The consultation conducted on the Bill did not reveal any resistance from stakeholders or local authorities to this proposed change on financial grounds.

AREAS OF SPECIAL PROTECTION (ASP)

187. The Bill repeals the legislation establishing ASP. ASPs are considered defunct as the 1981 Act and other measures provide the appropriate protection for wild birds.

188. There are no cost implications for the Scottish Administration, local authorities, bodies, individuals or businesses.

SNARING

Background

189. Following a public consultation in November 2007, the then Minister for Environment, Michael Russell MSP, announced a package of measures to the Scottish Parliament in March 2008 to deliver the recommendations that were largely based on the findings of the Report of the Independent Working Group on Snares (James Kirkwood et al., 2005) commissioned by DEFRA.

190. The Bill will require all snares to be filled with identification tags which show an identification number and whether the snare is intended to catch foxes or rabbits/brown hares. An identification number will be obtained from the police, and the police must be satisfied that a person has been trained before issuing an identification number. It is estimated that a one-off training course will cost the operator approximately £40-45.

191. While each snare must carry a tag, it is not necessary for each snare to be uniquely identified i.e. all that is required is the snare operator’s identification number and information to show whether the snare is intended to catch foxes or rabbits/brown hares. The type of tag is not specified except that the tag and the identification marking should be weatherproof and reasonably resistant to tampering or unauthorised removal. The cost of fitting an identification tag to each snare is small and estimated at no more than £0.05p per tag.
Costs to the Scottish Administration

192. There will be no costs to the Scottish Administration resulting from these legislative changes.

Costs to local authorities

193. There will be no costs to local authorities resulting from these legislative changes.

Costs to other bodies, individuals and business

194. All snaring operators will be required to undertake a snaring training course which is expected to cost approximately £40-45 per person. It is estimated that around 3000-5000 individuals will require to undertake the training. It is estimate that an additional 100 new operators per year will require to undergo training.

195. It is estimated that the initial cost to the Police of issuing identification numbers will be £12,750-£21,250 with a recurring cost of £425 per year thereafter to account for additional operators. This equates to an average cost of £1,594-£2,656 per police force in the first year followed by £53 for each year thereafter.

Benefits

196. These provisions will make training compulsory for snaring operators (voluntary training is currently undertaken by some operators). This will result in a non-recurring cost for each operator. This is estimated to be a total non-recurring cost of £120,000-£225,000 for the sector. The ongoing costs to the sector (based on 100 new operators per year) is £4,000-£4,500 per year. The issue of an identification number to operators by the police will result in a non-recurring cost to the police of £12,750-£21,250 with a cost of £425 per year thereafter.

197. This system of training of operators and identification of the operator of a snare (by the identification number) will result in increased certainty for the police in identifying the responsible person for each snare set in their operational area.

INVASIVE AND NON-NATIVE SPECIES

Background

198. The Bill sets out provisions designed to strengthen legislative mechanisms relating to invasive and non-native species, including:

- preventing the introduction and spread of non-native animals and plants
- introducing provisions relating to the keeping and notification of specified invasive animals and plants
- ensuring effective control and eradication measures can be carried out when problem situations arise
Benefits

199. Invasive and non-native species impact across a broad range of areas including biodiversity, agriculture, forestry, aquaculture, the development industry, transport, utilities, and recreation; resulting in significant costs to individuals, business and government.

200. Preventing the release of all non-native species (both known invasive or otherwise) should be given the highest priority as the most effective and least environmentally damaging intervention. Once a species has become widely established, full-scale eradication is possible or cost effective in only a minority of cases and they can have significant impacts on biodiversity and the economy. For example, Japanese knotweed, which is one of the best known invasive non-native species, has been established for a considerable time (it was first introduced early in the 19th century) and its financial impacts are known to be significant. The plant is thought to have economic costs of approximately £18 million a year in Scotland, made up of control costs for a variety of sectors including local authorities, individual householders, and the road and rail network, with the majority of costs falling to developers controlling Japanese knotweed on development sites. The Bill aims to ensure that cost currently association with invasive non-native species such as Japanese knotweed are not replicated in the future by emphasising the importance of prevention.

201. The provisions set out in the Bill also aim to facilitate eradication (where appropriate) of invasive non-native species at an early stage. As eradication costs generally increase exponentially as establishment continues, if a decision is taken to remove or eradicate the species from the environment at an early stage (a decision that will be based on a number of factors including cost, feasibility, and acceptability), it is generally much more cost effective than long-term control or late-stage eradication.

Prevention – Release, Keeping and Notification

202. Preventing the introduction and establishment of non-native species is a primary objective to avoid long term costs and environmental damage.

203. New release provisions will prevent the release of all plants and animals outside their native range. Appropriate flexibility will be maintained by creating a list of general and licensable exemptions, so that people can continue to carry out legitimate activities (e.g. game bird releases).

204. Regulating the keeping of high-risk invasive species can reduce the risk of escape or protect particularly sensitive or vulnerable habitats or species. The Bill provides for Scottish Ministers to prohibit by order the keeping of a particular type of invasive animal or plant or. The powers are not expected to be used widely, will be subject to consultation, and where appropriate keeping of a banned species could be permitted under licence. Keeping orders for Chinese muntjac deer, and all deer (excluding red deer) on the refugia islands have already been consulted on. Costs will be driven by the numbers of people who wish to keep identified high-risk species (if keeping is allowed under licence and not prohibited).
205. The Bill also provides a power for Scottish Ministers to list by order species that are required to be notified by specified persons. As with the keeping provisions they are not expected to be used widely and only for high-risk invasive non-native species.

206. The Bill provides a discretionary power for Scottish Ministers to make compensation to a person who may no longer keep the specified animal or plant. This is similar to a power provided in section 7 of the Destructive Imported Animals Act 1932 (which would be repealed by the Bill) although that Act only covers mammalian species. The new provision only applies where people are banned from keeping a specified species, in most cases it is expected that keeping would be permitted under licence. The recent orders that were consulted on (e.g. muntjac) proposed that keeping would be permitted under licence. If a new species was proposed for listing by order, consultation would be required which would set out the proposals including whether the plant or animal was to be prohibited absolutely from keeping and if so, whether compensation was to be provided.

Costs to the Scottish Administration

207. These provisions will be supported by enhanced guidance that will be developed by the Scottish Government with assistance from SNH and the Scottish Working Group on Non-Native Species. The administration involved will be covered from within existing resources.

208. The administration and inspection involved in the keeping orders outlined above (that were consulted on in the Bill Consultation) will be covered from within existing resources.

Costs to local authorities

209. The amended no release provisions and notification provisions will not result in any new costs to local authorities.

Costs to other bodies, individuals and business

210. Release provisions will not result in any new costs for private individuals, landowners or businesses as they do not provide new offences but rather clarify and improve existing provisions. The release of plants and animals to be exempted from the no-release presumption will be set out. This will ensure that current low-risk activities can continue to take place.

211. Where an individual wishes to keep an identified high-risk species they will need to comply with any necessary conditions. None may be required if the animal is being kept securely but if the enclosure is unsuitable then improvements will be need to be undertaken. Assuming that one keeping order is made each year, that this is for an animal that is not widely kept (e.g. by 1-10 individuals), and that it is appropriate to permit keeping under licence, and that lawful keeping requires individuals to improve enclosures at an average cost of £500, it can be estimated to range between £500 - £5,000.

212. The new notification provisions will not result in any costs to other bodies, individuals and business.
213. The Bill introduces a new regime of control orders that will enable relevant bodies (Scottish Ministers, SNH, the Scottish Environment Protection Agency (SEPA) and the Forestry Commissioners (FCS)) to make species control orders which enable or require control or eradication on measures where an invasive non-native species is present. These powers are not expected to be used widely, and voluntary measures should be attempted first whenever possible. Examples of where it might be appropriate to make an order include where a voluntary arrangement has failed, a high risk invasive non-native species has been detected which is not widespread, or where a strategic control plan for an invasive non-native species is in place and a population is detected that is a threat to that plan.

214. The relevant body will be able to provide for the payment of costs in an order. It is expected that the power to recover or impose costs on the owners or occupiers of premises will be exercised fairly and proportionately, applying the “polluter pays” principle.

Costs to the Scottish Administration

215. The new control provisions in the Bill will enable relevant bodies to target their budgets more effectively (the Scottish Administration is already involved in projects to address invasive non-native species) and to take action in situations which current legislation does not provide for.

216. The new control provisions will also enable action via control orders to be undertaken where a voluntary control agreement has been refused or has not been complied with, where it is not possible to ascertain who the occupier or owner is, and where the situation is an emergency.

217. Development of these orders will involve the administrative task of site visits, meetings and drawing up and issuing the document (estimated to be the equivalent of approximately 1-4 days of staff time at B2 grade). Some situations may require a risk assessment. It is anticipated that the cost of making an order will be between £200-£1,000 per order.

218. Where there is no polluter to recover costs from, the relevant body may incur control costs themselves. It should be reiterated that control order will be appropriate where a high-risk species has been detected which is not widespread e.g. where early intervention will save long-term costs) or where a strategic control plan is in place. Relevant bodies already fund control of invasive non-native species and future control costs will be met from that same existing resource, as it is presently. These new provisions will ensure that existing budgets can be targeted more effectively. SNH currently fund control of invasive non-native species through the Species Action Framework as well as funding control of other species. Estimates for control costs have been provided for private individuals, below, and provide the relevant costs if the Scottish Administration decided to take on this work at their cost.

Costs to local authorities

219. Local authorities already control certain invasive non-native species on their land. The new control provisions in the Bill will help to ensure that their existing budgets can be targeted
more effectively, so that for example where a strategic control plan is in place there is less risk of local authority owned or controlled premises being re-infested from adjoining land.

220. It is expected that local authorities would be more likely to enter into a voluntary control agreement with a relevant body if there was a particular species issue. However it would be possible for them to be issued with a control order. As it is unlikely that they would be considered to be the “polluter” (i.e. the one responsible for the species becoming established), it is not expected that they would routinely pay for control costs under compulsory measures. In addition, early action could be viewed in some cases as a long term cost saving.

Costs to other bodies, individuals and business

221. Some individuals already incur control costs for invasive non-native species. In some cases, the Scottish Government provides funding for control costs (in whole or in part) to landowners under the Scottish Rural Development Programme (SRDP) for the control of 5 invasive non-native species.

222. Private control costs can be wasted if the individual is not part of a strategic plan and land is able to become re-infested from land locally. These new control provisions will allow work to be targeted more effectively thereby reducing long-term costs.

223. If individuals do not enter into a voluntary control agreement to deal with a problem, it is possible they may be issued with a control order. If the individual is considered to be the “polluter” then it is expected that the relevant body will either require the individual to carry out the control work according to a management plan, or recoup the costs of carrying out the control work themselves.

224. Costs of carrying out a control order will be dependent on the species involved, their distribution and habitat occupied (e.g. aquatic environment tends to incur higher costs). Because of this there are some example control estimates provided below for different types of species. Costs will depend on the number of animals or plants involved, the habitat they need to be removed from, the degree of establishment and the longer it is before a relevant body is informed of the situation. It is estimated that between 3 and 5 control orders will be made each year across a range of different species types. Using the example costings provided below, if during one year species orders were made for the following:

- one escape of 4 large mammals (costing £450),
- one control order for 5 hectares of woody evergreen shrub (costing £2085),
- two control orders for an herbaceous perennial (one of 50 square metres costing £249; one of 100 square meters costing £498), and
- one control order for the treatment of fish within a large pond (costing £40,000), then total costs could range from £1,146 to £43,531.
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

<table>
<thead>
<tr>
<th>Species Type</th>
<th>Example species and scenarios</th>
<th>Costs (note that units are not consistent across species due to the differences in control action)</th>
</tr>
</thead>
</table>
| **Herbaceous perennial**
(e.g. Japanese knotweed) | Spraying costs are estimated at £1.66 per square metre. However, follow up control would be likely to be needed. | £4.98 per square meter. (Assuming 3 years spraying is necessary) |
| **Woody evergreen shrub**
(e.g. Rhododendron ponticum) | | £417 per hectare |
| **Aquatic plant**
(e.g. floating pennywort) | | £2 per metre |
| **Fish**
(e.g. Topmouth gudgeon) | Costs are taken for control undertaken by Environment Agency in 2006 of topmouth gudgeon in small lake. Equipment and logistics was estimated at approx £20,000 and manpower at approx £20,000 | £40K small <1ha lake |
| **Mammal**
(e.g. grey squirrel) | Control of grey squirrel in woodland. | £15 per hectare |
| **Medium mammal**
(e.g. muntjac deer) | A small release of up to 5 animals are likely to be contained within 2-3 days | £450 for up to 5 animals |

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*a From Shaw RH, Child LE, Evans HC, Bailey JP (2001). The Biological Control Programme for Japanese Knotweed (Fallopia japonica) in the UK and USA.


*c Combined estimated costs from Environment Agency, British Waterways and CEH


*e From Forestry Commission costs and CABI questionnaire (unpublished)

*f Estimated by Deer Commission for Scotland
Benefits

225. As mentioned above the Bill is intended to have long term positive benefits on the cost of controlling invasive non-native species with an increased focus on prevention.

SPECIES LICENSING

Background

226. The Bill will return all protected species licensing functions under the 1981 Act to Scottish Ministers and provide them with the flexibility to delegate these to SNH or local authorities as appropriate. It is envisaged that there are in practice 3 options relating to the administration of these licensing functions:

- Option 1 - the status quo where the Scottish Government and SNH continue to carry out their licensing functions;
- Option 2 - all licensing functions being transferred to SNH; and
- Option 3 - Scottish Government and SNH continuing to deal with all licence applications except those where planning consent is involved. In those cases, the species licensing would be carried out by the local authority in conjunction with the planning application.

227. The Bill provides for an additional licensable reason. A licence may be issued for conduct affecting the species of animals and plants protected by the 1981 Act to be licensed for social, economic or environmental purposes provided that this will contribute to a significant social, economic or environmental benefit, and there is no other satisfactory solution. This is a new provision and as such it is not possible to directly attribute costs to it. However on the basis of current information there have only been 2 cases where an application could have been made in these circumstances in the last few years.

228. The Bill also removes some species from Schedule 6 of the 1981 Act and is purely streamlining exercise with no cost implications.

Costs to the Scottish Administration

229. There are currently 4 staff employed by Scottish Government to carry out licensing work with a combined annual cost of £109,769 (1xB2, 2xB1, 1xA3). Under Option 1, this would remain unchanged. Under Option 2, this would be saved by Scottish Government but, a similar cost would be incurred by SNH. Under Option 3, roughly 25% of cases based on 2008 figures, the last full year available, there would be a saving in staff costs of £29,370 (explained further below).

Costs to local authorities

230. Options 1 & 2, present no change to local authorities. Based on 2008 figures, Option 3, would equate to 89 cases involving planning consent. These would be spread across 32 local authorities. 89 cases equates to one Scottish Government staff member and dividing the annual salary costs by the number of cases, the cost per case is under £330 pounds. This results in a total
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

cost to local authorities of a maximum of £29,370. The cost to each local authority would therefore be in the range of £0 (where there have been no applications) to £8,250 (Dumfries and Galloway received 25 applications in 2008 – the maximum number). However, local authorities should already be taking legal licence conditions into account when issuing planning consents. The estimation of £29,370 does not take this into account. Therefore it is expected that while £29,370 is estimated as a maximum cost, the financial burden will not be as great as this and any additional costs to local authorities will be in relation to additional administration rather than decision making.

Costs to other bodies, individuals and business

231. Only the destination of the application forms might change so there are no additional costs for the applicant.

Benefits

232. Overall the transfer of licensing functions are expected to be cost neutral.

DEER

Background

233. The Bill proposes changes to deer management, provides an enabling power to permit Ministers to introduce a competence requirement for deer stalking and makes certain changes to exemptions (which allow occupiers to shoot deer during close seasons).

Collaborative Deer Management

234. The Bill will provide for a new Code of Practice to provide guidance on and practical examples of sustainable deer management. The code will clarify how existing statutory powers of intervention will be used to secure the public interest, with a specific duty on public bodies to have regard to advice given to them by SNH (which will take over the functions of the Deer Commission for Scotland on the commencement of section 1 of the Public Sector Reform (Scotland) Act 2010). Deer management will continue to be done on a voluntary basis only, but a greater role is envisaged for Deer Panels as a method of bringing interested parties together to work to find a solution for a local deer management problem. Existing SNH powers of intervention will be refined to allow them to be used more effectively, and in wider circumstances, so as to render the legislation fit for purpose as new deer management issues emerge in the future.

Competence

235. The Bill will provide an enabling power allowing Ministers to introduce a competence requirement for deer stalkers, intended to assure deer welfare and public confidence (the current cost of training in this area ranges from £80 to £280 depending on the nature of the course). The power will not be exercised immediately and the intention is to permit the industry a number of years to continue to raise standards via voluntary initiatives. If Ministers do not exercise this
power there will be a review in 2014. Therefore, no additional costs or burdens are being imposed at this time.

Consequential measures

236. Currently, occupiers are permitted to shoot deer in close season without requiring DCS authorisation, where the deer are causing damage to crops or enclosed forestry. This has led to concern for deer welfare. The Bill proposes that the exemptions be controlled by a system of general authorisation to allow occupiers to shoot during close seasons for certain purposes (protecting crops, pasture or enclosed woodland) provided that they comply with certain conditions. Conditions are likely to include requirements to provide certain information to SNH e.g. cull returns, contact details and restrictions on when deer can be shot (so the authorisation would not cover female deer at times of greatest welfare concern).

Costs to the Scottish Administration

Collaborative Deer Management

237. DCS estimate that costs can be met within existing resources. Implementation of the Code of Practice will be done on the ground with the support of the deer officers and the collaborative deer management officer. The deer management powers are not new powers but a refocusing of existing powers and hence would not require additional resources.

Consequential measures

238. It is intended that the process for occupiers obtaining authorisation is straightforward. As such any costs associated with this will be met within existing resources building on the systems and procedures already in place within SNH.

Costs to local authorities

Collaborative Deer Management

239. DCS do not consider that introducing a new duty on public bodies to have regard to advice and guidance issued in relation to deer management would impact significantly on local authorities. Overall, the new duty that has been proposed is not intended, or expected, to give rise to significant additional expenditure. Expectations in relation to deer management will be set out in a code of practice. Local authorities will be consulted on the development of this code.

240. There will be no additional cost to local authorities in areas where they do not own land, where deer control is not needed, or where they are already considering deer management as part of their wider duties. Where there are new costs involved in meeting the duty, these are likely to be modest and would mostly utilise existing council officers in developing and administering deer control contracts where required. In some circumstances individual deer controllers may be willing to pay for the opportunity to carry out deer management on behalf of a council which would help to offset other costs. In many circumstances local authorities who currently undertake deer management would have no difficulty or increased costs in relation to discharging this duty. Several local authorities are already engaged with DCS and other partners in terms of planning, raising awareness and the active management of deer.
Consequential measures

241. The Scottish Government does not consider that any costs are likely to arise to local authorities as the result of consequential measures.

Costs to other bodies, individuals and business

Consequential measures

242. Individuals such as farmers and foresters would have to familiarise themselves with licence conditions/apply to SNH for authorisation before exercising occupiers’ rights to shoot deer in order to protect agricultural production or forestry. However, no fee would be charged for this.

Benefits

Collaborative Deer Management

243. This will provide positive environmental, economic and social benefits from better deer management – securing condition of designated sites and make better use of resources already invested in deer management.

BADGERS

Background

244. The Scottish Government considers that the Protection of Badgers Act 1992 (“the 1992 Act”) Act provides an effective legislative framework for the protection of badgers. However, there are two specific anomalies which are addressed in the Bill.

245. The Bill extends section 1, 2, 4 and 5 of the 1992 Act so that it is an offence for a person to knowingly cause or permit any of the offences to which those sections relate. These provisions have no cost implications and none are recorded in this financial memorandum.

246. The Bill also amends the 1992 Act so that offences committed under sections 1(1) and (3) of that Act, relating to the taking, injuring or killing of badgers and the possession of dead badgers are included within the category of offences that may be tried by summary procedure or indictment. These provisions have no cost implications and none are recorded in this financial memorandum.

247. The Bill also amends section 10 of the 1992 Act to transfer licensing functions in relation to badgers in the same way as it transfers licensing functions in relation to species protected under the 1981 Act (see above). The cost implications of this provision are noted below. The Bill will return all protected species licensing functions to Scottish Ministers and provide them with the flexibility to delegate these as appropriate. It is envisaged that there are in practice 3 options relating to the administration of these licensing functions:
Option 1 - the status quo where Scottish Government and SNH continue to carry out their licensing functions;

Option 2 - all licensing functions being transferred to SNH; and

Option 3 - Scottish Government and SNH continuing to deal with all licence applications except those where planning consent is involved. In those cases, the species licensing would be carried out by the local authority in conjunction with the planning application.

**Costs to the Scottish Administration**

248. Under Options 1 and Options 2 there would be no change to costs to the Scottish Administration.

**Costs to local authorities**

249. Options 1 & 2, present no change to local authorities. Based on average figures, Option 3, would equate to 20 cases involving planning consent. The staff cost of dealing with these cases is £452 per year. This would be spread across 32 local authorities. This results in a total cost to local authorities of a maximum of £452. However, local authorities should already be taking legal licence conditions into account when issuing planning consents. The estimation of £452 does not take this into account. Therefore it is expected that while £452 is estimated as a maximum cost, the financial burden will not be as great as this and any additional costs to local authorities will be in relation to additional administration.

**Costs to other bodies, individuals and business**

250. Only the destination of the application forms might change so there are no additional costs for the applicant.

**Benefits**

251. Overall the transfer of licensing functions are expected to be cost neutral.

**MUIRBURN**

**Background**

*Introducing flexibility in the regulation of muirburn dates*

252. Under the Hill Farming Act 1946 (“the 1946 Act”), muirburn is permitted only between 1 October until a date in April/May which depends on altitude and obtaining the landowner’s permission. The Bill proposes to introduce flexibility in the regulation of muirburn dates by:

- allowing licensed burning outwith the muirburn season (administered by SNH); and
- allowing Ministers to vary the dates of the muirburn season under secondary legislation, for reasons other than to adapt to climate change.
Removing the May extension to the muirburn season, at altitudes above 450m

253. Currently, at altitudes above 450m, the muirburn season may be extended from 30 April until 15 May, with the landowner’s permission. In order to reduce impacts on nesting birds, the Bill would remove this extension period.

Neighbour notification

254. Currently, land managers are required to notify all neighbours in writing at least 24 hours before making muirburn, describing the date, location and approximate size of the burn. The Bill proposes a more flexible notification requirement, where practitioners must notify neighbours of their intention to burn during a muirburn season, giving further details where requested by neighbours. Where the number of people to be notified is 10 or more, there is the option to place and advertisement in a local paper.

Costs to the Scottish Administration

255. SNH estimate that they will receive around 10 out of season licence applications per year (based on around 6 applications per year received in England, scaled appropriately for Scotland). SNH estimate that each application will take 2-3 days to assess, to include site visits and consultations with other interested parties. The estimated annual cost is £5,968.

256. The total cost will also include travel and accommodation expenses for site visits where necessary. SNH estimate that these T&S costs will be around £2,639 in 2011/12. Some of the ground assessment will be carried out by Area staff where capacity and knowledge allows, as well as liaison with applicants. The total recurring cost will be £8,607 per year.

257. There will also be an initial one-off cost to SNH of producing guidance for applicants. SNH estimate that this will require approximately 25 days work to take into account discussions with interested parties and drafting, costing £5,547 in 2011/12.

258. Research may be required in order to assess the likely environmental impacts of permitting an extended muirburn season and the costs may fall to the Scottish Government. However, the degree of additional research required has not yet been assessed. It will be necessary to undertake a review of existing evidence initially to identify the gaps which require to be addressed through new research.

Costs to local authorities

259. There will be no costs to local authorities resulting from these legislative changes.

Costs to other bodies, individuals and businesses

260. The level of information which must be submitted in licence returns is yet to be established. However, preparing a simple licence return is likely to cost a minimum of £50 (one hour’s work at £50/hour).
261. It is estimated that the cost of preparing a licence application will be £200-£400 (based on half a day to prepare a simple/small application and a full day for a complex/larger application; at professional charge rate of £50/hour). In some circumstances, SNH may request that an ecological survey is included in the application. Such a survey may incur a maximum cost of around £1,000 (to account for 3 days’ work by a consultant plus travel and subsistence costs). However, such costs would be exceptional, and most applications will require only an in-house resource. An ecological survey is only likely to be required when burning over a relatively wide area within, or immediately adjacent to, a Natura site with a diversity of qualifying features.

262. The estimated cost of licensing is therefore £50-£1,400.

263. If those wishing to make muirburn would require to notify 10 or more people they have the option of advertising in a local paper. The cost of this is estimated to be between £30-£50. This notification is required no more than once a season.

Benefits

Savings to land managers

264. It is possible that the ability to carry out licensed out of season burning will result in increased grouse production (by increasing the quality and area of habitat for grouse), and improved grazing. Out of season licensing may therefore result in financial benefits to the land management sector. Likewise, the power to vary the muirburn season may, if used to extend the season into September, also result in improved grouse production and grazing. However, it is impossible to estimate the potential scale of this financial benefit, as any benefit would be highly dependent on weather, local conditions and other complex and variable factors.

SITES OF SPECIAL SCIENTIFIC INTEREST (SSSIS)

Background

265. The Bill proposes notices requiring the restoration of damage to the natural features of a SSSI; it also provides for the provision of extended powers of entry to land for SNH; additional powers for SNH to extend, merge and denotify SSSIs in certain limited circumstances; and makes minor changes to the Nature Conservation (Scotland) Act 2004.

Costs to the Scottish Administration

266. These changes will result in no additional costs to the Scottish Administration. It is expected that there will be cost savings.

267. The cost to SNH to implement Restoration Notices to implement is less than the current option of enforcement through the courts. There will also be a reduction in costs for the Crown Office with a probable reduction in the number of cases referred to the Procurator Fiscal service.
Costs to local authorities

268. These changes will result in no additional costs to local authorities.

Costs to other bodies, individuals and business

269. The proposal to improve the procedure associated with third party operations under section 13 of the 2004 Act is expected to generate between 10 and 20 additional instances of consultation with SNH for which there is no charge (such applications are normally satisfied in a single written communication).

270. The requirements of a restoration notice would be likely to have financial implication but such a notice would only be served following damage to a SSSI which, in the opinion of SNH, had been the result of an illegal act.; the cost implication depends entirely on the nature and extent of damage (and bearing in mind the broad range of types of SSSI features). Indicative examples of where a restoration notice might be used include the removal of dumped material (where costs will be for actual removal plus any disposal costs), replanting and care of trees that have been removed from a protected woodland, disabling drainage put in without consent or the restoration of habitat following the construction without consent of a hill track on a SSSI where costs for restoration are estimated at being over £5 per metre (and could therefore amount to a significant sum for a track which is several kilometres in length). Prosecution will not follow where the restoration notice has been accepted and complied with.

Benefits

271. The introduction of provision for restoration notices has potential to introduce resource saving for the police, the Crown Office Procurator Fiscal Service and the Scottish Courts Service by providing SNH with an alternative to the only current option which is to seek prosecution. This would also support delivery of the Scottish Government’s target to increase to 95% the proportion of protected nature sites in favourable condition.

272. In addition to presenting some modest saving in administrative costs for SNH (e.g. by obviating the need for unnecessary consultation, document maintenance, database management etc); the proposal to provide provision to combine the boundaries of SSSIs in certain circumstances will also help simplify procedures for SNH, other regulatory authorities and land managers.
These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

**SUMMARY TABLE**

<table>
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<tr>
<th>Total Costs</th>
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<td>Costs on other bodies, individuals and business</td>
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These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

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SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

273. On 9 June 2010, the Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Wildlife and Natural Environment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

274. On 9 June 2010, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Wildlife and Natural Environment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Wildlife and Natural Environment (Scotland) Bill introduced in the Scottish Parliament on 9 June 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 52–EN.

POLICY OBJECTIVES OF THE BILL

Overview

2. The overarching purpose of the Bill is to deliver a package of measures intended to ensure that the legislation which protects wildlife and regulates the management of the natural environment and natural resources is fit for purpose.

3. In addressing this policy area, the Scottish Government’s intention is to:

   • maintain the high quality of our natural environment and its biodiversity, which is vital to the economy of Scotland; and
   • ensure that wildlife and natural environment legislation is responsive to the needs of economic and social development in Scotland.

4. The Bill modernises outdated statutes and addresses anomalies and weaknesses which have been identified in the current legal framework. The Bill will also enable Ministerial commitments on policy development to be delivered; for example, in relation to the steps to improve snaring practice outlined to the Scottish Parliament by the then Minister for Environment, Michael Russell MSP on 20 February 2008.¹

5. The substantive parts of the Bill relate to the following policy areas:

   • Game

The changes abolish outdated licensing systems and modernise game poaching statute.

- **Areas of Special Protection**

  The changes abolish the Areas of Special Protection (ASP) designation.

- **Snares**

  The changes implement Ministerial commitments to improve snaring practice.

- **Invasive and non-native species**

  The changes are intended to improve the regulation of non-native and invasive species, by strengthening the offence of release of a non-native species, and creates new powers to prohibit the keeping of invasive species, to require notification of invasive species, and to control and eradicate invasive non-native species where required.

- **Species licences**

  The changes increase the flexibility in the administration of licences to take, kill and carry out other prohibited activities in relation to protected species. They also allow licences in relation to certain species of plants and animals to be issued for new purposes.

- **Deer**

  The changes set out improvements to current deer management structures and address competence in deer stalking.

- **Protection of badgers**

  The changes strengthen the legislation which deals with badgers, seeking to make the offences more effective and the licence system more flexible.
• **Muirburn**

The changes are intended to increase the flexibility of how muirburn can be practised, and address a number of issues raised during consultation on the muirburn provision in the Climate Change (Scotland) Bill.

• **Sites of Special Scientific Interest**

The changes are intended to improve the operation of Sites of Specific Scientific Interest (SSSI) legislation.

6. Each policy area is addressed separately in this Policy Memorandum.

**CONSULTATION**

**Public consultation**

7. In June 2009 the Scottish Government published a consultation document to obtain views on potential reform to a number of areas of wildlife and natural environment legislation. This consultation has informed the development of the Bill.

8. The consultation closed on 4 September 2009 and 456 responses were received from both individuals and organisations. An analysis of responses to the consultation document was prepared by Envirocentre Ltd and CAG Consultants and published in February 2010.

**Stakeholder engagement**

9. In addition to the public consultation, other steps have been taken to ensure stakeholders have had the opportunity to discuss policy issues with the Scottish Government.

10. A formal Stakeholder Forum was established and met on three occasions at various stages of the Bill’s development, prior to introduction in the Scottish Parliament.

11. The Minister for Environment met with stakeholder groups during December 2009 and January 2010 to discuss the prospective Bill with them directly.

12. A Liaison Group consisting of representatives from public bodies (Convention of Scottish Local Authorities, Deer Commission for Scotland, Forestry Commission Scotland, Scottish Environment Protection Agency, Scottish Natural Heritage “SNH”) and the Scottish Government was established and met on three occasions. It is intended that the Liaison Group will continue to meet as the Bill progresses.

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2 Available at [http://www.scotland.gov.uk/Publications/2009/06/17133414/0](http://www.scotland.gov.uk/Publications/2009/06/17133414/0)

13. The Scottish Government will continue to engage with stakeholders while the Bill is in the Scottish Parliament, and after it completes its progress.

Impact of consultation on the Bill

14. The views expressed in response to the consultation document and by stakeholders as part of ongoing dialogue with the Minister for Environment and the Scottish Government have been carefully considered and inform the content of the Bill.

15. The consultation responses reveal that overall the proposals met with a “significant level of agreement.”\(^4\) However there are some parts of the Bill that elicited strong stakeholder disagreement, notably deer and species licensing. It is clear that in some policy areas the views of consultation respondents are irreconcilably opposed.

16. The analysis of responses to the consultation document noted a number of recurring debates:

- Game as a commodity versus game as wildlife
- Increased regulation versus the status quo/voluntary agreements
- New legislation versus extending the scope of existing legislation
- Centralised versus devolved regulation
- Retaining the existing distribution of powers versus increased Ministerial authority
- List-based versus broad ‘catch all’ approaches for the definition of legal parameters
- Minimising the burden on rural economies versus enhancing the protection of wildlife.

17. Further detail on the consultation relating to each part of the Bill is noted below.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

18. The Bill has no effect on equal opportunities, either positive or negative.

Human Rights

19. The Scottish Government considers the Bill to be compatible with Convention rights.

20. There are a number of provisions in the Bill that engage Convention rights. A number of provisions engage rights under Article 1 Protocol 1 because they regulate how people are able to use their land. However, Article 1 Protocol 1 rights are not absolute, and may be interfered with

\(^4\) Analysis of Responses to the Consultation on the Wildlife and Natural Environment Bill, Envirocentre Ltd and CAG Consultants, February 2010 page 7.
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

if this can be justified in the public interest, is proportionate and is in accordance with the law. The Scottish Government considers that the interference is justified, proportionate and in accordance with the law.

21. The Bill will also create and amend a number of criminal offences. These provisions are considered compatible with Convention rights as they will not prevent an accused receiving a fair trial, as required by Article 6.

Island Communities

22. The Bill has no differentiating effect on island communities in comparison to other communities in Scotland. The subject matter of the Bill, covering as it does Scotland’s wildlife and natural environment, does not have any particular impact on island communities.

Local Government

23. The Bill does relate to some of the work currently carried out by local authorities. In some cases, such as game licensing, the administrative process will be removed from local authorities. In others, such as in relation to deer, local authorities are obliged to have regard to guidance or advice of SNH. Where local authorities are affected, details are included in this Policy Memorandum.

Sustainable Development

24. The Bill supports sustainable development. In particular it recognises the importance of balancing the economic value of game shooting with conservation interests. The changes introduced by the Bill relating to species licensing may allow developments and projects to go ahead where that has previously not been possible.

GAME LAW

(PART 2 OF THE BILL)

Introduction

25. In common law, wild animals and birds have no owner but can become the property of anyone who catches them. However, every landowner has the right to exclusive use of their own land which includes the right to take those birds and animals which are on it. Over the years that right has become subject to statutory restrictions on the species which may be hunted, the methods which may be used to do that, and the times of the year when this may occur. Statutory rights have also been conferred to allow certain other people (notably occupiers) to take and kill certain species (generally those which can be considered pests) in certain circumstances. A number of ‘game’ species (‘game birds’, such as pheasants, partridge and grouse, and ‘ground game’ which are rabbits and hares) have traditionally been hunted for sport or for food. They usually have a higher commercial value relative to other species of bird and animal. Legislation has developed to reflect this recognition of commercial value, providing in particular for the ‘poaching’ of these species to be treated as a criminal offence – that is, it is an offence for someone to take or kill game where they do not have the legal right to do so or permission from
the person with that legal right. This part of the Bill does not deal with fish\(^5\) or deer (except insofar as repealing an element of game licensing which applies to deer\(^6\)), which are the other elements of game or sport species.

26. Game law is very old, with most of the legislation dating from the 19th Century. It has largely gone unchanged since that time. The archaic language and foundations of the legislation make it difficult to interpret and some provisions are in need of modernisation to bring them into line with modern social and legal norms. The Bill therefore seeks to replace the two main aspects of game statute – the element which deals with licensing (to shoot game and to deal in game) and the element which deals with poaching. Although the modernisation process will result in some changes to the current legal position, the Bill does not seek to change the common law on who has a right to take game in the first place. Nor does it seek to change statutory rights to take game (e.g. the Ground Game Act 1880) or statutory requirements to control certain species as pests (e.g. the Pests Act 1954).

**Game licensing**

*Background*

27. Currently, licences are required when (i) a person wishes to take or kill game or (ii) when a person wishes to deal in game.

28. These licensing systems were abolished in England and Wales in 2007.\(^7\) The Wildlife and Natural Environment Bill which was introduced to the Northern Ireland Assembly at the end of 2009\(^8\) proposes to abolish the equivalent licensing systems in that jurisdiction. This Bill proposes to abolish the licensing systems in Scotland.

*Licence to take/kill game*

29. Under the Game Licences Act 1860 ("the 1860 Act"), before anyone (with some statutory exceptions) may take or kill game they must obtain a licence to do so. The original basis for the licence is unclear, but may have been to help combat poaching and/or to limit the sport of shooting game to those who could afford the licence fee. The Scottish Government considers that the licence now represents a bygone age which has become redundant over the passage of time. It does not, for example, perform a conservation role as the licence does not impose any limit on the number of a species which can be taken. The Scottish Government believes that this area of law is suitable for deregulation and that the requirement to obtain this licence can be abolished without any negative effects.

*Licences to deal in game and selling game out of season*

30. The Game Act 1831 ("the 1831 Act") and the 1860 Act regulate who can sell game and detail the conditions of being a licensed dealer. The original basis for the licences is again

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\(^5\) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 deals with similar issues in relation to fish.

\(^6\) Section 17 of the Deer (Scotland) Act 1996 creates poaching offences in relation to deer. Part 3 of the Bill deals with deer but does not alter poaching offences.

\(^7\) The Regulatory Reform (Game) Order 2007 S.I. 2007/2007

\(^8\) NIA Bill 5/09
unclear, but they are assumed to have been seen as a means of deterring poaching and/or to control the basis of game-dealing in general. With the advent of food standards legislation the licensing system is considered to be generally redundant and the Scottish Government believes that this area of law is suitable for deregulation and that the requirements to obtain these licences could be abolished without any negative effects.

31. A related issue is that section 4 of the 1831 Act provides that it is an offence to buy or sell game birds during the close season of the relevant species, and the Hares Preservation Act 1892 restricts the sale of hares for a certain period of the year. These restrictions are understood to have been implemented to ensure that there was no market for meat illegally obtained during the close season of the relevant species (although there is in fact no close season for hares). The restrictions do not apply to (dead) game which has been imported to the UK. Refrigeration options now mean that game which has been killed in Scotland during the open season could now be sold throughout the year. The Bill removes the restriction on selling game at certain times of year but provides that it is an offence to sell game which has been killed outside the open season or which has been poached.

Poaching and Close Seasons

Background

32. At present a number of different statutes create offences and enforcement mechanisms in relation to the unlawful taking of game in Scotland. These do not apply consistent definitions of “game”. In addition some poaching offences apply to birds such as wild ducks, snipe and woodcock, which are not traditionally considered to be “game” species.

33. The Game (Scotland) Act 1772 sets close seasons for “muir fowl” (red grouse), ”tarmagan” (ptarmigan), “heath fowl” (black grouse), partridge and pheasant. The Wildlife and Countryside Act 1981 (“the 1981 Act”) sets close seasons for other birds, which are often referred to as “shootable species”. There is no close season for hares but the Hares Preservation Act 1892 restricts their sale at certain times of year. There is no close season for rabbits, which are treated as a pest species under other legislation.9

34. There are poaching offences under the Game (Scotland) Act 1772, the Night Poaching Act 1828 and the Game (Scotland) Act 1832. The offences draw distinctions between daytime poaching, night-time poaching, group poaching, armed poaching and poaching in disguise. Most are based on concepts of trespassing on land. The 1828 and 1832 Acts and the Night Poaching Act 1844 give landowners and occupiers powers to question and apprehend suspected poachers and creates related offences, while the Poaching Prevention Act 1862 confers enforcement powers on constables. The Game Laws Amendment (Scotland) Act 1877 makes provision about prosecutions for offences under the various different Game Acts and provides that people cannot be prosecuted more than once under different statutes in respect of the same actions.

9 For example section 39 of the Agricultural (Scotland) Act 1948 and the Pests Act 1954.
Modernisation of game law

35. The Bill provides for the modernisation of game poaching offences. It does this by repealing the relevant game acts. It brings game birds (pheasants, partridges, grouse and ptarmigan) within the scope of the existing bird offences in the 1981 Act. It then creates close seasons for these birds and provides that they may be hunted at other times of year by those with a legal right to take or kill them or with permission from a person with the legal right to give such permission. Together, these offences, close seasons and exceptions replace the older offences of poaching game and will mean that anyone who takes or kills these birds without a legal right or permission to do so will commit an offence. The new provisions also cover a number of other bird species, including wild ducks, snipe and woodcock, which were already protected under the 1981 Act but were also covered by poaching offences. The Bill also creates new offences of taking hares and rabbits without the legal right or permission to do so. These operate in the same way as the provisions about game birds and replace existing poaching offences as set out above.

36. The Bill creates a new offence of taking and killing hares during the close season. It sets separate close seasons for brown and common hares. The rationale for these close seasons is to protect hares at times where there is likely to be the greatest welfare concern i.e. when the hares are lactating and have dependant young. Currently the protection of hares is limited to the Hares Preservation Act 1892 which restricts the sale of hares at certain times of year. The Scottish Government considers that this protection, with modern refrigeration options, no longer serves its intended purpose and accordingly this should be replaced with close seasons, in line with other game species. It also allows close seasons for other animal species to be set by order in future.

37. The poaching offences are simplified (by providing for the basic offence of poaching and creating a penalty ceiling which will enable the courts to determine the seriousness of the specific offence committed, instead of reproducing the distinctions between night and daytime poaching, armed poaching and poaching in disguise). The enforcement mechanisms are altered to be consistent with current norms (by providing for standard police enforcement powers under the 1981 Act to apply to poaching offences, and by removing the unique powers which landowners have to apprehend suspected poachers). The Bill maintains the current situation whereby poaching offences can be prosecuted on the basis of single witness evidence.

Alternative approaches

38. The are two main alternatives to the policy adopted in the Bill, to do nothing or to formulate a new single game law statute. The Scottish Government considers the current provisions on game licensing and poaching to be in need of modernisation and therefore that to do nothing would not be a suitable option. There was some support in the consultation responses for consolidating game law in to a stand alone statute, however the majority support was to bring the game laws within the 1981 Act, and the Bill takes that approach.

39. The removal of the unique powers currently enjoyed by landowners and their employees (e.g. to apprehend suspected poachers) attracted the greatest degree of opposition of all the game law proposals. However the Scottish Government takes the view that these powers, as currently

10 As mentioned above, the exception to this is rabbits who are considered pest species in law.
expressed in statute, are exceptional without justification and should indeed be repealed. The Scottish Government was not persuaded by any evidence to justify retention of these powers.

40. The Bill maintains the current situation allowing prosecution on the basis of single witness evidence. This received strong support from stakeholders. Removing this position would fail to recognise the particular issues around enforcement of poaching offences, which makes single witness evidence appropriate.

41. An alternative to the Bill bringing game within the 1981 Act and extending the recognition of the economic value of game to quarry species would be to treat game birds separately. However it is considered that the option chosen provides for the best framework for balancing the clear economic value of game (particularly to rural communities) with ensuring that appropriate mechanisms are in place to support wildlife and the natural environment.

Consultation

42. In addition to the public consultation, meetings with stakeholders in the land management sector were conducted at official and Ministerial level.

43. The analysis of consultation responses commissioned by the Scottish Government provides a breakdown of views about the game law proposals. There was broad agreement amongst stakeholders to the proposals to modernise game law, although there was a clear divergence of approach from landowners and shooters (who viewed game as a valuable commodity/livestock which required active management) and conservation interests (who viewed game as wild birds and animals which should be protected in the same way as other wild creatures). This was reflected in the fact that the substantial majority of respondents supported abolition of the game licensing systems and modernisation of poaching statute, but diverged on whether game species should receive the same protections available to other wild birds (including ‘quarry species’, which are other ‘shootable’ birds not classed as ‘game’) in the 1981 Act.

AREAS OF SPECIAL PROTECTION (ASP)

(PART 2 OF THE BILL)

Introduction

44. There are eight areas of special protection (ASPs) in Scotland, as follows.

<table>
<thead>
<tr>
<th>Name</th>
<th>Local Authority</th>
<th>Date of Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horse Island</td>
<td>North Ayrshire</td>
<td>1 March 1963</td>
</tr>
<tr>
<td>Inchmickery</td>
<td>City of Edinburgh</td>
<td>1 March 1963</td>
</tr>
<tr>
<td>Fetlar</td>
<td>Shetland Islands</td>
<td>20 May 1968</td>
</tr>
</tbody>
</table>
Lady Isle South Ayrshire 24 December 1955
Loch Eye Highland 1 October 1974
Loch Garten Highland 23 April 1960
Low Parks South Lanarkshire 14 March 1958
Possil Marsh Glasgow City 19 March 1956

45. The ASP was originally provided for in the Protection of Birds Act 1954, when such areas were known as “bird sanctuaries”. They are now designated under the 1981 Act.

46. The purpose of an ASP was to increase the protection afforded to birds beyond that which was already provided in species protection legislation. It also enables Ministers to restrict the public from entering the area, or part of it, during specified periods. Making an ASP does not affect the rights of owners, tenants or others having rights in the area covered by the order, such as rights to take game. It is an offence to fail to comply with a requirement of an ASP.

Repeal of ASP

47. The protective provisions of ASPs are now, with the exception of public access, duplicated by other provisions of the amended 1981 Act. The Land Reform (Scotland) Act 2003 gives everyone statutory access rights to most land if those rights are exercised responsibly. Powers to restrict access are currently available to Access Authorities (with Scottish Ministers’ approval) under section 11 of that Act and through bye-laws.

48. Having reviewed the above list, SNH is satisfied that there is no need for an ASP in any of the current areas, and that the orders in place can be abolished. The Bill will therefore repeal section 3 of the 1981 Act.

Alternative approaches

49. The alternative policy considered was not to repeal the ASP measures. This was not considered appropriate, as the last ASP was created in 1974, and enhanced protections when needed can be secured using the legislative and administrative tools developed in response to the Birds and Habitats Directives.11

50. It is considered therefore that proposals in relation to ASPs will help to modernise and streamline wildlife protection rules, without any adverse effect on wild birds.

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Consultation

51. The consultation responses revealed almost 90% support for this proposal. Some respondents made it clear that areas should have the same protection through other means. The Scottish Government believes that other legislation contains sufficient provision to ensure this protection, where the need for it is made out.

SNARING

(PART 2 OF THE BILL)

Introduction

52. Snares are currently used in Scotland in a number of different contexts, chiefly to catch foxes and rabbits. Most commonly they are used as part of population control measures (e.g. to reduce fox predation on other species or to protect crops from rabbits) but they are also used to harvest animals for food and to capture them for research. Snares involve the use of flexible materials to capture and restrain, and in this regard they have similarities to gill nets used for capture of sea fish and mist nets used in the capture of wild birds for ringing.

Background

53. At present, snaring in Scotland is permitted but is subject to restrictions under section 11 of the 1981 Act, as amended by the Nature Conservation (Scotland) Act 2004. The 2004 Act amended the 1981 Act to impose a number of restrictions on the usage of snares, including:

- a new offence of setting in position or otherwise using any snare calculated to cause unnecessary suffering;
- a modified offence of setting in position any snare, trap, electrical device or poison which is likely (rather than calculated) to cause injury to animals listed in Schedule 6 of the 1981 Act;
- a change to the requirement to inspect all snares at least once every day to ensure that no more than 24 hours elapse between any two sequential inspections;
- a new requirement, when carrying out such an inspection, to release or remove any animal caught in the snare whether it is alive or dead; failure to remove an animal is an offence in its own right, but the presence of a dead animal in any snare if it is clear that the animal has been there for more than 24 hours, may also constitute evidence of an offence;
- a new offence of possessing a self-locking snare, without reasonable excuse;
- a new offence of selling, or offering or exposing for sale, any self-locking snare; and
- two new offences of being in possession of a snare on any land, and of setting a snare on any land where the permission of the owner or occupier of that land has not been obtained.
54. The Scottish Executive launched a public ‘Consultation on Snaring in Scotland’ on 27 November 2006 to honour a commitment made during the passage of the 2004 Act. A total of 247 separate representations were received by the closing date for submissions. Of the responses received, 71 were against a ban and 172 supported a complete ban on use of snares, the remaining 4 were in favour of limited snaring within a licensing system.

Following further consultation with interested parties, the then Minister for Environment, Michael Russell MSP, announced that after careful consideration he had concluded that snaring should be retained for use as a land management tool. There remained a clear need for pest control to protect livestock and crops. Other methods of pest control such as shooting and trapping were not effective in certain circumstances. New measures would be introduced to improve the animal welfare aspects of snaring and raise the standards of snare operators in setting and monitoring snares. These measures were largely based on the findings of the Report of the Independent Working Group on Snares. Work has been undertaken by the Partnership for Action against Wildlife Crime Scotland (PAW Scotland) Legislation, Regulation and Guidance Sub-Group to consider the practical implementation of the proposals. Two of these proposals are addressed for the first time in the Bill. Five others are already in force through the Snares (Scotland) Order 2010 but are replaced by the Bill, to bring all requirements in relation to snaring into the 1981 Act itself.

### Snare stops and anchors, prohibited locations for setting and inspection requirements

55. The following requirements were set through The Snares (Scotland) Order 2010, which came into force on 11 March 2010, and will be replaced, with minor changes by the Bill. Failure to comply with these requirements will constitute an offence of setting a snare of such a nature or in such a way as to be calculated to cause unnecessary suffering:

- Snares must be fitted with effective stops to prevent nooses from closing too far.
  
  - Leporid (rabbit/hare) snares should be fitted with a stop 13cm from the running end.
  
  - Fox snares should be fitted with a stop 23cm from the running end.

In practice, stops may be crimped on to the wire of the snare or the wire may be knotted. In all cases the stop should prevent the noose from closing beyond the stop when a force of the relevant breaking strain for the type of snare is applied. The Bill will change the way this measurement is expressed (so that the measurement mentioned above for each target species relates to the circumference of the noose of a snare, rather than the distance between the stop and the running end) but the effect is intended to be the same. In addition, the 13cm minimum circumference will apply to snares intended for all animals other than foxes (rather than just rabbits and brown hares). Anyone who wished to set a snare with a smaller noose would require a licence to do so.

- The action of each snare must be checked at least once every 24 hours to ensure that it is free running.

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12 James Kirkwood et al., 2005
13 S.S.I. 2010/8
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

This is to ensure that the snare is working correctly, in particular that the snare has not become self-locking, which is expected to improve animal welfare. The Snares (Scotland) Order 2010 was not intended to prescribe the nature of the check, but there were some concerns expressed that it might be interpreted as requiring more than a visual inspection and could require a physical check to be carried out every 24 hours. The Bill will replace the Order and the existing inspection requirements in the 1981 Act with a new section which will deal with both types of inspection (for the purposes of seeing whether an animal is caught in the snare and whether the snare is free-running). The Bill will also remove any distinction between inspections and checks. The intention is to ensure consistency and to make it clear that any kind of inspections can be relied on, provided that they are sufficient to allow the person to see whether a snare is free-running and whether an animal is caught in it.

- All snares that are not staked in place must be fixed with an effective anchor.

  This is to ensure the operator will be able to locate the snare and quickly release any non-target species. It is also to ensure that captured animals do not suffer by dragging the snare and becoming entangled over fences or other objects.

- Snares must never be set in a place where an animal caught by the snare is likely to become fully or partially suspended or to drown.

  The setting of snares on posts, over water courses, on planks or fences will be prohibited as this can cause unnecessary suffering to the target species. Snares set this way could enable entanglement or drowning, e.g. on fences or gates, or on objects spanning watercourses.

56. The Snares (Scotland) Order 2010 was made under the enabling powers in section 11 of the 1981 Act. However, these powers were not sufficient to allow the desired provisions about identification tags and training requirements to be included in the 2010 Order which is why these are being progressed through the Bill. It is also considered beneficial to incorporate all of the changes made by the 2010 Order in the Bill as this will bring together all the relevant legislation on snaring in a single place.

### Identification Tags and Training

57. The Scottish Government’s objectives in relation to snaring are to:

- improve the welfare of animals caught in snares,

- improve the standard of snaring operators and eliminate bad practice.

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14 Concerns were expressed regarding the physical check because it may make the snare ineffective due to the transfer of human scent.
The Bill introduces new requirements relating to identification tags and training of snare operators to achieve these objectives.

58. The Bill will require all snares to be fitted with identification tags which show an identification number and indicate whether the snare is intended to catch foxes or rabbits/brown hares. The intention is that the identification number will allow the authorities to identify the person who set the snare, but will not allow identification by casual passers-by while the information about target species will make it easier to identify whether the stop has been fitted in the correct place. While each snare must carry a tag, it is not necessary for each snare to be uniquely identified i.e. each snare set by the same snare operator will contain the same identification number. The type of tag is not specified except that the tag and the identification marking should be weatherproof and not capable of being easily removed. The Bill allows further requirements about snare tags to be set by Order. It will be an offence to set a snare that does not carry an identification tag.

59. It will also be an offence for a person to set a snare without having obtained an identification number from the police. The police must be satisfied that the person is trained before issuing an identification number. Together, these provisions will ensure that it is a criminal offence for anyone to set a snare without having undertaken the specified training. The Scottish Ministers will be able to set training requirements by Order and, in practice the function of issuing identification numbers is expected to be carried out by local police force wildlife coordinators.

Alternative approaches

60. The two main policy alternatives of banning snaring or developing a licensing system were considered and rejected prior to a statement made to the Scottish Parliament in February 2008 by the Minister for Environment and the subsequent order. The arguments were that a ban would impose serious difficulties on land managers in their pest control activities, while a licensing system for snaring would impose cost and bureaucracy without providing any more assurance on improving animal welfare than the package of measures announced by the Scottish Government.

61. The consultation on the Bill proposed the introduction of a new offence of tampering with a legally set snare. However, it was decided not to include this in the Bill as the existing offences of vandalism (under section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995) and aggravated trespass (under section 68 of the Criminal Justice and Public Order Act 1994 and which covers acts to obstruct or disrupt lawful activities) already cover the main situations which the new offence was intended to cover.

Consultation

62. In addition to formal consultation, meetings with stakeholders with an interest in snaring were conducted at official and Ministerial level. There was broad support, with caveats, for a snaring training requirements. Animal welfare groups were against the proposals as, in their opinion, this would condone a practice that they believe should be banned on animal welfare grounds.
INVASIVE AND NON-NATIVE SPECIES
(PART 2 OF THE BILL)

Introduction

63. The Scottish Parliament debated invasive non-native species issues at the end of 2008 and passed a motion which requested that the Scottish Government develop proposals to improve the legislative framework concerning non-native species. This part of the Bill delivers those improvements and has been informed by a Scottish Working Group including key policy interests from government, agencies, local government, research institutes, police, and environmental interests.

64. Many non-native species have been introduced deliberately and improve the quality of our lives whether as game, livestock, crops, garden plants or pets. A minority can have serious negative impacts on our environment, health and economy. These species are known as invasive non-native species.

65. As travel, trade, and tourism have increased, humans have facilitated the movement of plants and animals around the world, beyond natural barriers (such as oceans, mountain ranges and deserts). If plants and animals are introduced to areas which have similar environmental conditions to their native range, they have the potential to become established. As plants and animals are often introduced without their usual predators (e.g. pests and diseases) they can have an advantage over native species and may become invasive.

66. Some of the negative impacts on native species caused by invasive non-native species are laid out in table 1:

Table 1

<table>
<thead>
<tr>
<th>Negative impact</th>
<th>Example in Great Britain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outcompeting native species e.g. for food, nutrients, light, nest sites etc.</td>
<td>Aquatic plants such as New Zealand pigmyweed (<em>Crassula helmsii</em>) outgrow native species, lower light levels and remove oxygen and nutrients from the water</td>
</tr>
<tr>
<td>Preying upon native species</td>
<td>Ruffe (<em>Gymnocephalus cernuus</em>) eats eggs of the native powan (<em>Coregonus lavaretus</em>) in Loch Lomond</td>
</tr>
</tbody>
</table>
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

<table>
<thead>
<tr>
<th>Transmitting disease</th>
<th>Grey squirrels (<em>Sciurus carolinensis</em>) pass on squirrel pox to red squirrels (<em>Sciurus vulgaris</em>)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hybridising with native species</td>
<td>The native bluebell (<em>Hyacinthoides non-scripta</em>) hybridises with the Spanish (<em>Hyacinthoides hispanica</em>) to create an invasive hybrid bluebell</td>
</tr>
<tr>
<td>Suppressing (e.g. by toxins in soil) native species</td>
<td><em>Rhododendron ponticum</em> produces toxic leaf litter which suppresses regeneration of native species.</td>
</tr>
<tr>
<td>Human health impacts, such as:</td>
<td>The caterpillars of oak processional moth (<em>Thaumetopoea processionea</em>) have irritating toxic hairs that cause serious irritation to the skin, eyes and bronchial tubes.</td>
</tr>
<tr>
<td>- Respiratory issues</td>
<td>- Noxious plants causing burns</td>
</tr>
<tr>
<td>Costs to development industry</td>
<td>Japanese knotweed (<em>Fallopia japonica</em>) is required to be removed from development sites.</td>
</tr>
<tr>
<td>Fouling of aquaculture equipment and aquaculture beds</td>
<td>Carpet sea squirt (<em>Didemnum vexillum</em>)</td>
</tr>
<tr>
<td>Increasing the likelihood of flooding</td>
<td>Floating pennywort (<em>Hydrocotyle ranunculoides</em>)</td>
</tr>
<tr>
<td>Decreased fishing opportunities</td>
<td>North American signal crayfish (<em>Pacifastacus leniusculus</em>) eats baits on fishing lines as well as preying on fish eggs.</td>
</tr>
<tr>
<td>Problems navigating waterways</td>
<td>Floating pennywort (<em>Hydrocotyle ranunculoides</em>) clogs up waterways in England.</td>
</tr>
</tbody>
</table>
Background

**Internationally agreed framework**

67. The Scottish Government’s approach to invasive non-native species is guided by the internationally recognised 3-stage hierarchical approach.\(^{16}\) Its key principles are:

- Prevention – preventing the release of all non-native species (both known invasives or otherwise) should be given the highest priority as the most effective and least environmentally damaging intervention.
- Rapid response (eradication) – where prevention fails, early eradication or removal should be the preferred response.
- Control and containment – once a species has become widely established, full-scale eradication is possible or cost effective in only a minority of cases. However, if the invasive non-native species has negative impacts then it may be necessary to mitigate their impacts or control or contain the population.\(^{17}\)

68. The non-native provisions contained in the Bill are designed to deliver this approach in full; the existing legislative framework in Scotland does not do so. It will do this by improving the prevention of release of non-native species, and by ensuring that where they have been introduced into the wild that appropriate control and eradication measures can be taken.

**Importance of prevention**

69. Preventing non-native animals and plants becoming established is critical to a successful policy on invasive non-native species. This is because we can’t predict with certainty what species will become invasive, and because invasive non-native plants and animals often display a lag effect where they can be present for many years before ‘taking off’ and causing problems. It can therefore be many years before the nature and scale of the threat is known. Many plants and animals already in the wild may still be in their lag phase.

70. Japanese knotweed is a good example of all these issues. It was introduced many years ago, when few people understood how harmful invasive non-native species can be. Its lag phase lasted for almost 100 years, as shown in Figure 1. It would currently be prohibitively expensive to eradicate it nationwide (estimated in 2003 to cost £1.56 billion) as well as practically difficult. It causes severe problems such as river bank erosion and structural damage, and is very expensive to control.

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\(^{16}\) Convention on Biological Diversity: http://www.cbd.int/invasive/background.shtml

\(^{17}\) Some of the “best known” INNS such as grey squirrels, Japanese knotweed and American mink are at this stage of the approach.
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010


71. This illustrates why preventing the introduction of non-native species should be given the highest priority, as opposed to waiting until an established plant or animal becomes invasive before instigating expensive control and mitigation measures. This emphasis on prevention is the approach advocated though the Convention on Biological Diversity and promoted through the Non-Native Species Framework Strategy for Great Britain.18

**Prevention – regulating the release, keeping, and notification of invasive non-native species**

**Release**

72. The current legal framework governing the release of species is made up of disparate and overlapping legislation.

73. The central provisions are in section 14 of the 1981 Act. This currently makes it an offence to release, or to allow to escape, animals which are not ordinarily resident in Great Britain, or to release from captivity any animal (native or non-native) listed in Schedule 9 to that Act, or to plant or cause to grow in the wild any plant (native or non-native) which is listed on that Schedule.

74. Some native animals are currently listed on Schedule 9 to the 1981 Act for the purpose of improving conservation or welfare. For example, in some cases uncontrolled release of native animals from captivity could harm their welfare (barn owls were listed in 1992) or a vulnerable wild population (capercaillie were listed in 1981).

75. Other legislation regulates the import, keeping or release of types of animal or plant. For example, the Destructive Imported Animals Act 1932 regulates the import and keeping of

specified mammals, and the Import of Live Fish (Scotland) Act 1978 regulates the import, keeping and release in Scotland of live fish.

76. The Bill strengthens the current release provisions, and consolidates the law where appropriate.

77. It is not presently an offence to release in Scotland an animal that is ordinarily resident elsewhere in Great Britain. It is not an offence to release an animal native to the south of England, although such an animal may be a non-native (and potentially invasive) in Scotland. It is not an offence to release on the Scottish islands an animal found only on the mainland, although such an animal may be non-native (and potentially invasive) on the island. It is not an offence to release an animal introduced by man, even if it is invasive, if the animal has been here long enough to become ‘ordinarily resident’ (unless that animal is listed on Schedule 9 to the Act).

78. It is possible to ban the release or growing in Scotland of any problem species by using the power in the 1981 Act to change the Schedule 9 list. However, this often results in species being added to the Schedule and prevented from being released only once they are established and invasive.

79. The new offences in the Act will therefore ban the release of an animal or the growing of a plant outwith native range. This ‘general no-release approach’ is considered to be a much more effective way in which to prevent the release or growing of potentially harmful animals or plants.

80. The changes will also ensure flexibility, so that the release of beneficial non-natives can be permitted (if considered appropriate). The Bill makes it clear that certain non-native game birds can be released in Scotland. Further releases can be permitted where appropriate by order, or by a licence under section 16 of the 1981 Act.

81. This flexibility will also enable the Scottish Ministers to continue to regulate native releases for conservation or welfare purposes. The release of some animals like barn owls and sea eagles is banned so that the releases can be controlled as needed under a licence and the Bill will allow this to continue.

82. The release offences will be supported by a Code of Practice which explains key terms and concepts and provides guidance on relevant activities. This will help the public to understand the nature of the problem and what they should do to prevent harmful releases. The courts will be able to have regard to the guidance in the Code when considering relevant cases.

83. Penalties for non-compliance with a release notice reflect the penalties for the existing release and growing offences.
Keeping invasive animals and plants

84. The Bill provides for Scottish Ministers to list by order invasive animals and plants, keeping of which will be prohibited; which can either be an absolute prohibition, or allowed only under licence.

85. There are currently keeping provisions under various Acts, including for example a 2003 order under the Import of Live Fish (Scotland) Act 1978, and Orders from 1933 and 1937 relating to musk rats and squirrels under the Destructive Imported Animals Act 1932. In addition the Scottish Government has consulted on making orders banning the keeping of Chinese muntjac deer in Scotland, and the keeping of all deer (excluding red deer) on the refugia islands. Ministers will be able to consider what species to include in orders under the provisions in the Bill which amend the 1981 Act.

86. The power to make orders is not expected to be used widely, and is subject to consultation. They might for example be used to ban the keeping of the Chinese mitten crab, which could be released for the purpose of commercial exploitation, but which if released is likely to have a severe impact similar to that of the American signal crayfish.

87. It will be an offence to keep an animal when doing so is banned under an Order, unless a person accused of so doing can show that he or she took reasonable steps and exercised due diligence to avoid committing an offence. Penalties for non-compliance are in line with similar offences in the 1981 Act.

Notification

88. There is a very limited duty to notify certain destructive (i.e. invasive) animals in section 5 of the Destructive Imported Animals Act 1932.

89. The Bill therefore provides for Scottish Ministers to require by order the notification of specified invasive animals and plants. This will ensure that reports of plants and animals that are considered a significant risk to Scotland are reported to the appropriate authority, so that they can be investigated at an early stage, and control or eradication measures considered as necessary.

90. As with the keeping provisions, the notification provisions are not expected to be used widely and will only be used for high-risk invasive species.

91. In addition, the intention is that the duty to notify will only be applied to persons who might reasonably be expected to be able to identify the individual species. Table 2 illustrates species for which the notification power might be used, with examples of the kind of persons who might be required to notify the presence of the species.

Table 2
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

<table>
<thead>
<tr>
<th>Species</th>
<th>Specified persons for notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese muntjac deer (<em>Muntiacus reevesi</em>)</td>
<td>Forestry/woodland managers; Professional stalkers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Cervus species (deer) excluding red deer (<em>Cervus elaphus</em>) on the refugia islands</td>
<td>Forestry/woodland managers; Professional stalkers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Carpet sea squirt (<em>Didemnum vexillum</em>)</td>
<td>Harbour Masters; Port Authorities; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>European and Canadian beavers (outwith trial reintroduction area)</td>
<td>District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Floating pennywort (<em>Hydrocotyle ranunculoides</em>)</td>
<td>District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Water primrose (<em>Ludwigia grandiflora</em>)</td>
<td>District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials</td>
</tr>
</tbody>
</table>

92. It will be an offence to fail without reasonable excuse to notify the presence of a plant or animal when doing so is required by an order. Penalties for non-compliance are in line with similar offences in the 1981 Act.

**Control - new framework to enable control of INNS**

93. As noted previously, the current law provides partial controls on the release or growing of certain species and the keeping of certain animals. There are currently no comprehensive powers to control invasive non-native species. Once they become widely established, full-scale eradication is only feasible or cost-effective in a small number of cases. However, there are some situations where control action is very important and can be effective in reducing future impact.

94. If an invasive plant or animal is detected outwith its native range, and it will (or is likely to) cause significant harm to biodiversity, the environment, or social or economic interests, then
it should be possible to take action to prevent it from becoming established, or from spreading further.

95. Another situation where control action should be possible is where there is a broadly agreed strategic plan or programme of action in place (such as an agency-led voluntary catchment-wide eradication programme) and a landowner/occupier within the area is refusing to participate, thus putting the effectiveness of the programme at risk.

96. In both of the situations outlined above, if a voluntary control agreement cannot be reached, the effectiveness of national or regional preventative measures or control and eradication programmes could be compromised, and the long term biological and economic costs could be significant.

97. The Bill therefore introduces a new regime of Species Control Orders. This will enable relevant bodies (Scottish Ministers, SNH, the Scottish Environment Protection Agency and the Forestry Commission Scotland) to make a species control order setting out measures that must be taken to control or eradicate an invasive non-native animal or plant.

98. A species control order may be made where an owner or occupier has not entered into a control agreement, or has not kept such an agreement, or cannot be found. The Bill also sets out the process of making an order, including making an order in an emergency, the giving of notice of an order, the mechanism to appeal against an order, the date of effect, enforcement of an order (including powers of entry), and revocation of an order.

99. It will be an offence to fail to comply with an order, or obstruct the carrying out of an order. Penalties for non-compliance are in line with similar offences in the 1981 Act.

100. The Bill enables the costs of an order to be recovered from the owner or occupier, but does not require recovery. The intention is that costs will be recovered only where it is fair and proportionate to do so, in accordance with the polluter pays principle.

101. The two practical hypothetical examples below illustrate how the power to make an order might be used:

- A population of American bullfrogs is detected in a series of ponds on private land. The landowner has admitted to releasing the bullfrogs but refuses access to their land. This is the only known population of bullfrogs in Scotland. Bullfrogs are known to compete with native amphibians and pass on a disease which is one of the factors resulting in plummeting amphibian populations worldwide. Measures are required to prevent the bullfrogs spreading. As the landowner has refused to enter into a control agreement and has refused access to land, a control order is issued by SNH, which sets out the operations that SNH will undertake and the period over which this will take place. Costs will be recouped from the land-owner on the basis of the polluter pays principle, as the owner has admitted the release.

- A catchment scale eradication programme is underway for *Rhododendron ponticum* in Argyll. A number of landowners/occupiers are identified in the catchment that
have areas of *Rhododendron ponticum* on their land. Forestry Commission Scotland enters into voluntary control agreements with the various landowners and occupiers. One occupier refuses to control the Rhododendron as specified in his management agreement. This will leave a reservoir of the species in the catchment area, threatening the success of the whole programme. A control order is issued and the landowner abides by the terms of this order. Costs are not recovered as that is considered disproportionate in the particular circumstances, having regard to the nature of the default, and the fact that the owner did not introduce the species to their land.

**Alternative approaches**

102. There are a number of alternative options to those set out above. These are presented below.

**Release**

103. The main alternative to the proposals in the Bill is to maintain the current position. However, as noted above, there are a number of problems with relying on the current provisions. The most important weakness is that many species can in principle be released, and while it is true that their release can be banned by adding them to the Schedule 9 list, that is only a partial solution as species tend to be banned only once they are established in the wild and known to be causing problems. Given that prevention is the most important and most effective response, doing nothing would frustrate policy aims, and would be likely to lead to increased numbers of non-native species becoming established in the wild and having an invasive impact.

104. An alternative would be to keep the mechanism of a prohibited release list (like that currently provided by Schedule 9) but which could be used to list any non-native plant or animal – including those that are not yet established in Great Britain or Scotland. While this would be likely to be able to cover a greater number of plants and animals and be more preventative than the current mechanism, it would still be likely to need regular updating and may not always predict with certainty what is likely to arrive and become invasive. This may result in a similar situation to the present one where species are added to the list only once they are causing a problem. In addition, it would result in a very lengthy and complex list and would not address the problem of species that are native to some parts of Scotland but not others.

**Keeping**

105. The main alternative to the proposals in the Bill is to maintain the current position. However, the current controls are restrictive in that they cannot be applied to all types of species that might pose a risk. The Scottish Government considers that it is necessary to be able to regulate keeping of all potential high-risk invasive animals and plants and that the present situation does not therefore afford the required level of protection.

106. An alternative option would be to prevent the keeping of all known invasive species. This would require significant numbers of plants and animals which it would be an offence to
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

keep (unless under licence conditions) to be listed by order. The Scottish Government believes that this would be disproportionate, and would impact on significant numbers of people who for example have invasive plants in places where they present only a very minor risk, such as their garden.

Notification

107. The main alternative to the proposals in the Bill is to maintain the current position. However, being able to act to manage a species before it has established is key to the likely success of any control action. There are some species that are present in other parts of Great Britain, or that are known to present a risk of entry on known pathways, which can be expected to arrive in Scotland. For these high risk invasive species, the Scottish Government considers that the powers of notification for specified persons will complete the package of preventative proposals that will facilitate early effective control. Not having these powers (i.e. doing nothing) will mean that there is less certainty that high-risk species can be successfully controlled before they establish.

108. An alternative option would be to require the notification of all invasive non-native species. These would need to be listed by Order and would be likely to include several hundred plants and animals. The Scottish Government considers that this would be an unreasonable obligation. It would also be time consuming for relevant bodies to receive reports of widely established invasive species and receiving the information would be of limited value unless control action was a realistic possibility.

Control

109. The main alternative to the proposals in the Bill is to maintain the current position. However, the lack of any powers to enable the control of an invasive non-native species is a weakness of the current legislative framework. If the present situation is maintained and no control powers are provided then future control programmes (both national and regional) will have a reduced chance of success and new invasive non-native species are more likely to become well-established, causing long-term harm to both biodiversity and economic interests.

Consultation

110. The proposals for reform of non-native species legislation were developed by the Scottish Working Group on Non-Native Species. In addition to the formal public consultation on proposals conducted by the Scottish Government, meetings with stakeholders with an interest in non-native species issues were conducted at both Ministerial and official level.

111. The analysis of the consultation responses showed that response to the invasive non-native section of the consultation was very positive with over 80% of proposals receiving majority agreement and none receiving majority disagreement.

112. Areas where majority agreement was not reached included concern relating to release proposals, and the fact that these related to non-native species, rather than invasive non-native species (the importance of preventing the introduction of non-native species is outlined above).
While respondents agreed with the principle of access to land, there was concern regarding powers to require individuals to carry out control (30.8% in agreement, 38.3% with caveats). Concerns were mainly in relation to the fact that the powers should be used as a last resort once voluntary approaches had failed (the requirement to attempt to enter into a voluntary control agreement fulfils this). There were also concerns relating to the penalising of individuals who were not responsible for the introduction of the species in question (the discretion to recover costs addresses this).

113. 24% disagreed with the proposals relating to cost recovery (50.8% agreeing with caveats and 18.3% agreeing outright). Concerns were primarily that the system should be fair and transparent and that there should be an appeals mechanism. As noted above, it is intended to recover costs in accordance with the polluter pays principle, and the appeals process is set out in the Bill.

**SPECIES LICENSING**

(PART 2 OF THE BILL)

**Introduction**

114. The current law gives certain animal and plant species special protections, including making it an offence for protected animal species to be taken, killed or disturbed, or for protected plants to be uprooted.

115. There may however be good reasons for taking action that causes harm to a protected animal or plant. For example, a bird may need to be killed to prevent damage to crops, a plant may need to be uprooted for the purpose of introducing it to another area, an animal may need to be killed to prevent the spread of disease or a bird or animal may need to be marked or otherwise disturbed for research purposes. In general, therefore, a licence can authorise an act that would otherwise be an offence (a ‘species licence’).


117. The Bill makes changes to the 1981 Act as considered here and to the 1992 Act as considered below. The intention would be to amend the 1994 Regulations after the Bill has been passed so as to ensure appropriate consistency with the 1981 Act, as amended. The 1970 Act will be repealed and replaced with a new licensing regime for Scotland when Part 6 of the Marine (Scotland) Act 2010 is brought into force.

**Administration of species licensing under the 1981 Act**

118. Section 16 of the 1981 Act allows most activities prohibited by that Act to be licensed for certain purposes. Administration of these licences is currently shared between the Scottish Ministers and SNH. In general, SNH is responsible for issuing licences for scientific, research or
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

educational purposes, and the Scottish Government is responsible for issuing licences for wider public safety or land management purposes.

119. The Bill provides for the Scottish Government to become the Appropriate Authority for all licensing matters within the 1981 Act, with the power to delegate the administration of those licences to SNH by written direction or to local authorities by Order. By becoming the default authority for species licences, with the power to delegate that authority, the Scottish Government will maximise flexibility within the licensing system, so helping to ensure that the most efficient and cost-effective service is delivered. The intention is that only those licences related to development planning would be considered appropriate to delegate to local authorities. Local authorities already consider species licensing as part of their consideration of applications for planning permission therefore if licensing functions were delegated in this way the process should be more efficient and streamlined.

**Purposes of species licences**

120. The licensing system is currently applied in an inconsistent way to otherwise similar situations. The 1981 Act protects certain species listed in Schedules 5 (animals) and 8 (plants) including red squirrels, pine martens and water voles. At present, there is no listed purpose which permits prohibited activities to be licensed in order to allow development activities.

121. In contrast, the 1994 Regulations protect species protected under EU law such as the otter. They allow a species licence to be granted where doing so is justified by “imperative reasons of over-riding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”. This enables licences to be issued for development purposes providing the impact on species is proportionate to the activity and not an undue risk to conservation of the species.

122. The Scottish Government considers that there is no good reason why species which are protected by domestic legislation but not under EU law should have a higher degree of protection than species which are protected under EU law. The Bill therefore allows activities affecting the species of animals and plants protected by the 1981 Act to be licensed for social, economic or environmental purposes, provided that this will contribute to a significant social, economic or environmental benefit and there is no other satisfactory solution.

**Removal of certain species from Schedule 6**

123. The 1994 Regulations prohibit the killing and taking of animals and plants which are listed in Schedules 2 and 4 of the Regulations. These species are protected under the Habitats Directive and are known as European protected species. Some European protected species were originally protected under Schedule 5 to the 1981 Act and Schedule 5 was amended in 2007\(^\text{19}\) to remove the duplication.

124. The 1994 Regulations (regulation 41) also protect European protected species and certain other animals (those listed in Schedule 3 to the Regulations) from being taken by certain

\(^{19}\) See S.S.I 2007/80
methods. Section 11(2) of the 1981 Act provides similar protection to animals listed in Schedule 6 to the Act. Some European protected species and some species listed in Schedule 3 to the 1994 Regulations remain in Schedule 6 to the 1981 Act. There remains therefore some duplication with the protection offered under the 1994 Regulations for these animals.

125. The Bill therefore removes horseshoe bats, typical bats, wildcats, bottle-nosed dolphins, common dolphins, dormice, common otters and harbour (or common) porpoises, all of which are European protected species, from Schedule 6 to the 1981 Act. It also removes pine martens and polecats, which are listed under Schedule 3 of the 1994 Regulations, from Schedule 6. These species will continue to receive the necessary legal protection under the 1994 Regulations.

Alternative approaches

126. In relation to the administration of licensing, the proposed changes already take account of any alternatives. The Bill provisions would enable species licences to be granted by any or all three of the Scottish Ministers, SNH or local authorities.

127. The only alternative to adding a licensable purpose for Schedule 5 and 8 species is not to do so. The lack of this provision is already thought to have limited otherwise beneficial projects.

128. Retaining the current list of species in Schedule 6 would mean that some species remained protected under two overlapping pieces of legislation. The two pieces of legislation are very similar, in that they regulate broadly the same activities and are intended for the same purpose (wildlife protection) but they are not identical. The differences arise because one (the 1994 Regulations) is required to implement European legislation (the Habitats Directive) while the other was developed as a purely domestic wildlife protection regime. Applying both regimes to one species lacks legal clarity and could cause confusion for those dealing with that species.

Consultation

129. In the public consultation the transfer of all licensing administration to SNH was broadly supported although a number of respondents supported the idea that licensing should remain either shared or be dealt with by the Scottish Government. The proposal that local authorities should have a role in the licensing procedure was almost unanimously rejected, however this may have been partly due to uncertainty about the licensing process and what roles the various authorities already have, that is local authorities currently must consider species licensing in their role as planning authority. In recognition of this the Bill contains a requirement that a local authority with delegated licensing functions must consult SNH.

130. The addition of a licensable purpose to allow development or other similar works which would be of significant social or economic benefit was strongly supported as long as levels of protection were still maintained within the licensing system.

131. The removal of European protected species and other species protected under the 1994 Regulations from Schedule 6 was fully supported as there would be no effect on the level of protection of those species.
DEER

(PART 3 OF THE BILL)

Introduction

132. Deer are an iconic species for Scotland, bringing significant benefits in terms of tourism, sport and food. They also have the potential to impact adversely on natural habitats, public safety and the economic value of woodlands and agricultural crops. With no natural predators in Scotland, wild deer populations will tend to increase in numbers and range. Deer therefore need to be managed because of their interaction with other land-use and management objectives.

133. Consultation on the proposed merger of SNH and Deer Commission for Scotland (DCS)\(^20\) revealed a broad consensus that key elements of the Deer (Scotland) Act 1996 (“the 1996 Act”) (which is based largely on its predecessor the Deer (Scotland) Act 1959) were out of date and in need of reform.

134. In 2008, the then Minister for Environment, Michael Russell, asked DCS to review the 1996 Act and to make recommendations to improve the management of wild deer across Scotland. DCS identified a number of deficiencies in the 1996 Act and made recommendations for improved mechanisms for: tackling the impacts which deer can have on important features of the natural environment; delivering and support local deer management; and improving deer welfare and delivery of other public benefits. The Scottish Government consulted on these proposals and they form the basis of this part of the Bill.

135. The Scottish Government’s objectives in relation to deer management are to:

- modernise the legislative framework for managing deer;
- develop a system that delivers public benefits in environmental management as well as sustainable recreational stalking and venison industries;
- put in place arrangements to deal with urban deer; and
- ensure the highest standards of deer welfare.

Deer management structures

136. Wild deer are like other wild animals and birds in that they are not owned but landowners have certain rights in relation to them. These arise as part of the landowner’s general right to exclusive use and enjoyment of their own land and they include the right to take wild animals which are on the land. Over the years that right has become subject to statutory restrictions about the methods which may be used to hunt deer and the times of the year when this may occur. Statutory rights have also been conferred to allow certain other people (including

\(^{20}\) DCS and SNH are scheduled to merge in 2010. SNH will inherit DCS’ functions under the 1996 Act by virtue of section 1 of the Public Services Reform (Scotland) Act 2010 (asp 8).
occupiers, who are not necessarily landowners) to take and kill deer in certain circumstances.\(^{21}\) Apart from restrictions on when deer may be taken or killed, and the means by which that may be done, few other obligations are placed on landowners about how wild deer should be managed.

137. In practice, the principal mechanism for the joint management of red deer in the uplands of Scotland is the Deer Management Group (DMG). DMGs have tended not to develop in the lowlands.

138. The DMGs are non-statutory and are a voluntary mechanism by which local land managers come together to manage deer (which frequently range across land ownership boundaries) in specific geographic areas. Whilst these arrangements have proved to be effective in situations where land managers have a common objective, they are of limited value where objectives differ and are considered not to have delivered the optimal public benefit.

139. The Scottish Government believes that wild deer management will continue to be best delivered on a non-statutory basis. However, better guidance and support is required for land managers to ensure that deer management is proactive, efficient and effective, and that the backstop powers for when voluntary mechanisms fail are credible and effective. The Bill therefore includes what the Scottish Government considers to be a number of improvements to the deer management structure in the 1996 Act:

- **Statutory code of practice to support deer management** – To ensure that all relevant landowners engage with their role in managing deer on their land in a suitable (and, where appropriate, collaborative) manner, a new duty will be placed on SNH to develop and monitor implementation of a statutory Code of Practice. This code will set out responsible deer management practice in a range of settings and will set out the practical steps which can be taken by landowners to deliver it. The code is not binding, but SNH will monitor compliance with the code and take this into account when assessing whether to exercise its statutory intervention powers to ensure delivery of effective deer management.

- **Urban deer management** – Deer numbers in the urban and peri-urban (between the suburbs and the countryside) environment are increasing. Their presence in these environments presents unique management issues and they can be a significant contributory factor in road traffic accidents. The new statutory Code of Practice will set out expectations for how deer should be managed in the urban and peri-urban environment. In addition, the Bill will amend SNH deer management functions under the 1996 Act to make clear that it should seek to further urban deer management across Scotland. Additionally, in light of their significant interests in urban land management, the Bill will place a duty on public authorities to have regard to advice issued by SNH on deer management to ensure that they take the necessary steps to manage deer on their land in an appropriate manner. This duty to have regard to advice of SNH could include the Code of Practice.

- **Amended powers of statutory intervention to ensure delivery of effective deer management** – Currently, DCS may intervene to ensure effective deer management

\(^{21}\) Section 29 of the Deer (Scotland) Act 1996
through control agreements (voluntary measures, agreed under section 7 of the 1996 Act) and control schemes (compulsory measures, specified under section 8 of the 1996 Act). These powers may be exercised by DCS in situations where deer are causing damage to forestry, agriculture, the natural heritage or where they have become a danger to public safety. There is strong stakeholder support for improving these backstop measures to make them more credible and effective, and the Bill makes a number of amendments to how they operate for those purposes. In particular, SNH must have regard to the Code of Practice when considering how to use its powers. The triggers for control agreements and control schemes will also be aligned so that in cases where the triggers are met to allow SNH to seek a control agreement but either no agreement can be reached or an agreement is reached but not implemented, those triggers can be relied on by SNH as a basis for seeking a control scheme. The Bill also provides for time limits for actions to be taken by landowners to be embedded into control agreements and schemes.

- **Support for collaborative deer management** – The role of SNH in providing advice to third parties will be enhanced by amending section 3 of the 1996 Act to provide a power to assist any person or organisation in reaching agreement with a third party. This could be used to assist people (including DMGs) in reaching purely voluntary deer management agreements, without having recourse to more formal deer control agreements and control schemes. Furthermore, the limit of nine on the number of members of a deer panel, appointed under section 4 of the 1996 Act to provide DCS with advice on deer management issues, is removed in order to provide the maximum flexibility for the operation of such panels.

**Competence requirement in deer stalking**

140. The consultation proposed a mandatory competence requirement for those who wish to shoot deer unsupervised, or supervise the shooting of deer. However, Ministers have recognised the strength of feeling against this proposal expressed by stakeholders in consultation responses and meetings. Furthermore, several representative organisations within the deer and game sector expressed their doubts about the proposal, and offered to work with Government to secure high standards in deer stalking and to support the provision of voluntary training.

141. The Scottish Government believes that voluntary arrangements will work best, if they can be made to work. They therefore intend to give the industry a fair chance to self-regulate and work with them to develop a voluntary framework. The Bill will enable the Scottish Ministers to introduce a competence requirement by Order at any time in the future, should that be needed. If the Scottish Ministers have not used this power by 1 April 2014, SNH will conduct a review of standards of competence amongst those who shoot deer.

142. If the competence requirement was introduced, the current policy is that this would require stalkers to demonstrate skills in and knowledge of deer stalking, and to ensure their names were listed on a register of fit and competent persons to be maintained by SNH. The objective would be to ensure deer welfare and public confidence. A system of recognition for foreign hunting qualifications, held by visitors to Scotland wishing to stalk deer, would also be developed.
143. Linked to the competence register, the original proposal would have removed the obligation on owners and occupiers to submit cull returns to DCS/SNH and passed this requirement on to those on the competence register, in respect of deer they shot or supervised in shooting. This provision is also included in the enabling power described above and could be implemented if the power was exercised.

**Occupier exemptions**

144. The Scottish Government has decided to proceed with a modified version of the proposal to remove the automatic exemption under section 26 of the 1996 Act which allows occupiers to shoot deer during close seasons for the purpose of protecting crops, pasture or enclosed woodland, without authorisation.

145. The Bill will replace the automatic exemption with a responsive authorisation system under section 5 of the 1996 Act. It will do so by amending sections 5 and 37 to allow SNH to issue general authorisations to shoot in the close season without carrying out a separate assessment of whether individual applicants are “fit and competent” to be so authorised. The intention is to issue a general authorisation to allow occupiers to shoot during close seasons for certain purposes (protecting crops, pasture or enclosed woodland), provided that they comply with certain conditions. Conditions are likely to include requirements to provide certain information to SNH (e.g. contact details and cull returns) and restrictions on the deer which can be shot (so the authorisation would not cover female deer at times of greatest welfare concern i.e. when they have dependant young).

**Alternative approaches**

146. The two main alternatives to the proposals set out in this section are either to maintain the status quo, or to institute a Scotland-wide statutory deer management system.

147. The Scottish Government believes that the 1996 Act is in need of modernisation if effective management of wild deer across Scotland is to be achieved. The range of factors which need to be taken into account in deer management, and the range of relevant land-managers involved, has grown since the 1996 Act was put in place. The deer sector comprises a complex and diverse range of interests with differing and often opposing management objectives. Without the reforms proposed in this part of the Bill, there is a strong risk that the legislative framework will be unable to reconcile those diverse interests and effective management of wild deer will be frustrated.

148. The Scottish Government considers that the creation of a Scotland-wide network of statutory deer management groups would be disproportionate. Significant new funding would be required to establish and maintain a statutory framework and would potentially involve a fundamental shift in day to day control of deer management from private landowners to public bodies. Where they have worked, voluntary deer management structures have proved to be efficient and effective and the Scottish Government considers that the most appropriate way forward is to provide better support and assistance for these voluntary mechanisms.
149. The alternatives to the enabling power to introduce competence registration requirements were to maintain the current position or to implement a mandatory competence regime within the Bill. Ministers are mindful of the advice from DCS of evidence of some poor performance in deer stalking. However, Ministers are also keen to avoid a regulatory and bureaucratic burden on the rural economy if this can reasonably and responsibly be avoided. The Scottish Government considers that the compromise solution of including an enabling power in the Bill therefore represents the best approach.

150. Other proposals are not being pursued, either because reasonable concerns were expressed in the consultation, or because they were linked to the introduction of the competence register. The proposed change to authorising night shooting (to authorise deer stalkers through the competence register rather than occupiers of particular land) will not be introduced but if a competence register is introduced at a later date, the enabling power will allow Ministers to provide that people registered as competent will automatically be considered “fit and competent” for the purpose of a night shooting authorisation. The proposed changes to controls on driving deer with vehicles will not be introduced due to concerns expressed in the responses to the consultation about formulating a workable offence. Changes to the legislation requiring Ministers to set a female close season and enabling Ministers to set a male close season are not being taken forward in the Bill, in recognition of the views expressed in the consultation responses.

Consultation

151. In developing its proposals for reform of the 1996 Act, DCS consulted a wide range of stakeholders. Meetings with stakeholders in the deer management sector were conducted at official and Ministerial level.

152. The analysis of consultation responses commissioned by the Scottish Government provides a breakdown of views about the deer management proposals. Out of all the deer proposals in the consultation document, those which related to deer management structures generated the highest levels of support amongst respondents. Almost all (96%) of respondents supported the maintenance of a default voluntary deer management system, although five (50%) of the conservation organisations which commented on this section advocated moving to a statutory deer management system. Many respondents recognised that some sort of enforcement mechanism was needed as a backstop where the voluntary approach broke down.

153. The responses on the proposed competence requirement were split fairly evenly with only a small majority disagreeing with the proposed offence of shooting deer without being registered as competent. The deer and game sector was keen to promote competence but on a voluntary basis. On the related question of cull returns, a very large majority of respondents expressed concern about the proposed change, with 73% of unique responses (and 83% of those responses including statements in support of a representative body) opposing the change. The Scottish Government has also taken note of the strength of feeling over the proposed changes to the legislation regarding the setting of close seasons for female and male deer and for the proposal for setting a local male season. Respondents overwhelmingly opposed these changes and therefore this is not included in the Bill.
BADGERS

(PART 4 OF THE BILL)

Introduction

154. Badgers are a common species in Scotland and can be found in any type of habitat including woodland, urban and agricultural settings. Because of their adaptability to survive in these varied habitats, badgers are susceptible to a range of offences including badger baiting and destruction of setts.

155. The protection of badgers from unlawful persecution, exploitation and disturbance is covered by the 1992 Act. The Scottish Government considers that the 1992 Act provides an effective legislative framework for the protection of badgers, however there are anomalies which this Bill provides the opportunity to address.

Knowingly causing or permitting an unlawful act

156. Sections 1 to 5 of the 1992 Act contain five types of offences in relation to badgers. These are taking, injuring or killing badgers, cruelty, interfering with badger setts, selling and possession of live badgers, and marking and ringing.

157. Section 3 (interference with badger setts) was amended by the 2004 Act to specify that an offence was committed where a person undertook the activity directly or knowingly caused or permitted the act to be done. The Bill extends sections 1, 2, 4 and 5 of the 1992 Act so that it is an offence for a person to knowingly cause or permit any of the offences to which those sections relate. The offence of knowingly causing or permitting does not, however, apply to the offence of refusing to leave land or refusing to give personal details under section 1(5) of the 1992 Act.

Administration of species licensing under the 1992 Act

158. Section 10 of the 1992 Act allows a number of prohibited activities in relation to badgers to be licensed for certain purposes. As with licences under the 1981 Act, administration of these licences is currently shared between the Scottish Ministers and SNH. The Bill provides for the Scottish Ministers to become the licensing authority for all licences under the 1992 Act, with the power to delegate the administration of those licences to SNH by written direction or to local authorities by Order. This is consistent with the changes in relation to species licensing under the 1981 Act, as set out in Part 2 of the Bill and will ensure that species licensing for badgers is consistent with other species licensing.

Penalties

159. The penalties which apply to offences in relation to badgers are contained in section 12 of the 1992 Act. The Scottish Government considers that it is an anomaly that the maximum penalty for killing a badger (which can be dealt with only on summary procedure) is less than that for other offences, such as digging for a badger (which can be dealt with by summary procedure or on indictment).
The Bill amends the 1992 Act so that the offences committed under sections 1(1) and (3) of that Act, relating to the taking, injuring or killing of badgers and the possession of dead badgers, are included within the category of offences that may be tried by summary procedure or indictment. This will result in the law properly reflecting the serious nature of these offences.

**Alternative Approaches**

The main alternative to the Bill is to do nothing. However the Scottish Government considers the Bill presents an opportunity to address known anomalies in the protection of badgers.

**Consultation**

The consultation responses revealed that responses were positive towards the proposed amendments to strengthen the existing legislation, although some of the land management groups were concerned as to how this would affect badger population control if required to prevent the spread of bovine TB.\(^2\)

**MUIRBURN**

**(PART 4 OF THE BILL)**

**Introduction**

Muirburn is the act of burning vegetation (such as heather, gorse and grass) on open semi-natural habitats, including heath and moor. It is practised throughout the Scottish uplands as a tool to facilitate habitat management for economically important species, including red grouse and livestock. It is thought to play a role in managing the risk of wildfires by preventing the build up of older vegetation which can act as a source of fuel. More recently, prescribed burning has been used to manage habitats for conservation objectives and there is interest in exploring the role of muirburn in pest and disease control.

Muirburn is regulated under sections 23 to 27 of the Hill Farming Act 1946 (“the 1946 Act”), as amended by the Climate Change (Scotland) Act 2009 (“the 2009 Act”). Under the 1946 Act, muirburn is only permitted within the defined season (1 October until 15 April). It is possible to extend this season, with the landowner’s permission, until 30 April at altitudes below 450m and until 15 May at altitudes above 450m. The 2009 Act allows Scottish Ministers to vary the permitted muirburn dates where necessary or expedient in relation to climate change. Regulation in legislation is complemented by best practice guidance in the Muirburn Code, which is included in the cross compliance obligations for recipients of the Single Farm Payment\(^2\).\(^3\)

Consultation on the proposed muirburn provision in the 2009 Act suggested that muirburn legislation needed to be reviewed to reflect changes in the objectives and practice of


\(^3\) See the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (S.S.I. 2004/518) and Article 5 of Council Regulation (EC) No 1782/2003 for cross compliance requirements.
prescribed burning since the 1946 Act was introduced. Suggestions focused on support for introducing further flexibility in the regulation of muirburn dates, as well as other changes to muirburn legislation outwith the scope of the 2009 Act. Views were sought on these proposed changes in the Bill consultation.

166. The Scottish Government wishes to facilitate well-managed muirburn, to ensure adverse environmental impacts are avoided, and to allow prescribed burning to be used for new beneficial purposes. The current regulation of muirburn under the 1946 Act is too restrictive to allow these objectives to be met effectively.

167. The Bill therefore proposes a number of improvements to the 1946 Act.

**Variation of the muirburn season**

168. Ministers may currently vary the dates of the muirburn season only where necessary or expedient in relation to climate change, but there is broad support for allowing variation of the season for other purposes. The following additional purposes are included in the Bill: conserving, restoring, enhancing and managing the natural environment, and public safety. It also proposes allowing variation of the season on a geographical basis, to reflect variation in conditions over Scotland, and on a phased basis, to allow a gradual change of permitted dates over a number of years. Ministers will not be able to reduce the number of available burning days when exercising this power.

**Removing the May extension to the muirburn season**

169. Currently, muirburn is permitted between 1 October and 15 April. This period may be extended, with the landowner’s permission, until 30 April on lands below 450m, and until 15 May on lands above 450m. Evidence suggests that many moorland bird species have started nesting by 15 May and that nesting attempts may be disrupted by burning at this time. It is therefore proposed that the last date to which the muirburn season may be extended (with landowner’s permission) will be 30 April, regardless of altitude. This will help to minimise impacts on nesting birds and also simplify the permitted muirburn dates by removing altitudinal variation.

**Licensing out of season muirburn**

170. This would allow licensed out of season burning to be used for new beneficial purposes, such as habitat restoration or recovery from heather beetle infestation, where the optimum times for burning are outwith the muirburn season. It would also allow research into the impacts of burning at different times of year, to improve understanding of wildfire behaviour and explore new potential uses for muirburn (such as pest and disease control).

**Neighbour notification requirements**

171. Under the 1946 Act, it is an offence to make muirburn without providing written notice of the date, location and approximate extent of the burn to neighbouring proprietors at least 24
hours before burning. This does not allow practitioners the flexibility to respond to changeable weather conditions. However, the proposal to remove the legal notification requirement received mixed views in the consultation. The Bill therefore proposes a more flexible notification requirement, where practitioners must notify the proprietor of the land, and the occupiers of land within 1km of where muirburn is planned, of their intention to burn during a muirburn season. They are only required to provide further details of the dates, place and extent of burns where requested by neighbours. Where there are ten or more neighbouring occupiers to notify, notification may alternatively be made by placing a notice in a local newspaper. Neighbours also have the opportunity to opt out of being notified of the intention to burn, avoiding unnecessary notifications.

**Alternative approaches**

172. The two main alternatives to the proposals set out in this section are either to maintain the status quo, or to change the dates of the muirburn season under primary legislation.

173. Allowing muirburn only within a rigidly-defined burning season which may not be varied (unless a clear link with climate change can be demonstrated) could result in a number of risks.

174. Firstly, practitioners report that a shortage of suitable burning days within the current muirburn season is constraining good practice and making it difficult to carry out sufficient muirburn. This may result in an increased risk of wildfire, if practitioners are forced to burn in less suitable conditions, and less managed habitats of lower quality for livestock, grouse and other wildlife. Constraints on the number of burning days also increase the pressure on practitioners to burn in the spring, when there may be risks to nesting birds. For these reasons, it may be beneficial to extend the muirburn season into September to increase the window of opportunity for burning. The current lack of provision for licensing out of season muirburn also prevents its use for new beneficial purposes, such as habitat restoration, where the optimum time for burning is outwith the muirburn season. Evidence suggests that maintaining the ability to burn until 15 May (above 450m) is likely to disrupt the nesting attempts of many moorland bird species. Finally, the current neighbour notification requirement is impractical and compromises flexibility.

175. Some stakeholders expressed the view that the muirburn season should be extended into September in primary legislation. However, the Scottish Government considers that further evidence of the environmental impacts of September burning (e.g. on the risk of peat fires, or on species not normally exposed to burning at this time) will be required before varying the season in this way. It may be necessary to carry out research, through licensed burning in September, in order to assess these impacts. Allowing variation under secondary legislation also allows for greater flexibility in the dates of the muirburn season, allowing the dates to be altered in response to future evidence or changes.

**Consultation**

176. In addition to the formal public consultation on proposals for the Bill, meetings with stakeholders with an interest in muirburn (including members of the Moorland Forum’s Muirburn Group) were conducted at official and Ministerial level.
The analysis of consultation responses commissioned by the Scottish Government provides a breakdown of views about the muirburn proposals. There was broad support for allowing Scottish Ministers to vary the dates of the muirburn season for reasons other than adaptation to climate change (including on a geographical basis), and introducing a system of out of season licensing for muirburn. Views on the proposal to remove the May extension to the muirburn season were mixed, with a narrow majority in support of the proposal. Views on the proposal to remove the legal neighbour notification requirement were also mixed, with an equal proportion of respondents agreeing, agreeing-with-caveat and disagreeing with the proposal. The Bill therefore proposes to retain a more flexible notification requirement.

SITES OF SPECIAL SCIENTIFIC INTEREST (SSSI)

(PART 5 OF THE BILL)

Introduction

Sites of Special Scientific Interest (SSSIs) are the main statutory nature conservation designation in Scotland (and in Great Britain). SSSIs are areas of land or water which, in the opinion of SNH, are of special interest by reason of their flora or fauna or geological or geomorphologic features.

The SSSI designation was originally created by the National Parks and Access to the Countryside Act 1949, and amended by the 1981 Act. The 1981 Act gave sites greater legal protection and allowed the payment of compensation to landowners/occupiers. Notably, it also ensured the involvement of landowners/occupiers in the management of the site. The Nature Conservation (Scotland) Act 2004 made important changes to legislation governing the notification, management and protection of SSSIs. The 2004 Act addressed many of the recognised shortcomings of the 1981 Act and reflected Government policy to promote care for Scotland’s biodiversity. SSSIs notified under the 1981 Act continue under the 2004 Act. The following considerations do not apply to the 13 SSSIs that remain notified only under the 1949 Act.

Criteria for the selection of SSSIs are published on the Joint Nature Conservation Committee’s website. At the current time, there are 1,442 (2004 Act) SSSIs, covering 1,033,056 ha (approximately 13% of Scotland). These affect approximately 7,500 owners and occupiers, the majority of whom are private landowners (some sites are publicly owned). When SNH wishes to designate land as SSSI, it must notify a range of interested parties. These include:

- owners and occupiers
- Scottish Ministers
- the relevant local, National Park, regulatory and planning authorities
- relevant community councils and statutory undertakers
- any community body having expressed an interest in the land under the Land Reform (Scotland) Act 2003
181. The notification comprises a description of the natural features to be protected, a map showing the boundary of the designated land and a list of those operations requiring consent from SNH or a regulatory authority.

182. The main changes introduced by the 2004 Act in relation to SSSIs related to the following: statutory purpose and wider consultation, site management statements, improved protection, Nature Conservation Orders (NCOs), reduced regulation, compensation, better dispute resolution, Land Management Orders (LMOs), duties of public bodies, consent mechanisms for operations on a SSSI, better enforcement and more realistic penalties.

Combining SSSIs

183. There are instances where two or more SSSI notifications apply to the same land or are adjacent to each other. In such instances, there are also two or more different lists of operations requiring consent relating to the same land. This can be confusing for owner/occupiers and increases the risk of (inadvertent) non-compliance and possible damage to protected natural features. There are also costs associated with the maintenance and listing of each SSSI notification in corporate databases, the SSSI register, periodic statutory documentation review and maintenance of boundary maps.

184. It would therefore be expedient to provide a means by which the boundaries (and associated administrative burdens) associated with such sites may be rationalised in a manner which is not disproportionate. Existing statute does not allow this.

185. The Bill will allow SNH to combine 2 or more SSSIs into a single SSSI such that the original SSSI notifications cease to have effect. SNH must notify the interested parties and also give public notice of the new combined site in such other manner as it thinks fit (e.g. on the internet). This provision will not enable the notification of any land as a SSSI which was not already notified, or allow SNH to add anything to the list of operations requiring consent which was not already on one of the component SSSI lists of operations requiring consent.

De-notification of SSSIs in Certain Circumstances

186. The Bill has provision to streamline the procedure for the de-notification of SSSIs by SNH in certain circumstances. Those circumstances are when all or any part of an SSSI is no longer of special interest due to damage to, or destruction of, a natural feature as a consequence of authorised relevant development, (on the basis that consultation with the interested parties and SNH will already have taken place under procedure associated with the consideration of the development at the application stage). In such circumstances, SNH will be able to de-notify all or part of a SSSI without having to execute the procedure provided in Schedule 1 to the 2004 Act.

Third party operations on SSSIs permitted by public bodies

187. Section 16 of the 2004 Act requires non-public body owners and occupiers to apply for consent before they “carry out, or cause or permit to be carried out” certain operations. Such activities could be, for example, mass participation or motorised events or other recreational
activities (beyond responsible access rights). However, section 13 of the 2004 Act only requires public bodies to apply for consent from SNH before they carry out certain operations and does not require them to obtain consent from SNH for the “causing or permitting” of such operations.

188. Consequently, the statute doesn’t deal with the position where a public body SSSI owner or occupier is requested to give permission to a third party for an operation likely to damage the protected natural features of the SSSI. The Bill will therefore align more closely the provisions for public bodies causing or permitting a damaging operation, with those for other owners and occupiers.

**Additional exemptions from the need for SSSI consent**

189. A fundamental aim of the 2004 Act was to streamline procedures and reduce the bureaucratic and regulatory burden on owners and occupiers of SSSIs. One of the key provisions for owners and occupiers other than public bodies was the listing in section 17(1)(a) to (e) of those situations in which consent from SNH was not required.

190. The Bill makes provision for the extension of the list of situations in which SNH consent is not required in order to streamline the control regime for operations on SSSIs where this can be achieved without diminishing the protection afforded to such sites. It is intended that the power be used to specify operations authorised by an existing process when that process allows sufficient input by SNH such that it can be satisfied that the operations are acceptable without the need for a separate formal consent. The nature of the provision is such as to provide flexibility for a possible range of situations where separate SNH consent is not required (an example at the present time is the granting of contracts under the Rural Priorities scheme) and also to provide flexibility to accommodate operations which might be carried out under regimes created by future legislation (and also account for regimes which may not continue indefinitely). The intended result is a reduction in the burden on SSSI owners and occupiers and SNH and achieve better integration of Government regulatory services.

191. The Bill will also extend the list of exempted operations to include deer control operations being carried out in accordance with a control scheme under section 8 of the 1996 Act.

192. Compliance with a restoration notice is also added to the list of exemptions from the need for SSSI consent. This is analogous to the current provision whereby compliance with a Land Management Order is exempt (section 17(1)(e)).

**Restoration notices**

193. Where there has been illegal (i.e. unconsented, reckless or intentional) damage to the natural features of an SSSI, it is a priority for SNH to secure the restoration of the natural features, as far as is possible.

194. Currently, there are two options available:
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

i) seeking voluntary restoration by the offender (responsible party); or

ii) by way of a restoration order made by the courts under section 40 of the 2004 Act (should a person be convicted of an offence).

195. Securing a restoration order requires successful investigation and prosecution, and for a Court to decide that a restoration order is an appropriate part of the sentence. This process is likely to be protracted and costly with no certainty of outcome.

196. Provisions for a “middle” option are therefore included in the Bill to provide a more compelling legal requirement for reparations to be made following illegal damage on a SSSI (with prosecution being avoided). Similar statutory notice arrangements are already provided in other statutes in relation to

- Forestry Commissioners in the Forestry Act 1967 (sections 17A and 24) and the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 (reg 20);
- Scottish Ministers in the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 (regs 25, 27);
- Scottish Environment Protection Agency in the Water Environment (Controlled Activity) Regulations 2005 (reg 28);
- DCS in the 1996 Act (section 8);
- local planning authorities in Town and Country Planning legislation.

197. The Bill will amend the 2004 Act to include provision for SNH to issue restoration notices requiring the responsible party to restore the damaged natural features (if that person accepts the notice). Prosecution could only follow if a person who has accepted a restoration notice fails to comply with it.

198. A restoration notice is a written notice which would be issued by SNH to the owner or occupier of land or to a public body having exercised its function in relation to land notified as an SSSI. The notice would require the person to take steps to restore the damaged natural features of an SSSI caused by non-compliance with the requirements of the 2004 Act, so that the position is restored as far as possible to what it would have been if no damage had occurred. The degree to which this can be achieved will depend on the circumstances of each case.

Procedure

199. A restoration notice will specify:

- the damaged natural feature(s) to be restored
- the actions required to bring about restoration
- a time limit for completion of the works
- the person to whom the Notice applies
200. The person on whom it is proposed to serve a restoration notice will be given the opportunity to make representations to SNH. SNH must then consider any representations that it receives before deciding whether to serve the restoration notice.

**Enforcement**

201. It will be an offence to fail to comply with the terms of a Restoration Notice.

202. SNH will have the right to carry out restoration works specified in a notice in the event of non-compliance and to recover costs from the responsible party. SNH currently has a similar right under the Land Management Order provisions in the 2004 Act.

203. SNH will be granted a right of entry in order to determine what works are required before making a restoration notice, to monitor compliance with a Notice, and if necessary to carry out works.

204. The responsible party will not need to apply to SNH for consent to carry out the works required by a restoration notice, and so sections 14 and 17 of the 2004 Act are to be amended accordingly. This will be similar to existing provision for land management orders, where no consents are needed for operations required by a LMO.

205. This provision will apply to both public body and private owners and occupiers. (Public bodies already have an obligation to restore damage caused in certain circumstances under section 14(5) of the 2004 Act).

**Alternative Approaches**

206. In practice, the 2004 Act has been effective at delivering protection for Scotland’s SSSIs and wildlife. However, some scope for improvement has been identified in the form of

i) delivering administrative streamlining where possible and

ii) additional provision to facilitate the restoration of illegal damage without having to seek prosecution in the first instance.

207. It is therefore considered that the 2004 Act remains fit for purpose and major revision is unnecessary; the provisions in Part 5 of the Bill result from specific issues which have been identified and the range of alternatives is therefore limited.

208. Provision to allow for boundary rationalisation of multiple adjoining SSSIs (without providing for the notification of any additional land) are not considered to represent a substantial departure from current policy. New powers for denotifying SSSIs will be exercisable only when the features have been lost/destroyed beyond recovery or where part of an SSSI is deemed to be no longer of special interest following the execution of a consent in relation to which SNH have already been consulted.
Consultation

209. A range of views was expressed in consultation responses. These were largely positive with regard to proposals to streamline and better regulate potentially damaging activities on SSSIs. Land managers expressed some concerns about the proposed provisions relating to combining and de-notifying SSSIs. It is considered that the provisions in the Bill are robust enough to allay any reasonable concerns.
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Wildlife and Natural Environment (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The Bill makes a range of provision about wildlife and the natural environment. It consists of six Parts and a schedule, which make provision as explained below.

4. The following expressions are used throughout this memorandum:
   - “The 1946 Act” means the Hill Farming Act 1946;
   - “The 1996 Act” means the Deer (Scotland) Act 1996;
   - “The 2004 Act” means the Nature Conservation (Scotland) Act 2004;
   - “DCS” means the Deer Commission for Scotland, established under the 1996 Act and to be dissolved and its functions transferred to SNH on the commencement of section 1 of the Public Sector Reform (Scotland) Act 2010; and
   - “SNH” means Scottish Natural Heritage, established under the Natural Heritage (Scotland) Act 1991.
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

Part 1

5. Part 1 contains defined expressions for the statutes amended by the Bill.

Part 2 – Wildlife under the 1981 Act

6. Part 2 of the Bill makes amendments to Part 1 of the 1981 Act. Part 1 of that Act regulates the taking, killing, sale and possession of all wild birds and of the species of animals and plants which are specified in Schedules to the Act. Certain other species of animals and plants are protected separately under the Conservation (Natural Habitats & c.) Regulations 1994 (S.I.1994/2716). Part 1 of the 1981 Act also prohibits certain methods of taking and killing birds and animals and regulates the use of other methods (including snares). It also regulates the introduction of non-native species. Most activities prohibited under Part 1 are capable of being licensed for certain purposes under section 16 of that Act.

7. The amendments in Part 2 of the Bill add provisions about the protection and poaching of game species to the 1981 Act, abolish “areas of special protection” established under section 3 of that Act, impose restrictions on the use of snares to catch animals, reform and extend the regime for controlling non-native and invasive species, extend the scope of the licensing functions and enable the delegation by the Scottish Ministers of all such functions, and make consequential changes to licensing functions and the powers of wildlife inspectors.

Part 3 - Deer

8. Part 3 of the Bill amends the 1996 Act. Part I (sections 1 to 4) of the 1996 Act places a duty on DCS to further the conservation, control and sustainable management of deer. Part II of that Act (sections 5 to 16) provides for the setting of close seasons and creates mechanisms for DCS to work with landowners to manage deer numbers. Part III (sections 17 to 26) of that Act creates offences in relation to deer, including poaching offences which make it an offence to kill deer without the legal right to do so. Part IV (sections 27 to 48) regulates venison dealing and contains enforcement and other miscellaneous provisions.

9. The functions of DCS under the 1996 Act are to be transferred to SNH by section 1 of the Public Services Reform (Scotland) Act 2010. Schedule 1 to the 2010 Act makes a large number of consequential amendments to the 1996 Act. These have been taken into account in drafting the Bill, which refers to SNH throughout. The same approach has been taken in this memorandum.

10. Part 3 of the Bill amends the 1996 Act to change the provisions which allow certain occupiers of land to shoot deer during close seasons. It requires SNH to prepare a code of practice in relation to deer management. It revises the purposes for and the circumstances in which SNH can exercise powers in relation to control agreements, control schemes and emergency measures to manage deer. It also enables Scottish Ministers to make provision by order to require persons who shoot deer to be registered as competent to do so. Such orders may also be used to make consequential changes to the arrangements for collecting data about numbers of deer killed (known as “cull returns”).

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Part 4 – Other wildlife etc.

11. Section 27 of the Bill amends 1992 Act. The 1992 Act prohibits a range of activities in relation to badgers, including the killing, taking and sale of badgers and disturbance to their setts. Some of these activities can be licensed for certain purposes. The Bill creates a number of new offences under the 1992 Act and provides for certain offences to be triable on indictment as well as under summary procedure. It also makes provision for the delegation of licensing functions under the 1992 Act.

12. Section 28 of the Bill amends the 1946 Act. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland, which is defined in section 39 of that Act as including “setting fire to or burning heath or muir”. The Bill replaces periods during which muirburn is prohibited with a positive season during which it is permitted. It also expands the power to amend muirburn seasons by order and provides for a new licensing regime in respect of out of season muirburn. Finally it reforms requirements to inform neighbours of intentions to make muirburn.

Part 5 – Sites of Special Scientific Interest

13. Part 5 of the Bill amends the 2004 Act to make provision for the combination and denotification of SSSIs, operations which affect SSSIs and alternative procedure for securing reparation to SSSIs following illegal damage.

Part 6 - General


Schedule

15. The schedule contains repeals. These include the repeals of the 18th and 19th century statutes known as the Game Acts, which set close seasons for game birds, create poaching offences and establish requirements for game licences. The close seasons and poaching offences are replaced by provision under Part 2 of the Bill. The game licensing regime is repealed and not replaced, although it will be possible to grant licences in relation to game species for other purposes under the 1981 Act.

RATIONALE FOR SUBORDINATE LEGISLATION

16. The Bill contains a number of delegated powers provisions which are explained in more detail below. The Scottish Government has carefully considered whether and in what manner provisions should be set out in subordinate legislation rather than on the face of the Bill. In consideration of this, and in determining the appropriate level of scrutiny, the Scottish Government has had regard to:

- the likely frequency of amendment;
- the need to make proper use of Parliamentary time;
- ensuring sufficient flexibility to respond to changing circumstance; and
the need to anticipate the unexpected which might otherwise frustrate the purpose of the provision in primary legislation.

17. The Bill amends primary legislation that contains delegated powers provisions. The level of scrutiny considered appropriate for the delegated powers provisions in the Bill are consistent with the level of scrutiny currently used for the delegated powers provisions in existing primary legislation.

DELEGATED POWERS

18. This memorandum lists the delegated powers provisions of the Bill together with a short explanation of:

• what the power allows;
• who the power is conferred on;
• the form in which the power is to be exercised;
• why it is considered appropriate to delegate the power; and
• the Parliamentary procedure (if any) to which the exercise of the power is to be subject, and why this procedure (if any) is considered appropriate.

Section 5(3)(d) – Power to make regulations about marking and ringing

Substituted section 6(5) and (5A) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

19. Section 5(3)(d) amends section 6(5) (sale etc. of live or dead wild birds, eggs etc.) of the 1981 Act by substituting new subsections (5) and (5A). New subsection (5)(b) enables Scottish Ministers to make regulations about the marking and ringing of certain species of captive birds, while new subsection (5A) provides that such regulations may make different provision for different purposes. The provisions replace and do not extend the existing power to make such regulations under subsection (5).

Reason for taking power

20. The original power enables the identification and tracking of certain captive birds. The power in the Bill replaces that power, but does not extend it. The only substantive change to the legal effect of the current subsection (5) is the addition of subsection (5)(c) but that does not relate to the enabling power. The other changes are considered necessary for drafting purposes. The Bill does not make other changes in relation to marking or ringing captive birds.
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

Choice of procedure

21. Section 26(2) of the 1981 Act has the effect that regulations made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

22. In line with other regulations under the 1981 Act and the procedure which currently applies to regulations under section 6(5) of the 1981 Act, negative resolution is considered the appropriate level of scrutiny.

Section 6(2) and (3) – Power to vary the close season for any animal listed on Schedule 5A

New section 10A(3) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Orders made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

23. Section 6(2) inserts new section 10A in the 1981 Act. This new section provides for a close season for certain wild animals (brown hares and mountain hares) listed on new Schedule 5A of the 1981 Act. Section 10A(3) allows Scottish Ministers to vary the period of the close season during which the wild animals listed cannot be killed or taken. An order may be made for all or part of Scotland. Section 26(4)(b) of the 1981 Act has the effect that Scottish Ministers must consult with SNH before making an order.

Reason for taking power

24. This power allows Scottish Ministers to balance shooting and conservation interests by taking into account changes in the wild animal population and factors that might affect those populations such as disease or bad weather.

Choice of procedure

25. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

26. The negative resolution procedure is considered appropriate to allow Scottish Ministers to react to changing circumstances that may require prompt response. The negative resolution procedure is currently in place for the power contained in section 2(5) of the 1981 Act which allows changes to close seasons for certain species of birds. It is considered that this procedure is sufficient for those purposes and therefore the procedure for this new analogous power should be consistent. In addition there is a requirement to consult on the face of the Bill.
Section 6(2) – Power to protect any animal listed on Schedule 5A outside the close season.

New section 10A(4) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Orders made by statutory instrument
Parliamentary procedure: None

Provision

27. Section 6(2) inserts new section 10A in the 1981 Act. This new section provides for a close season for certain wild animals (brown hares and mountain hares) listed on new Schedule 5A of the 1981 Act. Section 10A(4) allows Scottish Ministers to extend protection to the wild animals listed on Schedule 5A outside of the close season for a period of up to 14 days. Before making any such order Scottish Ministers are required to consult such representatives of organisations representing those with an interest in killing or taking the wild animal in question as they consider appropriate. An order may be made for all or part of Scotland.

Reason for taking power

28. This power allows Scottish Ministers to provide for short term protection of hares. This may be required due to circumstances such as adverse weather in all, or some parts, of Scotland.

Choice of procedure

29. Section 6(3) of the Bill amends section 26(2) of the 1981 Act with the effect that orders made under this provision will be subject to no procedure in the Scottish Parliament.

30. The nature of such an Order is that it may be required in emergency or urgent circumstances. The Order is to cover a short period of time. It is considered that this should not require use of parliamentary time and scrutiny. In addition there are requirements to consult those with an interest in killing or taking the relevant animal and SNH (in section 26 of the 1981 Act). Section 2(6) of the 1981 Act contains an analogous power which allows Scottish Ministers to make cold weather orders for certain species of birds. That power is not subject to any parliamentary procedure and it is considered that this is sufficient and that the same approach should be taken to this new analogous power in relation to animal species.

Section 10(a) and (b) – Power to vary Schedules to the 1981 Act and prescribe close seasons.

Amended section 22 of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Orders made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

31. Section 22 of the 1981 Act allows Scottish Ministers to vary the Schedules attached to that Act. These Schedules list the birds, animals and plants which are protected by different
provisions in the 1981 Act. Section 10(a) of the Bill adds new Schedules 5A and 6A to those which may be varied under section 22 of the 1981 Act. Section 10(b) inserts a new section 22(2ZA) providing that an order adding an animal to Schedule 5A (which protects listed animals during their close seasons) may prescribe a close season for that animal. Therefore this section extends the current enabling power in section 22 of the 1981 Act.

Reason for taking power

32. The extended power under section 22(1)(b) allows Scottish Ministers to add or remove animals from the list in Schedule 5A of animals protected by close seasons under inserted section 10A and the list in Schedule 6A of animals protected by poaching offences under inserted section 11E. The power in new section 22(2ZA) allows Scottish Ministers to set the necessary close seasons for any new animal which is to be added to Schedule 5A. This will enable Scottish Ministers to balance shooting and conservation interests and to react to changing circumstances relating to animals for example populations and welfare.

Choice of procedure

33. Section 26(2) of the 1981 Act has the effect that orders made under the amended provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

34. The existing powers in section 22 of the 1981 Act which allow Scottish Ministers to vary the other Schedules to the Act are subject to negative resolution. It is considered that this is an appropriate level of scrutiny and therefore the new provision in Bill should be consistent with this.

Section 13(3) – Power to make provision as regards training, identification numbers, tags etc. for snares.

New section 11A(8) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Orders made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

35. Section 13(3) inserts new section 11A into the 1981 Act. The new section 11A makes provision for tags containing identification numbers and other information to be attached to snares. The identification numbers will be provided by the police provided they are satisfied that the applicant for an identification number has completed a training course. Section 11A(8) provides that Scottish Ministers may by order make provision regarding:

- when a person has been trained;
- how chief constables can be satisfied that a person has been so trained;
- the manner in which a tag is to be fitted including the material from which the tag is made;
- the manner in which an identification number and statement is to appear on a tag;
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

- form and manner of an application for an identification number;
- any fee that may accompany an application and the charging of such a fee;
- the issuing of identification numbers;
- the keeping of records of identification number issued and the sharing of information from such records; and
- any other appropriate matter relating to training, tags and identification numbers.

Reason for taking power

36. The power enables the practical details relating to the operation of training, tagging and identification numbers to be prescribed in detail and varied, if required, in light of experience in operating the scheme.

Choice of procedure

37. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

38. Negative resolution procedure is considered to be an appropriate level of scrutiny for setting out the technical and practical detail of the tagging scheme and training requirements. The Scottish Government aims to ensure that the practical detail of the scheme supports the policy aim contained in the Bill, this procedure will allow a considerable amount of specification, together with flexibility to alter details should this be required.

Section 14 – Powers to specify native animals which it is an offence to release, or to allow to escape from captivity, and non-native plants or animals which may be released

New section 14(1)(a)(ii) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

39. Inserted section 14(1)(a)(ii) and (2C) of the 1981 Act makes provision for Scottish Ministers to specify by order animals which it is an offence to release, or to allow to escape from captivity (unless done under a licence under section 16(4) of the 1981 Act).

40. Section 26(4A) and (4B) of the 1981 Act (inserted by section 17(6)(c) of the Bill) has the effect that the Scottish Ministers may only make an order under this provision where they have consulted SNH and any other person appearing to Scottish Ministers to have an interest in the making of an order, except where Scottish Ministers consider it necessary to make the order urgently and without consultation.
41. Section 26(4)(c) and (5) of the 1981 Act has the effect that Scottish Ministers may cause a public inquiry to be held before making an order, and the making of the order shall be published by the Scottish Ministers in the Edinburgh Gazette.

**Reason for taking power**

42. The new power relates to the release of an animal within its native range. This power replaces the list of animals that must not be released under section 14(1A) of and Schedule 9 to the 1981 Act. It enables the release of native species to continue to be regulated. It will be used to prevent the release of animals or control (under licence) the release of animals where that is necessary for conservation or welfare reasons, such as capercaillie, barn owl and sea eagle currently listed on Schedule 9.

**Choice of procedure**

43. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This is the same level of scrutiny given to orders amending the Schedule 9 list.

44. Negative resolution procedure is considered appropriate, given that a power to list animals that may be released is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), is consistent with the general level of scrutiny in Part 1 of the 1981 Act, and is the same level as the power being replaced.

**Section 14(2) – Power to specify animals and plants which may be released or grown outwith their native range**

**New section 14(2B) of the 1981 Act**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative resolution</td>
</tr>
</tbody>
</table>

**Provision**

45. Inserted section 14(2B) and (2C) of the 1981 Act makes provision for Scottish Ministers to specify by order animals and plants to which the release provisions in sections 14(1)(a)(i), 14(1)(b) and 14(2) (the “release provisions”) do not apply. The Scottish Ministers must consult on and publish a release order in the same way as a no-release order, and may also cause a public inquiry to be held.

**Reason for taking power**

46. The release provisions have the effect that it is an offence to:

- release, or allow to escape from captivity, an animal to a place outwith its native range;
• cause an animal outwith the control of any person to be at a place outwith its native range; or
• plant, or otherwise cause to grow, any plant in the wild at a place outwith its native range.

It will not be an offence to release or plant any such type of animal or plant if the type is specified in an order made under this provision.

47. At present, an animal is treated as a native animal that may be released if it is “ordinarily resident” in Great Britain. It is therefore lawful to release many types of animal introduced by man that have become established in the wild. The effect of the provisions in the Bill is that it will be unlawful to release an animal introduced by man even if it has established a presence in the wild. This reform will help to ensure that invasive non-native species do not spread into unaffected areas.

48. However, the release of non-native species may have no harmful impact, and may indeed deliver a positive benefit. Examples include the release of non-native game birds, or the release of animals for conservation purposes. The power will enable Scottish Ministers to make lawful the release of non-native animals where that is appropriate having regard to legitimate interests. It could for example be used to permit the release or growing of non-native species that were formerly native to any part of Scotland, such as the European beaver on the mainland of Scotland.

Choice of procedure

49. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

50. Negative resolution procedure is considered appropriate, given that a power to list animals or plants that can be released or grown is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), and is consistent with the general level of scrutiny in Part 1 of the 1981 Act.

Section 14(3) – Power to specify invasive animals and plants which it is an offence to keep, have in a person’s possession, or have under a person’s control

New section 14ZC(1) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

51. Inserted section 14ZC(1), (2) and (5) of the 1981 Act make provision for Scottish Ministers to specify by order invasive animals and plants which it is an offence to keep, have in a person’s possession, or have under a person’s control. An order may provide for the payment of compensation to people who can no longer keep an animal or plant as a result of the making of
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

an order. The Scottish Ministers must consult on and publish a keeping order in the same way as for a no-release order, and may also cause a public inquiry to be held.

**Reason for taking power**

52. There are some invasive non-native species which pose a high-risk to biodiversity, the wider environment, and social and economic interests. Regulating their keeping will help to prevent their introduction into and spread in the wild.

**Choice of procedure**

53. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

54. Negative resolution procedure is considered appropriate, given that a power to ban the keeping of animals or plants is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), and is consistent with the general level of scrutiny in Part 1 of the 1981 Act.

**Section 14(4) – Power to specify invasive animals and plants which it is an offence to sell or market**

*Amended section 14A(1) of the 1981 Act*

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative resolution</td>
</tr>
</tbody>
</table>

**Provision**

55. Inserted section 14A(1) and (3) of the 1981 Act make provision for the Scottish Ministers to specify types of invasive animals and invasive plants that it is an offence to sell or market. The Scottish Ministers must consult on and publish a sale order in the same way as for a no-release order, and may also cause a public inquiry to be held.

**Reason for taking power**

56. At present, the enabling powers in section 14A(1) and (3) of the 1981 Act may be used to ban the sale or marketing of an animal not ordinarily resident in Great Britain, or a plant not ordinarily grown in Great Britain, or an animal or plant listed on Schedule 9 to that Act.

57. The Bill makes changes to section 14A that are consequential on the release provisions. The new power relates to invasive animals or invasive plants. The reason for taking the power is broadly the same as the reason for taking the keeping power. Regulating the sale or marketing of invasive species will help prevent their introduction into or spread in the wild.
Choice of procedure

58. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

59. Negative resolution procedure is considered appropriate, given that a power to ban the sale of animals or plants is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), is in general consistent with the level of scrutiny in Part 1 of the 1981 Act, and is in particular the same level of scrutiny as the power being replaced.

Section 14(5) – Power to specify invasive animals and plants outwith their native range which specified persons must provide notification of

New section 14B(1) of the 1981 Act

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative resolution</td>
</tr>
</tbody>
</table>

Provision

60. Inserted section 14B(1) to (3) of the 1981 Act makes provision for the Scottish Ministers to require the notification by a specified person to a specified person of the presence of a specified invasive animal or invasive plant at a place outwith the native range of the plant or animal. It is an offence to fail without reasonable excuse to notify the presence of a specified plant or animal.

Reason for taking power

61. There are some invasive non-native species which pose a high-risk to biodiversity, the wider environment, and social and economic interests. It most cases early action to control or eradicate such species is the most effective way to ensure that they do not spread in the wild. Ensuring that their presence must be notified by specified persons means that early detection is more probable, and therefore successful control action a more likely prospect.

Choice of procedure

62. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

63. Negative resolution procedure is considered appropriate, given that a power to require the notification of animals or plants is relatively limited in scope, requires to be exercised in a flexible and responsive manner, and is in general consistent with the level of scrutiny in Part 1 of the 1981 Act.
Section 15 – Non-native species code

New section 14C of the Wildlife and Countryside Act 1981

Power conferred on: Scottish Ministers
Power exercisable by: Scottish Ministers
Parliamentary procedure: Draft laid before the Scottish Parliament at least 30 days before code is issued

Provision

64. Inserted section 14C of the 1981 Act confers on the Scottish Ministers a power to issue a code of practice to provide practical guidance in respect of the release, keeping, sale and notification offences in the 1981 Act, and related matters.

65. A code may only be issued following consultation with SNH and any other person who appears to the Scottish Ministers to have an interest in the code. It must be laid before the Scottish Parliament for 30 days before it is issued and has effect. It is not subject to any scrutiny by the Parliament.

66. Failure to comply with a provision of a code does not, of itself, give rise to proceedings. It can however be taken into account in determining any question in any proceedings, and in a criminal prosecution for a relevant offence the court may have regard to compliance with the code when deciding whether or not the accused is liable for the offence.

Reason for taking power

67. The issuing of a code of practice will help the public to understand the nature of the duties imposed on them by the 1981 Act, and frame their behaviour accordingly. It will also assist the courts in interpreting and applying the relevant law. For example, the Scottish Ministers could give guidance on how far a non-native ferret released temporarily for the purposes of pest control can be considered as being under the control of any person.

68. A code of practice will also be able to go into more detail than the legislation, and illustrate the intended effect of the legislation with case studies.

Choice of procedure

69. The code requires to be user-friendly and in an accessible format, and is expected to require regular revision and updating. It is persuasive rather than binding. It is not therefore appropriate to require that the code is made by or approved under a statutory instrument. It is appropriate given that a Code may be considered by the courts to enable Parliament to comment on a draft code before it is issued.
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

Section 18(3) and (4) – Delegation of a licence granting power to a local authority

New section 16A(4)(b) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

70. Section 18(2) of the Bill amends section 16 of the 1981 Act (which deals with licensing functions) and section 18(3) inserts a new section 16A into the Act. Inserted section 16A of the 1981 Act makes provision for the Scottish Ministers to delegate their species licensing functions under section 16 of that Act to SNH or a local authority. Section 16A(4)(b) provides that delegation to a local authority must be by order.

71. Section 26 of the 1981 Act (as amended by section 18(4) of the Bill) has the effect that the Scottish Ministers shall give any local authority or other person affected by an order an opportunity to submit representations or objections to the subject matter of the order, and may only make an order where they have consulted SNH.

Reason for taking power

72. To allow for species licensing to be as streamlined and efficient as possible, the power will give Scottish Ministers the opportunity to consider delegation (for example in relation to development where the local authority are currently considering species protection as part of planning controls) in particular circumstances.

Choice of procedure

73. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

74. Negative resolution procedure is considered appropriate, given that a power to delegate the granting of licences is limited in scope, is subject to consultation requirements, and such procedure is in general consistent with the level of scrutiny in Part 1 of the 1981 Act.

Section 23 – Deer management code of practice

Power conferred on: Scottish Ministers
Power exercisable by: Scottish Ministers
Parliamentary procedure: Draft laid before the Scottish Parliament

Provision

75. Section 23 of the Bill inserts a new section 5A into the 1996 Act. Section 5A requires SNH to draw up a code of practice for the purpose of providing practical guidance in respect of deer management. SNH must consult any person appearing to have an interest in the code before
drawing up the code of practice. The code of practice will be submitted to Scottish Ministers who may approve or reject the code.

76. The code once approved must be laid before the Scottish Parliament, but it is not subject to any Parliamentary scrutiny.

77. Failure to comply with a provision of the code will not, of itself, give rise to any action in terms of the 1996 Act.

Reason for taking power

78. The code of practice will provide practical examples of deer management and set out detail which would not be appropriate for legislation.

Choice of procedure

79. The code is not binding (although SNH may direct public bodies and office holders to have regard to it in exercising their functions). It is therefore not appropriate to require that the code is made by or approved under a statutory instrument.

Section 26(4) – Power to introduce a competence requirement in deer stalking

Inserted section 17A(1) of the 1996 Act

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

 Provision

80. Section 26(4) of the Bill inserts a new section 17A into the 1996 Act. This enables the Scottish Ministers to make regulations which provide for the establishment and maintenance of a register of persons competent to shoot deer in Scotland. These regulations could prohibit anyone who was not named on the register, or not supervised by a named person, from shooting deer. They could provide that registration is sufficient to establish that a person—

- is fit and competent for the purpose of exercising occupiers rights under section 26(2)(d) of the 1996 Act to shoot deer in close season in order to protect crops;
- is authorised to shoot deer out of season to prevent damage to unenclosed woodland, or the natural heritage, or in the interests of public safety, under section 5(6) of the 1996 Act;
- is authorised to shoot deer out of season for scientific purposes under section 5(7) of the 1996 Act;
- is authorised to shoot deer at night under section 18(2) of the 1996 Act; or
- is authorised to drive deer with vehicles under section 19(2).

Regulations made under this power could also require cull returns to be submitted to SNH either by those registered as competent or by owners or occupiers of land.
81. The regulations may provide who will set up and maintain the competence register, and how applications to be named on the register will be decided, together with deciding the criteria for judging competence, arrangements for supervision and the procedure for handling an appeal. Provision may be made to charge a registration fee and to specify the form in which cull return must be made. “Shoot” in new section 17A means discharge a firearm of a class prescribed in an order under section 21(1) of the 1996 Act.

Reason for taking power

82. The shooting of deer by persons with a low standard of shooting competence creates a risk to deer welfare and impacts on public confidence. Concerns in that respect have been expressed to the Scottish Ministers by DCS, and it is therefore appropriate to enable Scottish Ministers to impose compulsory competence requirements on those intending to shoot deer.

83. Those requirements are not set out in the Bill because the deer sector may through self-regulation be able to demonstrate that shooting in Scotland is carried out by those that are competent to do so. Indeed the deer sector has signalled its commitment to ensure high standards of competence and best practice amongst all those who shoot deer, on a voluntary basis. While Scottish Ministers may exercise this power at any time, new section 17B of the 1996 Act requires SNH to conduct and publish a review of standards of competence in deer stalking if the power has not been exercised by April 2014.

84. Section 47 of the 1996 Act has the effect that regulations made under this power would be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Choice of procedure

85. Any regulations would set out the administrative and technical requirements relating to competence levels, application process and maintenance of registers. Regulations of this sort are considered to be appropriate for negative procedure.

Section 27(7) – Protection of Badgers

New section 10A(4)(b) of the 1992 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

86. Section 27(7) of the Bill inserts a new section 10A into the 1992 Act. This makes provision for the Scottish Ministers to delegate their species licensing functions under that Act to SNH or a local authority. Section 10A(4)(b) and (8) provide that delegation to a local authority must be by order made by statutory instrument.

87. Before making an order, section 10A(9) requires the Scottish Ministers to consult the local authority to which functions are to be delegated, SNH and any other persons they consider are affected by the order.
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

Reason for taking power

88. To allow for licensing in relation to badgers to be as streamlined and efficient as possible, the power will give Scottish Ministers the opportunity to consider delegation in particular circumstances (for example in relation to development where the local authority are currently considering badger protection as part of planning controls).

Choice of procedure

89. Inserted section 10A(8) of the 1992 Act provides that orders under section 10A(4) will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

90. Negative resolution procedure is considered appropriate, given that a power to delegate the granting of licences is limited in scope.

Section 28(3) – Variation of the permitted times for making muirburn

Amended section 23A of the 1946 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution

Provision

91. Section 28(3) of the Bill amends section 23A of the 1946 Act. Section 23A was inserted by the Climate Change (Scotland) Act 2009 (“the 2009 Act”), and allows Scottish Ministers to vary by order the permitted dates for making muirburn in any year, where necessary or expedient in relation to climate change.

92. Section 28(3)(b) inserts a new subsection (1A) into section 23A, allowing an order to make different provision for different purposes and, in particular, for different lands and different years. Subsection (3)(c) specifies new purposes (conserving, restoring, enhancing or managing the natural environment and public safety) for which the muirburn season may be varied, in addition to adaptation to climate change. Under Section 23A, Scottish Ministers may not reduce the total number of burning days when varying the muirburn season. Subsection (3)(d) alters the minimum number of burning days which must be maintained in order to reflect the removal of the May extension to the muirburn season.

Reason for taking power

93. The permitted times for making muirburn in Scotland have not changed since the 1946 Act came into force.

94. The 2009 Act introduced an order-making power allowing Scottish Ministers to vary the permitted muirburn dates in order to allow adaptation to climate change, in case climatic changes continue to impact on the ability to successfully undertake muirburn. That power has not yet been exercised.
95. It is considered appropriate to be able to vary the dates of the muirburn season for reasons not related to climate change, or where a link to climate change cannot be clearly demonstrated. The muirburn season currently extends from 1 October until 15th April (subject to conditional extensions). Land managers report that a shortage of suitable burning days within the current muirburn season is constraining good practice and making it difficult to carry out sufficient muirburn. This may result in an increased risk of wildfire, if practitioners are forced to burn in less suitable conditions, and less managed habitats of lower quality for livestock, grouse and other wildlife. Constraints on the number of burning days also increase the pressure on practitioners to burn in the spring, when there may be risks to nesting birds. For these reasons, it may be beneficial to extend the muirburn season into September, to increase the window of opportunity for burning. Before using the power in this way, it will be necessary to assess the likely environmental impacts of September burning on soils and biodiversity.

Choice of procedure

96. Subsection (5) of section 23A of the 1946 Act provides that an order made under subsection (1) of that section is subject to approval by resolution of the Scottish Parliament. Section 28(3) of the Bill does not change the procedure required when making an order under section 23A. It simply broadens the purposes for which the muirburn season may be varied, and allows an order to make different provisions for different lands and for different years. It is therefore appropriate for the amended power to be subject to the same level of scrutiny as the original power.

Section 28(4) – Regulations relating to muirburn licences

Inserted section 23B(11) of the 1946 Act

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

97. Section 28(4) of the Bill inserts a new section 23B into the 1946 Act, allowing Scottish Ministers to issue licences permitting the making of muirburn outwith the muirburn season. Section 23B(11) and (12) enables the Scottish Ministers to make regulations by statutory instrument making further provision for, or in connection with, muirburn licences.

Reason for taking power

98. This power will allow Scottish Ministers to specify further details of the licensing system in regulations, such as procedures for notifying unsuccessful applicants, any appeals procedures, application timescales etc. Specification of such details in secondary legislation will allow the licensing system to operate more flexibly.

Choice of procedure

99. Section 23B(13) provides that regulations made under 23B(11) are subject to annulment in pursuance of a resolution of the Scottish Parliament. These regulations will specify technical details relating to the operation of the licensing system, as opposed to the permitted licensing
purposes and licensing authority set out in the Bill. A negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature.

Section 31 – SSSIs: operations not requiring SNH consent

Amended sections 14(1) and 17(1) of the 2004 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

100. Section 31(3)(a)(iii) and (4)(a)(iii) amends sections 14(1) and 17(1) of the 2004 Act respectively. These amendments provide for extension of the lists of circumstances in which the consent of SNH is not required in relation to the carrying out of operations under section 13 (for public bodies) and section 16 (for non-public body-owner occupiers) of that Act. New paragraphs are added to each of section 14(1) and 17(1), specifying that an operation will not require consent if it is of a type described by order made by the Scottish Ministers.

Reason for taking power

101. The purpose of these amendments to the 2004 Act is to streamline the control regime for operations on SSSIs where this can be achieved without diminishing the protection afforded to such sites. It is intended that the power be used to specify operations authorised by an existing process where that process allows sufficient input by SNH such that it can be satisfied that the operations are acceptable without the need for a separate formal consent. The reason for taking the power in this manner is to provide flexibility for a possible range of situations where SNH consent will not be required (an example at the present time is the granting of certain types of rural development contract) and also to provide flexibility to accommodate operations which might be carried out under regimes created by future legislation.

Choice of procedure

102. Instruments will be subject to negative resolution procedure in terms of section 53(4) of the 2004 Act. Negative resolution procedure is considered appropriate in this case given the subject-matter of the provisions. No rights are affected and the provisions are concerned with administrative streamlining.
This document relates to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010

Section 34(1) – Ancillary provision

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament, unless the order amends an Act, in which case affirmative resolution

Provision

103. Section 34(1) enables the Scottish Ministers, by order, to make incidental or consequential provision, if appropriate.

Reason for taking power

104. Any body of new law may give rise to a need for a range of ancillary provisions.

105. Without the power to make incidental or consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament’s or the Government’s resources.

Choice of procedure

106. Where an order changes primary legislation it is submitted that the affirmative procedure is appropriate. In any other situation, the negative procedure is considered appropriate for these powers. The power to make such provision by order is considered desirable in case it proves necessary to make further minor and consequential tidying up provision – e.g., further repeals. Such provision would be technical and incidental or consequential in nature and therefore negative procedure is considered appropriate. Any textual modification of legislation would require affirmative procedure.

Section 35(1) – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no Parliamentary procedure

Provision

107. This section provides that all of the provisions of the Bill, except section 1 which contains definitions and section 34 (the ancillary order-making power, are to come into force on a day or days set by the Scottish Ministers by order.

Reason for taking power

108. The decision on when and to what extent the Bill is commenced is an administrative issue for the Scottish Ministers.
Choice of procedure

109. As the decision on commencement is a matter for the Scottish Ministers, and as is usual, the Scottish Government considers that the commencement powers should not be subject to any Parliamentary procedure.
Rural Affairs and Environment Committee

8th Report, 2010 (Session 3)

Stage 1 Report on the Wildlife and Natural Environment (Scotland) Bill

Published by the Scottish Parliament on 25 November 2010
Rural Affairs and Environment Committee

8th Report, 2010 (Session 3)

CONTENTS

Remit and membership

<table>
<thead>
<tr>
<th>Report</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report</td>
<td>1</td>
</tr>
<tr>
<td>SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>15</td>
</tr>
<tr>
<td>Amended legislation</td>
<td>15</td>
</tr>
<tr>
<td>Parliamentary scrutiny</td>
<td>16</td>
</tr>
<tr>
<td>Background to and purpose of the Bill</td>
<td>17</td>
</tr>
<tr>
<td>Scottish Government consultation</td>
<td>18</td>
</tr>
<tr>
<td>General principles of the Bill</td>
<td>19</td>
</tr>
<tr>
<td>‘Natural’ or ‘managed’ environment</td>
<td>20</td>
</tr>
<tr>
<td>Balance and compromise</td>
<td>21</td>
</tr>
<tr>
<td>Overall vision</td>
<td>22</td>
</tr>
<tr>
<td>The marine environment</td>
<td>28</td>
</tr>
<tr>
<td>Part 2: wildlife under the 1981 Act</td>
<td>28</td>
</tr>
<tr>
<td>What the Bill proposes</td>
<td>28</td>
</tr>
<tr>
<td>Game management</td>
<td>29</td>
</tr>
<tr>
<td>Enforcement of wildlife crime</td>
<td>43</td>
</tr>
<tr>
<td>Raptor persecution</td>
<td>52</td>
</tr>
<tr>
<td>Areas of Special Protection</td>
<td>62</td>
</tr>
<tr>
<td>Snaring</td>
<td>65</td>
</tr>
<tr>
<td>Invasive and non-native species</td>
<td>78</td>
</tr>
<tr>
<td>Species licensing and protection</td>
<td>87</td>
</tr>
<tr>
<td>Part 3: Deer</td>
<td>93</td>
</tr>
<tr>
<td>Background</td>
<td>93</td>
</tr>
<tr>
<td>What the Bill proposes</td>
<td>94</td>
</tr>
<tr>
<td>Duty to manage deer sustainably</td>
<td>95</td>
</tr>
<tr>
<td>Deer Management Groups</td>
<td>97</td>
</tr>
<tr>
<td>Code of practice</td>
<td>100</td>
</tr>
<tr>
<td>Control agreements and schemes</td>
<td>101</td>
</tr>
<tr>
<td>‘Serious damage’ v ‘damage’</td>
<td>102</td>
</tr>
</tbody>
</table>
Owner-occupier shooting during close seasons 103
Competence in shooting deer 104
Close seasons 106
Part 4: other wildlife 107
Protection of badgers 107
Muirburn 110
Part 5: Sites of Special Scientific Interest 115
Part 6: General 116
Financial issues 116
Financial Memorandum 116
Resourcing of additional SNH duties 116

Annexe A: Subordinate legislation committee report 118
Introduction 118
Overview of the bill 118
Delegated powers provisions 118
Section 14(5) – Power to specify invasive animals and plants outwith their native range which specified persons must provide notification of. 118
New section 14B(1) of the Wildlife and Countryside Act 1981 118
Power conferred on: Scottish Ministers 118
Power exercisable by: Order made by statutory instrument 118
Section 15 – Non-native species code 119
Section 18(3) and (4) – Delegation of a licence granting power to a local authority 120
Section 23 – Deer management code of practice 121
Section 27(7) – Protection of Badgers 122

Annexe B: Letter from the finance committee 126

Annexe C: Extracts from minutes of the Rural Affairs and Environment Committee 135

Annexe D: Oral evidence and associated written evidence 139

Annexe E: Other written evidence 141
Rural Affairs and Environment Committee

Remit and membership

Remit:
To consider and report on agriculture, fisheries and rural development and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs and the Environment.

Membership:
Aileen Campbell
Karen Gillon
Liam McArthur
Elaine Murray
Peter Peacock
John Scott (Deputy Convener)
Maureen Watt (Convener)
Bill Wilson

Committee Clerking Team:

Clerk to the Committee
Peter McGrath

Senior Assistant Clerk
Nick Hawthorne

Assistant Clerk
James Drummond

Committee Assistant
Iain Weston
SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. It is clear to the Committee that the consultation carried out by the Scottish Government, some of which is on-going, has been appropriately extensive.

2. The Committee notes the sheer volume of evidence and background information submitted to it during its scrutiny of the Bill, some of which contained contradictory information. The Committee further notes the difficulty organisations and members of the public may face in attempting to seek clarity on the evidence which may have informed many of these policy decisions.

3. No particular criticism of the Policy Memorandum which accompanied the Bill was made in evidence to the Committee. The Committee found the Policy Memorandum to be broadly helpful in explaining the policy behind the provisions contained in the Bill and the degree of consultation undertaken.

4. The Committee notes that the Bill is intended as a package of measures relating to wildlife and the natural environment and is broadly supportive of the principle of updating and strengthening regulation in the areas covered by the Bill, and of improving the efficiency of the existing legislation. The Committee therefore supports the general principles of the Bill.

5. However, the Committee also recognises that there are a wide variety of proposals in the Bill on distinct subjects, and does have a number of recommendations, questions and concerns on some of these issues. The Committee therefore draws the attention of the Scottish Government to its comments on each part of the Bill, as the Committee believes there is work required at Stage 2, should the Bill pass to that Stage, to further update, strengthen and improve the existing legislation.

6. The Committee notes the comments made in evidence on the extent to which the Scottish environment is ‘managed’ or ‘natural’. The Committee
accepts that the management of land plays a significant role in creating and sustaining the types of biodiversity and landscape that have come to be valued and understood as ‘typically’ Scottish and, as such, many land management practices should be valued for the contribution they make to public goods. This includes employment of local people in rural areas.

7. It is clear to the Committee that cooperation is going to be vital if future management of Scotland’s wildlife and managed environment is to be successful. Different management objectives need to be acknowledged and accepted if people are going to work together successfully to achieve an appropriate balance.

8. With regard to concerns raised by the RSPB and SE Link that the Bill lacks a “narrative”, the Committee does not necessarily see the role of legislation, in every case, as providing an “overall vision”, but rather setting out legal obligations that are robust and clear enough to be interpreted in a court of law in the way Parliament intended.

9. The Committee notes the evidence it received calling for the Bill to be amended to establish ecologically coherent networks and considers it important that further thought be given to ensuring that ecologically coherent networks are set up that can cope with the challenge of climate change or other factors causing variations in the range, population health and migratory patterns of species.

10. The Committee would welcome comment from the Scottish Government on what establishing ecologically coherent networks would mean in a Scottish context and how such networks could be established in practice.

11. The Committee also notes the Minister’s comments that the Bill was not the appropriate vehicle for taking the issue forward. The Committee asks the Scottish Government to consider whether the emerging land use strategy may be a suitable vehicle for making progress on this issue.

12. The Committee notes that the safeguarding of Scotland’s biodiversity requires the private sector, which holds most of Scotland’s rural land, to play its part. A variety of levers - legislation, codes of practice, policy and funding (which includes cross-compliance) – are already in existence. The Committee invites the Scottish Government to consider whether it is making best use of these levers in order to ensure that the country overall meets its biodiversity target.

13. The Committee considers that the case for consolidating the law in this area was very well made in evidence to it, particularly as even legal experts were of the view that the law was complex and difficult to follow. The Committee therefore recommends that, following the passage of this Bill, serious consideration should be given to consolidating the current range of legislation.

14. The Committee also notes comments made to it on how difficult the task of consolidating the law in this area may, or may not, be. The Committee was
encouraged by comments made by Professor Colin Reid that, given the availability of legal databases and other tools, consolidation needn’t necessarily be an overly burdensome task. The Committee considers that the fact that consolidation might be difficult should not stand in the way of viewing this as a priority.

15. The Committee notes the discussions which took place on what the appropriate levels of parliamentary scrutiny, if any, should be, for the codes of practice provided for by the Bill. The Committee considers that the codes established by the Bill should be subject to Parliamentary scrutiny, given that the INNS code helps establish liability for offences created by the Bill, and the deer code details circumstances which could lead to SNH intervening in the use of a person’s property. The Committee notes the precedent for other codes of practice, such as those concerning the welfare of cats and dogs, to be subject to Parliamentary scrutiny. The Committee therefore recommends that the codes of practice relating to both deer management, and INNS, should be subject to parliamentary procedure and that the Scottish Government gives serious consideration to using the affirmative procedure for the INNS code.

16. The Committee draws the attention of the Scottish Government to the comments raised by the Crown Estate above and recommends that the Government clarify the issue with the Crown Estate before Stage 2.

17. The Committee recognises that shooting for sport, provided it is conducted in an environmentally responsible manner, is an important aspect, both economically and culturally, of Scottish life. The legal and policy framework encompassing the shooting industry must however continue to adapt to reflect evolving societal attitudes to field sports and shooting in particular. The Committee welcomes the Bill as a process in that evolution.

18. There was consensual support in evidence for the modernisation of game law and the abolition of game licenses. The Committee is content with these provisions.

19. The Committee notes the concerns raised in some submissions about the change in status of game birds, but is reassured that the provisions in the Bill do not alter, in any significant way, the legislation surrounding the release or management of game birds in Scotland.

20. The Committee also notes, however, that a future administration in Scotland could, by negative procedure, amend the legislation to remove a game species from the list of birds which may be killed or taken outwith the close seasons. As this would be a radical change, the Committee recommends that any proposal to remove the game species from Schedule 2 of the 1981 Act, be subject to affirmative, rather than negative, procedure.

21. The Committee notes the comments made by the RSPB that although it is not recommending removal of any species from the current list of quarry species, it would welcome better record-keeping and more robust statistics
on bag catches to enable populations to be monitored more dynamically. The Committee also notes that no other suggestion has been made to it to remove birds from the lists contained in the Schedules to the 1981 Act as amended by the Bill.

22. However, the point made by the RSPB about the need for better record-keeping and monitoring of mortality rates of certain species on estates and bag counts, should be further considered by the Scottish Government. The Committee is under the impression that the vast majority of estates keep records of what is shot on their land, and that it should therefore be possible to make this information more widely available to inform scientific analysis of the health of a particular species. If there are concerns regarding commercial sensitivities, provision should be made to enable such evidence to be anonymised.

23. The Committee is aware that the management of significant numbers of geese is a matter of some urgency to certain communities in Scotland, and that ways of tackling the problems often need to be specific to local situations.

24. The Committee looks forward to the results of the goose review. The Committee recommends that the Scottish Government give detailed consideration to any proposals or recommendations that emerge from the review, and assess whether any of them would be best taken forward as part of this Bill.

25. The Committee supports the rationalisation of poaching offences in the Bill to create a single poaching offence.

26. The Committee addresses the wider issue of enforcement of wildlife crime offences, and available appropriate resources, later in this report. However, the Committee is of the view that the removal of the current power which landowners and their employees have to apprehend suspected poachers is not the real issue. The issue is whether there are appropriate resources within the police forces across Scotland to respond appropriately and timeously to reported incidents of wildlife crime.

27. The Committee notes that the Bill does not prohibit the killing or taking of game birds on Sundays or Christmas Day, but rather of other quarry species (geese, ducks, rails (other water birds) and wading birds). The Committee understands that not shooting game for sport on Sundays and Christmas Day is a matter of cultural convention.

28. The Committee notes that there is, therefore, an anomaly in legislation, which allows shooting of certain species on Sundays and Christmas Day, but not others. The Committee recommends that the Scottish Government takes the opportunity to addresses this anomaly during the passage of this Bill.

29. The Committee considers catching-up to be of value to those managing game birds. The Committee notes the apparent uncertainty over the
lawfulness of catching-up and welcomes the clarification provided in the Bill that it is legal to do so. However, the Committee notes the evidence from landowners and managers who consider the 14 day period for catching-up certain game birds in close season is not sufficient.

30. The Committee asks the Scottish Government what welfare, environmental or economic reasons there are for setting the catching-up period at 14 days? If there are no such particular reasons, the Committee would be minded to recommend that the Scottish Government amends the Bill at Stage 2 to extend the period for catching-up.

31. The Committee notes the comment made by the Game and Wildlife Conservation Trust proposing the inclusion of black grouse in the catching-up provisions but does not have sufficient information regarding the possible consequences of such a change to make any recommendation. The Committee therefore draws this to the attention of the Scottish Government for further consideration.

32. The Committee supports the introduction of a close season for both brown and mountain hares.

33. The Committee notes the evidence on whether the close season, for brown hares in particular, should be reduced by a month. The Committee is not clear on whether reducing the close season by such a time would have any significant negative welfare impact on live young and therefore asks the Scottish Government to re-consider the close season dates to ensure that they take account of the welfare of live young specifically.

34. The Committee appreciates that it is sometimes necessary to manage hare populations. In particular the Committee notes evidence that the tick-borne louping-ill virus can be carried by hares, which might present a potential problem in terms of transfer of tick to sheep and grouse, and also a possible threat to public health, in terms of Lyme disease.

35. However local population levels should be carefully monitored. The Committee notes the research being carried out by SNH to assess the extent of local populations of mountain hares and recommends that the Scottish Government give this full consideration when it is published.

36. The Committee asks the Scottish Government to note the concerns raised by falconers that the Bill may penalise them for inadvertently allowing a falcon to take a hare, rather a rabbit, during the close seasons.

37. The Committee notes the extensive evidence it received on the issue of single witness evidence. It is clear to the Committee that the Scottish Government’s reason for retaining single witness evidence for poaching was to maintain the status-quo.

38. The Committee appreciates the rationale for being able to convict certain wildlife crimes on the basis of single witness evidence, because of how and where these types of crimes are likely to happen. The Committee
notes the evidence which called for single witness evidence to be extended to other wildlife crimes.

39. On the other hand, the Committee notes the evidence it heard that it is extremely rare that any alleged offence of poaching or egg stealing to be prosecuted on the evidence of a single witness, and that there is therefore little to be gained by extending the use of single witness evidence for other wildlife crimes.

40. The Committee was not clear, despite extensive evidence taking, on how single witness evidence could practically be applied, and whether in practice corroborative evidence is always required and, if so, what such evidence would amount to.

41. A majority of members agree that the law on single witness evidence should be made consistent on the basis that the same distinctive evidential considerations that apply for poaching offences also apply for many other wildlife crime offences, e.g. raptor poisoning. Some members consider that single witness evidence should be admissible for other wildlife crimes, such as raptor poisoning, whilst other members consider that single witness evidence should be inadmissible in all poaching or wildlife crime cases.

42. The Committee notes the evidence received that a significant problem in tackling wildlife crime is the lack of consistency by the police, across Scotland, in responding in a timely and appropriate fashion.

43. The Committee notes that the Partnership for Action Against Wildlife Crime Scotland has recently established a definition of ‘wildlife crime’. The Committee recommends that the Scottish Government ensures that this definition is used by all police forces in Scotland in order to ensure a consistency of approach in responding to reports of wildlife crime and properly recording such instances. The Committee also notes that a consolidation and rationalising of the law regarding wildlife crime may enable an even clearer definition to be established in future.

44. The Committee commends Grampian Police as an exemplar of investigating wildlife crime and recommends that the Scottish Government uses it as a best practice example that should be studied by other police forces in Scotland. The Committee accepts that if resources were deployed more effectively – for example more officers being designated as having responsibility for responding to wildlife incidents, – it would help in terms of proper recovery of evidence and lead to a reduction in wildlife crime.

45. The Committee\(^2\) is encouraged by the Minister’s comments that the Scottish Government was ‘open’ to giving further consideration to the request by the SSPCA that its powers be extended to allow them to investigate wildlife crimes, where a dead animal is involved. On the basis that this is likely to be the last piece of wildlife legislation considered for

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\(^1\) John Scott MSP is content with the status quo on single witness evidence.

\(^2\) John Scott MSP dissents from this paragraph.
some time, the Committee recommends that the Scottish Government gives consideration to putting an enabling power in the Bill to allow for the possible extension of the SSPCA’s powers, subject to the outcome of a full consultation on the proposal and endorsement by Parliament.

46. Finally, the Committee notes efforts being made to encourage people in rural communities, whether they be gamekeepers, environmentalists, ghillies, farmers etc, to train as special constables to provide further support in the detection of wildlife crime. The Committee also notes that it may also be possible for SSPCA officers to train as special constables.

47. The Committee condemns as wholly unacceptable the illegal killing of raptors which continues across Scotland. The Committee recommends that the Scottish Government instructs police forces to investigate rigorously suspected cases of raptor persecution. The Committee also recommends that the Scottish Government likewise instructs the Crown Office and Procurator Fiscals office to prosecute wildlife crime vigorously.

48. The Committee concludes, from all evidence taken on this issue, that detection, investigation and prosecution of this crime is not resulting in a significant reduction in cases of raptor persecution, and that this should be addressed.

49. The Committee welcomes the Scottish Government’s intention to bring forward an amendment at Stage 2 to introduce a vicarious liability offence in the Bill, which it considers to be a helpful step in the right direction. The Committee awaits further detail on this, which was not available before the conclusion of evidence-taking at Stage 1. The Committee recognises there could be significant challenges in securing convictions under such new provisions, but believes the strengthening of the law in this regard is a helpful addition to the range of provisions available for potential prosecution.3

50. The Committee notes that the majority of private landowners are appalled by raptor persecution. The Committee considers that such landowners should have nothing to fear from a vicarious liability provision.4

51. The Committee welcomes the principle of the estates initiative, a voluntary good governance scheme for private land managers currently being prepared by the SRPBA, and agrees with the Minister that the scheme should be supported and given an appropriate amount of time to become established. However, the Committee also notes that the scheme will be voluntary and will therefore lack the power to compel estates that do not wish to take part. The Committee would welcome clarification from the Minister on how she plans to support the initiative.

52. The Committee accepts that it would represent a challenge and a significant development of policy to introduce a fully worked up system for

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3 John Scott MSP dissents from this paragraph.
4 John Scott MSP dissents from the second sentence of this paragraph.
licensing sporting estates in the Bill at this stage. The Committee also notes that the issue would not have been subject to consultation and as a result introducing such a system would be inappropriate at this time. However, the Scottish Government may wish to consider the appropriateness of introducing an enabling power in to the Bill which would permit them to introduce a licensing scheme, only after full consultation with stakeholders and parliamentary scrutiny under the super-affirmative procedure. Should it take the power, the Scottish Government could consider formally adopting the estates initiative with appropriate modifications as a code of conduct applicable to all estates. However, any such power should only be used if the Scottish Ministers are not satisfied that the voluntary approach to good governance and any vicarious liability offence are working.  

53. The Committee notes Sheriff Drummond’s proposal to establish a presumption of guilty intent for anyone found in possession of a regulated substance. The Committee also notes his comments on whether an employer could be proven to have knowingly caused or permitted the possession of such a substance. The Committee considers that Sheriff Drummond’s proposals, and the introduction of a vicarious liability offence, are not mutually exclusive, and invites the Scottish Government to consider the proposal.

54. The Committee also notes the view that there is a further gap in the armoury of potential offences, that which seeks to catch those “concerned in” the use of illegal poisons for the purpose of raptor persecution or in other activity “concerned in” the offence of bird persecution. The Committee urges the Scottish Government to consider developing further offences which cover these points to further strengthen the grounds for potential prosecution.

55. The Committee invites the Scottish Government to consider the merits of announcing an amnesty on illegal substances such as carbofuran.

56. The Committee recommends that the Scottish Government reports to Parliament annually on the number of illegal raptor killings, detailing the number of cases brought and those which were successfully prosecuted.

57. Committee is broadly satisfied that the protections afforded by the ASP designation have been replicated in other legislation and that most ASPs can be abolished without the areas concerned suffering any reduction in the levels of protection afforded and without increasing threat to any wild birds.

58. The Committee notes the concerns raised by the RSPB with regard to the site at Loch Garten and also notes the comments made by SNH that, in its view, there is no threat to the site at Loch Garten by removing the ASP status, and that powers contained in other legislation would provide equitable levels of protection.

John Scott MSP dissents from this paragraph. Maureen Watt MSP dissents from all but the first two sentences.

John Scott MSP dissents from this paragraph.
59. However, the Committee retains a concern that the levels of protection at Loch Garten, currently afforded by the ASP, will not be automatically replicated in existing legislation, and urges the Scottish Government to work with SNH and the RSPB to ensure that the site at Loch Garten could not suffer, or potentially suffer, as a result of the loss of its ASP status.

60. The Committee acknowledges that snaring provokes a strong, emotional response in Scotland and that there are many people who hold strong views on whether or not snaring should be permissible. It is clear that the Scottish Government has sought a compromise in the Bill, which seeks to find a balance between an outright ban and extensive and loosely regulated use of snares.

61. The Committee respects the deeply held views of those who support an outright ban on the use of snares because of their belief that they are inhumane, indiscriminate and out-dated. The Committee notes the evidence it received which detailed cases of animals suffering significantly, both whilst held in a snare, and afterwards, when released. The Committee also notes the evidence received on the cases of non-target species being caught in snares, from wild animals, such as otters, badgers and capercaillie, to pets, such as dogs.

62. However, the Committee also acknowledges that pest control is a vital part of land management and that, if properly regulated and managed, limited and appropriate use of snares should continue to be an option for land managers in Scotland.

63. The Committee recommends that the Scottish Government works with the relevant bodies to continue to secure further advances in snaring technology and in our understanding of animal behaviour. Both these factors should help in the development of more humane snares and snaring techniques and reduce the amount of non-target species caught.

64. The Committee invites the Scottish Government to take stock, after an appropriate period of perhaps five years, as to the outcomes of the snaring provisions and whether they have been deemed to have had a positive effect. Accordingly the Committee invites the Scottish Government to consider whether to take a power to enable them to ban snaring. Such a power should only be exercised under the super-affirmative procedure and only if the Scottish Government considers that the current approach is not working and cannot be made to work.

65. The Committee recommends that the Scottish Government works closely with those delivering the relevant training courses on snaring to ensure that everyone who requires the training receives it no later than two years following the commencement of the provision.

66. The Committee was encouraged by the Minister's assurances that animal welfare issues were being discussed at training courses for snare operators. The Committee considers such input to be important in helping to
reduce the potential suffering of animals caught in snares and in underlying
that snaring is not an activity to be undertaken lightly.

67. The Committee notes the concern that tag coding snares is impractical
but also notes that this is a minority view. The Committee supports the
introduction of identification tags on snares.

68. The Committee asks the Scottish Government to give consideration to
issuing a separate identification number for each individual snare tag. The
Committee also recommends that the Scottish Government ensures that
such numbering be sequential, to allow for easy identification, and that
records are kept of which numbers have been issued to which operators.
Alternatively, the Committee asks the Scottish Government to consider
fitting a barcode, or some other means of electronic identification, to each
tag which could easily and practically be used to keep records of when a
snare had last been inspected.

69. The Committee asks the Scottish Government to note the points raised
regarding the legal presumption in the Bill, which states that the ID number
on a snare would relate directly to the person who physically set the snare.
The Committee further asks the Scottish Government to consider this issue
alongside the Committee’s comments on the possible issuing of a unique
sequential number for each snare tag.

70. The Committee notes the comments made on the inconsistency
between domestic and EU legislation on the definition of a snare and how
this leads to uncertainty about licensing snares as a method of catching
mountain hares in particular. The Committee recommends that the Scottish
Government consider how best to correct this anomaly.

71. The Committee notes the concerns regarding the Bill’s establishment of
a presumption against release of non-native species, and also the views of
those in favour of the policy. The Committee supports the general no-release
presumption provided for in the Bill.

72. The Committee notes the volume of evidence which, rightly, highlights
the potential difficulties in terms of the clarity of the legislation and the
guidance, of the definition of terms such as ‘in the wild’ and ‘native range’. It
is very important that such definitions be clear and easy to understand.

73. The Committee welcomes the Scottish Government making available an
early draft of the code which contains draft definitions, which seem broadly
helpful. The Committee also notes the Scottish Government’s intention to
consult widely on these definitions.

74. The Committee notes that roadside verges are defined as non-wild in
the draft code, and that there is particular potential for invasive plants to
escape from such verges into the wild. The Committee would not want to
prevent local communities from planting colourful displays to brighten up
their area. However, the Committee asks the Scottish Government to give
further consideration to whether it is appropriate for roadside verges to be
designated as being wild, and, if it is considered appropriate, whether any additional measures could be taken to limit the risk of escapes from such areas.

75. The Committee notes that the code of practice on invasive non-native species will be vital in providing clarity on all relevant matters, from definition of the frequent terms involved, to how species control orders will operate. The Committee welcomes the Scottish Government’s intention to fully consult on its draft code during the Bill’s passage through Parliament and considers that it is important that the final code be subject to the affirmative procedure of parliamentary scrutiny.

76. The Committee considers that a system of Species Control Orders is necessary as a backstop to the general invasive non-native species regulations and to provide statutory backing for the code of practice.

77. The Committee also believes that it is appropriate for SNH to have powers to recover costs of removing a species from a property from the landowner, if circumstances warrant it (the Committee expects that this would happen very rarely). However, the Committee recommends that the Scottish Government ensure that the code of practice gives detail and examples of what would lead to this ‘polluter pays’ principle being invoked.

78. The Committee also recommends that the Scottish Government ensure that trigger points that would lead to a Species Control Order being issued also be detailed clearly in the code of practice.

79. The Committee believes it is important for one clearly identified agency to act as a lead coordinating body for INNS provisions in Scotland, to avoid issues being passed from one organisation to another with no action being taken to address the problem. The Committee supports the view of SNH that it should be the lead coordinating body for such matters and recommends this to the Scottish Government.

80. The Committee notes the concerns expressed in relation to the exemption of pheasants and red-legged partridges from the INNS provisions, to allow what are classified as non-native species to be generally released.

81. The Committee is not aware of pheasants or red-legged partridges currently being regularly released in Scotland in such high densities as to cause significant damage to habitat or biodiversity. However, the Committee asks the Scottish Government to consider putting a reserve power in the Bill to allow it to restrict the release of these species, should they ever be released in such numbers as to cause significant habitat and biodiversity damage.

82. The Committee notes the call for the Pacific oyster to be added to the list of exempted species and asks the Scottish Government to clarify its position with regard to the Pacific oyster.
83. The Committee recommends that the Scottish Government reconsider which body, or bodies, should be delegated the function of issuing licenses, in light of the volume of evidence received stating that it is not appropriate or necessary for local authorities to have this function.

84. Should local authorities remain as potential licensing bodies, the Committee invites the Scottish Government to clarify what might happen should a local authority decide against following the advice of SNH on whether to issue a species licence or not.

85. The Committee notes the concerns expressed in evidence over the provision of the Bill for licenses to be available where a clear social, economic or environmental case could be demonstrated. However, the Committee notes that the Scottish Government's rationale for this was to close a loophole between domestic and European law, which currently allows for different criteria to apply to different species.

86. The Committee is, therefore, broadly content with the provision, but draws the attention of the Scottish Government to the comments made by SNH regarding the 'big challenge' of drafting the guidance to ensure that it is clear and easy to follow.

87. On the issue of whether there should be a right of appeal against refusal to grant a species licence, the Committee notes and accepts comments made by Professor Colin Reid, who said that it could be argued that as licences were for otherwise prohibited activities there was probably no difficulty from an ECHR/'natural justice' perspective.

88. The Committee is content with the law as it stands, that licences are available only in exceptional circumstances to control species which are otherwise protected. The Committee notes that currently anyone seeking a licence must make a robust case and expects this will continue after implementation of this Bill.

89. The Committee notes the Ministers comments on the status of pheasants as livestock. The Committee would be grateful for further clarification as to the point at which pheasants cease to be deemed as livestock.

90. The Committee notes the anomaly that beavers are currently being released under licence in Scotland, but are not specifically a protected species and draws that to the attention of the Scottish Government.

91. The Committee asks the Scottish Government to give consideration to how to best protect the native Scottish black bee, given its current classification as a farmed creature. The Committee also asks the Scottish Government to examine whether such bees could be considered as wild creatures, in order to secure their genetic protection. The Committee also asks the Scottish Government to consider whether the Bill could be used imaginatively to secure greater options in providing further protection to populations in areas such as Colonsay.
92. The deer aspects of the Bill are those that were most changed as a result of the consultation the Scottish Government conducted on the Bill. It appears to the Committee that the Government did indeed listen to concerns expressed in consultation responses from a large number of stakeholders and that the Bill represents an acceptable compromise.

93. The Committee notes the conflicting evidence it received on the success, or otherwise, of Deer Management Groups. However, the Committee notes that there was no evidence suggesting that DMGs should be abolished altogether, but rather a broad consensus that the DMG system was an appropriate one. However the Committee agrees that a review of how DMGs operate is required with a view to encouraging participation in them.

94. The Committee notes that the NFUS is not currently amongst those groups helping formulate the code of practice for deer management, and recommends that they, and at least one environmental organisation, are invited to participate at future meetings.

95. Given the importance of the code of practice for deer management, and the Scottish Government’s intention that the code stands as a de facto duty of sustainable management, the Committee recommends that the code be subject to parliamentary scrutiny.

96. The Committee also asks the Scottish Government to clarify whether all landowners will have to abide by the code and whether SNH will have powers of intervention on any type of land should the code be breached.

97. The Committee notes the importance of the Scottish Government, through SNH, having backstop powers to intervene, through a two-step process, in instances where deer management is not being successfully carried out, and where there is threat to livelihood, natural heritage or public safety. The Committee supports the minor amendments in the Bill to the control agreement and control scheme provisions.

98. The Committee also supports the introduction of timescales to both the control agreement and control scheme systems, in an attempt to speed up the process and raise levels of participation. However, the Committee also notes the concerns of the British Deer Society that a six month time frame for a voluntary agreement to be made may require additional flexibility in certain circumstances and recommends that the Scottish Government considers giving SNH the power to extend this period at its discretion.

99. The Committee agrees with the evidence it received that there is currently an inconsistency in the Deer (Scotland) Act 1996, between the uses of the term ‘damage’ and ‘serious damage’. The Committee also agrees that there has been difficulty in establishing what ‘serious damage’, rather than ‘damage’, consists of. The Committee is therefore content with the provision in the Bill to remove the word ‘serious’ and use ‘damage’ consistently throughout the 1996 Act.
100. The Committee is content with the provision in the Bill relating to owner-occupiers shooting deer out of season, and considers it to be a technical change that should not, in reality, change the ability of landowners to control deer out of season, but allow for better regulation should any problems develop.

101. The Committee supports the provisions in the Bill which seek to establish a high standard of competency through non statutory means.

102. The Committee also supports the backstop provision for compulsory testing and a register if the voluntary approach turns out not to be successful.7

103. The Committee notes the concerns expressed in responses to the Scottish Government’s consultation on making alterations to close seasons for both male and female deer. The Committee is content that the issue has not been progressed in the Bill and that the 1996 Act contains sufficient flexibility for the Scottish Government to vary close seasons.

104. However, the Committee also notes the comments made by SNH that a consequence of other provisions in the Bill, such as those on establishing universal levels of competence for shooting deer and ensuring more consistent sustainable management of deer, may result in close seasons being unnecessary.

105. The Committee supports the proposals in the Bill which bring consistency to the issue of offences and sentencing under the 1992 Badger Act.

106. The Committee notes the concerns that it is important that proper provisions are available in the event of an outbreak of TB in badgers and further notes that Scotland is currently declared as officially bovine TB free. The Committee is of the view that the Protection of Badgers Act 1992 contains sufficient provision, should a cull of badgers be required at any future point, due to an outbreak of TB, and that this Bill makes no alterations to that position.

107. The Committee recommends that the Scottish Government gives consideration to amending the Bill at Stage 2 to address the points raised by several organisations with regard to the legal disturbance of setts that are no longer active.

108. However, the Committee would hope that common sense would prevail in an instance of a badger sett being disturbed to rescue a child or animal in distress, and takes the view that if the law allows that a parent or owner to be prosecuted in such circumstances, it is absurd.

109. The Committee notes that the season dates outlined in the Bill came about as a result of a great deal of effort to seek a compromise, and that

7 John Scott MSP dissents from this view.
there is broad agreement on the dates from most stakeholder organisations. The Committee therefore supports the proposed burning dates in the Bill.

110. The Committee is supportive of the provisions regarding licensed out of season burning for combating specific issues such as outbreaks of heather beetle and particularly poor weather during the season, and also to allow scientific experiments.

111. However, it is important that full account is taken of the effect such burning could have on various soils, habitats and wildlife and that all out of season burning is appropriately monitored and managed in strict adherence to the muirburn code.

112. The Committee notes that muirburn can be a very helpful land management tool that has economic, social and environmental benefits. It is also aware that if poorly and/or irresponsibly practised it can have a negative effect on wildlife, such as ground nesting birds, habitat, soil and biodiversity. The Committee supports the muirburn code and regulations in trying to prevent poor practice. With regard to SEPA’s comments regarding muirburn causing soil damage, the Committee asks the Scottish Government if it is possible to withdraw or limit funding to any landowner who was not complying with the muirburn code and keeping their land in good environmental and agricultural condition and, if so, whether there have been any instances of this.

113. The Committee supports the amendments in the Bill to the notification requirements with regard to muirburn.

114. The Committee is broadly content with the proposals regarding SSSIs, which appear to be in the interests of simplifying the current administrative arrangements.

115. The Committee notes the comments made by SNH regarding its concerns about how the extra duties the Bill places on it will be resourced in the current economic climate.

INTRODUCTION

Amended legislation

116. The Wildlife and Natural Environment (Scotland) Bill is almost entirely a Bill which would amend other legislation. The Act that would be most amended by the Bill is the Wildlife and Countryside Act 1981 (c.69), which is referred to from this point on as “the 1981 Act”.

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8 John Scott MSP dissents from this paragraph.
9 Wildlife and Natural Environment (Scotland) Bill. Available at: http://www.scottish.parliament.uk/s3/bills/52-WildNatEnv/b52s3-introd.pdf
Parliamentary scrutiny

117. The Bill was introduced in the Scottish Parliament on 9 June 2010 by the Minister for Environment. The Bill was accompanied by Explanatory Notes,\(^{11}\) which include a Financial Memorandum, and by a Policy Memorandum,\(^{12}\) as required by the Parliament’s Standing Orders.\(^{13}\) The Bill was also accompanied by a Delegated Powers Memorandum.\(^{14}\)

118. On 15 June 2010, under Rule 9.6 of Standing Orders, the Parliamentary Bureau referred the Bill to the Rural Affairs and Environment Committee to consider and report on the general principles.

119. No secondary committee was appointed to scrutinise the Bill. However, the Finance Committee did seek views from the Scottish Government, Scottish Natural Heritage (SNH) and the Scottish Gamekeepers Association (SGA) on the Financial Memorandum to the Bill, and subsequently wrote to the Committee, appending the responses. The Subordinate Legislation Committee has reported on the delegated powers contained in the Bill.\(^{15}\) The Committee notes and comments on any recommendations made by those committees at appropriate points in this report.

120. The Committee issued a call for views on 10 June 2010, with a closing date of 1 September 2010. Sixty-one written submissions were received (including supplementary submissions) from a wide range of individuals and organisations. The Committee also received a significant amount of information\(^ {16}\), which has been made publicly available on the Committee’s webpage, including drafts of codes of practice introduced by the Bill on deer management and invasive non-native species, which were provided by SNH and the Scottish Government respectively.

121. The Committee took evidence in public session at six meetings between June and November 2010, one of which was an external meeting held on 7 September 2010 in Langholm, Dumfriesshire. At that meeting an opportunity was provided for members of the audience to participate in an ‘open mic’ session, and engage with the Committee on issues which had been raised by the Bill.

122. The Committee also undertook three fact-finding visits: to the Langholm Moor Demonstration Project (7 September), and to the Alvie Estate and the RSPB reserve at Abernethy (both on 21 September).

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\(^{11}\) Wildlife and Natural Environment (Scotland) Bill. Explanatory Notes. Available at: http://www.scottish.parliament.uk/s3/bills/52-WildNatEnv/b52s3-introd-ex.pdf


\(^{15}\) See Annexes A and B.

\(^{16}\) Rural Affairs and Environment Committee, Further information. Available at: http://www.scottish.parliament.uk/s3/committees/rae/bills/WANE/writtensubmissions.htm
123. Extracts from the minutes of all the meetings at which the Bill was considered are attached at Annexe C. Where written submissions were made in support of evidence given at meetings, these are reproduced, together with the extracts of the *Official Report* of the relevant meetings, at Annexe D. All other written submissions, including supplementary written evidence, are detailed at Annexe E.

124. The Committee would like to put on record its thanks to all those who have assisted it with its scrutiny of the Bill and participated in the meetings and fact-finding visits, which proved invaluable to the Committee’s understanding of the wide range of issues covered by the Bill.

125. In particular, the Committee would like to thank all who assisted with, and attended, the external meeting held at the Buccleuch Centre, Langholm on 7 September 2010; the partners of the Langholm Moor Demonstration Project, who gave the Committee a detailed explanation of the project, its challenges and implications; Jamie Williamson of the Alvie Estate, near Aviemore, for his helpful insights into managing a sporting estate; and the RSPB officials who are involved with the management of the Loch Garten and Abernethy reserves, for the helpful information and tour they gave the Committee.

**BACKGROUND TO AND PURPOSE OF THE BILL**

126. The Bill would, if passed, provide a range of measures designed to update legislation protecting wildlife in Scotland and to ensure that legislation which regulates and manages aspects of the natural environment is fit for purpose.

127. The Bill deals with a wide range of issues under that broad theme, in 35 sections (in 6 parts) and a schedule. Specifically, the Bill makes provisions intended to—

- modernise game law;
- abolish the designation ‘areas of special protection’ (due to powers with similar effect existing in other legislation);
- improve snaring practice;
- regulate invasive non-native species;
- change the licensing system for protected species;
- amend current arrangements for deer management and stalking;
- strengthen the law relating to the protection of badgers;
- make changes to the times at which muirburn may be practised and how it is managed; and
- make operational changes to the management of Sites of Special Scientific Interest (SSSI).
128. All of these issues are specifically addressed in the main body of this report, together with related issues which were part of the Scottish Government’s original consultation, or which emerged during evidence taking.

**Scottish Government consultation**

**Details**
129. The Scottish Government published a consultation document\(^{17}\) in June 2009, which included a rationale and proposals for what would form a draft Wildlife and Natural Environment (Scotland) bill. The consultation took the form of 84 questions seeking stakeholder views on a wide range of potential reforms to wildlife and natural environment legislation.

130. The Scottish Government received 456 responses and commissioned EnviroCentre Ltd and CAG Consultants Ltd to analyse the responses. The commissioned analysis was published in February 2010.\(^{18}\)

131. The Scottish Government also established a formal stakeholder forum, which met on three occasions at various stages of the Bill’s development, prior to its introduction in the Scottish Parliament. The Minister for Environment met stakeholder groups in December 2009 and January 2010 to discuss the prospective bill.

132. Finally, a liaison group was established, consisting of representatives from public bodies, (COSLA, the Deer Commission for Scotland (DCS), the Forestry Commission, the Scottish Environmental Protection Agency (SEPA) and SNH) and the Scottish Government, which also met on three occasions. It is believed that the Scottish Government intend that this group should continue to meet as the Bill progresses through the Parliament.

**Impact**
133. As a result of the Scottish Government’s consultation on the contents of a draft Bill, it decided not to pursue some of the proposals contained in the consultation questions.

134. In particular, due to significant concerns raised in consultation responses and at stakeholder events, the Scottish Government decided not to pursue a number of proposals relating to deer management, such as introducing a duty of sustainable deer management, allowing close seasons for deer to be determined locally by deer management groups, and making statutory provision for deer management groups.

135. Certain other consultation proposals were also not taken forward in the Bill and these are discussed, where appropriate, in the relevant sections of this report.

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Comment

136. There was broad consensus across a wide range of organisations that the Scottish Government’s consultation had been extensive and appropriately thorough. Most organisations said that they had been given appropriate opportunities to submit views, and that the Scottish Government was genuinely listening to the views of stakeholders before forming policy.

137. However, the Game and Wildlife Conservation Trust (GWCT) criticised the Bill for lacking any substantial evidence base, saying that—

“It is disappointing that many of the proposals have not been preceded by more evidence gathering. There is little evidence that the current laws pose real difficulties for land managers or that the proposed amendments will improve the conservation of Scotland’s wildlife.”

138. The Committee was struck, not by the lack of statistics and evidence presented to it, but by the sheer volume and often contradictory nature of some of the information it received. The Committee received contradictory evidence on issues such as the number of raptors going missing or being killed, the impact snares have on animals held in them, whether foxes naturally predate live lambs, and the success of deer management groups.

139. It is clear to the Committee that the consultation carried out by the Scottish Government, some of which is on-going, has been appropriately extensive.

140. The Committee notes the sheer volume of evidence and background information submitted to it during its scrutiny of the Bill, some of which contained contradictory information. The Committee further notes the difficulty organisations and members of the public may face in attempting to seek clarity on the evidence which may have informed many of these policy decisions.

Policy Memorandum

141. No particular criticism of the Policy Memorandum which accompanied the Bill was made in evidence to the Committee. The Committee found the Policy Memorandum to be broadly helpful in explaining the policy behind the provisions contained in the Bill and the degree of consultation undertaken.

GENERAL PRINCIPLES OF THE BILL

142. The Committee notes that the Bill is intended as a package of measures relating to wildlife and the natural environment and is broadly supportive of the principle of updating and strengthening regulation in the areas covered by the Bill, and of improving the efficiency of the existing legislation. The Committee therefore supports the general principles of the Bill.

143. However, the Committee also recognises that there are a wide variety of proposals in the Bill on distinct subjects, and does have a number of

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19 Game and Wildlife Conservation Trust. Written submission to the Rural Affairs and Environment Committee.
recommendations, questions and concerns on some of these issues. The Committee therefore draws the attention of the Scottish Government to its comments on each part of the Bill, as the Committee believes there is work required at Stage 2, should the Bill pass to that Stage, to further update, strengthen and improve the existing legislation.

‘Natural’ or ‘managed’ environment

144. Scotland’s environment, ecology and ecosystems, have been affected by human beings for centuries, and what is considered to be the natural landscape and wildlife has changed accordingly. For example, natural predators of deer that once existed, such as wolves, no longer exist in Scotland, which means there are now many more deer than once would have been the case. Deer were also subject to other impacts, such as woodland clearances – which meant there was less native forest across Scotland than was previously the case, when swathes of forest covered large parts of the country – and, later, industrialisation. All of these factors affected the numbers of deer and their habitat, and therefore impacted on their behaviour and the consequences of that behaviour.

145. The ever-shifting state of biodiversity crops up throughout consideration of this Bill as an underlying theme, touching on subjects such as invasive non-native species (INNS). Questions were raised about how species were to be defined as either native or non-native, and within that, what the native range of species was determined as being. It was noted that the expanse and retreat of particular species was a dynamic process affected by issues such as climate change, change of habitat, and changes in species’ behaviour.

146. Pheasants are thought by many to be native to Scotland because they have been in the country for hundreds of years, but are, in fact, native to Asia. It is thought they were brought to Scotland originally during the Roman Empire. Other species, such as the rhododendron, grey squirrel, and European rabbit are also not native to Scotland, but are prevalent. The consideration of Scotland’s biodiversity is of particular significance given that Scotland is part of the UK, which consists of a relatively small group of islands, the biodiversity of which is prone to potential significant disturbance by the introduction of non-native species.

147. The Committee’s visit to the Langholm Moor Demonstration Project on 7 September 2010, underlined the fact that what, superficially, appeared to be a vast, wild, natural area was, in fact, a rigorously managed environment. This point was emphasised by the Committee’s visit to the RSPB reserve at Abernethy, in the Cairngorms, and in evidence. Although the title of the Bill refers to the “natural environment”, the Bill actually deals with issues and practices involved with the, often robust, management of wildlife and the environment. The word ‘natural’ in the title of the Bill may, therefore, be a little misleading.

148. When it visited Langholm, the Committee learnt that the moor had previously lain unmanaged for a period of approximately ten years. The current partner managers of the moor explained that, during this period, habitat, species, and ultimately the biodiversity of the moor suffered a great deal. One result of the lack of management was that the moor had become over-run by foxes which predated on other wildlife on the moor. This lack of management, in turn, had had, over that...
period, a negative effect on vegetation and habitat. It was an interesting example of the consequences of leaving such an extensive area, unmanaged, even for a short time.

149. Jonathan Hall, of the National Farmers Union Scotland (NFUS), made just this point when giving evidence to the Committee, on 7 September 2010—

“It is excessive to include the word "natural" in the bill. Talking about the environment, environmental management and environmental legislation is sufficient to capture everything. The word "natural" is misleading. The vast majority of, if not all, Scotland’s land mass is managed in some way, shape or form; it has the intervention of man somewhere upon it. Indeed, 5.6 million hectares, or about 80 per cent of the land mass, is under agricultural land management.”

150. The Committee also notes that farming and forestry policy, which impacts so significantly on the managed environment, is in a constant state of flux and therefore any legislation regulating it requires an appropriate level of flexibility. Current economic, social and environmental concerns, or definitions of what constitutes the ‘public interest’ may not be the same in five or ten year’s time, or beyond. A good example of this is the state of forestry in Scotland, and the shifting priorities that have existed over the years about the ideal amount and type of forest cover.

151. The Committee notes the comments made in evidence on the extent to which the Scottish environment is ‘managed’ or ‘natural’. The Committee accepts that the management of land plays a significant role in creating and sustaining the types of biodiversity and landscape that have come to be valued and understood as ‘typically' Scottish and, as such, many land management practices should be valued for the contribution they make to public goods. This includes employment of local people in rural areas.

Balance and compromise

152. During the Committee’s fact-finding visits and extensive evidence taking, a word that kept recurring, whichever aspect of the Bill was being discussed, was ‘balance’. Central questions formed, such as;

- what is the desired balance between different management objectives, such as grouse moor management, protection of certain species, forestry targets and environmental concerns, and how can it best be achieved?

- is there a desired ‘right’ population number for different species, such as deer, hares, raptors, foxes, badgers, plants and trees? If so, why, and how can they best be managed?

- if management is required, where is the correct balance between animal welfare concerns and the most practical forms of management? Is snaring a necessary and acceptable practice in certain circumstances, or an excessively cruel method of control, which should be banned? What would the consequences of a ban be?
are some interests being rigorously pursued to support a single species management, or ‘monoculture’ agenda? Should birds of prey ever be culled to protect other objectives?

153. Another word that kept cropping up during the Committee’s scrutiny was ‘compromise’. The Bill attempts to reconcile differing objectives and opinions into compromise positions in many areas, so any one policy does not unduly favour, for example, landowners or environmentalists, but supports core principles that can be shared by all.

154. **It is clear to the Committee that cooperation is going to be vital if future management of Scotland’s wildlife and managed environment is to be successful. Different management objectives need to be acknowledged and accepted if people are going to work together successfully to achieve an appropriate balance.**

**Overall vision**

155. The Royal Society for the Protection of Birds (RSPB) expressed a fundamental criticism of the Bill, stating that it contained “no overall narrative as to the Government’s long-term objectives for the environment”. This absence of what the RSPB called the “overall vision” was noted by other respondents, such as Scottish Environment Link (SE Link), as a broad criticism of the Bill.

156. This criticism of a lack of “narrative” was discussed with Professor Colin Reid, a professor of environmental law at the University of Dundee, at the Committee meeting on 6 October 2010. He posed the question, “what are we trying to achieve in the countryside?” This, it seems to the Committee, is an appropriate question to keep in mind throughout consideration of the Bill and when reading this report.

157. Responding to these points, the Minister for Environment said that the Bill was concerned with regulation and management and was very much about the practicalities involved in managing the countryside rather than providing an overall vision.

158. **With regard to concerns raised by the RSPB and SE Link that the Bill lacks a “narrative”, the Committee does not necessarily see the role of legislation, in every case, as providing an “overall vision”, but rather setting out legal obligations that are robust and clear enough to be interpreted in a court of law in the way Parliament intended.**

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20 Royal Society for the Protection of Birds Scotland. Written submission to the Rural Affairs and Environment Committee.
21 Royal Society for the Protection of Birds Scotland. Written submission to the Rural Affairs and Environment Committee.
Ecological coherence

159. The Scottish Wildlife Trust (SWT) raised the issue of “ecological coherence” in its written evidence. The SWT said that—

“The EU Habitats Directive of 1992 requires Member States ensure the ecological coherence of the Natura 2000 network to further the conservation of natural habitats and wild fauna and flora (Articles 2, 3 and 10). [...] The [UK Habitats] Regulations do not address the need to transpose Article 3 or 10 of the Habitats Directive to make provision for the “improvement of the ecological coherence of the Natura 2000 network”. A new measure is required to encourage the management of landscape features which are of importance for wild fauna and flora, such as buffer zones to European sites and habitat stepping stones, for example, ponds or hedgerows.”

160. During the passage of the Marine (Scotland) Bill, SE Link made a case for introducing a requirement to establish an ecologically coherent network of marine protected areas. In its written submission, it suggested that this Bill could do the same with Natura 2000 sites. Lloyd Austin of SE Link, expanded on this point when giving evidence to the Committee—

“No protected area exists on its own; it is part of the wider countryside, the wider ecosystem and the wider environment. That is one of the reasons why ecologists talk about the kind of coherent network of protected areas that, as you say, is now set out in the Marine (Scotland) Act 2009. We support such a great step forward and are grateful that the committee moved in that direction. In that respect, however, this bill has missed an opportunity to make it more than the sum of its parts [...] it is silent on what I would describe as the big picture or long-term conservation objectives. Most of those long-term vision statements exist in policy statements rather than in legislation; I agree that it would be difficult to set down a vision in law but nevertheless we feel that the delivery of those vision statements is often weak [...] The bill could take this opportunity to link vision statements in the biodiversity strategy, the land use strategy, ministerial speeches or whatever to delivery, implementation, monitoring and enforcement.”

161. When questioned on this by members, SNH said that the current provisions in the UK Habitats Regulations were adequate, and were actually wider than possibly intended. SNH suggested that the problem did not rest with the regulation, but rather with the original policy and provisions, in the EU Habitats Directive, which were considered “weak”.

162. The Minister stressed again that the Bill was intended to be a practical statute dealing with regulation and management, and, as such, was not considered the appropriate vehicle to address the issue of ecologically coherent networks. She added that the Marine (Scotland) Act did not create criminal offences in a comparable way to this Bill and concluded that—

24 Scottish Wildlife Trust. Written submission to the Rural Affairs and Environment Committee.
“I understand the drive to put such a statement in the bill, but I ask members to remember that doing so makes that very statement subject to argument, interpretation and application in ways, perhaps, that might not have been foreseen in the first place, particularly if the provision gives rise to a lot of liabilities and resource issues that have not been clearly thought through. Depending on the provision itself, we should be aware, conscious and careful of all of that.”

163. The Committee notes the evidence it received calling for the Bill to be amended to establish ecologically coherent networks and considers it important that further thought be given to ensuring that ecologically coherent networks are set up that can cope with the challenge of climate change or other factors causing variations in the range, population health and migratory patterns of species.

164. The Committee would welcome comment from the Scottish Government on what establishing ecologically coherent networks would mean in a Scottish context and how such networks could be established in practice.

165. The Committee also notes the Minister’s comments that the Bill was not the appropriate vehicle for taking the issue forward. The Committee asks the Scottish Government to consider whether the emerging land use strategy may be a suitable vehicle for making progress on this issue.

Biodiversity duty

166. Leading on from the points raised by SE Link on coherent networks, Plantlife raised concerns in its written evidence with regard to biodiversity—

“The commitment by the UK and Scottish Governments to halt and reverse the decline in biodiversity by 2010 will, it is generally recognised, not be fulfilled. The current bill offers the Scottish Government the opportunity to fill the legislative ‘gaps’ in the biodiversity provisions of the Nature Conservation (Scotland) Act 2004.”

167. The submission went on to make a number of suggestions as to how the Bill could address this, including introducing a requirement for public bodies to report to the Parliament on progress on meeting the current biodiversity duty, and improving the implementation of the Scottish Biodiversity Strategy.

168. This was echoed by the SWT in written evidence—

“The duty on all public bodies and public officials to further the conservation of biodiversity was a very welcome aspect of the Nature Conservation (Scotland) Act 2004. Experience has now shown that there is a lack of accountability which undermines the delivery of that duty. Public bodies

28 Plantlife. Written submission to the Rural Affairs and Environment Committee.
should be required to report to parliament on their compliance or otherwise with the biodiversity duty. All persons undertaking publicly funded work should be covered by the duty.”

169. The Minister told the Committee that she was chair of the Scottish Biodiversity Committee and that such issues such as the effects of climate change on species were regularly discussed and kept under constant review.

170. The Committee notes that the safeguarding of Scotland’s biodiversity requires the private sector, which holds most of Scotland’s rural land, to play its part. A variety of levers - legislation, codes of practice, policy and funding (which includes cross-compliance) – are already in existence. The Committee invites the Scottish Government to consider whether it is making best use of these levers in order to ensure that the country overall meets its biodiversity target.

Is the legislation becoming too muddled?

171. A recurring theme in evidence to the Committee was how complex, and potentially confusing, legislation in this area was becoming, and that this Bill added to rather than reduced this confusion. There were calls for a consolidation of the law in this area. Traditionally, consolidation of Acts involves bringing together relevant existing statutes into one single act, in order to simplify the statue book without making significant changes to the law. In the Scottish Parliament, such consolidation Acts are subject to an expedited Parliamentary procedure, although options to change the law under this procedure are extremely limited.

172. Professor Reid emphasised how difficult the law had become to follow at the Committee on 6 October, describing the current statute in this area as “atrocious” and “not fit for use.” He argued that consolidating the legislation was essential. He also added that he was mystified as to why many thought such a consolidation would be complicated, adding that it had been avoided because it “does not win you votes” and was potentially resource intensive and, therefore, a low priority for administrations. He concluded that—

“[…] having clearer legislation is so important to ensuring public access and understanding. It helps you explain what the law is, which helps you ensure that it is understood and enforced.”

173. This point was emphasised by Sheriff Drummond, Chair of the legislation, regulation and guidance subgroup of the Scottish Government’s Partnership for Action against Wildlife Crime (PAW), when he gave evidence to the Committee—

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Scottish Wildlife Trust. Written submission to the Rural Affairs and Environment Committee.
“I am slightly concerned about the direction that the law is beginning to take […] The law is becoming fragmented, so it is getting difficult to find and to see the direction in which it is going. If it is difficult for people such as myself and academics such as Professor Colin Reid to find the law, I only ask the committee to have sympathy for the operators who are trying to apply it on the ground […] I know that Professor Colin Reid strongly expressed the view that codification is necessary, but I fear that we might be getting past the stage at which codification is a realistic possibility.”

174. Sheriff Drummond subsequently altered his position on this slightly, stating that he now considered that consolidation might be possible.

175. Professor Reid outlined to the Committee what tools were available to assist with a consolidation of the law—

“[…] there are commercially run electronic databases that give you at least a very good starting point for producing a more or less clean text of an act as amended […] many of the people who are working with the legislation day to day have their own electronic updates. Previously, they literally cut and pasted versions to work with.”

176. The Minister told the Committee that she felt there was a good argument for consolidating the law in this area, and that she had sympathy for lawyers and others involved in understanding, interpreting and applying the law. She added that it might be desirable to consolidate a part of the law that the Bill covers, such as wildlife crime. However, the Minister also had some words of caution for the Committee—

“The issue is difficult. Wildlife crime is not the only area of legislation that I have come across, even in the two years in which I have been a minister, in which I can see that a consolidation bill might be the right way to go in theory, but in practice might be harder to achieve than we imagine.”

177. It was also said by some that an overreliance on guidance and codes of practice was developing, which could lead to challenges being made to their quasi-legal status, and questions of transparency and accountability. Professor Reid also emphasised the need for all the resulting regulations and guidance to be accessible and accountable—

“There is an issue with codes of practice. The more important they become to how people understand the law and how they apply it, the more you have to understand them.”

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36 Sheriff TAK Drummond. Supplementary written submission to the Rural Affairs and Environment Committee.
37 Codification traditionally means re-enunciating in statute the law found in a particular area where that law is either common law or a mixture of common law and statutes. Consolidation means rationalising various statutes into one Act.
consider whether they are being scrutinised properly. There is a huge
difference between what is in the law, on which legal rights and prosecutions
are based, and simple guidance. However, when that boundary gets blurred
because the law is expressed so vaguely that, in practice, the guidance
becomes more important, you need to think about how that guidance is
presented, whether there is accountability for it and whether it can be
Col 3223.}

178. This point was also raised by the Parliament’s Subordinate Legislation
Committee, which considered that the Scottish Government had not given
adequate justification for the lack of parliamentary scrutiny proposed in respect of
the code for INNS, and that further thought should be given to the scrutiny of the
code on deer management.

179. The Minister expressed sympathy for the position of the Subordinate
Legislation Committee. However, the Government considered it important that the
approval process for codes of practice and other relevant guidance was kept
sufficiently flexible to allow changes to be made swiftly so that they could retain
relevance and respond to changing situations and demands as they occurred. The
Minister added that the Scottish Government considered it important that any
parliamentary procedure, in terms of scrutiny and approval, did not compromise
that principle.\footnote{Scottish Parliament Rural Affairs and Environment Committee. \textit{Official Report}, 3 November 2010,
Col 3315.}

180. The Committee considers that the case for consolidating the law in this
area was very well made in evidence to it, particularly as even legal experts
were of the view that the law was complex and difficult to follow. The
Committee therefore recommends that, following the passage of this Bill,
serious consideration should be given to consolidating the current range of
legislation.

181. The Committee also notes comments made to it on how difficult the task
of consolidating the law in this area may, or may not, be. The Committee was
encouraged by comments made by Professor Colin Reid that, given the
availability of legal databases and other tools, consolidation needn’t
necessarily be an overly burdensome task. The Committee considers that
the fact that consolidation might be difficult should not stand in the way of
viewing this as a priority.

182. The Committee notes the discussions which took place on what the
appropriate levels of parliamentary scrutiny, if any, should be, for the codes
of practice provided for by the Bill. The Committee considers that the codes
established by the Bill should be subject to Parliamentary scrutiny, given
that the INNS code helps establish liability for offences created by the Bill,
and the deer code details circumstances which could lead to SNH
intervening in the use of a person’s property. The Committee notes the
precedent for other codes of practice, such as those concerning the welfare
of cats and dogs, to be subject to Parliamentary scrutiny. The Committee therefore recommends that the codes of practice relating to both deer management, and INNS, should be subject to parliamentary procedure and that the Scottish Government gives serious consideration to using the affirmative procedure for the INNS code.

The marine environment

183. In written evidence to the Committee, the Crown Estate raised a point requiring clarification—

“[…] it is not clear from the Bill how its provisions might be applied in the marine environment, and as owner of large parts of the foreshore and seabed The Crown Estate seeks further clarification around the obligations applying to land owners in relation to non-native species.”

184. The Committee draws the attention of the Scottish Government to the comments raised by the Crown Estate above and recommends that the Government clarify the issue with the Crown Estate before Stage 2.

PART 2: WILDLIFE UNDER THE 1981 ACT

What the Bill proposes

185. Part 2 of the Bill is the most complex and controversial part of the Bill, containing provisions relating to the management of species, methods of taking/killing species (such as snaring), management and control of INNS, poaching and wildlife crime enforcement.


- regulates the taking, killing, sale and possession of all wild birds and of the species of animals and plants which are specified in Schedules to the Act;
- prohibits certain methods of taking and killing birds and animals and regulates the use of other methods, including snares; and
- regulates the introduction of non-native species.

187. Most activities prohibited under Part 1 are capable of being licensed for certain purposes under section 16 of the Act.

188. Part 2 of the Bill adds provision to the 1981 Act concerning—

- poaching and protection of game species;
- abolishing ‘areas of special protection’ (due to appropriate replication in other legislation);

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42 The Crown Estate. Written submission to the Rural Affairs and Environment Committee.
restrictions on the use of snares;

replacing the regime for controlling invasive species;

amending and enabling the delegation of licensing functions under the Act; and

consequential changes to the powers of wildlife inspectors.

Game management

Background

189. The laws regulating game in Scotland date from the eighteenth and nineteenth centuries. They cover three main areas—

- game licensing, which governs who may take and/or kill game, and deal in game;

- poaching – the offence of illegally taking game, the penalties involved, and the enforcement mechanisms; and

- close seasons – the dates between which game may be taken and/or killed.

190. Game law is governed by the following statutes—

- the Game (Scotland) Act 1772 (c54);

- the Game Act 1831 (c32);

- the Night Poaching Act 1828 (c69);

- the Game (Scotland) Act 1832 (c68);

- the Game Licences Act 1860 (c90); and

- the Poaching Prevention Act 1862 (c114).

191. Under the Game Licences Act 1860, before anyone (with some statutory exemptions) may take or kill game they must obtain a licence to do so. An annual licence costs £6. This price has not changed since 1968.

192. The Game Act 1831 and Game Licences Act 1860 together regulate who can sell game and the conditions of being a licensed dealer. Anyone intending to deal in game must obtain two licences – a local authority licence and an excise licence. The excise licence costs £4, and, as in the case of the licence to take or kill game, the price has not changed since 1968. The price of the local authority licence is set by individual local authorities and tends to be similarly low. Under section 4 of the Game Act 1831, it is an offence to trade game birds after ten days from the start of the close season of the relevant species. This close season on dealing was implemented to ensure that there was no market for meat illegally obtained during the close season, and to help game maintain bird populations.
193. The game-poaching laws create offences and enforcement mechanisms for the unlawful taking of game in Scotland. The legislation underpinning poaching offences dates from the 19th century and has not been substantially modernised since that time. The language is often archaic and some of the terminology no longer has common usage. This can give rise to anomalies and a lack of clarity of meaning. The enforcement provisions are also outdated with, for example, police having few specific powers to intervene proactively where poaching is suspected, and landowners or their representatives (e.g. gamekeepers), on the other hand, having powers to stop and apprehend people they suspect might be involved in poaching. For these reasons, the Scottish Government considers that there is a case for modernisation and consolidation of poaching law.

What the Bill proposes

194. The Bill would repeal the Game Acts and consolidate new provisions on game into the 1981 Act.

195. In order to abolish the requirements for game licences and licences to deal in game, the Bill repeals the game Acts that required these licences. Since modern refrigeration offers the possibility that game that has been killed during the shooting season could be sold throughout the year, the Bill would also repeal the restriction on selling game during the close season. To protect game, the Bill provides that it would be an offence to sell game that has been killed outside the shooting season, or that has been poached (i.e. taken without permission). Section 5 of the Bill contains amendments to the 1981 Act, which would have this effect. It would also make amendments to allow game birds bred in captivity, and game bird eggs, to be sold.

196. The Bill is intended to modernise game poaching offences. It would do this by repealing the Game Acts and bringing game birds, hares and rabbits within the scope of the 1981 Act. Section 2 of the Bill would change the interpretation provisions of the 1981 Act to bring game birds within its scope. Section 3 of the Bill would amend the definition of “wild bird” in the 1981 Act to apply it to game birds that are bred in captivity and then released. Section 3 of the Bill would also amend the 1981 Act to create closed seasons for game birds, during which they could not be hunted as game. These would be the same as the existing closed seasons under the Game Acts. Some species of game birds are bred in captivity, and then released. As part of this, gamekeepers sometimes “catch up” birds at the end of the shooting season to use them in captive breeding programmes. The Bill would amend the 1981 Act to allow this to continue.

197. Section 3 of the Bill would insert text into section 2 of the 1981 Act to allow game birds to be killed or taken outside the close season and would provide that only those with the legal right, or who had the permission of someone with that right, could kill or take game birds. Poaching would be the taking of a game bird without that right or permission, which would be an offence under section 1 of the 1981 Act. Section 7 of the Bill would insert new sections 11E and 11F into the 1981 Act, which would create an offence of poaching hares or rabbits without legal right or permission. Section 8 of the Bill would insert a new section 11G to create an offence of selling or possessing hares or rabbits taken illegally. The current distinctions between different poaching offences – depending on the number of people involved and whether the poaching occurs by day or by night – would be
removed. Poaching offences would be subject to the same penalties as other offences under the 1981 Act – these are imprisonment of up to six months and/or a fine of up to level 5 on the standard scale (currently £5,000).

198. The Bill would repeal the unique powers that landowners have to apprehend suspected poachers and provide for standard police enforcement powers to apply to poaching offences.

**Shooting for sport**

199. A central question, when considering game management, is whether shooting for sport is an acceptable practice that should be supported and allowed to continue in Scotland. Although many aspects of this Bill relate directly to this question, the Committee did not receive a great deal of evidence, from either side of the debate, addressing the question directly. The evidence which was received seemed to suggest an already established tolerance between those who run commercial sporting estates and animal welfare groups which are fundamentally opposed to shooting for sport.

200. There were no direct calls in evidence for a ban on shooting for sport. In contributions made on this topic, fundamental objections also came with acknowledgments of the economic benefits to Scotland of shooting for sport. The Hare Preservation Trust said in evidence—

“We appreciate that the shooting industry contributes significantly to the Scottish economy, but that does not make it morally right – indeed we say it has no place in a modern, civilised society.”

201. Similar views were expressed by the League Against Cruel Sports—

“The League must stress that while it is our policy not to support the shooting of live targets for sport, we do not dispute that shooting is indeed a generator of income and employment.”

202. The Committee recognises that there is an inherent tension, which crops up throughout this Bill, in the area of game management and law and the issue of conservation in its widest sense. On one hand, there are many land owners and managers who manage game as a valuable sporting commodity, and on the other, there are many who view the priority as being the welfare and protection of a variety of species and the habitats concerned. It is a difference of purpose and motivation. In bringing forward the Bill, the Scottish Government seeks to recognise different objectives by establishing legislation that acknowledges the contribution, economically, culturally and environmentally, that the game and field sports industry makes, but also seeks to ensure that land management practices are appropriately managed, regulated and fit for the 21st century, and to give suitable consideration to animal welfare issues.

203. The Committee recognises that shooting for sport, provided it is conducted in an environmentally responsible manner, is an important

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43 Hare Preservation Trust. Written submission to the Rural Affairs and Environment Committee.
44 The League Against Cruel Sports. Written submission to the Rural Affairs and Environment Committee.
aspect, both economically and culturally, of Scottish life. The legal and policy framework encompassing the shooting industry must however continue to adapt to reflect evolving societal attitudes to field sports and shooting in particular. The Committee welcomes the Bill as a process in that evolution.

**Game law and the classification of certain birds**

204. The GWCT, SGA and Scottish Countryside Alliance (SCA) voiced concerns about the re-classification of game birds in the Bill, despite the Scottish Government’s position that it is for tidying-up and modernisation purposes only, and does not make any fundamental change to the legal position of game birds and shooting for sport.

205. Whilst accepting that the Bill does not, in itself, make any direct changes to the status of game birds, some witnesses expressed concern that the Bill created the possibility of significant changes being made by future administrations, via secondary legislation. Some organisations were concerned that this could be the start of a reduction in the powers and control currently enjoyed by landowners and managers of sporting estates and could even lead, if a future administration so desired, to a ban on shooting game for sport.

206. The Scottish Rural Property and Business Association (SRPBA) said in written evidence—

“...The Bill ensures that game birds effectively enjoy the same position in law as previously, which is welcomed. Whilst undoubtedly simpler, this regime does enable future changes to the game and quarry species listed in the relevant schedule without the benefit of full parliamentary scrutiny, thus posing a potential threat to the game management sector in Scotland if the lists were to be altered arbitrarily without proper consideration of the full consequences.”

207. The GWCT was particularly disappointed by this part of the Bill, suggesting it did a fundamental disservice to the game industry in Scotland—

“...By merging game birds with other hunted species where lower intensity management is the norm (most ducks, wading birds including woodcock and others) this Bill risks reducing the incentive to invest in two ways. First by reducing control over their management by those investing in them and secondly by making the species vulnerable to secondary legislative change which does not reflect the long-term nature of the investment. Such loss of investment would lead to a loss of social, economic and biodiversity dividends for Scotland [...]”

208. The Subordinate Legislation Committee made no comment on the possible effect of the delegated powers in the Bill in this regard.

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45 Scottish Rural Property and Business Association. Written submission to the Rural Affairs and Environment Committee.

46 Game and Wildlife Conservation Trust. Written submission to the Rural Affairs and Environment Committee.
209. The British Association for Shooting and Conservation (BASC) noted that the requirement of a license to deal in venison remained, and suggested that this was an unnecessary anomaly in the legislation, which should be abolished.

210. The Minister informed the Committee that she had taken advice from the DCS (now SNH) on this and, based on that advice, the requirement of a licence to deal in venison had been retained because of continued instances of deer poaching.

211. There was consensual support in evidence for the modernisation of game law and the abolition of game licenses. The Committee is content with these provisions.

212. The Committee notes the concerns raised in some submissions about the change in status of game birds, but is reassured that the provisions in the Bill do not alter, in any significant way, the legislation surrounding the release or management of game birds in Scotland.

213. The Committee also notes, however, that a future administration in Scotland could, by negative procedure, amend the legislation to remove a game species from the list of birds which may be killed or taken outwith the close seasons. As this would be a radical change, the Committee recommends that any proposal to remove the game species from Schedule 2 of the 1981 Act, be subject to affirmative, rather than negative, procedure.

214. The new provisions place game birds on the same footing as quarry species (other wild birds killed for sport not formally classed as game, such as ducks, geese and waders), i.e. as birds which may be taken or killed out of specified close seasons.

215. Colin Shedden, the Director of BASC in Scotland, was of the view that this afforded sufficient flexibility to the hunting of quarry species—

“I think that there is a logic to putting all the quarry species, as it were, together. We need to recognise that things can change. For example, we have lost some quarry species in the past—the last one was the capercaillie, because of its population decline. I think that the flexibility could be useful if other species become much more abundant in Scotland and become legitimate quarry for game-shooting interests.”

216. The RSPB raised some concerns about the list of quarry species that remains in the Bill—

“The quarry list includes many wildfowl and waders as well as the game birds that are being moved into the quarry list in the Wildlife and Countryside Act 1981. Many of those species have a less than robust conservation status, but

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in the circumstances we do not think that removing them from the quarry list is the best way to address the issue.”

217. Dr Paul Walton, head of habitats and species for RSPB Scotland, spoke further on this issue, citing an example of greylag geese on the Western Isles and Inner Hebrides. Serious agricultural damage was reported as occurring as a result of the resident breeding geese, which may require future management to limit the damage occurring. However, he suggested that any such programme would require a basis of scientific support not currently available, and went on to conclude—

“At the moment, the gathering of bag statistics in this country is generally poor in comparison with other countries. We do not know for sure how many birds are shot for sport by estates. We know some other pieces of information on mortality—for example, we have an idea of the number of birds that are shot under licence—but there is no robust mechanism for us to be absolutely confident in the mortality levels. If we are not confident of those levels, the science and, therefore, our whole adaptive management approach falls apart and it becomes more difficult for conservation bodies such as the RSPB to support it. We want to use the opportunity that the bill provides to set in train a process that will provide us with properly robust gathering of bag data.”

218. SNH gave the Committee a slightly different picture of the state of record keeping, noting that although it did not routinely carry out such research themselves, it did carry out research on specific species that are of particular conservation concern, such as the Ptarmigan (a game bird in the grouse family). In addition, SNH noted that there were national game records, compiled by the GWCT and BASC, which were available on-line to enable people to draw their own conclusions on the health of various game and quarry species.

219. The Committee notes the comments made by the RSPB that although it is not recommending removal of any species from the current list of quarry species, it would welcome better record-keeping and more robust statistics on bag catches to enable populations to be monitored more dynamically. The Committee also notes that no other suggestion has been made to it to remove birds from the lists contained in the Schedules to the 1981 Act as amended by the Bill.

220. However, the point made by the RSPB about the need for better record-keeping and monitoring of mortality rates of certain species on estates and bag counts, should be further considered by the Scottish Government. The Committee is under the impression that the vast majority of estates keep records of what is shot on their land, and that it should therefore be possible to make this information more widely available to inform scientific analysis of the health of a particular species. If there are concerns regarding

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commercial sensitivities, provision should be made to enable such evidence to be anonymised.

**Goose management**

221. The issue of goose management was brought up several times in evidence to the Committee even though the Bill makes no specific provision for the management of geese, although they would be covered by the general provisions on INNS, species management and amendments to the wild bird provisions of the 1981 Act.

222. The Committee notes that a review of the national goose policy framework is currently being carried out by the British Trust for Ornithology (BTO) Scotland and is due to report to the Scottish Government before the end of the year. The Government asked the BTO to assess whether the existing policy remained appropriate or whether there were other management options or policy mechanisms that might now be more appropriate for addressing the interactions between geese, biodiversity and agriculture.

223. The Committee is aware that the management of significant numbers of geese is a matter of some urgency to certain communities in Scotland, and that ways of tackling the problems often need to be specific to local situations.

224. The Committee looks forward to the results of the goose review. The Committee recommends that the Scottish Government give detailed consideration to any proposals or recommendations that emerge from the review, and assess whether any of them would be best taken forward as part of this Bill.

**Poaching and close seasons**

225. It was noted, in evidence to the Committee, that recorded instances of poaching were on the increase and that the traditional image of the ‘one for the pot’ poacher was, perhaps, out of date. Mike Flynn, chief superintendent of the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) went into further detail on the latter point—

“[…we have seen a marked increase in reports of poaching, although I have to say that it is probably not the traditional type of poaching that the bill is aimed at. For example, people on the outskirts of cities are causing tremendous suffering with the use of dogs, crossbows and air rifles.”

226. This was supported by Robbie Douglas Miller, of the SRPBA, who told the Committee—

“Last year, we had instances of gangs of poachers using semi-automatic weapons on herds of deer […] The poachers would pull up at the side of the road and, from the side of a van, fire 40 or 50 rounds into a herd of deer perhaps 80m to 100m away. The poachers would then go and hack off the

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pieces that they wanted and could take in a short period of time, but they would leave everything else—including deer that were wounded, wandering around waiting to die. That is a real issue.\textsuperscript{51}

227. Broad support for the modernisation of poaching offences was expressed in evidence to the Committee. For example, Dr Colin Shedden, from BASC, told the Committee that—

“[…] the issue is important and has been well addressed in the bill. For example, we have lost—or, I hope, will lose—a lot of very archaic legislation that is in very archaic language. With the definition of poaching as the illegal removal of game or other wildlife species from land without permission, the whole thing has been very much simplified.”\textsuperscript{52}

228. The Committee supports the rationalisation of poaching offences in the Bill to create a single poaching offence.

\textit{Powers to apprehend suspected poachers}

229. The Committee received evidence expressing concern at the removal of the current power landowners and their employees hold to apprehend suspected poachers. This reflected the opposition to this proposal in responses to the Scottish Government’s consultation. The SRPBA and SEBG were concerned about whether the police had sufficient resources to provide an effective and timely response to instances of poaching.

230. Robbie Douglas Miller, of the SRPBA, told the Committee—

“The problem for those of us on the ground is what to do with people we have detained, especially if there are more of them than there are of us. What do you do with someone in the middle of the night? Ringing the police might be fine, but […] when there is a direct confrontation, what should we do? Should we walk away? They know who we are, so if we walk away, they know that it is free reign and they can just come back tomorrow. It is a difficult problem.”\textsuperscript{53}

231. The SGA brought to the Committee’s attention, in its written evidence, a potential inconsistency in removing landowners’ powers of apprehension whilst powers belonging to water bailiffs are retained. Water bailiffs perform a similar role on fresh water to that performed by gamekeepers on land, and have powers of arrest with regard to suspected poachers.

232. A Scottish Government official told the Committee—

“[…] the main underlying reason for the different approach is that a different regime applies to freshwater fisheries. There is a statutory role for salmon fisheries boards, and the bailiffs have a role in that regard. The structure is


different from that of most game businesses, which are run by private-sector landlords and are a matter of private property.”\textsuperscript{54}

233. The Scottish Government commented in the Policy Memorandum on the removal of landowners’ rights to apprehend suspected poachers, stating that significant opposition had been expressed towards the proposal but concluded that it “was not persuaded by any evidence to justify retention of these powers.”\textsuperscript{55} Such significant opposition was not expressed to the Committee during its scrutiny of the Bill.

234. Alex Hogg, Chairman of the SGA, whose members may be most directly involved in the apprehension of suspected poachers, said that—

“The loss of the power will not really affect us. Another issue is that we have shotgun and firearms certificates and we do not want to apprehend those guys face on sometimes, because we can end up landing in trouble because of the firearms. It is better if we watch the guys and the police come and deal with them.”\textsuperscript{56}

235. The Committee addresses the wider issue of enforcement of wildlife crime offences, and available appropriate resources, later in this report. However, the Committee is of the view that the removal of the current power which landowners and their employees have to apprehend suspected poachers is not the real issue. The issue is whether there are appropriate resources within the police forces across Scotland to respond appropriately and timeously to reported incidents of wildlife crime.

\textit{Shooting on Sunday and Christmas Day}

236. The Scottish Association of Country Sports (SACS) raised the issue of the current ban on shooting certain birds on Sundays and Christmas Day—

“The original reasons for making shooting for sport on Sundays and Christmas Day unlawful were simply to assist in the detection of poachers – the ‘working classes’ only had Sunday free from work, whereas the landowners could shoot any day they chose. The justification used was for religious observance. Today, the working practices are entirely different, as are the measures and methods used to prevent rural crimes such as poaching. That said, today most of the population would consider Saturday and Sunday to be its main leisure time, and is thereby hugely disadvantaged by any restrictions on Sunday shooting, since that equates to 50% of its available leisure time.”\textsuperscript{57}

237. The Committee notes that the Bill does not prohibit the killing or taking of game birds on Sundays or Christmas Day, but rather of other quarry

\textsuperscript{55} Policy Memorandum, paragraph 39.
\textsuperscript{57} Scottish Association of Country Sports. Written submission to the Rural Affairs and Environment Committee.
species (geese, ducks, rails (other water birds) and wading birds). The Committee understands that not shooting game for sport on Sundays and Christmas Day is a matter of cultural convention.

238. The Committee notes that there is, therefore, an anomaly in legislation, which allows shooting of certain species on Sundays and Christmas Day, but not others. The Committee recommends that the Scottish Government takes the opportunity to addresses this anomaly during the passage of this Bill.

Catching-up

239. All those who commented on the catching-up provisions in the Bill thought that the fourteen days timescale was too short and argued for varying lengths of extension to the allowable catching-up period, from a month up to 42 days. There was consensus amongst these organisations\(^\text{58}\) that the 14 days did not give sufficient flexibility to deal with the vagaries of the weather. The SGA explained—

“[…] we do not feel that the current proposal of a 14 day period is practical. The relevant shooting seasons close after 1st February, and Gamekeepers will then generally allow a period of time for birds to settle without disturbance. If the weather is open in early February, it would be difficult for Keepers to achieve their objectives, as birds may be widely dispersed. Hard weather helps to concentrate birds within key areas.”\(^\text{59}\)

240. The GWCT also said it would like black grouse to be included in catch-up provisions, noting that—

“The loss of this facility could prove to be a disincentive for future investment in game management for this species. Such an interest is an important as suggested by the current performance of black game populations in north-east Scotland where red grouse management is protecting and enhancing their population performance.”\(^\text{60}\)

241. The Minister told the Committee—

“The practice of catching up is currently illegal, and our advice is that the current position is unworkable. We are therefore using the bill as an opportunity to provide two weeks for catching up. The provision is based on the fact that the existing provision is not manageable […] We are starting from the position of zero so, from our perspective, the bill gives another two weeks and that ought to be sufficient.”\(^\text{61}\)


\(^{59}\) Scottish Gamekeepers Association. Written submission to the Rural Affairs and Environment Committee.

\(^{60}\) Game and Wildlife Conservation Trust. Written submission to the Rural Affairs and Environment Committee.

242. The Committee considers catching-up to be of value to those managing game birds. The Committee notes the apparent uncertainty over the lawfulness of catching-up and welcomes the clarification provided in the Bill that it is legal to do so. However, the Committee notes the evidence from landowners and managers who consider the 14 day period for catching-up certain game birds in close season is not sufficient.

243. The Committee asks the Scottish Government what welfare, environmental or economic reasons there are for setting the catching-up period at 14 days? If there are no such particular reasons, the Committee would be minded to recommend that the Scottish Government amends the Bill at Stage 2 to extend the period for catching-up.

244. The Committee notes the comment made by the Game and Wildlife Conservation Trust proposing the inclusion of black grouse in the catching-up provisions but does not have sufficient information regarding the possible consequences of such a change to make any recommendation. The Committee therefore draws this to the attention of the Scottish Government for further consideration.

Hares

245. Under the Hares Preservation Act 1892, it is currently illegal in Scotland to sell or expose for sale, hares or leverets between 1 March and 31 July inclusive. In Scotland, Section 1 (3) of the Ground Game Act 1880 has been modified by the Agriculture (Scotland) Act 1948 as follows—

“...The occupier of the land or persons authorised by him may kill ground game, throughout the year, on moorlands and unenclosed lands (not being arable) by all legal means other than by shooting, and by means of firearms over the period from 1 July to 31 March inclusive.”

246. Currently ground game (rabbits and hares) can be killed in Scotland all year round on land that is not classed as moorland or unenclosed land.

247. The Bill proposes the establishment of separate close seasons for brown hares (1 February – 30 September) and mountain hares (1 March – 31 July) and makes it an offence to take or kill hares during such times. The rationale given by the Scottish Government for introducing a close season for hares is to protect hares at time when there is likely to be the greatest welfare concern, i.e. when hares are lactating and have dependant young.

248. Most evidence to the Committee was supportive of the introduction of a close season for hares, but some argued that the dates proposed in the Bill were not the most appropriate, particularly for brown hares. Many,63 agreed that the close season for brown hares should start at least a month later, on 1 March, to more accurately reflect breeding seasons and to tackle problems caused by poor

63 The British Association for Shooting and Conservation, Game and Wildlife Conservation Trust, Scottish Rural Property and Business Association, Scottish Association for Country Sports, Scottish Countryside Alliance and the Scottish Hawk Board.
weather. Some also felt that the mountain hare season should also be delayed by a month, to 1 April, although there was less consensus on this issue, with others satisfied with the 1 March proposal.

249. SNH told the Committee that the close season dates in the Bill were based on scientific advice concerning pregnancy rates. The brown hare has a 47% pregnancy rate in February and 44% in March, and the mountain hare was comparable. SNH was concerned that any shortening of the close season could create an animal welfare issue with regard to leverets. It also noted that statistics suggest that only 10% of hares shot for land management are currently shot between March and August, and only 2% of informal shooting takes place during those months, which suggests that the close season dates, as established in the Bill, would not have the significant impact on management methods and availability which some of the written evidence to the Committee would suggest.

250. The Hare Preservation Trust (HPT) took a different view on the killing or taking of hares at any time (supported by the SWT), citing evidence of cruelty due to the difficulties in cleanly shooting a hare, and concluded in its written evidence—

“It is therefore our view that hare shooting should be kept to a minimum and allowed under licence solely upon proof of serious economic damage to crops or forestry. Furthermore, licences should only be issued during the main breeding period of February to September inclusive if a cull has been carried out during the previous October to January but has not been effective. We estimate that at least 37,000 orphaned leverets die of starvation annually in Britain because there is no close season to protect nursing females. However, since Defra claim that farmers need the flexibility to cull hares throughout the year we have been willing to accommodate that in our licensing provisions, but with tightly drawn conditions. We make no accommodation for hare shooting for so-called “sport”.”

251. The HPT also noted that the mountain hare was listed as a species of community interest in the EC Habitats Directive 1992, and, as such, was protected from certain methods of capture, such as snaring and night shooting. The HPT believed that there was not currently proper adherence to these measures and that the Habitats Directive was regularly being broken in Scotland.

252. The SGA told the Committee that the most productive habitat for hares was found mostly on managed sporting estates. This was because hares were prone to fox predation and therefore had a greater survival rate on ground that was managed to keep down fox numbers.

253. There was some contradictory evidence received about the health of the brown and mountain hare, with the HPT stating that the brown hare population

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64 Hare Preservation Trust. Written submission to the Rural Affairs and Environment Committee.
was in decline and the mountain hare population under significant threat, while others, such as the GWCT, suggesting that both brown and mountain hare populations were currently on the increase in Scotland.

254. SNH’s view was that the GWCT was the most authoritative source for information on hare numbers, via its national game bag census, which is an index. That has shown that mountain hare is showing no long term changes, with the ten year trend showing a non-significant decline. The brown hare trend is less clear, but both the 10 and 25-year trend indicate no significant decline, and the population is felt to be static. SNH believed this demonstrated there was no case, based on conservation alone, for a ban on shooting either brown or mountain hare. SNH also pointed to 2008 research \(^{66}\) carried out by SNH, the Macaulay Land Use Research Institute (MLURI) and the GWCT, which showed no significant change in the distribution of mountain hare.

255. The GWCT outlined why it believed that management of mountain hares was necessary, beyond shooting for sport—

> “Where the tick-borne louping-ill virus is present GWCT research shows that moor mountain hares can help perpetuate the disease, impacting on grouse and sheep. As there is currently no alternative form of treatment, some hare populations have been temporarily and locally reduced to suppress the disease, protect the red grouse and thus ultimately save the heather moorland both hares and grouse depend upon. Similarly, some suppression of hare population densities may be necessary on some occasions to allow woodland regeneration.” \(^{67}\)

256. Alex Hogg, of the SGA, also noted the tick problem, stating that cases of Lyme disease were on the increase and that hare and deer populations were being culled to try to tackle this. They noted a public health issue when giving evidence to the Committee on 7 September 2010—

> “We have to try to find an answer to the tick that causes Lyme disease. The Scottish Parliament is encouraging people to access the countryside, but some areas of the country are absolutely ridden with ticks […] It is a serious problem.” \(^{68}\)

257. SNH said it was aware of the problems that ticks carried by hares were having on some grouse and was concerned about reports of systemic culling of mountain hare on some estates as a result. SNH has commissioned research to measure the extent of local populations of mountain hares.


\(^{67}\) Game and Wildlife Conservation Trust. Supplementary written evidence to the Rural Affairs and Environment Committee.

258. The Committee supports the introduction of a close season for both brown and mountain hares.

259. The Committee notes the evidence on whether the close season, for brown hares in particular, should be reduced by a month. The Committee is not clear on whether reducing the close season by such a time would have any significant negative welfare impact on live young and therefore asks the Scottish Government to re-consider the close season dates to ensure that they take account of the welfare of live young specifically.

260. The Committee appreciates that it is sometimes necessary to manage hare populations. In particular the Committee notes evidence that the tick-borne louping-ill virus can be carried by hares, which might present a potential problem in terms of transfer of tick to sheep and grouse, and also a possible threat to public health, in terms of Lyme disease.

261. However local population levels should be carefully monitored. The Committee notes the research being carried out by SNH to assess the extent of local populations of mountain hares and recommends that the Scottish Government give this full consideration when it is published.

262. The issue of falcons being flown to take rabbits was raised by several witnesses. Their concern was that it was inevitable that some hares would be taken by falcons in the hare close season and that this would therefore place falconers in danger of prosecution. An amendment to the Bill was called for, to acknowledge this issue, and protect those flying falcons for such purposes during the hare close season from what, it is argued, would not be an offence committed by intent.

263. The Scottish Hawk Board outlined the concern—

“[…] the use of hawks and eagles to hunt rabbits for control purposes will be impacted by the imposition of a close season for hare. Although rabbit control with birds of prey is mainly carried out through the normal hunting seasons, some areas of rabbits warrant culling throughout the summer period […] Once a bird of prey is flying free there is no possibility to stop it taking a hare that may flush, by default the falconer will be guilty of an offence if his bird takes a hare. To impose a close season when a hawk or eagle is unable to distinguish between a rabbit or hare is going to place the falconer in an untenable position. To prevent unwarranted law transgressions an exemption clause should be added […]”

264. The Committee asks the Scottish Government to note the concerns raised by falconers that the Bill may penalise them for inadvertently allowing a falcon to take a hare, rather a rabbit, during the close seasons.

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69 Scottish Hawk Board. Written submission to the Rural Affairs and Environment Committee.
Enforcement of wildlife crime

Background
265. PAW Scotland defined wildlife crime as “any unlawful act or omission, which affects any wild creature, plant or habitat, in Scotland” at its plenary meeting held on 25 May 2010.

266. PAW was established to unify efforts to combat wildlife crime in the UK. PAW Scotland is the Scottish arm of PAW and the delivery mechanism for Scottish Government action on wildlife crime. PAW Scotland currently has 33 members, including: the eight police forces in Scotland; the Scottish Government; SNH; rural industry bodies and environmental organisations. PAW Scotland produced a Scottish Wildlife Crime Reduction Strategy in 2008. This short strategy document describes the problem of wildlife crime, and why it should be tackled – in essence, it says, because wildlife and the natural environment are vital to Scotland’s economy and identity. PAW Scotland intends to review the strategy in 2011.

267. The principal statute protecting wildlife is the 1981 Act. Wild animals, plants, birds and their habitats are protected under international and European as well as domestic law, and some species of mammal and bird, such as deer, game birds, and badgers are also protected under separate statutes. Animal welfare law also protects wild animals from cruel treatment, and requires their welfare to be ensured when they come under the control of man.

268. The number of wildlife crimes recorded by police forces in Scotland in the ten years between 1999-00 and 2008-09 ranged between a low of 139 in 2002-03 and a high of 384 in 2008-09 and the Minister noted that—

“[…] we have been through what is likely to be a very bad year for bird poisonings, which has featured some high-profile cases at well-known estates in the Highlands.”

Single witness evidence
269. The 1981 Act contains provision for the stealing of birds’ eggs to be prosecuted on the basis of evidence by a single witness. Poaching offences, under the Acts being abolished by this Bill, also contain provisions for prosecution on the basis of evidence from a single witness. The Bill amends the 1981 Act, in Section 12, to include provision for the prosecution of the new poaching offence on the basis of evidence from a single witness.

270. A Scottish Government official told the Committee on 23 June 2010, that the rationale for this was simply to maintain the current position—

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“[…] the policy objective was not to disturb the current situation and […] poaching offence require only single witness evidence […] at this stage we did not want to change the policy or the way in which that was done; it was more a matter of simplification and of bringing everything under a single regime. That is why we have ended up with the current situation of retaining single witness evidence for poaching.”

271. The Bill’s retention of single witness evidence for poaching was supported in some evidence, both to the Committee and the Government’s consultation, as poaching was felt to be a ‘caught in the act’ style of crime often committed in rural areas where the likelihood of a corroborating witness was low.

272. Mike Flynn, of the SSPCA, said it was essential that single witness evidence was retained for poaching, explaining that—

“There is a place for it. It originally applied to the stealing of birds’ eggs, given the remote nature of the places where that happens. That is a problem whether we are talking about taking birds’ eggs or poaching; it is not happening at the end of the street in front of 20 witnesses. As Alex Hogg [Chairman of the SGA] said, in the majority of cases the evidence has to be corroborated anyway, but Alex could say that he saw somebody poaching and that he found the carcase of the animal that was killed—that is a form of corroboration. There can be evidence that a dog attacked an animal, for example. There can be corroboration that does not come from another person, so the single witness approach is valuable.”

273. Indeed, some organisations, such as the SSPCA and SWT, wanted the extension of the admissibility of single witness evidence for other wildlife crimes. The SWT explained the rationale behind this a little further—

“We further note that single witness evidence is sufficient for littering offences under the Environmental Protection Act 1990 and dog fouling offences under the Dog Fouling (Scotland) Act 2003. We see no convincing argument why single witness evidence should not be sufficient for general wildlife crime prosecutions. This would simplify enforcement and send a very powerful message to criminals.”

274. However, another side of the debate emerged in evidence, with several organisations calling for the admissibility of single witness evidence to be scrapped altogether for any wildlife crime offence. BASC, SGA, and the SCA all said it served little purpose because offences always required corroboration to result in prosecution. The Law Society of Scotland felt that consistency was

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75 Scottish Wildlife Trust. Written submission to the Rural Affairs and Environment Committee.
required, whichever direction the argument took, a position also taken by Professor Reid who asked for 'harmonisation'.

275. In evidence given on 29 September 2010, Ron Macdonald, head of policy and advice at SNH, made it clear that he did not think the answer to the anomaly was to extend the use of single witness evidence to other wildlife crimes, as corroboration was essential in Scots law—

“The provision is an anomaly and should not be extended. Corroboration is a basic tenet of Scots law. We see no need to extend the provision. Sheriff Drummond said that, even with single witness evidence, he would require separate corroboration. I hope that that clarifies our position. We are not saying that the provision should be extended; it is an oddity and we see no benefit in extending it to other crimes.”

276. Malcolm Strang Steel, of the SRPBA, also said that the evidence seemed to suggest that single witness evidence was not effective, and questioned whether it was wise to continue to pursue it—

“Scots law has always said that uncorroborated evidence is a bad principle. Single witness evidence is an exception because it is a hangover from 150-plus years ago. I do not think that we would be desperately upset if it disappeared. However, we would be desperately upset if it came in through the back door in relation to anything else. Corroboration is an extremely important principle and should be maintained, unless there is a very strong reason otherwise, and I cannot think of one within the context of what we are talking about at the moment.”

277. Sheriff Drummond told the Committee that, in 35 years of professional experience, he had never known of any person being convicted based on single witness evidence alone—

“Let us think of the situation of a prosecutor who receives a report of a case that will be contested. In effect, one person is saying, "Here is the evidence that points to guilt" and somebody else is saying, "That is not what happened." The prosecution of the case may be weakened by the law saying that it can proceed on single witness evidence. I think that I have never in my entire professional career dealt with a case in which the only evidence was single witness.”

278. Several witnesses raised the possibility of wildlife cases being prosecuted on the basis of the evidence of a single witness, but with other supporting evidence,

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76 The Law Society of Scotland. Written submission to the Rural Affairs and Environment Committee.
77 Professor Colin Reid. Written submission to the Rural Affairs and Environment Committee.
such as a poisoned carcase. Sheriff Drummond stressed that single witness evidence with other supporting evidence, was not single witness evidence at all, it was corroboration. Single witness evidence would be one person saying they saw another person doing something, and a prosecution being possible as a result of that alone.

279. Sheriff Drummond noted that extending the number of offences in which single witness evidence was admissible could lead to more cases being brought forward with a view to prosecution, but those cases not actually being prosecuted in the courts due to a lack of corroboration. He emphasised that the focus should be on the collection of robust evidence.

280. In terms of admissibility of evidence, the RSPB raised the importance, within current law, of how evidence was discovered and gathered. For example, a person who discovered a poisoned carcase would be questioned on how they came to be on the relevant piece of land, to ensure they had a legal right to be there. If the person were a hill walker who happened to find the carcase, it is likely that person’s evidence would be admissible, as the person would have been exercising their access rights under the Land Reform (Scotland) Act 2003. However, if the person worked for an organisation and had been sent to look for evidence, it could be deemed that they were not there legally.

281. The Minister told the Committee that, having noted the debate with interest, she was not persuaded by either the argument to abolish single witness evidence, or extend it further to cover other wildlife crimes, and was therefore content with the status-quo position in the Bill.

282. The Committee notes the extensive evidence it received on the issue of single witness evidence. It is clear to the Committee that the Scottish Government’s reason for retaining single witness evidence for poaching was to maintain the status-quo.

283. The Committee appreciates the rationale for being able to convict certain wildlife crimes on the basis of single witness evidence, because of how and where these types of crimes are likely to happen. The Committee notes the evidence which called for single witness evidence to be extended to other wildlife crimes.

284. On the other hand, the Committee notes the evidence it heard that it is extremely rare that any alleged offence of poaching or egg stealing to be prosecuted on the evidence of a single witness, and that there is therefore little to be gained by extending the use of single witness evidence for other wildlife crimes.

285. The Committee was not clear, despite extensive evidence taking, on how single witness evidence could practically be applied, and whether in

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practice corroborative evidence is always required and, if so, what such
evidence would amount to.

286. A majority of members agree that the law on single witness evidence
should be made consistent on the basis that the same distinctive evidential
considerations that apply for poaching offences also apply for many other
wildlife crime offences, e.g. raptor poisoning. Some members consider that
single witness evidence should be admissible for other wildlife crimes, such
as raptor poisoning, whilst other members consider that single witness
evidence should be inadmissible in all poaching or wildlife crime cases.

Investigation of suspected crimes

287. There were conflicting views about whether instances of wildlife crime were
increasing, or whether statistics showing increased numbers were a result of the
public being better informed and more cases being reported. It was also
suggested that as there were now dedicated wildlife crime procurators fiscal, more
cases were being brought and prosecuted. However, there was consensus in
evidence condemning wildlife crime and emphasising the need for robust
enforcement.

288. The Committee heard extensive evidence concerning the enforcement of
wildlife crimes, which included the ability of the police, in terms of resources, to
respond to suspected crimes effectively, the priority that police forces across
Scotland gave to investigating wildlife crimes, and the support that currently
existed, and could exist in the future, in terms of supporting the police in its role.

289. Libby Anderson, a policy director with Advocates for Animals (now called
OneKind), told the Committee that the timely response of the police to reported
suspected crimes was currently a problem—

“...The experience of many people who come across what they think are
offences in the countryside is that the police do not come and address the
problem. Evidence needs to be looked at quickly, because it can disappear.
Before we even think about the admissibility of evidence, enforcement is a
serious issue.”

290. She went on to give a specific example of this—

“...in a recent case, [our field research officer] thought that he had found
some illegal snares and he informed the police about them, but they were
unable to attend. The incident took place in Strathclyde, but he was advised
to go to his local police station in Gayfield Square in Edinburgh and give a
statement, which would be passed back to Strathclyde Police. That is not
really taking forward the issues of enforcement and investigation.”

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83 John Scott MSP is content with the status quo on single witness evidence.
291. Grampian Police was extolled to the Committee as a model for policing wildlife crime, and one which should be replicated as best practice across the country. The RSPB indicated that lessons to be learnt from the successes in Grampian included numbers of officers and resourcing—

“Although we in the RSPB would always ask for more, we would not say that huge amounts of police resource should be applied to wildlife crime. We are asking for a proportionate model to be put in place, which is really what happens in the Grampian model […] They understand the issues that the committee has heard about, such as the economic benefits and so on of tackling wildlife crime. They read research papers that demonstrate that in some areas there are absences of various species, and they apply some resource to doing something about that. That is really successful. It is not about creating a massive force of police wildlife crime officers.”

292. Mark Rafferty, from the SSPCA, told the Committee that the Grampian model was “the exception to the rule” in wildlife crime policing across Scotland, and suggested other parts of the country were quite a way behind—

“Certain police forces—I will not name and shame—do not have any commitment to wildlife crime. That poses problems when people report a crime, the SSPCA goes to assist the police and no police officers are available, let alone wildlife crime officers. The reality is that there is too little enforcement and that the police afford too few resources to tackling wildlife crime because it is too low a priority. There will always be a reason why the police cannot go. As a former police officer, I can accept those reasons. There are other angles that need to be investigated.”

293. The Minister told the Committee that, whilst there had been a general improvement, some police forces were still better than others in tackling wildlife crime, and added that the issue of available police resources was “a challenge”.

294. Mike Flynn, of the SSPCA went on to argue for the Bill to provide an extension to the current powers of SSPCA inspectors to investigate animal welfare issues, if the animal is in captivity—

“It is proposed that the SSPCA should be given additional powers—primarily, those that are contained in section 19 of the Wildlife and Countryside Act 1981—which would allow authorised inspectors to go on to land to recover evidence. Once they had recovered that evidence, the investigation could start. Sadly […] we come across incidents where an eagle might lie on a hillside for a week or two. By the time the police can resource the recovery of

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that piece of evidence, it is no longer there, which means that an investigation cannot take place and there is no detection or prosecution."^90

295. Currently the SSPCA can investigate if a live animal is involved, but if, for example, its inspectors found snares they considered had been set illegally they have no powers to act and have to notify and wait for police assistance. The SSPCA argued that this would provide very useful support to police forces, at a time of difficult budgetary constraints, helping to ease the burden on the police, and would lead to the detection of more wildlife crimes, and a reduction in the number of crimes committed. This call was supported in a supplementary written submission made by OneKind.

296. This view was not shared by Sheriff Drummond, as he believed that the area of powers of investigation had become so fragmented that it had directly led to the failure to prosecute certain cases, as investigations had been carried out by persons who had no authority to do so. He went on to add that this opened up other significant areas of concern, as there is now provision for organisational inspectors, local authority inspectors and police officers, and of the step towards giving other, non-police, inspectors wider powers. He urged both caution and consideration of context—

"[…] that step should not be taken without careful consideration of much wider principles in relation to crime enforcement. We should remember that we are talking about crime in the context of the presumption of innocence and proof beyond reasonable doubt, and of the rules on the admissibility of evidence in court. The committee touched on the question of single witness evidence and corroboration in the evidence session earlier today. We must not forget that we are operating in the context of criminal law—it is dangerous to fiddle with some of its elements in isolation."^91

297. Sheriff Drummond also stressed that the police was an arm of the state, whereas organisations such as the SSPCA and RSPB were charities and private bodies established for very specific purposes. There were therefore questions of accountability and impartiality.

298. Bob Elliot, head of investigations at RSPB Scotland, spoke about the power to recover evidence and the SSPCA’s proposal that its powers of investigation and arrest be extended—

"I have spent far, far too many hours standing on a hillside in Grampian next to a dead golden eagle, waiting for a police officer to respond […] Of course the collection of evidence has to be done properly and fairly, which is why I want the police to be able to respond. The SSPCA’s idea is an absolute no-brainer. The SSPCA has trained, uniformed officers who have been doing the job for I do not know how many years and who have successfully investigated and prosecuted people not just for wildlife crime but for all sorts of offences. It is funny that the police do not seem to mind the SSPCA..."^90


dealing with lots of issues involving domestic animals [...] I think that it was the police who decided that the SSPCA and the RSPCA should do that, because they could not cope with all the incidents that involved cats, dogs and farm animals. We are at a point in Scotland at which the same can be said for some police forces in relation to wildlife crime.”

299. The Minister told the Committee she was open to giving further consideration to the suggestion put forward by the SSPCA but added that it may not be appropriate to consider it as part of the Bill. The Minister said that such an extension of powers would be a significant step, and therefore would require full and appropriate consultation, which should not be limited by the timescale of the Bill. The consequences of such a change should be fully explored and given very careful thought. 93

300. Another issue raised was that of recording wildlife crime offences. Constable David McKinnon confirmed that all eight Scottish police forces submit monthly returns to the national wildlife crime unit, which collates returns for the UK. However, he went on to add that whether incidents were properly recorded as crimes and therefore recognised in crime statistics was another matter.

301. Bob Elliot added—

“In numerous cases, I have been incredibly frustrated by speaking to senior police officers, who may not necessarily have expertise in wildlife crime, who do not see the data on their system. I have tried to explain about some criminality that has been going on for X number of years, but they have looked at me and said, “That's really interesting, but the system is telling me that there's been no such crime in my area.” We have a long way to go to get wildlife crime offences properly recorded.” 94

302. The SSPCA added that, as wildlife crime was not a current automatic recordable crime, this leads to some forces not giving it a high enough priority and not resourcing it sufficiently. The SSPCA suggested that elevating wildlife crime to a ‘group 5’ crime (i.e. recorded as part of the ‘other crimes’ section of the recorded crime statistics under the Scottish Crime Recording Standard), police forces would be judged upon their ability to detect and investigate it. Sheriff Drummond noted that there was no definition of what did, and did not, constitute a wildlife crime which made it hard for accurate statistics to be gathered.

303. The Minister noted that this issue had been discussed in the PAWS group, and that ACPOS had informed the group that wildlife crime was now being recorded across Scotland. However, given that there was not a definitive list of offences that constitute wildlife crime, the statistics produced may not be comparing like with like.

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304. Given that police resources are undoubtedly going to be under significant pressure in the coming years, the Committee explored the issue of special constables being specifically recruited from rural communities. Constable Dave McKinnon said—

“[…] I would welcome greater participation by people who work in the rural community—stalkers, ghillies, keepers, bailiffs or whoever. We want to explore that through the Cairngorms National Park Authority. In my opinion, the pool of people who become special constables is far too narrow, and it should be widened to include anyone who has something to contribute and has an interest in their rural community.”

305. The SRPBA notified the Committee, in supplementary written evidence, of a project it is currently involved with in conjunction with Central and Tayside Police—

“The SRPBA has been working with Central and Tayside Police to devise a workable model to deliver additional rural policing through use of volunteer police specials. These specials would be recruited from employees across rural Scotland, keepers, foresters, farm workers etc. This would be part of a recognised police project called Employer Supported Policing which is already established in other business sectors e.g. retail and finance in urban areas. Employers grant their employees paid time off to undertaking policing duties within their own community area/region. With an increase in all forms of rural crime and financial cut backs to come we think this project needs to be accelerated.”

306. The Committee notes the evidence received that a significant problem in tackling wildlife crime is the lack of consistency by the police, across Scotland, in responding in a timely and appropriate fashion.

307. The Committee notes that the Partnership for Action Against Wildlife Crime Scotland has recently established a definition of ‘wildlife crime’. The Committee recommends that the Scottish Government ensures that this definition is used by all police forces in Scotland in order to ensure a consistency of approach in responding to reports of wildlife crime and properly recording such instances. The Committee also notes that a consolidation and rationalising of the law regarding wildlife crime may enable an even clearer definition to be established in future.

308. The Committee commends Grampian Police as an exemplar of investigating wildlife crime and recommends that the Scottish Government uses it as a best practice example that should be studied by other police forces in Scotland. The Committee accepts that if resources were deployed more effectively – for example more officers being designated as having responsibility for responding to wildlife incidents, – it would help in terms of proper recovery of evidence and lead to a reduction in wildlife crime.

96 Scottish Rural Property and Business Association. Supplementary written evidence to the Rural Affairs and Environment Committee.
309. The Committee⁹⁷ is encouraged by the Minister's comments that the Scottish Government was 'open' to giving further consideration to the request by the SSPCA that its powers be extended to allow them to investigate wildlife crimes, where a dead animal is involved. On the basis that this is likely to be the last piece of wildlife legislation considered for some time, the Committee recommends that the Scottish Government gives consideration to putting an enabling power in the Bill to allow for the possible extension of the SSPCA's powers, subject to the outcome of a full consultation on the proposal and endorsement by Parliament.

310. Finally, the Committee notes efforts being made to encourage people in rural communities, whether they be gamekeepers, environmentalists, ghillies, farmers etc, to train as special constables to provide further support in the detection of wildlife crime. The Committee also notes that it may also be possible for SSPCA officers to train as special constables.

**Raptor persecution**

*Background*

311. A wildlife crime of great concern, and one which appeared to be uppermost in the minds of the public and professionals alike, was that of the persecution, especially poisoning, of protected birds of prey (raptors). There was consensus amongst all those who gave evidence to the Committee that the illegal killing of any raptor was unacceptable, and that the issue needed to be taken seriously.

312. However, the Bill does not actually contain any provision specifically relating to tackling the poisoning of raptors. This was raised with Scottish Government officials on 23 June 2010, when members asked whether consideration had been given, or would be given, to using the Bill to try to tackle this issue. An official told the Committee that—

“It has not been positively ruled out. There is an argument that we already have a strong legal framework for the protection of wild birds in the Wildlife and Countryside Act 1981 and now need more effective enforcement. The ministers are keeping the issue under review in light of the recent events on shooting estates in the north of Scotland. They wish to think about whether any further provisions would need to be introduced to the bill, but no firm decisions have been taken.”⁹⁸

313. There was some agreement in evidence with the Government's argument that the legal framework already in place was sufficiently strong, and that it was a question of effectively enforcing that, rather than improving the law. The SEBG agreed with this, adding that landowners could face having part of their single farm payment withdrawn if there were repeated cases of raptor poisoning on their land.⁹⁹

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⁹⁷ John Scott MSP dissents from this paragraph.
⁹⁹ Scottish Estates Business Group. Written submission to the Rural Affairs and Environment Committee.
314. However, others, such as the SSPCA, OneKind, the League Against Cruel Sports and the RSPB, thought that law and enforcement is failing in this area and that wildlife crimes were not taken as seriously, across the whole country, as they should be. Many felt that the continued instances of raptor poisonings across Scotland were evidence to suggest that current measures to tackle the problem were not working.

315. A number of key questions emerged in evidence taking—

- what is the extent of the problem;
- what is the motivation behind it;
- what problems exist with current attempts to investigate suspected crimes and enforce the law (this is primarily discussed above); and
- what can be done to tackle the situation more effectively?

**Extent of the problem**

316. There was dispute amongst some giving evidence to the Committee as to whether the poisoning cases that have been confirmed are the “tip of an iceberg”, or whether they represent, more or less, the true extent of the problem.

317. A case was put by some that the known confirmed poisonings were a small percentage of a larger problem and suggested that the evidence of this was to be found in the population number of certain birds. The Committee heard, from several sources, that there was a current estimate that annually there are approximately 50 fewer golden eagles in Scotland than would be expected. The Committee also heard from the RSPB that the red kite population on the Black Isle was not developing at the same rate as that of a similar population in the Chilterns, despite generating an equal number of chicks.

318. Some witnesses concluded that this absence of population, even given natural mortality rates, was evidence of significant illegal killing of these birds. In responding to whether the confirmed cases of raptor poisoning were indicative of a wider problem, Ron Macdonald, of SNH, said that—

“In our published framework on golden eagles, we estimate that up to 50 golden eagles are missing in the black hole in north-east Scotland, which is probably the most productive area for golden eagles in the country. That area is much more productive than the west coast, which has a high population but does not have the richness of prey that the east coast has, largely because of grouse moors—they are a productive food source for golden eagles. We have done some work that shows the scale of the golden eagle problem.

In a population of 500 hen harriers UK-wide, only five breeding pairs were successful in 2008 on all moors throughout the UK. Given the rich food
supply and the ideal and optimum breeding habitat, that indicates that we have a major problem on our hands.”

319. However other groups, such as the SGA, cautioned against making a connection between absence of expected numbers of birds in certain areas, and illegal killing, without sufficient evidence—

“Whilst recognising that there were two poisoning cases in 2009, one of which is unrelated to game management, there is no other credible evidence to suggest that 50 Eagles vanish each year. If that were the case, then given the age at which they reach breeding maturity, the Scottish Golden Eagle population should have been facing extinction a long time ago. Neither are we aware of any research which maps actual unoccupied Eagle territories, but instead wonder whether these are theoretical projections.”

320. This point was also stressed by Sheriff Drummond—

“Absence of evidence is not the same as evidence of absence, but those things tend to get conflated in the course of discussions such as ours. We assume that, because we are not finding stuff, it must be there. There might be many reasons—for example, the birds might have left—but the assumption is made, and that is where the resentments come in. When an investigation is carried out, nothing is found and it goes down as an investigation with no result. That is the kind of area in which damage is done on a public relations level between the investigator and the investigated.”

321. The SGA also suggested that the raptor population in Scotland was thriving, especially when compared to populations in England, and that some species had risen every year since the 1960s.

322. Alex Hogg of the SGA asked—

“[..] where are all the poisoned ravens, carrion crows and seagulls? If poison bait is laid on somebody's land, the first things to eat it are those species—the most common species—but their remains are never found. Also, if the golden eagle population is such that the least bit of interference could knock it off, why are we continuing to export golden eagles? We have exported 75 golden eagles to Northern Ireland and the Republic of Ireland, where most of them have been poisoned.”

323. The Committee condemns as wholly unacceptable the illegal killing of raptors which continues across Scotland. The Committee recommends that

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101 Scottish Gamekeepers Association. Supplementary written evidence to the Rural Affairs and Environment Committee.
the Scottish Government instructs police forces to investigate rigorously suspected cases of raptor persecution. The Committee also recommends that the Scottish Government likewise instructs the Crown Office and Procurator Fiscals office to prosecute wildlife crime vigorously.

324. The Committee concludes, from all evidence taken on this issue, that detection, investigation and prosecution of this crime is not resulting in a significant reduction in cases of raptor persecution, and that this should be addressed.

Possible motivation

325. In terms of the motivation for raptor poisoning, witnesses drew a direct link between sporting estates, and grouse moors in particular, and instances of poisoning. Both the SGA and the SRPBA acknowledged the issue and said that they were working very hard with members of their respective organisations to eliminate any instance of raptor poisoning on estates.

326. The RSPB drew a direct link between the game industry and certain wildlife crimes and voiced concern that the Bill was a step along the road of de-regulating the industry. They were not alone in seeing the Bill as an opportunity to strengthen the law on wildlife crimes, specifically regarding tackling the problem of poisoning birds of prey.

327. The Committee discussed a policy that it is alleged some estates were carrying out by managing solely for the benefit of a single species (creating a monoculture), and culling any other species which posed a risk or threat to it.

328. SNH commented on this on 29 September 2010—

“[…] we have grave concerns about the on-going persecution of birds of prey that is primarily associated with grouse moors. Although there has been on-going dialogue—the committee has visited Langholm moor—and we have made great strides in talking around the table and reaching a mutual understanding of what the key issues are, we are concerned that there has been no substantive progress in reducing the scale of the persecution of birds of prey. We have a continuing concern about that.”

329. Dr Colin Shedden, of BASC, an organisation which includes members who shoot for sport, was not in favour of estates pursuing any single species agenda—

“I do not think that a pure monoculture of any individual species has any place in Scotland’s landscape. My preference would be for a much more traditional approach that provided a surplus of grouse but also had deer, hare—which are important for eagles—and a wide variety of other species.”

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**Improved detection and prosecution – vicarious liability**

330. Alongside discussions about current resources and enforcement, the Committee explored with witnesses what changes could be made to the law to strengthen enforcement of wildlife crimes, and raptor poisoning offences in particular.

331. One issue that was explored was the concept of vicarious liability, i.e. making a third party liable for a crime, in order to attempt to capture employers who may be creating pressures on employees to carry out illegal activity.

332. A Scottish Government official told the Committee that vicarious liability was one area that was being considered to strengthen the law—

> “Vicarious liability is one of the options that we would propose as part of any review of possible measures. That would be based on the report "Natural Justice: A Joint Thematic Inspection of the Arrangements in Scotland for Preventing, Investigating and Prosecuting Wildlife Crime" by Her Majesty's inspectorate of constabulary for Scotland, which recommended that the partnership for action against wildlife crime's legislation sub-group consider vicarious liability. That sub-group has done some initial work on it and continues to consider other options. Vicarious liability is definitely one of the measures of which ministers are aware, but I stress that no decisions have been taken on it as far as I am aware. It would be one of the measures that we would present to ministers if they asked us for options.”

333. Sheriff Drummond urged caution in relation to vicarious liability for suspected raptor poisoning—

> “There is a lot of loose talk about vicarious liability. One respondent to the committee refers to vicarious liability being used or introduced as a sanction in the bill. Vicarious liability is a textbook all on its own; it is not a simple concept or a magic bullet that we can just introduce. The whole subject area must be looked at in the context of criminal law, the presumption of innocence, the need for proof beyond reasonable doubt and the ordinary rules of evidence. That is sometimes lost sight of in discussion of the broader environmental aspects, if I can put it that way.”

334. He went on to outline the challenges in trying to establish vicariously liability for criminal actions—

> “We do not simply say, "And there shall be vicarious liability". That is meaningless. We need to spell out specifically what is meant and consider the issues that arise. What happens if the person who is the principal in the illegal activity is acting outwith the scope of his employment? What happens if he is acting in the face of specific prohibition? A gamekeeper who lays poisoned bait might have a contract of employment that says that he will not do anything like that under any circumstances. What do we do about that?

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[...] What I am trying to say is that to wave the flag of vicarious liability is largely meaningless. If it had any meaning, the people who are seriously minded to get round it would simply make the gamekeeper self-employed. There are so many ways round it. Vicarious liability has been floated as some kind of answer. It is not an answer and, with respect, it is being floated by people who do not necessarily understand the concept that they are talking about.\textsuperscript{109}

335. However, Sheriff Drummond did consider that it might be possible to make employers liable for regulated substances being kept by members of staff. He also suggests that if someone were caught with an illegal pesticide, such as carbofuran, which is known to be used for poisoning birds, then the law could be established to presume that it was intended for use in poisoning, and the onus would be on the person to prove otherwise.

336. Sheriff Drummond also noted that art and part offences (the aiding or abetting in the perpetration of a crime, or being an accessory before or at the perpetration of the crime) contained in Scots law did not help, as they rarely lead to a third-party conviction, because the problem remained an evidential one.

337. However, Malcolm Strang Steel, of the SRPBA, considered that art and part offences did offer a de facto vicarious liability—

“[...] if an employer, factor or anyone else has been involved in a crime that their employee has committed, the person who is implicated is guilty of the crime art and part under existing law. That is not vicarious liability, but it is liability. If an individual employee goes off and commits a crime off his own bat, whether it is murder or the killing of a golden eagle, I do not see why an employer who had nothing whatever to do with the crime—and might condemn it, if he knew that it had happened—should be liable for the murder of the golden eagle any more than he is liable for the murder of the human being.”\textsuperscript{110}

338. Constable David McKinnon told the Committee about the difficulties in linking evidence in suspected raptor poisoning cases to land managers—

“A stash of carbofuran was found, in a sizeable quantity—kilograms of it—and traces of carbofuran were found in a vehicle and in a bag in a shed. Some months later, a dead bird was found and sent to SASA [Science and Advice for Scottish Agriculture], which confirmed that the bird died from ingesting carbofuran. To me, the people managing that land were concerned with the use of an illegal pesticide. However, the problem was linking that to an individual.”\textsuperscript{111}


339. The Minister announced to the Committee on 3 November 2010 that the Scottish Government intended to bring forward an amendment, should the Bill pass to Stage 2, to introduce a vicarious liability offence in relation to the poisoning of birds of prey. She added that a draft amendment had been developed with the Crown Office and was about 80% complete. The Minister stressed that the Scottish Government wanted to close any potential loopholes in the provision, such as people responsible being able to escape liability, and also an employer being liable in the event of mischief.

340. The Minister said that there was already precedent for such provision in Scots Law. This would be used as the basis for the proposed amendments.

341. The Committee welcomes the Scottish Government’s intention to bring forward an amendment at Stage 2 to introduce a vicarious liability offence in the Bill, which it considers to be a helpful step in the right direction. The Committee awaits further detail on this, which was not available before the conclusion of evidence-taking at Stage 1. The Committee recognises there could be significant challenges in securing convictions under such new provisions, but believes the strengthening of the law in this regard is a helpful addition to the range of provisions available for potential prosecution.\textsuperscript{112}

342. The Committee notes that the majority of private landowners are appalled by raptor persecution. The Committee considers that such landowners should have nothing to fear from a vicarious liability provision.\textsuperscript{113}

*Improved detection and prosecution – licensing sporting estates*

343. One question that the Committee considered at length was how to get a better purchase on those responsible for wildlife crimes such as the poisoning of raptors. Could an answer be found in licensing estates to operate as commercial sporting estates, so a deterrent becomes the threat of losing that licence?

344. SNH believed that there needed to be a debate about the possibility of licensing estates, but serious questions would need to be asked as a part of that. Was it proportional? What or who would be licensed? SNH did add that any such licence should be able to be “easy to get and easy to lose”\textsuperscript{114} and not overly bureaucratic. However, SNH added that this was not an issue to which it had given much practical thought.

345. Ron Macdonald, of SNH, confirmed he was pleased that the SRPBA was developing a wildlife estates initiative to provide guidance on sustainable land management on sporting estates, but was concerned it would lack powers of enforcement, which would be required for estates operating outside of the law—

“[…] we have been encouraged by the fact that the land management sector, particularly the SRPBA, is keen to develop a wildlife estates initiative, which

\textsuperscript{112} John Scott MSP dissents from this paragraph.
\textsuperscript{113} John Scott MSP dissents from the second sentence of this paragraph.
considers grouse shooting and upland management according to sustainable land management principles. We have been supportive of that initiative, but it must have teeth. It must have some sort of code of practice and accreditation so that not only the good estates come in, but those that are still wanting. There must also be demonstrable improvements in respect of the number of deaths of birds of prey.

We are keen to give that a fair wind and to support it. It is always better to have a voluntary approach than to have a regulatory approach with licences. Because the WANE bill gives quite a short time window in which to develop a licensing system and we are not sure that that can be done, we tend to support the development of the voluntary code.”

346. The Minister also welcomed the estate scheme and told the Committee that she would be helping the SRPBA to launch the initiative.

347. Dr Colin Shedden, of BASC, said he had both practical and principled concerns regarding the introduction of licensed shooting for sport—

“My major concern with such an approach, which appears on the face of it to be quite logical, is that it would be very difficult to define what a shoot is. As I said earlier, 4.4 million hectares of Scotland’s land area is influenced by shoot management. That is about 67 per cent of the whole land area. It is an important driver. That ranges from a small duck-flight pond, which may be one or two acres, up to an estate of 10,000, 20,000 or 30,000 hectares. It will be difficult to define what a shoot is—that is the major stumbling block to that approach [...] I find elements of the principle difficult as well, because individuals are currently licensed by the police according to their suitability to have a shotgun or firearms certificate. That is the approach that society has taken over the past 100 or so years—to license the individual rather than to license the nebulous concept of a shoot. It is difficult to make that approach jump from the individual, who is responsible for his own activities, to a much larger entity. A lot of innocent people could lose out because of the behaviour of one individual.”

348. Malcolm Strang Steel, of the SRPBA, was also not in favour of estate licensing, saying that—

“As far as licensing is concerned, it would be hugely expensive and, as was mentioned earlier, there would be all sorts of practical difficulties. I really do not see that it is necessary. There are no particular advantages to it, and it would be bureaucratic and expensive for the Government.”

349. Patrick Stirling-Aird, of the Scottish Raptor Study Groups, was more open to an estate licensing system—

“Licensing could be an alternative or an add-on, but there would be a lot of sensitivity about that and, in a way, it brings me back to the moral point: it might help to tackle what I see as the moral falling down of some owners and managers of land. I presume that removal of the licence would come in only when there is a conviction, not on suspicion, which would be quite right. I understand that in the European Union, for example, Germany, the Netherlands and Spain have procedures that one could follow. There is a lot to be said for the idea.”

350. The Minister noted that the Government had considered this option before agreeing to proceed with the introduction of a vicarious liability offence, but felt that such a measure would capture every estate, rather than only the small minority responsible for committing offences. As such, she did not consider it a proportionate response to the problem. She added that careful thought should be given to what message the introduction of such a licensing system would send out, and what it would say about individual freedoms. In conclusion, she considered that the SRPBA estate initiative should be given time to work before any further thought was given to the introduction of a statutory licensing scheme.

351. The Committee welcomes the principle of the estates initiative, a voluntary good governance scheme for private land managers currently being prepared by the SRPBA, and agrees with the Minister that the scheme should be supported and given an appropriate amount of time to become established. However, the Committee also notes that the scheme will be voluntary and will therefore lack the power to compel estates that do not wish to take part. The Committee would welcome clarification from the Minister on how she plans to support the initiative.

352. The Committee accepts that it would represent a challenge and a significant development of policy to introduce a fully worked up system for licensing sporting estates in the Bill at this stage. The Committee also notes that the issue would not have been subject to consultation and as a result introducing such a system would be inappropriate at this time. However, the Scottish Government may wish to consider the appropriateness of introducing an enabling power in to the Bill which would permit them to introduce a licensing scheme, only after full consultation with stakeholders and parliamentary scrutiny under the super-affirmative procedure. Should it take the power, the Scottish Government could consider formally adopting the estates initiative with appropriate modifications as a code of conduct applicable to all estates. However, any such power should only be used if the Scottish Ministers are not satisfied that the voluntary approach to good governance and any vicarious liability offence are working.

119 John Scott MSP dissents from this paragraph. Maureen Watt MSP dissents from all but the first two sentences.
Improved detection and prosecution – other suggestions

353. Sheriff Drummond made a paper available to the Committee that he had prepared as a discussion paper for PAWS, which suggested decoupling the pesticides offences from the 1981 Act and creating a stand-alone offence.\footnote{Sheriff T A K Drummond, written submission to the Rural Affairs and Environment Committee.}

354. Sheriff Drummond explained the proposals further to the Committee in person—

“If somebody is found in possession of a regulated substance, the presumption, it is provided, is that he possesses it for the purpose of committing a criminal offence. If he is in lawful possession of whatever substance, we would expect to find it in his register and we would expect his employer to have countersigned the register. The employer would have acknowledged, "That is what my employee possesses. I know that he has it and I am happy with the reasons why he has it." [...] that process would create traceability, responsibility and linkage to the employer, as it would create the knowledge in the employer’s mind. If the gamekeeper or other person was thereafter caught in possession of a substance, the short questions would be, "Why was it not in your book? Why was it not in its appropriate container? Why was it not in appropriate storage?" The person’s failure to do those things would give rise to the presumption that they possessed the substance for the purpose of setting poison or whatever. I suggest that that structure be examined and implemented.”\footnote{Scottish Parliament Rural Affairs and Environment Committee. Official Report, 15 September 2010, Cols 3105-3106.}

355. The Minister told the Committee that creating such a stand-alone offence was not as easy as it might appear and that it might create more problems than it would solve. She added that there were wider issues in considering pesticide legislation, such as the trade in illegal pesticides.

356. The SRPBA and SEBG both argued for PAWS to be allowed to consider this issue in depth and were not in favour of rushing provisions through in this Bill.

357. Malcolm Strang Steel, of the SRPBA, spoke about the outcome of pursuing raptor poisoning without trying to resolve the conflicts leading to it—

“Much of the work that is being done, particularly that at Langholm, is quite new. We do not yet have the answers to many of the problems, but they will come out of that work. To jump in now with vicarious liability, licensing or even further penalties will only polarise the issue; it will not help bring everyone together and bring a solution to the table. I do not suggest for a moment that more cannot be done. The industry could still make significant improvements. Some form of self-licensing or self-regulation might be the way forward to try to assist with the problem. Everybody is hugely aware of the problem and striving extremely hard to provide a solution. At this time, Government interference—if I can put it that way—would not be helpful. In the long term, it would work out to be a much better solution if the various
parties that are round the table were allowed to come up with a recommendation for Government to approve.”

358. This was also stressed by the SGA, who cautioned the Committee against recommending any measures that it considered to be disproportionate—

“[…] we are concerned that an estate/land licensing system merely adds bureaucracy and cost without necessarily achieving biodiversity objectives. We believe that alongside existing policing and penalties, it is important to consider both incentive and preventative measures to support biodiversity, including more targeted use of local predator/raptor species control licensing.”

359. The Committee notes Sheriff Drummond’s proposal to establish a presumption of guilty intent for anyone found in possession of a regulated substance. The Committee also notes his comments on whether an employer could be proven to have knowingly caused or permitted the possession of such a substance. The Committee considers that Sheriff Drummond’s proposals, and the introduction of a vicarious liability offence, are not mutually exclusive, and invites the Scottish Government to consider the proposal.

360. The Committee also notes the view that there is a further gap in the armoury of potential offences, that which seeks to catch those “concerned in” the use of illegal poisons for the purpose of raptor persecution or in other activity “concerned in” the offence of bird persecution. The Committee urges the Scottish Government to consider developing further offences which cover these points to further strengthen the grounds for potential prosecution.

361. The Committee invites the Scottish Government to consider the merits of announcing an amnesty on illegal substances such as carbofuran.

362. The Committee recommends that the Scottish Government reports to Parliament annually on the number of illegal raptor killings, detailing the number of cases brought and those which were successfully prosecuted.

Areas of Special Protection

Background

363. There are eight Areas of Special Protection (ASPs) in Scotland, which were designated between 1956 and 1974. Originally provided for in the Protection of Birds Act 1954 (and known as “bird sanctuaries”), they are currently designated under the 1981 Act.

123 Scottish Gamekeepers Association. Written submission to the Rural Affairs and Environment Committee.
124 John Scott MSP dissents from this paragraph.
364. ASPs were created to increase protection for birds beyond what was provided for in species protection legislation, and also giving Ministers the power to prevent the public from entering all, or part, of the area during specific periods.

**What the Bill proposes**

365. The Scottish Government has been advised by SNH that ASPs have become redundant as their purpose is now covered by other legislation, such as the amended 1981 Act and the Land Reform (Scotland) Act 2003. SNH is satisfied that there is no need for the eight ASPs to remain and that the orders can be abolished.

366. The Committee is also aware that the number of birds, and their conservation status, at some of the ASP sites has changed since the ASP was established, which again may suggest that the ASP, or bird sanctuary status as was, is no longer required in the same way. For example, the ASP at Loch Garten originally sought to protect a single pair of ospreys that were the first to return to Britain since the species had become extinct. Since then the species has established itself in a numbers of other sites across Scotland.

**General comment**

367. The Scottish Government’s consultation reported a 90% support for the proposal and this strong support was mirrored in responses to the Committee’s consultation.

368. The majority of evidence to the Committee on this issue was supportive of the proposal in the Bill, as the designation was no longer felt to be necessary.

**Loch Garten issue**

369. The exception to this was voiced by the RSPB and the umbrella body Scottish Environment LINK (of which the RSPB is a member), and related to the ASP at Loch Garten, which is managed by the RSPB. In its written evidence to the Committee, the RSPB said that—

> “[…] we oppose abolition of ASPs as currently proposed under s.4 of this bill – until and unless measures are taken to deliver similar levels of protection at Loch Garten under the alternative legislation.”

370. The Committee visited the Loch Garten site as part of its visit to the RSPB reserve at Abernethy on 21 September 2010 and discussed this issue further with RSPB representatives, representatives from SNH and the Cairngorms National Park Authority. The RSPB stated that the ASP ‘bird sanctuary’ status had been afforded to Loch Garten for over 50 years and provided reassurance to their staff in managing the site at Loch Garten, particularly in terms of enforcing access arrangements.

371. The RSPB’s concern was that, without its staff having powers to tell people that the site was an area of special protection, which brought clear legal

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125 The Royal Society for the Protection of Birds Scotland. Written submission to the Rural Affairs and Environment Committee.
restrictions on access and disturbance, there would be an increased possibility of damage to the site or disturbance of the birds.

372. The RSPB also argued that it was not calling for additional protection for the site, but rather a continuation of the current levels of protection.

373. SNH stated that it was not yet convinced of the RSPB case that the Loch Garten site required additional protection to that provided in various other statutes, such as the Land Reform (Scotland) Act 2003 and the Nature Conservation (Scotland) Act 2004. SNH noted that there had not been a single conviction under the powers afforded by the ASP and there was nothing to indicate that removing the ASP status would, in itself, present any future problems. However, SNH also stressed that dialogue was, and would continue to be, on-going with the RSPB.

374. Ron Macdonald, of SNH, added that the primary concern of the RSPB related to public access and that the legislation on access adequately covered such concerns. It was also an offence recklessly to disturb protected birds, which is what the RSPB wanted to avoid at Loch Garten. In conclusion, he added—

“The issue is modernising the law to make it much more in keeping with how most people in Scotland regard access to land. People are familiar with the Scottish outdoor access code and they know that free access is a basic right, provided that that access is responsible. All we are saying is that we should use that and the existing provisions. Criminal damage, such as vandalism or egg theft, can be addressed through the courts and through the police. They are dealt with already. We see no problem with the tools that we have in modern legislation. We do not need the ASP status.”

375. The Minister updated the Committee on the progress in relation to this issue on 3 November 2010, and said that the RSPB had been invited to discuss this issue further at a meeting of the Cairngorms National Park Authority local access forum meeting. She very much hoped the RSPB would take up that invitation.

376. The Committee is broadly satisfied that the protections afforded by the ASP designation have been replicated in other legislation and that most ASPs can be abolished without the areas concerned suffering any reduction in the levels of protection afforded and without increasing threat to any wild birds.

377. The Committee notes the concerns raised by the RSPB with regard to the site at Loch Garten and also notes the comments made by SNH that, in its view, there is no threat to the site at Loch Garten by removing the ASP status, and that powers contained in other legislation would provide equitable levels of protection.

378. However, the Committee retains a concern that the levels of protection at Loch Garten, currently afforded by the ASP, will not be automatically replicated in existing legislation, and urges the Scottish Government to work

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with SNH and the RSPB to ensure that the site at Loch Garten could not suffer, or potentially suffer, as a result of the loss of its ASP status.

Snaring

Background

379. Snares are used in Scotland primarily to catch foxes and rabbits as a form of pest control, to protect agriculture and livestock. Although snaring is permitted in Scotland, it is subject to the restrictions contained in section 11 of the 1981 Act. The Nature Conservation (Scotland) Act 2004 ("the 2004 Act") amended the 1981 Act to impose further restrictions on the usage of snares, such as making it an offence to—

- set a snare in such a way that it may cause unnecessary suffering;
- set a snare which is likely to harm animals it was not intended for;
- allow more than 24 hours to pass without a snare being inspected;
- upon inspection, not remove or release any animal caught in the snare;
- possess a self-locking snare without reasonable excuse;
- sell any self locking snare; and
- possess or setting a snare on any land without appropriate permission.

380. The former Scottish Executive honoured a commitment made during the passage of the 2004 Act in 2006, when it launched a consultation on snaring in Scotland. Of the 247 responses received, 172 supported a ban, 71 were against a ban and 4 supported limited use of snares by licence only.

381. The position of the current administration was made clear by the former Minister for Environment, Michael Russell MSP, who concluded that snaring should be retained as a land management tool, to protect livestock and crops, but that measures would be brought forward to improve animal welfare aspects of snaring, and the standard of snare operators. Some of these measures were brought forward in secondary legislation, in the Snares (Scotland) Order 2010, and some are new to this Bill. However all measures have been brought together in the Bill, including those in the 2010 Order, so that all snaring provisions will be under the amended 1981 Act.

What the Bill proposes

382. The Bill restates the provisions in the 2010 Order that all snares must be—

- fitted with effective stops to prevent nooses from closing too far (different stops are proposed for rabbits/hares and foxes);
- checked every 24 hours, at least, to ensure the action is free running;

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• anchored effectively to allow easy location by the operator and prevent suffering to animals caused by dragging snares; and

• not set anywhere where an animal is likely to become fully or partially suspended or drown.

383. The new provisions in the Bill relate to identification tags and training requirements. The Bill requires that all snares be fitted with an identification tag which shows an ID number and indicates whether the snare has been set for foxes or rabbits/brown hares. It would be an offence for a snare not to have an ID tag. However, it is not the intention that each snare has a unique number, but rather that the number is unique to the person who is setting the snare.

384. The Bill also proposes that it be an offence for anyone to set a snare without having obtained an ID number from the police, and that the police should not issue such a number if they were not satisfied that the person was sufficiently trained. Training requirements will be set by Order and it is expected that issuing of ID numbers would be done by local police force wildlife coordinators.

Requirement for predator control

385. The Committee was made aware, early in its evidence-taking on this issue, that Defra is shortly due to publish a report on snaring in England and Wales, based on new research.

386. There is fundamental disagreement on snaring, between organisations that view snaring, if managed appropriately and as humanely as possible, as being essential for managing foxes which predate on livestock, and rabbits which cause crop damage, and organisations that want snaring to be banned because they consider it to be indiscriminate, inhumane, unnecessary and ineffective.

387. The Committee explored both sides of this debate in detail. Firstly, it examined the reasons snares were used and why many land management organisations are in favour of their continued use. Within this, the debate predominantly focussed on fox snaring, which was carried out to protect livestock. That includes, on one hand, protecting farmers and crofters from losing chickens, pigs and lambs, and on the other, protecting game birds, such as grouse and pheasants and other wildlife such as waders, plovers and hares.

388. There was some dispute as to whether foxes do, in fact, predate on live lambs, with some conflicting academic research on the issue. Professor David Macdonald and Ray Hewson indicated, in research papers, that foxes do not normally predate live lambs. 

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128 The British Association for Shooting and Conservation, Game and Wildlife Conservation Trust, Scottish Estates Business Group, Scottish Gamekeepers Association and the Scottish Rural Property and Business Association.


389. The Scottish Government sent the Committee a report by SASA on this issue. That paper notes that—

“There are three main livestock areas that may be affected by fox predation, namely free-range or outdoor poultry, pigs and lamb production. Overall, the direct cost to UK agriculture from fox predation has been estimated at £12 million annually (£9.4 M to the sheep sector; £0.7M egg producers; £0.2M and £0.4m to turkey and goose producers respectively; and £1M to pig producers)”\(^{131}\)

390. However, the report does go on to say that there is relatively little empirical evidence about the scale of the damage caused by foxes, and the data that does exist relies on questionnaires sent to farmers. The paper looks at lamb losses specifically, and states that—

“Numerous questionnaire studies report perceived losses of lambs to foxes. These are summarised in White et al. (2000) in which the average percentage of lamb losses to foxes in relation to flock size were reported as between 0.4% and 2.0%. However, reported losses were highly variable between farms. Heydon and Reynolds (2000) stated that pre-weaning lamb predation to foxes averaged 0 to 0.6% of the lambs born, but could in some instances reach 28.6%.”\(^{132}\)

391. Jonathan Hall, of the NFUS, made the point that whilst very few farmers set snares, snaring carried out by gamekeepers on sporting estates was vital in protecting livestock, particularly lambs—

“Snaring is done by the professional—that word is important. It is done by a gamekeeper who has gone through the training and adheres to the guidance and all the requirements that the committee discussed earlier. That is exactly the right way for it to be, but it does not take away from the point that hill farming and vulnerable marginal hill farm units benefit from properly done snaring. We are absolutely unequivocal about that. The farmers do not set the snares themselves, but they benefit directly, so the loss of snaring would have a major economic impact on hill units that already operate under vulnerable circumstances, particularly on the west coast of Scotland and in upland situations [...].”\(^{133}\)


392. On the game management side, several groups\textsuperscript{134} insisted that fox control was vital to protect game birds on estates, and also to protect the wider habitat. The SGA clearly outlined its view on the consequences of a ban on snaring being introduced in Scotland, saying that it would, “wreck Scotland’s biodiversity for the future.”\textsuperscript{135}

393. Animal welfare organisations fundamentally disagreed with shooting for sport, and objected to the use of snares to protect commercial game species. However, there was no disagreement that foxes do predate on game birds and ground-nesting wild species.

394. There was some dispute about the extent to which snares are used presently, with figures from 25% to 40% of animals killed by snaring, being quoted. It was clear to the Committee that it was difficult to apply a blanket figure to the number of predators currently controlled by snaring, as the numbers vary significantly across the country, depending on circumstances. For example, when the Committee visited the Langholm moor project, it heard that around 20% of fox control was managed by snaring and the rest by shooting. However, it was suggested that this might not be a reflection on experience in other places, as the project was intensively managed and had significant resources that might not be available to hill farmers, crofters or smaller estates.

395. Given that virtually every organisation, including animal welfare organisations, that gave evidence to the Committee accepted that a form of predator control was necessary in certain circumstances (albeit that there was disagreement about what those circumstances were), the Committee turned its attention to the pros and cons of snaring as a practice and what possible alternatives existed, or could exist, to render it unnecessary.

\textit{Advantages of snaring}

396. Although other methods of predator control were employed, most commonly shooting, many organisations were of the view that snaring remained an important option for them. The main reason given for this was that if foxes and rabbits were only to be controlled by shooting, they would not be controlled in the numbers required and there would be significant economic and environmental consequences as a result. It was also felt that conditions were not always suitable for shooting foxes, such as the cover being too thick, access being problematic, or foxes being close to houses, villages and towns.

397. Snaring was considered by some organisations to be effective as a restraining device, trapping the animal so it could be humanely dispatched when found. It was stressed that snares are intended to restrain only, and not to cause undue harm or to kill.

398. The issue of resources was mentioned as having a significant effect on which method of predator control was employed. Those in favour of the retention of snaring stressed to the Committee that other methods, such as lamping (shooting

\textsuperscript{134} Scottish Gamekeepers Association, Game and Wildlife Conservation Trust, Scottish Rural Property and Business Association and Scottish Estates Business Group.

foxes at night by identification with a light) and shooting, required significant resource i.e. people on the ground, often for long periods of time and often at night, trying to find and kill the animals. It was noted that it was not economical to have large numbers of staff to carry out such labour-intensive culls.

399. SNH are among a number of land managers which do not snare on their land (including the RSPB and John Muir Trust) but SNH does control predators such as foxes, gulls and crows by other methods such as shooting and trapping. Its reason for this was that it did not consider snares appropriate, due to the risk of by-catch, for use in areas where SNH may be encouraging public access and use. However, it noted that snares were a legal and legitimate land management tool in certain circumstances, and supported the use of snares at Langholm, where SNH is a partner in the demonstration project. SNH also supported the use of snaring to aid the capercaillie life project, which aimed to improve the health of the capercaillie.

Disadvantages of snaring

400. A central question posed to the Committee on snaring was, does the end justify the means? Libby Anderson, of OneKind expanded on this in evidence—

“How much loss would there be if snaring was not available at that time and is that loss bearable in economic or convenience terms when you consider the downside of snaring?”

401. The Committee heard evidence in favour of a complete ban on snaring in Scotland from several organisations. Examples were given of animals being caught in snares and left in significant pain and distress, struggling to get free. In supplementary evidence to the Committee, OneKind cited a paper which found that—

“For both snares in all settings, an average of 35% of fox captures were around the body rather than the neck. Overall, injuries were similar for all snaring methods and capture-loop placement, suggesting that the addition of swivels and a break-way hook did not improve the performance of the snare. Of 64 foxes, one was dead, two had severe internal organ damage (internal bleeding), one had joint luxation at or below the carpus or tarsus, two had major subcutaneous soft tissue maceration or erosion, three had fracture of a permanent tooth exposing the pulp cavity and four had major cutaneous laceration. Overall, 9.4% of animals had indicators of poor welfare by ISO criteria (severe injury). For how long these animals suffered from these injuries was not known, but could have been for up to 24 hours as the snares were checked once daily. Other measures of welfare, besides injury scores, were not collected.”

402. There was a discussion about the indiscriminate nature of snares, and whilst land managers may use them with good intent, to catch foxes and rabbits, there were many documented cases, including photographs, of animals such as badgers, hares, wildcats, mink, capercaillie and domestic cats and dogs being

137 International Organization for Standardization (ISO)
138 OneKind. Supplementary submission to the Rural Affairs and Environment Committee.
caught in snares and suffering pain, distress and sometimes death as a consequence.

403. Dr Hal Thompson, of the British Veterinary Association (BVA), told the Committee of possible consequences of a badger being in a snare for up to 24 hours—

“[…] if an animal is in a snare for 24 hours the skin will probably break after it is released. I have sometimes wondered whether to release a badger in a snare or shoot it. Would it be more humane to shoot a badger that I have found in a snare? If I heard that someone had chosen to shoot a live badger caught in a snare, I would not necessarily criticise them. I have examined the skin from badgers under those circumstances, and I have found underlying pathology. In other words, I can imagine that after the animal is released the skin would break a week later, because of the pressure that is created.”

404. The SGA said that photographs publicised by animal welfare organisations of animals having suffered injury and distress because of snaring did not come from managed estates, but from “non-professional poacher types around urban areas”.

405. Mike Flynn, of the SSPCA, made the point that the problem did not only lie in snares being set illegally and improperly—

“Three weeks ago, outside Aviemore, a snare that had been set by a very reputable SGA member on a very reputable estate caught a dog, which was owned by the next-door neighbour. The injuries were horrific. The dog had not been in the snare for more than 12 hours, because it had last been seen 12 hours before it was found. The guy took our inspector to the snare and said, "You show me that I've set that wrong." The snare was totally in accordance with the Snares (Scotland) Order 2010; there was nothing that the dog could have got tangled in.”

406. Alex Hogg, of the SGA, was of the view that this example demonstrated the improper control of the dog, rather than being a problem with the snare or its operator—

“With regard to the dog that was running about and was caught in a snare, it must be brought to everyone's attention that it is bad practice to allow your pet to roam the countryside. Dogs must be kept under reasonable control. I would worry to death if one of my dogs disappeared for 10 minutes at home.

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That is bad practice, and it is not the dog's fault—it is the fault of the people who look after the dog.”

407. Land managers also made it clear that there were measures that could be taken to improve snaring still further, and that such work was on-going. Hugo Straker, of the GWCT, told the Committee—

“The trust is also examining other things such as relaxer locks, other swivels and break-away devices, which might be considered in order to allow badgers, which have greater pulling power than foxes, to get away. I have here an example of the type of snare that is currently being considered. The break-away is the little metal ring by which the noose is attached. At a certain pulling pressure, that ring will open and allow any animal larger than a fox to be removed. We are always looking for opportunities for snares to be target-species specific, so that they can hold the problem animals, such as foxes, but not non-target species such as brown hares and badgers.”

Veterinary view on snaring
408. The Committee sought the view of vets on snaring. Dr Hal Thompson, of the BVA, confirmed that he considered snaring to be the least inhumane method of pest control. Giving evidence to the Committee on 6 October, the Dr Thompson told the Committee that he did, indeed, consider snaring a “necessary evil” and commended the Bill for establishing a compromise between those who wish to continue to use snares, and those who would like to see them banned on animal welfare grounds—

“What is in the bill is excellent. If the bill is adopted and its provisions put in place, that will provide for very effective use of snares. In other words, you would be telling people that snares must be checked within 24 hours, that they must have labels and so on. All those things are very sensible and reasonable controls, and they present a balance between the people who require snares and the people who are interested in the protection of animals and animal welfare. I do not have any problems with what the bill contains in that regard. It is a commendable piece of proposed legislation.”

409. Dr Thompson did note, however, that it was unlikely that a majority of vets would support snaring as a method of control—

“If you were to take a vote of all veterinary surgeons, I suspect that the majority would be opposed to snaring, but a different view would probably be taken among rural veterinary surgeons. It would be much the same as asking veterinary surgeons whether it is a good thing to eliminate badgers. The vote

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would probably be that it is not, but veterinary surgeons in the south-west of England who deal with tuberculosis would take a different view.”

410. Snaring is supported as a method of control by the Veterinary Association of Wildlife Management. In a letter to the Scottish Government in July 2009, the Association concluded that—

“[…] whilst we may not regard snares as ideal in terms of animal welfare, we believe that the adverse consequences from their use can be minimised by rigorous application of the measures listed in the Guide, and that these adverse consequences are far outweighed by the adverse consequence of not controlling the fox population.”

Alternatives to snaring
411. A further anti-snaring argument centred on the alternatives available to land managers, and there was significant dispute about the effectiveness of such alternatives. Those who wished to see a ban on snaring argued that alternatives, such as lamping and shooting, were effective in keeping numbers to an acceptable level, and cited examples of land managers, such as the RSPB, who do not use snares on their land.

412. The Committee visited the RSPB reserve at Abernethy, which has a non-commercial shooting tenancy on it, and also had neighbouring grouse moors. The Society reported that it was able to keep foxes at an acceptable level at Abernethy without use of snares and its shooting tenants, and neighbouring estates, were happy with the extent of the fox population on RSPB land.

413. However, the RSPB is a partner in the Langholm Moor Demonstration, which the Committee visited, which does use snaring as part of the project’s predator control.

414. Robbie Douglas Miller, of the SRPBA, spoke to the Committee about the various alternatives to snaring—

“It is a huge mistake to suggest that shooting, which is very time consuming and haphazard, is the alternative to snaring. Lamping a fox is a professional job. It is not normally an easy task and my experience is that farmers are not as equipped as keepers to carry it out. At certain times of year, particularly at lambing time, you do not have the time to spend three, four, five or six hours of the night driving around your property, looking for a fox that might or might not be killing your or your neighbour’s lambs.”

Licensing snaring
415. The Committee asked Scottish Government officials if Ministers had considered licensing snaring so that people would have to demonstrate why and

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how they intended to use snares rather than any other form of control, and to
ensure better compliance with the snaring code.

416. A Scottish Government official replied that licensing was not considered appropriate due to bureaucracy and cost implications, adding that—

“It would mean, for example, that we would have to maintain a register, with all the attendant costs and data protection issues, and decide when people should be put on or taken off the register. We would, in effect, legally sanction particular people to become licensed snare operators. I do not think that the Government felt that that was necessary or required.”

417. The Committee acknowledges that snaring provokes a strong, emotional response in Scotland and that there are many people who hold strong views on whether or not snaring should be permissible. It is clear that the Scottish Government has sought a compromise in the Bill, which seeks to find a balance between an outright ban and extensive and loosely regulated use of snares.

418. The Committee respects the deeply held views of those who support an outright ban on the use of snares because of their belief that they are inhumane, indiscriminate and out-dated. The Committee notes the evidence it received which detailed cases of animals suffering significantly, both whilst held in a snare, and afterwards, when released. The Committee also notes the evidence received on the cases of non-target species being caught in snares, from wild animals, such as otters, badgers and capercaillie, to pets, such as dogs.

419. However, the Committee also acknowledges that pest control is a vital part of land management and that, if properly regulated and managed, limited and appropriate use of snares should continue to be an option for land managers in Scotland.

420. The Committee recommends that the Scottish Government works with the relevant bodies to continue to secure further advances in snaring technology and in our understanding of animal behaviour. Both these factors should help in the development of more humane snares and snaring techniques and reduce the amount of non-target species caught.

**Enforcing snaring law and guidance**

421. The law in Scotland on snaring is supported by guidance, the latest edition of which is the *Snaring in Scotland – A practitioners guide, Third edition – September 2010*. This guidance is produced by the SGA, BASC and GWCT and supported by the Scottish Government and 13 other organisations. The guide contains details

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of how snares should be set, where they can be set, how to avoid by-catch (including pictures of the prints of different animals), and provides a detailed summary of the legal position. The guidance is regularly reviewed and updated as necessary.

422. The question arose as to how to police the guidance and ensure that it was being adhered to in all situations. Animal welfare organisations said that the problem of illegal snaring, i.e. snares being set not in accordance with the law and the guidance, was still very much an issue and emphasised that enforcing the law on snaring was very important.

423. Organisations such as the SRPBA and SGA stressed that its members were committed to making many of the new practices outlined in the Bill work. The SGA stressed the great efforts that the industry was making to ensure all those who use snares abided by the law and the guidance, and it said huge progress had been made on this in recent years.

424. One aspect that was discussed was the requirement to check a snare every 24 hours. The reason behind this requirement is to ensure that any animal caught in the snare, whether it is the intended catch or by-catch, is not caught for a period longer than 24 hours, in order to limit any distress or suffering. The Committee was made aware of anecdotal evidence that, on some estates, hundreds of snares were being set at a time, and they questioned whether this large number of snares could physically be checked in a 24-hour period.

425. Land managers told the Committee that the number of snares set at any one time, on any estate, depended very much on the number of staff available to check them. If it were the responsibility of one person, then fewer snares could be set, but if more staff were available, then greater numbers could be set and checked with the stated requirements. However, there was currently no official method of recording when a snare had been checked, and regular checking ultimately relied on trusting that snare operators were competent, appropriately trained and abiding by the law.

426. The Scottish Government’s consultation on a draft bill did contain a requirement to keep records on where and when snares had been set and to make those records available to the police on request but that provision had not been carried through to the Bill. BASC told the Committee that whilst record keeping was not part of statute, it was contained in the guidance. BASC added that it would have no difficulty with that being on the face of the Bill.

427. It was further suggested by the SSPCA that record keeping would protect the land manager as well as identifying those who snared illegally, and an example was given to the Committee of 300 snares having been set on an estate by a keeper who then departed, leaving the estate owners unclear as to their exact location.

428. The Minister said that it was a matter for estates to ensure snares were properly checked in accordance with the law, but added that she would give further thought as to whether any system could be introduced for proving that snares had been checked with specified timeframes.
429. The Committee invites the Scottish Government to take stock, after an appropriate period of perhaps five years, as to the outcomes of the snaring provisions and whether they have been deemed to have had a positive effect. Accordingly the Committee invites the Scottish Government to consider whether to take a power to enable them to ban snaring. Such a power should only be exercised under the super-affirmative procedure and only if the Scottish Government considers that the current approach is not working and cannot be made to work.

Training

430. Scottish Government officials told the Committee, on 23 June that, given that Ministers are convinced of the need to retain snaring as a land management tool, the most important thing was that those setting snares could demonstrate that they were adequately trained. A training programme had been developed by stakeholder groups, such as BASC and the GWCT, and trainers had begun to teach those operating snares.

431. BASC said that three to five thousand people use snares legitimately and 600 have been through the course (at the time they gave evidence to the Committee on 7 September), which had started in March 2010. This meant between 12% and 20% of users would have been trained in approximately five months. At that rate, it would take between a further two to four years to train all users. The Scottish Government said that all relevant people would be trained “in a year or so” following the commencement of the provision. The Minister had a slightly different view, telling the Committee it would take up to two years.

432. OneKind its call for a ban on snaring notwithstanding, called for more animal welfare input into training courses – such as the advice of vets. The SSPCA, whilst also stressing that it favoured a ban on snaring, has had some involvement of providing input at an early stage, and the SRPBA had extended an invitation to the SSPCA to attend the course to see it in practice, which the SSPCA had accepted.

433. The Minister told the Committee that animal welfare concerns were taken into account as part of the courses and were “overtly discussed”.  

434. The Committee recommends that the Scottish Government works closely with those delivering the relevant training courses on snaring to ensure that everyone who requires the training receives it no later than two years following the commencement of the provision.

435. The Committee was encouraged by the Minister’s assurances that animal welfare issues were being discussed at training courses for snare operators. The Committee considers such input to be important in helping to reduce the potential suffering of animals caught in snares and in underlying that snaring is not an activity to be undertaken lightly.

Identification tags
436. The GWCT stood out from other land management organisations in favour of snaring as being more critical of some of the provisions in the Bill, specifically the tagging of snares, as they felt it was not practical—

“We [...] remain concerned about the practicality of the snare tag-coding system and suggest this is removed from the Bill. The proposal for tags on all snares does not appear to be likely to improve practice or welfare, remains open to abuse and will be difficult to police.”

437. This view was not shared by other organisations, but the SGA flagged the need to ensure that tagging did not interfere with the free running of the snare, particularly on the smaller rabbit snares.

438. The Committee notes the concern that tag coding snares is impractical but also notes that this is a minority view. The Committee supports the introduction of identification tags on snares.

439. The Committee asks the Scottish Government to give consideration to issuing a separate identification number for each individual snare tag. The Committee also recommends that the Scottish Government ensures that such numbering be sequential, to allow for easy identification, and that records are kept of which numbers have been issued to which operators. Alternatively, the Committee asks the Scottish Government to consider fitting a barcode, or some other means of electronic identification, to each tag which could easily and practically be used to keep records of when a snare had last been inspected.

440. An issue was raised concerning the legal presumption in the Bill, which states that the ID number on a snare would be presumed to relate directly to the person who physically set the snare in question.

441. A solicitor with Grigor and Young, Elgin, expressed significant concerns about the introduction of such a legal presumption—

“This is a legal presumption which must be rebutted by the accused. In practice, this will be a very difficult thing to do, unless the Trapper takes photographic records of the status of the snare just after he set it. The wording suggests that the named person “set the snare in position”. The logic is that if a snare is found in an offensive position/incorrectly tagged, or the tag has been altered/removed there is an ex facie presumption that the person who set the snare will esto be guilty of an offence. It is common to find snares which have been disturbed by domestic animals or ferae naturae. I am also concerned that, given the access legislation, it will be very easy for a third party to maliciously tamper with a snare for a variety of reasons [...] In the interests of natural justice, I would like to see this presumption removed and the wording clearly adjusted.”

152 Game and Wildlife Conservation Trust. Written submission to the Rural Affairs and Environment Committee.
153 Grigor and Young. Written submission to the Rural Affairs and Environment Committee.
442. OneKind addressed the concerns raised by Grigor and Young in its supplementary written submission, stating that they may have read too much into the provision, concluding that—

“The Crown would still have to prove that the person who set the snare was also responsible for the offence under consideration, and the presumption would presumably be rebuttable.”

443. The Committee asks the Scottish Government to note the points raised regarding the legal presumption in the Bill, which states that the ID number on a snare would relate directly to the person who physically set the snare. The Committee further asks the Scottish Government to consider this issue alongside the Committee’s comments on the possible issuing of a unique sequential number for each snare tag.

Inconsistency between EU and domestic legislation?

444. SNH raised the issue of the inconsistent definition of snares in domestic and EU legislation. The 1981 Act refers to ‘traps and snares’ as two distinct things, whereas the EU Habitat Directive uses the terms “traps that are not selective”. This creates a problem domestically, for example in granting licenses for methods prohibited under the Habitats Directive. If a license is granted to take or kill hares, which are listed under Annexe V of the Habitats Directive, it is licensing use of a trap that is not selective, but does this include snares, which are separated from traps in the 1981 Act?

445. SNH told the Committee that there was a case pending which may clarify this situation, but concluded that—

“[…] the legal fraternity has always had difficulty in establishing whether someone who is snaring mountain hares is falling foul of the habitats regulations.”

446. This issue was also brought up by OneKind, who told the Committee that during a case brought against Spain a few years ago, the court accepted that snares did fall under the heading of non-selective traps as described in the Habitat Directive.

447. The case referenced by OneKind was European Court of Justice case 221/04, Commission of the European Communities v Kingdom of Spain. This case concerned the use of stopped snares for the hunting of foxes in certain regions of Spain. The case was decided in favour of Spain.

448. The Committee notes the comments made on the inconsistency between domestic and EU legislation on the definition of a snare and how this leads to uncertainty about licensing snares as a method of catching mountain hares in particular. The Committee recommends that the Scottish Government consider how best to correct this anomaly.

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154 OneKind. Supplementary written submission to the Rural Affairs and Environment Committee.
Invasive and non-native species

Background
449. These provisions were informed by proposals developed by a Scottish Government working group (which included representatives from government, agencies, local government, research institutes, police forces and environmental groups), following the passing of a motion in the Scottish Parliament in 2008 which requested that the Scottish Government improve the legislative framework for non-native species.

450. An invasive non-native species (INNS) is one which has been introduced to Scotland and is deemed to have a negative impact on the environment, health or the economy.

451. Currently, the legislation which deals with the release of animal and plant species is disparate, with main provisions found in the 1981 Act, but other relevant provisions found in legislation such as the Destructive Imported Animals Act 1932 and the Import of Live Fish (Scotland) Act 1978.

452. As was mentioned earlier in this report, Scotland, as part of a group of relatively small islands, is particularly protected from non-native species being brought into the country, either accidentally or deliberately, by humans. There are numerous examples of the consequences of such species being introduced. A well-known example is that of the red and grey squirrel. The red squirrel is native to Scotland, and used to have a widespread and healthy population. However, whilst Scotland is still a stronghold for the red squirrel, that population has now dwindled to approximately 120,000. A significant factor in this decline has been the introduction of the non-native grey squirrel in the 19th century. Grey squirrels are larger, more robust, and can dominate food sources at the expense of the red squirrel. Grey squirrels can also carry the squirrel pox virus which is harmless to them, but can be fatal in red squirrels. This is a clear everyday example of the effect of an invasive non-native species on a native species.

453. There have many other examples in the plant world, such as the common problem with rhododendron, which is native to south-west Asia and South West Europe, and is believed to have been introduced to gardens from Spain, and subsequently escaped and now grows in forests, shading out the native forest vegetation. Once established, rhododendron is very difficult and labour intensive to remove, and is a serious problem in parts of Scotland.

What the Bill proposes
454. The approach taken in the Bill is guided by the internationally recognised three stage hierarchical approach of a) prevention, b) eradication and c) control and containment, and makes new offences banning the release of an animal, or the growing of a plant, outwith its native range. The Policy Memorandum describes this as a “general no-release approach”.156 However, the provisions are intended to be sufficiently flexible to allow the release of non-native species considered to be beneficial and appropriate, and also to allow certain non-native birds to be

156 Policy Memorandum, paragraph 79.
released (for sporting reasons). Release can be permitted either by Order or by licence. The Government intends to bring forward a code of practice on this issue.

455. The Bill allows the Scottish Ministers to list, by order, invasive plants and animals which people will not be permitted to keep, or will require a licence to keep. The Bill also addresses notification concerns, by requiring that the Scottish Ministers be notified (by those who would be reasonably expected to identify the species) of invasive animals and plants specified by order.

Central questions
456. As with other aspects of this Bill, when scrutinising the provisions relating to INNS, several central questions/themes emerged at an early stage:

- is establishing a general no-release presumption for all non-native species the correct starting point, fundamentally, for legislation on INNS?

- how are native or non-native species defined? Should historical factors be considered in seeking that definition?

- similarly, how are other key terms in the legislation, such as ‘in the wild’ and ‘native range’ defined? Is it going to be clear enough where the wild starts and stops, and what is the extent of a species natural native range?

General no-release presumption
457. The Committee notes that the measures in the Bill would apply to all non-native species rather than only invasive non-native species. The reason for this approach in the Bill has been clearly stated as centring on prevention, and that it is often not known at the time of release whether a non-native species will come to be regarded as invasive.

458. As with other areas of the Bill, there was a clear separation of views on the fundamental position behind the provisions in the Bill. On one side were those in support of the under-pinning principle of a general presumption against the release of non-native species, invasive or otherwise. Those supporting this including OneKind, the National Trust for Scotland, the Ornamental Aquatic Trade Association (OATA), Plantlife, SWT, RSPB and SE Link.

459. On the other side of the argument, organisations such as the SRPBA, SEBG and SGA believed this approach was misguided and could leave a legacy of unintended consequences. They believed that the policy did not take sufficient account of the benefits some non-native species had brought to Scotland, or the damage that invasive native species could cause.

460. One argument advanced in support of this was that species were constantly in a state of flux and affected by so many variables and longer term changes, such as those brought about by climate change, which can affect habitats, location of species, number of species, migratory patterns, that the notion of ‘native’ and ‘native range’ no longer really applied.
461. Malcolm Strang Steel, of the SRPBA, outlined his concerns to the Committee on 7 September 2010, that the Bill had adopted an extreme position, which did not take sufficient account of non-native but naturalised species.  

462. Dr Paul Walton, of the RSPB, said that controlling non-native species, whether or not they were currently deemed to be invasive, was not a case of species xenophobia. Rather, he said, it was to protect the richness and balance of Scotland’s biodiversity and that a general no-release presumption was simple to understand.

463. The Committee notes the concerns regarding the Bill’s establishment of a presumption against release of non-native species, and also the views of those in favour of the policy. The Committee supports the general no-release presumption provided for in the Bill.

**Code of practice and definition of terms**

464. It seems to the Committee that establishing clearly understood and accepted definitions of terms such as ‘native’, ‘non-native’, ‘native range’ and ‘in the wild’ will be fundamental in making the legislation workable, and to fulfil the desire that the general no-release presumption be simple to understand.

465. During the Scottish Government’s consultation, there was a great deal of comment about the difficulty of defining such terms. This concern continued in evidence to the Committee, and was expressed by Professor Colin Reid, BASC, the Law Society of Scotland and the National Trust for Scotland. Questions arose such as how native is native? Native to the UK, Scotland, or a part of Scotland? What constitutes the ‘wild’? Are gardens, fields and roadside verges part of the ‘wild’?

466. On the issue of definition of certain terms, SNH referenced the proposed of code of practice, and noted that—

“The code will need to clearly define the terms ‘native range’ and ‘in the wild’ as used in the Bill, but also recognise that some native ranges may change as a result of climate change. The native ranges of many species are already well defined, for example by the Botanical Society for the British Isles or the British Ornithologists Union.”

467. Many of those concerned with the definition of ‘in the wild’ were horticultural organisations such as the Horticultural Trades Association (HTA). The HTA expressed a preference for a voluntary scheme which avoided blacklisting good garden plants. They also expressed concern about the accuracy of naming hybrid plants as INNS. The Royal Horticultural Society also commented on this and questioned where ‘the wild’ would be defined as starting and ending when looking at gardens and grounds of estates. It felt it unreasonable that people unknowingly keeping INNS plants in private gardens could be committing an offence. Britain in

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159 Scottish Natural Heritage. Written submission to the Rural Affairs and Environment Committee.
Bloom and Best Kept Village competitions also regularly use non-native species in displays – would these be at threat under the proposed INNS regulations? Both groups made a plea to be consulted as the code of practice was being developed as they said horticulturalists were often omitted from such opportunities.

468. Plantlife told the Committee that a great deal of work was on-going in the Scottish Government led working group on these definitions and added—

“We are convinced that we can define those terms clearly and have useful definitions that will support the bill. Those discussions have been long and they continue. We think that the code of practice that is being developed will be strong enough to help to define those terms in a way that is useful to the bill.”

469. The Scottish Government published an early draft of its suggested definition of these terms before the Minister gave evidence to the Committee on 3 November 2010.

470. It is clear that the INNS code of practice will be a very important document in realising the provisions in the Bill and establishing good practice and therefore needs to be the subject of full consultation. Professor Reid also stressed the need for the code and subsequent changes to it to be subject to proper parliamentary scrutiny.

471. The Scottish Government made available an early draft of the code of practice to the Committee during its Stage 1 scrutiny. The Scottish Government intends to consult fully on the draft during the Bill’s passage through the Parliament. The draft code was published on the Committee’s website and gives initial proposals on many of the issues that were raised in evidence, such as definitions of terms.

472. The Scottish Parliament’s Subordinate Legislation Committee reported to the Committee that it considered that the Scottish Government has not given adequate justification for the lack of Parliamentary scrutiny proposed in respect of the code for INNS. Since the code provides a standard which can be used as evidence to determine criminal liability, the SLC recommended that the procedure chosen by the Parliament with respect to animal welfare codes under the 2006 Act should be adopted for the code under new section 14C, namely the affirmative procedure.

473. The Committee notes the volume of evidence which, rightly, highlights the potential difficulties in terms of the clarity of the legislation and the guidance, of the definition of terms such as ‘in the wild’ and ‘native range’. It is very important that such definitions be clear and easy to understand.

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160 Plantlife. Written submission to the Rural Affairs and Environment Committee.
474. The Committee welcomes the Scottish Government making available an early draft of the code which contains draft definitions, which seem broadly helpful. The Committee also notes the Scottish Government’s intention to consult widely on these definitions.

475. The Committee notes that roadside verges are defined as non-wild in the draft code, and that there is particular potential for invasive plants to escape from such verges into the wild. The Committee would not want to prevent local communities from planting colourful displays to brighten up their area. However, the Committee asks the Scottish Government to give further consideration to whether it is appropriate for roadside verges to be designated as being wild, and, if it is considered appropriate, whether any additional measures could be taken to limit the risk of escapes from such areas.

Code of practice

476. The Committee notes that the code of practice on invasive non-native species will be vital in providing clarity on all relevant matters, from definition of the frequent terms involved, to how species control orders will operate. The Committee welcomes the Scottish Government’s intention to fully consult on its draft code during the Bill’s passage through Parliament and considers that it is important that the final code be subject to the affirmative procedure of parliamentary scrutiny.

Species Control Orders

477. The Bill establishes a new system of Species Control Orders (SCOs), which would enable Scottish Ministers, SNH, SEPA and the Forestry Commission Scotland to set out measures that would be required to be taken to control or eradicate INNS. However, the Bill does stipulate that voluntary control agreements should be the first recourse and that SCOs would, therefore, be a last resort.

478. A Scottish Government official explained how SCOs would be used—

“[…] it is important to say that we do not envisage species control orders being used in a widespread way. If somebody had Japanese knotweed on their land, say, they would not automatically be asked to clear it. The idea behind species control orders is that the relevant agencies can use them to target work so that they can deal with new populations that arrive. If, say, somebody had bullfrogs in their garden that were about to spread, that could have significant implications for Scotland. If access to that land was not permitted, not much could be done about that. The purpose of the orders is to enable something to be done about new populations of species where there are obvious problems.”

479. SNH supported the Bill’s provision for it to be able to charge, at its discretion, owner/occupiers, for the costs of implementing an SCO and noted that it was very unlikely that this would ever result in a person being charged for something that was the original responsibility of a predecessor—

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“It is right that we should have the option to pass the charge for species control to a landowner, at our discretion. In reality, we would be unlikely ever to place a cost on a landowner for work that was needed as a result of what a predecessor owner had done, whether it was the landowner's grandfather or someone else. I think that in reality that would not happen. However, the option to pass costs to the owner, if necessary, should be kept as a backstop […] In the vast majority of cases the costs will be met by the public purse.”\(^{163}\)

480. The principle, that the person responsible pays any resulting costs, also known as the ‘polluter pays’ principle, was supported by several other organisations, such as the Scottish Countryside Alliance.\(^{164}\)

481. However, landowners’ organisations expressed concerns about this. The SRPBA said—

“Section 14F(2) also provides that a control order may require payments to be made either by the relevant body or by the owner/occupier in respect of reasonable costs incurred by a person carrying out an operation. The SRPBA strongly calls for adequate funding for these works to be made available if there is no fault on the part of the owner/occupier. The Scottish Government has previously cited European rules as a reason for not funding such works under the SRDP but if this is the case then alternative funding streams must be developed, and quickly.”\(^{165}\)

482. The Royal Horticultural Society (RHS) was concerned that, given landowners could be charged for being required to control a species, there was no requirement on the face of the Bill to assess the level of threat before an SCO would be issued—

“The RHS’s view is that without sufficient safeguards this provision is disproportionate and while the supporting documentation lays out the circumstances and interpretation of the provisions which go some way to allaying fears, these are not part of the legislation. There needs to be much greater clarity about what would trigger the use of an SCO and what steps would be necessary to show that such a power is being used properly.”\(^{166}\)

483. The Committee considers that a system of Species Control Orders is necessary as a backstop to the general invasive non-native species regulations and to provide statutory backing for the code of practice.

484. The Committee also believes that it is appropriate for SNH to have powers to recover costs of removing a species from a property from the landowner, if circumstances warrant it (the Committee expects that this


\(^{164}\) Scottish Countryside Alliance. Written submission to the Rural Affairs and Environment Committee.

\(^{165}\) Scottish Rural Property and Business Association. Written submission to the Rural Affairs and Environment Committee.

\(^{166}\) The Royal Horticultural Society. Written submission to the Rural Affairs and Environment Committee.
would happen very rarely). However, the Committee recommends that the Scottish Government ensure that the code of practice gives detail and examples of what would lead to this ‘polluter pays’ principle being invoked.

485. The Committee also recommends that the Scottish Government ensure that trigger points that would lead to a Species Control Order being issued also be detailed clearly in the code of practice.

Identification of lead body
486. Several submissions and witnesses\(^{167}\) raised concern about the Bill not identifying a single lead body for dealing with INNS matters. An example of the current lack of clarity on this, and the potential consequences of that, was highlighted by Dr Paul Walton, of the RSPB, in evidence to the Committee on 15 September—

“One example that involved the RSPB was with the species called crassula helmsii, which is also called the New Zealand pygmy weed and has a number of other common names. It is a highly invasive freshwater aquatic plant from New Zealand [...] We found some of it growing in a wee pond outside a visitor centre at our Lochwinnoch nature reserve. We set to work getting rid of it [...] My job was to phone the relevant authorities. I knew that there was an SSSI in the area, so I phoned SNH. The area staff's view was that it was probably a matter for the Scottish Environment Protection Agency, but when I phoned the relevant people in SEPA their view was that it was probably a matter for SNH. We were left in a situation in which neither of the agencies nor anyone else was clear about who would take a co-ordinating role.”\(^{168}\)

487. SNH responded to this and said that it would be helpful for a lead coordinating body to be identified, in order to direct the appropriate lead operational body, and that the appropriate lead coordinating body would be SNH, providing the role would be appropriately resourced.\(^{169}\)

488. SNH was of the view that designation of such a lead body should be made in the code of practice, rather than on the face of the Bill, so any subsequent changes, perhaps made by future administrations or to reflect changing circumstances, would not create a requirement to amend primary legislation.\(^{170}\)

489. The Committee believes it is important for one clearly identified agency to act as a lead coordinating body for INNS provisions in Scotland, to avoid issues being passed from one organisation to another with no action being taken to address the problem. The Committee supports the view of SNH that it should be the lead coordinating body for such matters and recommends this to the Scottish Government.

\(^{167}\) Plantlife, Professor Colin Reid, RSPB Scotland, SE Link and the SWT.


Exemptions

490. The Bill exempts the common pheasant and red-legged partridge from the provisions making it an offence to release any animal from captivity to a place outwith its native range. Many organisations were not satisfied with this exemption, for different reasons. Organisations such as the GWCT and the SGA were concerned that the exemption set a precedent for the separate treatment of these birds and that the provision would enable future administrations to make alterations to their status by order. They argued that although many did not consider these birds to be native, they were certainly naturalised and should be treated as native species.

491. However, other groups argued that as the birds were not native and, given that population numbers in Scotland were significant, the Bill should not provide the exemption it currently does. SE Link commented on this—

“[…] the research that has been done has revealed that they can have a negative impact, particularly at high densities. They can reduce the species diversity of ground vegetation layers, particularly in woodland. They can alter hedge structure, and some work has shown that that impacts on declining farmland bird nesting habitats, such as those of yellowhammers. They can reduce the availability of overwintering invertebrates, which are an important food source for native wildlife. They can cause the overnutrification of soil; they add nutrients to soil and leave it with nutrient levels that go way beyond what would be expected in woodland. There is also quite a bit of evidence that, at high densities, there can be disease transfer to native birds, particularly at feeding areas.” 171

492. The RSPB suggested how this should be tackled in the Bill—

“Pheasants and red-legged partridges are covered by the bill as a sort of permanent exemption. We propose that the permanent exemption is removed from the bill, but we would expect those species to be covered by the provisions in section 14(2) of the bill, under which ministers can specify the types of animals to which the presumption does not apply.” 172

493. Animal welfare organisations also argued that the exemption is not justifiable because the birds have the potential to be invasive as well as being non-native. They cited examples of these birds causing significant damage and called for them to be regulated.

494. Some organisations, such as BASC, the SRPBA and the SEBG, welcomed the exemption in the Bill, and saw it as affording appropriate protection to valuable game species.

495. SNH confirmed that it was not aware of any biological reason for exempting pheasants and red-legged partridges, but recognised that the Scottish Government had made a decision to exempt them on the basis of their economic

value to the rural economy. It noted that this was a “major departure from mainstream policy.”

496. Having said that, whilst SNH noted that it was aware of reported problems, mainly in North-East Scotland, of the release of such birds in high numbers causing damage to habitat and biodiversity, it did not think that this was an extensive problem, and believed it to be localised rather than wide-scale. SNH also said that where such instances had occurred, they had been adequately dealt with.

497. The Committee put to SNH that, without any backstop power on this in the Bill, it was possible that the problem, although perhaps not extensive at present, could worsen. SNH replied that this was possible only on non-protected sites, as they had powers on protected sites.

498. The Association of Shellfish Growers and the Shellfish Association of Great Britain both requested that the Pacific oyster be added to the list of species exempted from the general no-release presumption. Both noted that the Pacific oyster is currently subject to a general release licence, and that failing to exempt it would pose a significant threat to the “commercially important Pacific oyster [...] industry in Scotland.”

499. The Committee notes the concerns expressed in relation to the exemption of pheasants and red-legged partridges from the INNS provisions, to allow what are classified as non-native species to be generally released.

500. The Committee is not aware of pheasants or red-legged partridges currently being regularly released in Scotland in such high densities as to cause significant damage to habitat or biodiversity. However, the Committee asks the Scottish Government to consider putting a reserve power in the Bill to allow it to restrict the release of these species, should they ever be released in such numbers as to cause significant habitat and biodiversity damage.

501. The Committee notes the call for the Pacific oyster to be added to the list of exempted species and asks the Scottish Government to clarify its position with regard to the Pacific oyster.

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176 372. The Association of Shellfish Growers and the Shellfish Association of Great Britain. Written submissions to the Rural Affairs and Environment Committee.
Species licensing and protection

Background

502. Generally speaking, a species licence is granted to allow a practice that would otherwise be prohibited – often when a protected bird or animal is required to be killed, or a protected plant to be removed. Although four different Acts currently govern species licensing in Scotland, the 1981 Act is the primary Act being amended by the Bill. Section 16 of the 1981 Bill allows most activities prohibited by the Act to be licensed for certain purposes. Administration of the licences is split between Scottish Ministers (public safety and land management) and SNH (scientific, research or education purposes).

503. This raises questions such as:

- at what point, if at all, should humans intervene in the population of any species? What is an ideal population of any one species and what criteria should be used to determine that?

- under what circumstances, if at all, should protected species be controlled? For example, is it acceptable for licences to be given to protect game species from birds of prey?

504. Alex Hogg, of the SGA, posed the question, “at what point do the numbers of any species need to be managed?”

“You have to stop protecting species and start managing them. If we do not manage the species we will end up with one protected species eating another protected species. At some point, we have to decide which one needs more protection.”

What the Bill proposes

505. The Bill would alter the administration of species licences slightly by making the Scottish Government responsible for all licensing matters and giving the power to delegate administration to SNH by written instruction, or local authorities by order. The Policy Memorandum states that it is the intention that local authorities should only deal with licences as they relate to development planning.

506. On the issue of planning developments, the Bill seeks to address a perceived inconsistency between domestic and European law with regard to species licensing. Currently, the Conservation (Natural Habitats, &c.) Regulations 1994 protect species protected under EU law and allow for a licence to be granted for species where doing so is justified by “imperative reasons of over-riding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.” This allows licences to be granted for development purposes, unlike the 1981 Act, which protects listed species and does not permit licences to be granted to allow development activities. The Bill seeks to place the 1981 Act on the same footing as the 1994 regulations, thus making it possible for licences to be granted for development.

purposes, providing there is a demonstrable social, economic or environmental benefit and there is no alternative. Note that these provisions do not apply to birds.

507. The Bill also makes provision to remove current duplication in legislation between species listed in both the 1981 Act and 1994 regulations.

Issuing of licences

508. There was considerable evidence that argues against the proposal for local authorities being bodies to which Scottish Ministers could delegate the issuing of licences. This opposition came both from local authorities themselves (Falkirk Council, Highland Council and Comhairle nan Eilean Siar) and other organisations. The RSPB noted, at the Committee meeting on 15 September, that as local authorities are required, in any event, to consult SNH, it would be simpler to make SNH the sole licensing body? SNH also questioned what would happen if a local authority were to act against the SNH advice.

509. However, SNH said it was appropriate for local authorities to issue licenses in certain circumstances, and noted that they already deal with issues such as planning applications involving protected species. SNH said it would be highly desirable for local authorities to consult SNH before issuing any licence and did not consider that there would be any conflict in an authority dealing with a licence application from another department of the same authority.

510. The Minister noted that she was not aware of any significant opposition to these proposals during the Scottish Government’s consultation on a draft bill, and added that the provision had been included to ensure flexibility. She added that it was something that local authorities already did, and that it should not, therefore, be too burdensome. She also noted that it was not intended that local authorities would be asked to do this immediately upon the Bill being enacted, but that a period of discussion would take place with local authorities in advance of specific instances. It was not intended that the local authority delegation mirror that of SNH.

511. SNH had no issue with the appropriateness of it being the lead body on species licensing, but did raise concerns about the additional burden this could place on resources. This issue is explored further in the section of this report on the Financial Memorandum of the Bill.

512. The Committee recommends that the Scottish Government reconsider which body, or bodies, should be delegated the function of issuing licenses, in light of the volume of evidence received stating that it is not appropriate or necessary for local authorities to have this function.

513. Should local authorities remain as potential licensing bodies, the Committee invites the Scottish Government to clarify what might happen should a local authority decide against following the advice of SNH on whether to issue a species licence or not.

Licence for social, economic or environmental benefit

514. The Committee understands that the reason for this proposed change is to address a current anomaly between the 1981 Act and the EU Habitats Directive. The Habitats Directive protects certain species, such as the otter and wildcat, and allows control of them, under certain circumstances, for social, economic or environmental benefit. The 1981 Act protects other species, such as the red squirrel and pine marten.

515. The SWT said in its written evidence—

“We are seriously concerned by the proposal to extend the grounds on which species licences can be granted to include “for any other social, economic or environmental purpose”. The level of protection afforded to European Protected Species under the Habitats Directive should be the minimum level of protection for species of conservation importance in Scotland, i.e. that the activity must be for imperative reasons of overriding public interest or for public health and safety; there must be no satisfactory alternative; and that favourable conservation status of the species must be maintained. We do not accept that there should be any diminution in protection afforded to our most vulnerable and important species.”

516. This view was supported by SE Link, which said it was ‘gravely concerned’ by the proposal in the Bill.

517. In its written submission, SNH welcomed this change, saying that—

“We will also be the licensing authority for the new social, economic or environmental purpose to be inserted into the Wildlife and Countryside Act 1981. We welcome this new purpose, which we have long called for, as it will remove an anomaly in species protection.”

518. SNH confirmed its position when it appeared before the Committee, but added that the big challenge would come in drafting guidance and defining where the public interest began and ended. It believed that the licensing system would be both protective and proportionate.

519. The Committee notes the concerns expressed in evidence over the provision of the Bill for licenses to be available where a clear social, economic or environmental case could be demonstrated. However, the Committee notes that the Scottish Government’s rationale for this was to close a loophole between domestic and European law, which currently allows for different criteria to apply to different species.

520. The Committee is, therefore, broadly content with the provision, but draws the attention of the Scottish Government to the comments made by SNH regarding the ‘big challenge’ of drafting the guidance to ensure that it is clear and easy to follow.

179 Scottish Wildlife Trust. Written submission to the Rural Affairs and Environment Committee.
180 Scottish Environment Link. Written submission to the Rural Affairs and Environment Committee.
181 Scottish Natural Heritage. Written submission to the Rural Affairs and Environment Committee.
Processing of licence applications and appeals

521. SNH told the Committee that it aims to process such applications within 20 working days, and that, in reality, 99% are processed in 10 working days. It noted that it is continuously examining ways of making the process as efficient as possible, and is currently considering the possibility of issuing multi-year, rather than annual, licences in certain circumstances. SNH is also encouraging people to prepare applications well in advance of any actual problem occurring, to help speed up the process.

522. SNH confirmed that there was currently no right of appeal against such applications being declined, although SNH did make efforts to explain fully to applicants why an application had been unsuccessful and also made all the relevant information publically available.

523. Professor Reid gave his view on whether there should be a right of appeal against refusal of such applications—

“If the expectation is that one will not get a licence, and so being allowed one is a bonus, it is arguable that there is less need for an appeal mechanism. If, however, your view is that the prohibition is deliberately broad and people expect that they will be allowed licences, an appeal provision is more appropriate. From a Human Rights Act 1998 point of view, would the decision to refuse a licence determine somebody’s civil rights and liberties? I suspect that it would not, on the basis that if the general prohibition is acceptable, that is the starting point and any licence is an exception from it rather than an interference with rights.”

524. On the issue of whether there should be a right of appeal against refusal to grant a species licence, the Committee notes and accepts comments made by Professor Colin Reid, who said that it could be argued that as licences were for otherwise prohibited activities there was probably no difficulty from an ECHR/’natural justice’ perspective.

Licences to control birds of prey

525. Alex Hogg, of the SGA, detailed the problem that buzzards pose for some game birds, and the discussions it has had with SNH on the issue—

“The law states that we should have a licence to protect livestock should serious damage be occurring. It has to be livestock—and we decided that a pheasant poult was livestock if it was in the pen or in close proximity to the pen.

When it came to triggering the licence, however, we could not decide what "serious damage" meant. We are still talking. In my experience, when we have tried every deterrent in the book to scare off buzzards—hanging up bags, putting wires across rides, spinning compact discs, playing radios and anything else that we might think of—they become, to use the only analogy that I can think of, like seagulls at a resort: they have no fear of people

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whatever. When we drive up to the pen, the buzzards will arrive on scene. When we try to feed the pheasants, the buzzards will sit there and, with the patience of a saint, they will drop down and kill a poult after waiting for an hour or so.\textsuperscript{183}

526. The current definition of livestock in the 1981 Act includes any animal that is kept for the provision or improvement of shooting or fishing, a position not supported by the Scottish Raptor Study Groups (SRSG)—

\[\ldots\] the definition should extend only to any animal kept for this purpose that is wholly confined, meaning in the case of a game bird before it is put out to a release pen or equivalent. Logically livestock should be seen as kept wholly or primarily for food; for sport shooting “livestock”, in this case game birds, are kept primarily for shooting and only secondarily for food. SRSGs advocate such an amendment in order to counter what they consider to be unjustified calls for licensed control of certain raptor species at game bird release pens.\textsuperscript{184}

527. SNH confirmed that the Bill made no changes to the ability to apply for a licence to control serious damage to livestock, and that livestock included birds such as grouse, pheasants and partridges reared in captivity and kept in release pens. The test was whether the damage was deemed as being “serious”, how that was measured, and what else could have been done to resolve the problem. A person may currently apply for a licence to control, say, buzzards causing problems at release pens. No change in the law was proposed or, in the view of SNH, required. But a clear and persuasive case must be made and a license would only be granted as a last resort, when all alternatives have been exhausted. SNH said it was not opposed to the control of, say, buzzards in this way, providing a sufficiently strong case had been made.

528. The Minister told the Committee that pheasants were considered livestock “as long as they are in and around the pen and near it.”\textsuperscript{185}

529. The SGA argued that these licenses were virtually impossible to obtain, so much so that many no longer even tried, as it was well known that they would not be granted in any circumstance. It was, therefore, a theoretical licence only.

530. SNH told the Committee that it was not a question of “lowering the bar” that has been set, and said that adherence to the EU Birds Directive would prevent that in any case. The solution was to develop better guidance to assist those applying for such licences, to give examples of what a successful application would look like. SNH described this issue as “a work in progress” and suggested that only continued dialogue with land managers would lead to a resolution.


\textsuperscript{184} Scottish Raptor Study Groups. Written submission to the Rural Affairs and Environment Committee.

531. The Minister commented on the issue of licences being available to control protected birds—

“I took the view that the balance of public interest was not at present in favour of issuing licences for the control of birds of prey to protect non-native reared game birds [...] Raven licences are issued at present, so in some respects that control is already happening. The concern tends mostly to be about one specific species, which is the buzzard. As far as I know there is no sense that the buzzard population could currently be regarded as being out of control, but these things always involve a balance. At some point in the future our skies may be so thronged with raptors of one type or another that we have to consider such an approach, but we are not there yet, and I suspect that we are a long way from it.”

532. The Committee is content with the law as it stands, that licences are available only in exceptional circumstances to control species which are otherwise protected. The Committee notes that currently anyone seeking a licence must make a robust case and expects this will continue after implementation of this Bill.

533. The Committee notes the Ministers comments on the status of pheasants as livestock. The Committee would be grateful for further clarification as to the point at which pheasants cease to be deemed as livestock.

European Beaver
534. There are currently two species in Scotland which have been reintroduced under licence. These are European beavers, under the Scottish Beaver Trial, and sea eagles.

535. Beavers have been licensed for release as part of the Scottish Beaver Trial. As these animals are, according to the answer to a parliamentary question currently outwith their native range they are not afforded specific protection under the Habitats Directive. However, they would have a level of protection from shooting under rules relating to armed trespass under the Firearms Act 1968.

536. The Committee notes the anomaly that beavers are currently being released under licence in Scotland, but are not specifically a protected species and draws that to the attention of the Scottish Government.

Scottish black bee
537. Native British bees have become extremely endangered and it is understood that many of those that do remain have hybridised with non-native breeds. The Scottish black bee, *apis mellifera mellifera*, however is understood to survive in

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187 S3W-37195, Peter Peacock MSP: To ask the Scottish Executive what legal protection other than that afforded by the Animal Health and Welfare (Scotland) Act 2006 and the Wild Mammals (Protection) Act 1996 extends to animal species not specified as European protected species under Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations 1994, which have been reintroduced to Scotland under licence issued by the Scottish Ministers.
Colonsay and possibly other locations in Scotland. According to the answer to a parliamentary question, the Scottish black bee is currently classified as a "domesticated species" and so does not qualify for reserve status under current wildlife legislation.

538. A Scottish Government official confirmed that honeybees are "regarded as a farmed animal rather than a wild animal so they do not usually come within the ambit of the Wildlife and Countryside Act 1981". 188

539. The Committee asks the Scottish Government to give consideration to how to best protect the native Scottish black bee, given its current classification as a farmed creature. The Committee also asks the Scottish Government to examine whether such bees could be considered as wild creatures, in order to secure their genetic protection. The Committee also asks the Scottish Government to consider whether the Bill could be used imaginatively to secure greater options in providing further protection to populations in areas such as Colonsay.

PART 3: DEER

Background

540. Deer have been present in Scotland for 20,000 years and, in the last few hundred years, population numbers have fluctuated significantly. As forests were cleared across the country, and humans began to farm more intensively, deer populations shifted to where the forest and non-farmed land remained. Other factors affected the deer population, such as the extinction of the wolf in Scotland at the end of the 18th century, which helped increase the number of deer, and the introduction of greater numbers of sheep, which, combined with the changes in habitat, led to a nadir for the deer population. Numbers recovered after industrialisation, in the Victorian era, when shooting for sport became popular and a growth in numbers was encouraged to support this activity.

541. There are estimated to be up to 750,000 deer in Scotland. That number is made up by populations of four different species. Two species, red deer (Britain’s largest native land mammal) and roe deer, are native to Scotland and make up the majority of the total population figure. Estimated numbers are over 200,000 roe deer and between 300-500,000 red deer. The red deer is found predominantly in the north of Scotland, but significant populations can also be found in Argyll and the Trossachs and in Galloway. The smaller roe deer, which gathers in smaller numbers, is found across the country, and is increasingly being found in and around towns and cities.

542. Two further species, fallow and sika deer, have been introduced to Scotland through deliberate releases and escapes from country parks. Two other non-native species, muntjac and Chinese water deer, are found in England but not in Scotland, although there have been anecdotal accounts of muntjac deer being seen in Scotland.

543. Deer in Scotland are wild animals that can roam freely between forests, farms and estates and are a natural resource that is not owned by any individual or organisation. Deer only become someone’s property when they are captured or killed by persons entitled by law to do so – usually the owners of the land on which they are present, or people acting with their permission. In turn, landowners have a responsibility for the welfare of deer on their land, to manage the deer and their natural habitat appropriately.

544. Deer bring a number of economic, social and environmental benefits to Scotland, such as:

- tourism – people coming to specifically see red deer in particular;
- significant habitat and biodiversity benefits (such as grazing) where appropriate numbers exist; and
- employment, through deer stalking, deer management and the venison industry).

545. They can also bring significant economic, social and environmental costs, such as:

- damage to agriculture and forestry and the need to protect from possible damage (erecting fencing, re-planting of crops and trees);
- damage to natural heritage;
- damage to upland soils causing carbon emissions; and
- public health and safety issues, such as road accidents, and ensuring animal welfare concerns are properly taken in to account.

546. With no natural predators remaining in Scotland, deer populations are managed to balance the benefits and costs detailed above and protect different objectives. However, different people and organisations have a number of conflicting objectives in relation to managing deer numbers, such as establishing an ideal sporting population and protecting woodland and crops.

547. A collaborative approach to deer management was developed several decades ago with the formation of Deer Management Groups (DMGs), of which there are now more than 70 in Scotland.

548. DMGs are voluntary and cover areas where there are distinct herds of deer. The area they cover may range in size from 20,000 to 200,000 hectares. They can include as few as 3 or as many as 30 different landholdings. Groups are often subdivided into sub-groups for specific purposes.

**What the Bill proposes**

549. Part 3 of the Bill would amend the Deer (Scotland) Act 1996 (c.58) ("the 1996 Act"). Part 1 of that Act placed a duty on the Deer Commission Scotland (DCS)
(the functions of which were transferred to SNH under the Public Services Reform (Scotland) Act 2010) to further the conservation, control and sustainable management of deer.

550. Part 2 of the 1996 Act provides for the setting of close seasons and creates mechanisms for the DCS (now SNH) to work with landowners in managing appropriate deer numbers.

551. Part 3 makes it an offence to kill deer without the legal right to do so. Part 4 regulates dealing in venison and contains enforcement provisions.

552. The Bill amends the 1996 Act to alter the provisions that allow certain occupiers of land to shoot deer during close seasons. It requires SNH to prepare a code of practice in relation to deer management. It revises the purposes for and circumstances in which SNH can exercise powers in relation to control agreements, control schemes and emergency measures to manage deer. It also enables Ministers to make provision, by order, to require persons who shoot deer to be registered as competent to do so. Such orders may also be used to make consequential changes to the arrangements for collecting data about the number of deer killed (‗cull returns‘).

**Duty to manage deer sustainably**

553. SNH told the Committee, ―no one owns wild deer in Scotland; they are a common resource and must be managed as a shared resource‖.\(^{189}\) It is often said that deer should be managed sustainably and in the public interest but a definition and shared understanding of these terms are difficult to arrive at. Robbie Kernahan of SNH said—

"[..] it is also about trying to keep one eye on the future to see what else deer will have an impact on that may be in the public interest, such as carbon soils and carbon sequestration. It is about how well we equip ourselves legislatively to take action, and not only how we currently define public interest but how we might in the future.‖\(^{190}\)

554. As with other issues in the Bill, there is a fundamental split about whether sustainable deer management should remain on a voluntary basis or whether the Bill should introduce a duty on landowners. Opinion differs on whether the Bill represents an acceptable compromise or is a missed opportunity. Submissions also question how to define terms such as ‗sustainable‘ or the ‗public interest‘. It is clear that these terms mean different things to different people and there will need to be a common understanding of these terms for deer management to be successful.

555. Professor John Milne, ex-Chairman of the DCS, told the Committee that deer management needed to be thought of in terms of impacts rather than simply numbers. Scotland is a natural habitat for deer, the consequence of which was the proliferation of deer in some areas, and the inevitable resulting damage. The

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\(^{189}\) Scottish Natural Heritage. Written submission to the Rural Affairs and Environment Committee.

nature of this damage changes with time. For example, the number of cases of deer causing agricultural damage has declined in the last ten years, whereas cases of deer causing peat damage are increasing, or better understood. He said it was important to balance all talks of damage and control by keeping in mind the enormous positive benefits deer has, as an iconic animal in Scotland, on tourism and culture, as well as being a sporting resource of great benefit to the Scottish economy.

556. Dr Justin Irvine from the Macaulay Land Use Research Institute, also stressed the need to keep in mind the effect other changes can have, such as reducing sheep numbers, or milder winters leading to higher survival rates.

557. The consultation carried out by the Scottish Government contained a proposal that a duty be placed on landowners and managers to manage deer sustainably. However, due to disagreement in responses to the consultation, together with a concern that such a duty could contravene the European Convention on Human Rights (ECHR) this duty does not appear on the face of the Bill. Rather the Bill seeks to bring about a de-facto duty by other legislative means, and through a proposed code of practice.

558. Scottish Government officials explained the reasons behind the Bill not containing a duty to manage deer sustainably—

“[…] the point is not that we do not want deer to be managed sustainably; rather, it is that, on reflection, we consider that a legal duty in the bill to manage deer sustainably basically would not work. It would be insufficiently precise and would not focus on particular individuals. It would not be sufficiently clear in telling people what it meant.”191

559. The Bill team’s legal adviser explained some of the legal difficulties in pursuing a duty on the face of the Bill, essentially that it would be unenforceable—

“The essential problem with the duty approach is that it applies equally to private and public bodies—perhaps more to private persons and bodies than to public bodies. If general duties are included in statute for public bodies, there is a reasonable expectation that they will simply be observed; with private persons, that really needs to be backed up with criminal sanctions to make the duties have any force or teeth. It would be unreasonably vague to impose on individuals a general duty of sustainable deer management that was backed up by criminal sanctions. That would not meet tests under article 7 of the European convention on human rights.”192

560. Lloyd Austin of SE Link commented on the Scottish Government’s ECHR concerns—

“What we propose is that the solution is not to say, "We won't have a duty, then," but to make the duty clear, and that means having a statutory form of

planning system. We might encourage deer management groups to produce clear management plans, but if that does not happen, we believe that SNH should have the power to step in and produce plans. Alternatively, you might take the approach that as public bodies determine how to plan for natural resources throughout the country—for example, SEPA produces flood management plans and river basin management plans and local authorities produce development plans—SNH should take the lead in producing deer management plans, but that it should do so in a participative way.”

561. SNH outlined its position on whether the Bill should contain a duty on deer management—

“[…] in our submission, the Deer Commission—supported by SNH and the Forestry Commission—recognised that with the right to manage land comes a certain amount of responsibility. At the moment, the responsibility sits on SNH to manage deer or to co-ordinate the management of deer. We thought it only appropriate that that duty should be shared among those who have the rights to take deer. We recognise the difficulty of defining sustainability in legislative terms. We thought that that would be supported and underpinned by a code, which would have a lot of stakeholder buy-in.”

562. Finlay Clark, of the ADMG, told the Committee that the principle of a duty was already well established—

“I do not know of one landowner or deer manager—or anyone else who is involved in the management of deer—who does not believe that they have an absolute duty to deliver good, proper and sustainable deer management. I do not know anybody who disregards that absolute duty.”

563. The Minister told the Committee that if the voluntary measures provided for in the Bill ultimately were not successful, future administrations would need to consider the matter again.

564. The deer aspects of the Bill are those that were most changed as a result of the consultation the Scottish Government conducted on the Bill. It appears to the Committee that the Government did indeed listen to concerns expressed in consultation responses from a large number of stakeholders and that the Bill represents an acceptable compromise.

Deer Management Groups

565. One of the central pillars of the current, voluntary, approach to deer management across Scotland is the DMG system. As explained above, participation in DMGs by landowners is encouraged but ultimately voluntary and

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although DMGs can make plans and take decisions, there is no legal requirement for landowners to abide by such plans and decisions. However, SNH does have a backstop power, to issue a “control order”, discussed later in this section.

566. Part of the argument surrounding the possibility of the Bill containing provisions to impose a duty on landowners to manage deer sustainably, included examination of the possibility of giving greater strength, or ‘teeth’, to the DMG system by introducing duties on landowners to participate in the relevant DMG and abide by plans and decisions made by DMGs.

567. The Committee heard conflicting evidence concerning the success of DMGs. SNH noted that DMGs had originally been established to manage a common sporting resource and had struggled in recent times to deal with increasingly complex land management methods. This, in the view of SNH, had placed a great deal of pressure on the DMGs—

“When putting together the advice that it submitted to ministers, the Deer Commission for Scotland recognised that voluntary deer management must be at the heart of deer management. However, the expectations on voluntary deer management groups to deliver a host of public benefits are probably greater now than they have been at any time since the groups were first put together 30 years ago.”

568. It was noted that where DMGs gathered those with common objectives, they tended to work very productively. However, DMGs which had members representing conflicting objectives, sometime including conflicting private interests, struggled to reconcile that difference. This highlighted their lack of enforcement powers.

569. Professor John Milne, the ex-Chairman of the DCS, argued that DMGs were the right structure and that the concept of local decision making by local people with expertise was sound, but that DMGs were not currently working as well as they ought to because they did not have adequate powers and could not compel all relevant landowners to be involved—

“[…] nothing in law says that individuals have to take part in a group. If they do take part, they do not have to follow anything that the group agrees. The group itself has no teeth. Many chairmen have approached me and told me that they cannot get the group to work because one landowner will not do one thing and another will not do something else.”

570. Professor Milne also noted that DMGs lacked a shared understanding of what public objectives were and had no effective mechanism for resolving disputes He was of the view that DMGs were becoming poorer at tackling deer management issues, rather than showing signs of improvement.

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571. He cited the statistic, recently published by the Scottish Government in answer to a parliamentary question, that only 50% of DMGs have plans in place, and only 10% use those plans to set cull levels.198

572. However, Professor Milne went on to say that although there were problems to be addressed, the answer should be found in strengthening the voluntary approach rather than making sustainable deer management compulsory. His solution was that the Bill should place a duty on landowners and managers to work together to ensure sustainable deer management and to participate in DMGs with a view to producing workable deer management plans.

573. The Association of Deer Management Groups, the umbrella organisation for DMGs, challenged the figures published by the Scottish Government, stating that the figures of 50% and 10% quoted by John Milne dated from 2005 and that these figures were now 96% and 76% respectively. It added that 93% of designated sites were now either in an acceptable condition, or were in the process of being made acceptable (a claim that was subsequently disputed by Professor Milne). The Association said that the fact that the Section 8 powers in the 1996 Act, of compulsory intervention, had never been used was testament to the success of the Section 7, voluntary, approach. The Association also noted that a voluntary system of encouragement and consensus was likely to be less demanding on the public purse than a statutory, compulsory, system which would require resource to enforce.

574. Justin Irvine, of MLURI, suggested that having DMGs relying on a code of practice might save resources, and if it were both properly developed and bought into by stakeholders there would be likely to be less need for policy or active management by SNH. It would be up to DMGs to prove adherence to the code. He also stated that DMGs were not currently receiving all the appropriate information which could be of benefit to them, such as details on carbon, and recommended that such matters be communicated more effectively. He argued that the code should provide for this.

575. During its visit to the Alvie Estate on 21 September 2010, the Committee met the estate manager, Jamie Williamson. He told the Committee that he was very active in his local DMG (he is the Chairman of the Monadhliath DMG) and he felt that, on the whole, it had run successfully for over 40 years. Of the approximately 48 members, around 8 were not engaged with the group. He had concluded, as he said others had, that whilst DMGs are not without flaw, he could think of no better way of dealing with deer management across Scotland.

576. The Minister emphasised that the Scottish Government was concerned with outcomes (in this case, that deer are sustainably managed in the public interest), and less concerned with how the desired outcome was achieved. Therefore, if an estate were achieving the desired outcome without participating in the relevant DMG, then, whilst involvement was preferable, it need not be rigorously pursued.

577. The Committee notes the conflicting evidence it received on the success, or otherwise, of Deer Management Groups. However, the

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198 Scottish Parliament questions and answers, S3W-33450 and S3W-33451
Committee notes that there was no evidence suggesting that DMGs should be abolished altogether, but rather a broad consensus that the DMG system was an appropriate one. However the Committee agrees that a review of how DMGs operate is required with a view to encouraging participation in them.

578. The Committee notes that powers held by SNH to intervene to ensure good deer management can have the potential to encourage non-participating landowners to cooperate in DMGs. However, the Committee is not clear whether SNH is currently making full use of this to encourage participation. The Committee would also welcome clarification on whether the powers of SNH allow for intervention, not only when a proliferation of deer is causing difficulties in an area, but also where populations have become unsustainably low through overzealous management.

Code of practice

579. The proposed deer management code, will be very important in fleshing out the standards and practice outlined in the Bill, in the absence of detailed legal provision on the face of the Bill. The establishment of a code of practice, to underpin the wider voluntary system of deer management, was supported in written evidence by several witnesses. Scottish Government officials outlined the purpose of the proposed code—

“...The code of practice will be a key document. It will set out in detail what we mean by sustainable management, and it will have a role to play under the statute. The code will be taken into account when SNH decides whether to use its intervention powers. That is a more useful approach than just setting out in the bill a general duty to manage deer sustainably. It is more useful to describe in the code of practice what that actually means, and to link that with the intervention powers.”

580. Many submissions argued that the code should be consulted upon fully and a draft made available before the Bill completes its passage through the Parliament. Indeed, the British Deer Society noted that it was impossible to judge the appropriateness of the deer provisions in the Bill without sight of the code.

581. SNH told the Committee that the code on deer management provided for in the Bill is currently being drafted. On 29 September, when giving evidence to the Committee, SNH reported that one meeting had, at that stage, been held to agree the structure of the code and that officials were planning the timetable of its development to coincide with the timetable of the Bill’s progress through its parliamentary stages. The Committee notes that the NFUS is not currently amongst those groups helping formulate the code of practice for deer management, and recommends that they, and at least one environmental organisation, are invited to participate at future meetings.

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582. The Subordinate Legislation Committee, in its report on the Delegated Powers Memorandum, drew the attention of the Committee to the role of the code of practice in relation to deer management by SNH and recommended that it should consider whether the code should be subject to Parliamentary scrutiny.

583. **Given the importance of the code of practice for deer management, and the Scottish Government’s intention that the code stands as a de facto duty of sustainable management, the Committee recommends that the code be subject to parliamentary scrutiny.**

584. The Committee also asks the Scottish Government to clarify whether all landowners will have to abide by the code and whether SNH will have powers of intervention on any type of land should the code be breached.

**Control agreements and schemes**

585. The other argument involved in how to best achieve sustainable deer management across Scotland, is that of the extent of legal backstop powers to deal with situations where deer are not being appropriately managed. It would obviously be desirable for any such backstop powers to be used as infrequently as possible, as it could be argued that the more they were used, the less successful deer management in Scotland was. Exercising such powers could also potentially be costly to the public purse.

586. The Bill makes a number of changes to the current powers SNH has to intervene to ensure effective deer management through control agreements (section 7 of the 1996 Act), and control schemes, (section 8 of the 1996 Act).

587. Control agreements between SNH and the relevant landowners seek to address specific difficulties which have been identified due to excessive numbers of deer in specific locations. If a voluntary agreement cannot be secured, or is not adhered to, SNH may make an enforceable control scheme, which requires landowners to reduce deer numbers. If such a scheme were not adhered too, SNH could carry out its own cull, at cost to the landowner.

588. Section 24 of the Bill would require SNH to have regard to the code of practice when considering whether to seek a control order. The reasons under which SNH could seek a control agreement would be amended to include the numbers of deer casing damage to their own welfare and on “public interests of a social, economic or environmental nature” as well as the impact of deer on forestry, farming, natural heritage or public safety. Control agreements and schemes would also include time limits for actions to be taken by landowners, the specification of certain measures being taken for each twelve months of a control agreement, and, in the case of control schemes, interventions by SNH if agreements had not been reached within six months of SNH notifying landowners of a problem.

589. It was confirmed by the Scottish Government in evidence that there had not been any instance of a control scheme being implemented by SNH (or the DCS before it)—
"It is true that control schemes have not been used, but they are the second step in a two-step process. There are control agreements, which come before control schemes. Control agreements have been used in the past and are being used now, but it has been difficult to translate them into control schemes when the Deer Commission has thought that to be necessary. We have considered legal analyses of the problems and we think that some of them can be fixed. That is what we have attempted to do by amending the intervention powers through the bill."\(^{201}\)

590. The British Deer Society argued that the six month timeframe for a voluntary agreement to be arrived at before a control scheme could be brought forward was too short—

"[...] six months is too short a period to reach agreement when either party may have significant plausible reasons for being unable to provide evidence for or against the proposal, given the seasonal nature of the impacts of deer. Control Agreements are to be specific and accurate, science based and deer damage specific. It may well take longer than six months to prove either side of the debate as to the cause of damage and this tight timescale may lead to imperfect evidence being used in the decision making process, deer may only be present in some seasons, it may be some other transient animal causing the damage."\(^{202}\)

591. The Committee notes the importance of the Scottish Government, through SNH, having backstop powers to intervene, through a two-step process, in instances where deer management is not being successfully carried out, and where there is threat to livelihood, natural heritage or public safety. The Committee supports the minor amendments in the Bill to the control agreement and control scheme provisions.

592. The Committee also supports the introduction of timescales to both the control agreement and control scheme systems, in an attempt to speed up the process and raise levels of participation. However, the Committee also notes the concerns of the British Deer Society that a six month time frame for a voluntary agreement to be made may require additional flexibility in certain circumstances and recommends that the Scottish Government considers giving SNH the power to extend this period at its discretion.

‘Serious damage’ v ‘damage’

593. Part of the section 8 control scheme powers also gives SNH emergency powers to carry out a cull of deer where they are deemed to be causing serious damage to woodland, crops, livestock or the natural environment, or are posing a threat to public safety. The Bill amends the trigger point of such emergency intervention from deer causing “serious damage”, to “damage”.


\(^{202}\) British Deer Society. Written submission to the Rural Affairs and Environment Committee.
594. The SRPBA was amongst several witnesses not in favour of such a change, telling the Committee—

“If the situation is an emergency, the test should be that serious damage rather than just damage has been caused. "Damage" means one deer eating one tree; "serious damage" might mean a herd of 50 deer devastating a forest. Emergency action would obviously be required in the second case but not in the first.”

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595. Professor John Milne noted that Section 8 measures could be referred to the Court of Session and that proving ‘serious damage’ relied on opinion and expert witness and was therefore open to challenge. He did not believe that this would be the case with defining ‘damage’.

596. SNH told the Committee that the primary driver behind this proposed change was the lack of consistency in the 1996 Act. The Act uses both the terms ‘serious damage’ and ‘damage’ in different parts. For example, the provisions in Section 7, which provide for voluntary interventions, use ‘damage’, whereas the compulsory provisions in Section 8 use ‘serious damage’. The term ‘serious damage’ is also used in Section 5 of the 1996 Act, relating to owner-occupier rights to shoot deer during close seasons for specified purposes. It was felt that one reason the Section 8 orders had not been used effectively was because serious damage had been very difficult to define and prove and the threat of challenge was a strong one. SNH concluded that it was relaxed about whether the Bill tackled this inconsistency by using ‘serious damage’ or ‘damage’ throughout the 1996 Act as long as one or the other were used consistently.

597. SNH did not think that if the term ‘damage’ was to be adopted as the standard, this would lead to a more interventionist approach, but rather would help bring a greater degree of clarity to the current system.

598. The Committee agrees with the evidence it received that there is currently an inconsistency in the Deer (Scotland) Act 1996, between the uses of the term ‘damage’ and ‘serious damage’. The Committee also agrees that there has been difficulty in establishing what ‘serious damage’, rather than ‘damage’, consists of. The Committee is therefore content with the provision in the Bill to remove the word ‘serious’ and use ‘damage’ consistently throughout the 1996 Act.

Owner-occupier shooting during close seasons

599. Currently, owner-occupiers may shoot deer out of season if damage is being caused to crops, improved agricultural land or woodland. The Bill amends the 1996 Act to remove this right. In its place, it allows for authorisation to be granted for shooting out of season, for general or specific reasons. It is intended that SNH would issue a general authorisation for out of season shooting which would be removed from any individuals who were found to be in breach of the licence.

600. Comhairle nan Eilean Siar had concerns about this amendment to the 1996 Act—

“It is of some concern that the current rights crofters and farmers have to control marauding deer is to be replaced with a general licence that can be revoked by SNH. The general authorisation described in the proposals for legislation should require minimal administrative effort both to SNH and crofters and farmers affected.”

601. SNH told the Committee that much of this out of season shooting occurs at night and the licence is there to ensure that those persons are fit and competent to shoot deer, which is not the case at present. SNH also said that the change was to address an anomaly identified in the current legislation—

“Currently, anybody who applies to shoot deer out of season or at night must apply to the Deer Commission, and they have to demonstrate to SNH that they are fit and competent. However, those same tests are not applied to owner-occupiers of agricultural or forestry ground, who have the opportunity to shoot deer under section 26(2) of the 1996 act.”

602. The Committee is content with the provision in the Bill relating to owner-occupiers shooting deer out of season, and considers it to be a technical change that should not, in reality, change the ability of landowners to control deer out of season, but allow for better regulation should any problems develop.

Competence in shooting deer

603. It was universally accepted that it is important that all those who shoot deer, for whatever reason, be competent to do so, to ensure that deer are shot cleanly and do not suffer unnecessarily.

604. The Bill makes provision for the deer sector to develop its own training programme and competence assessment for shooting deer, and for a mandatory scheme to be introduced, at the earliest in 2014, only if the voluntary approach had not been judged as successful. If a mandatory scheme were to be introduced, the Bill provides for a register to be kept by SNH of those who had passed the competence test.

605. The SGA, SRPBA, ADMG and SEBG all supported the proposals in the Bill and said they represented a good compromise following the responses to the Scottish Government’s consultation. They agreed that there should be no compulsory scheme until at least 2014, if at all.

606. Justin Irvine, of MLURI, supported a register of competence with associated training, and also called for larder and carcass quality data and carcass tagging to maintain better standards than competency alone could achieve.

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204 Comhairle nan Eilean Siar. Written submission to the Rural Affairs and Environment Committee.
607. Professor Reid warned against the Bill allowing for the future introduction of a register by negative procedure, as he felt this was too significant a change to the current system for it not be subject to the greater level of scrutiny afforded by the affirmative procedure. Professor John Milne was of the view that a register should be introduced by 2014 regardless of the perceived success of self regulation, as it would still be important to record those assessed as competent.

608. The Committee explored with witnesses why the Scottish Government considered it necessary to assess competence in deer shooting at all, given that there did not appear to be much evidence of a current or historic problem e.g. public safety incidents, reports of deer being wounded, evidence of deer suffering unnecessarily, or public health problems. It could be concluded from this that the majority of those who shoot deer are ensuring their own level of competency successfully.

609. The Committee also noted that there was no requirement to demonstrate competence to shoot other animals, such as foxes or rabbits, which were often shot in greater numbers than deer. Similar arguments as to the consequence of poor shooting of deer would apply, as other animals would also suffer if not shot competently.

610. Scottish Government officials said that “there is a general acceptance among the public that the larger, more iconic, mammals require a greater degree of care.” They also said that “the safety record is extremely good as far as the public is concerned,” but added that a deer should be killed within five minutes of being shot, which did not always happen.

611. SNH added that deer welfare should be at the heart of all relevant legislation and must be of the highest possible standard. SNH argued that it was important, given the status of the deer in Scotland, that it was clearly demonstrated to the public that deer welfare, public safety and public health issues were taken very seriously.

612. John Milne noted that deer culls were reliant on the private sector, to achieve the numbers required, and it was therefore important that the public was satisfied, given that animal welfare issues and high calibre rifles were involved, that shooting was carried out appropriately. He said this was required because of the numbers involved and the status of the animal in Scotland, which warranted this special treatment.

613. Finlay Clark, of the ADMG, said that the effective target set in the Bill, for the industry to self-regulate by 2014, was achievable.

614. The British Deer Society noted that there were 400,000 registered deer shooters in Norway who take a test believed to be somewhat simpler than that

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proposed in the Bill. Highland Council said that any future register, if introduced, must not restrict the ability of foreign shooters to shoot in Scotland.

615. The Committee supports the provisions in the Bill which seek to establish a high standard of competency through non statutory means.

616. The Committee also supports the backstop provision for compulsory testing and a register if the voluntary approach turns out not to be successful. 209

Close seasons

617. The Scottish Government decided not to include in the Bill proposals suggested in its consultation on a draft Bill with regard to close seasons for deer. These included suggestions to shorten the close season for female deer and allow male close seasons to be set by DMGs.

618. The Bill therefore makes no changes to the current requirement for the Scottish Government to set a close season for female deer, and power to set a close season for male deer.

619. The Committee heard support for the view that the close season for deer could either be set to suit local circumstances, or abolished altogether, providing all those shooting deer were proven competent to do so. SNH said that this was a possible eventual outcome, given the direction of travel of the Bill: to let local people, as part of the Deer Management Group structure, decide when and how they shoot. In this eventuality, there may be a case for retaining a close season for female deer, but not for male deer, in order to protect calves.

620. The concern in this is that it would allow a free-for-all and that some people would overly exploit the resource. However SNH said it had sufficient powers to tackle such problems, via control orders and intervention powers, and that it could manage any such instances.

621. The British Deer Society suggested that close seasons are not as relevant as many people may think as they only apply to a minority of land – they do not apply on enclosed land where a great deal of shooting takes place. It is thought that this point relates to owner-occupier rights to shoot deer out of season for specified purposes.

622. Scottish Government officials told the Committee that consideration had been given to the local setting of close seasons but a number of DMGs and others in the sector raised serious objections. The Scottish Government had therefore decided not to change the current arrangements for setting close seasons as there was already sufficient scope within the 1996 Act to vary close seasons if required.

623. Officials also noted that the Scottish Government may return to the issue as "it is not clear that the current close season for female deer best reflects the time

209 John Scott MSP dissents from this view.
when their young are most dependant.” The Minister confirmed that the Government did not intend to revisit the issue as part of the Bill, and it would be a matter for future administrations to give consideration to.

624. Finlay Clark, of the ADMG, supported the retention of close seasons in the Bill—

“Back in history, the Deer (Scotland) Act 1959 was introduced largely to afford protection to deer by using close seasons. Deer were a dwindling resource and there was recognition that, unless some protection was afforded to deer species by way of a close season, that resource could not be managed properly […] there might be no welfare issue with an individual male animal being shot out of season while its condition is depleted, but significant disturbance could be caused to the other animals that are accompanying it […] the proposals to retain the current close seasons are pragmatic and take into account the welfare and protection of the resource.”

625. The Committee notes the concerns expressed in responses to the Scottish Government’s consultation on making alterations to close seasons for both male and female deer. The Committee is content that the issue has not been progressed in the Bill and that the 1996 Act contains sufficient flexibility for the Scottish Government to vary close seasons.

626. However, the Committee also notes the comments made by SNH that a consequence of other provisions in the Bill, such as those on establishing universal levels of competence for shooting deer and ensuring more consistent sustainable management of deer, may result in close seasons being unnecessary.

PART 4: OTHER WILDLIFE

Protection of badgers

Background

627. Badgers are currently protected from unlawful persecution, exploitation and disturbance by the Protection of Badgers Act 1992 (“the 1992 Act”). The 1992 Act sets outs five offences in relation to badgers:

- taking, injuring or killing badgers;
- cruelty;
- interfering with setts;
- selling and possession of badgers; and

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628. The section relating to interference with a sett was amended by the Nature Conservation (Scotland) Act 2004 to state that an offence was committed where a person undertook the activity directly, or knowingly caused or permitted (the art and part offences) the act to be done.

What the Bill proposes
629. The Bill extends the provision relating to setts in the 2004 Act to the rest of the 1992 Act relating to taking, injuring or killing badgers, cruelty, selling and possession of live badgers, and marking and ringing, so it would be an offence to undertake such activities directly and also knowingly to cause or permit such acts to be done.

630. The Bill also makes changes relating to the administration of licences and penalties. With regard to licences, which are allowed for certain prohibited activities for defined purposes, the Bill proposes that the Scottish Government become the authority for all licences under the 1992 Act, with the power to delegate administration of such licences to SNH by written direction, or to local authorities by order. The Scottish Government has said that this will bring species licences for badgers in line with other species licensing, ensuring consistency with changes outlined in Part 2 of the Bill relating to licensing under the 1981 Act.

631. Consistency is also the Government’s rationale behind alterations to the penalties which apply to offences relating to badgers. Currently, the maximum penalty for killing a badger is less than that for other badger-related offences, such as digging for a badger. This is because the offence of killing a badger may currently only be dealt with by summary procedure, whereas others can be dealt with by indictment and can thus incur greater penalties. The Bill seeks to address this inconsistency by amending the 1992 Act so that all offences may be tried by summary procedure or indictment.

632. The GWCT questioned the legislation protecting badgers more fundamentally, suggesting that the protection now being afforded to badgers was not proportionate or appropriate—

“The GWCT already has concerns about the general level of protection Badgers now receive, where the original intention was more concerned to ensure that practices such as baiting should rightly be stopped. Badgers are known predators of numbers of species of conservation concern and are linked to TB transmission with implications for human health and agriculture. The population of badgers is rapidly increasing and are already in very favourable conservation status.”

Bovine TB
633. Concerns were raised in responses to the Scottish Government’s consultation, as to how the changes to the 1992 Act in the Bill would affect badger population control that may be required should preventing the spread of bovine TB

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212 The Game and Wildlife Conservation Trust. Written submission to the Rural Affairs and Environment Committee.
in badgers become an issue. Scotland was recognised as having OFT (Officially Tuberculosis Free) status by the European Commission on 8 September 2009.

634. Jonathan Hall, of the NFUS, told the Committee—

“Whether the bill would allow sufficient action to be taken in time to arrest an outbreak of bovine TB remains to be seen. We just do not know. I would not say that such an outbreak is probable, but it is possible and I question whether the bill is sufficient in itself. I do not have too much difficulty with what the bill says about badgers, but we have concerns about badgers, full stop, and it is not clear whether the bill will enable farming and other land management interests to overcome some of those issues.”213

635. The UK Government is thought currently to be developing a badger control policy to help with cases of TB in badgers in the south west of England, and any future outbreaks. The Scottish Government stated that the Bill does not change the provisions in the 1992 Act with regard to disease control in badgers.214

Legitimate disturbance of a sett

636. Whilst most evidence on this issue agreed that the changes proposed in the Bill were logical and consistent, concerns were raised, by organisations such as the GWCT, SGA and SRPBA, about currently being prevented from disturbing setts which were no longer active. Various examples were given, from culling foxes who had taken up residence in an old sett, to work being carried out close to the site of a disused sett. The Scottish Association for Country Sports commented on the lack of provision for lawful disturbance of active and inactive setts, citing what they call ‘humanitarian’215 reasons, such as a dog or child being trapped in the sett, or a wounded badger being in a sett which required attention.

637. The Committee supports the proposals in the Bill which bring consistency to the issue of offences and sentencing under the 1992 Badger Act.

638. The Committee notes the concerns that it is important that proper provisions are available in the event of an outbreak of TB in badgers and further notes that Scotland is currently declared as officially bovine TB free. The Committee is of the view that the Protection of Badgers Act 1992 contains sufficient provision, should a cull of badgers be required at any future point, due to an outbreak of TB, and that this Bill makes no alterations to that position.

639. The Committee recommends that the Scottish Government gives consideration to amending the Bill at Stage 2 to address the points raised by several organisations with regard to the legal disturbance of setts that are no longer active.

215 The Scottish Association for Country Sports. Written submission to the Rural Affairs and Environment Committee.
640. **However, the Committee would hope that common sense would prevail in an instance of a badger sett being disturbed to rescue a child or animal in distress, and takes the view that if the law allows that a parent or owner to be prosecuted in such circumstances, it is absurd.**

**Muirburn**

*Background*

641. Muirburn is the act of burning vegetation, such as gorse, grass and heather, on open habitats including moor and heath. Its purpose is primarily to help manage habitats which are important to various birds and animals, but it also has conservation purposes. It is also carried out to manage the risk of wildfires and could have a role in pest and disease control.

642. Muirburn is currently regulated by sections of the Hill Farming Act 1946, as amended by the Climate Change (Scotland) Act 2009 ("the 2009 Act"). Under the 1946 Act, muirburn can only be carried out between 1 October and 15 April. This can be extended, (in the case of tenants, with landowner’s permission), until 30 April at altitudes below 450m, and until 15 May at altitudes above 450m. The 2009 Act furthered the out of season burning conditions by allowing Scottish Ministers to vary permitted muirburn dates where necessary or expedient to mitigate climate change. A muirburn code also exists to assist compliance with best practice.

643. During consultation on the Bill which became the 2009 Act, responses indicated that further revision was required to muirburn legislation to reflect changes in both objectives and practice since 1946. As such changes were outwith scope of the 2009 Act, this Bill proposes a number of changes to muirburn legislation.

*What the Bill proposes*

644. In the Policy Memorandum accompanying the Bill, the Scottish Government defines its aim regarding muirburn as—

"[...] to facilitate well managed muirburn, to ensure adverse environmental impacts are avoided, and to allow prescribed burning to be used for new beneficial purposes. The current regulation of muirburn under the 1946 Act is too restrictive to allow these objectives to be met effectively."^216

645. Following on from the power given to Ministers by the 2009 Act, to vary muirburn season dates to mitigate climate change, the Bill proposes a raft of other reasons for which Ministers could allow out of season burning, including conserving, restoring, enhancing and managing the natural environment, and public safety. It also proposes variation on a geographical basis.

646. The Bill also proposes changing the current extension date, with landowners’ permission, from 15 May to 30 April, regardless of altitude, as it is felt that many moorland birds have started to nest by 15 May and that nesting could be disrupted by burning later than 30 April. Ministers could not reduce burning days beyond this.

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^216 Policy Memorandum, paragraph 166.
Proposed season dates

647. It was clear during evidence taking that the Scottish Government and relevant stakeholders had worked hard during the consultation phase to agree an acceptable compromise on muirburn policy which most groups could sign up to. Therefore the season dates and ability to be flexible with those in certain circumstances, which are in the Bill, are broadly supported by most stakeholders.

648. The Scottish Government commented on the historic argument that the season should begin in September, saying that the out of season licence should cover legitimate cases for September burning and also that further evidence on the impact of September burning needs to be gathered – such as peat fires, and the impact on species.

649. The Committee notes that the season dates outlined in the Bill came about as a result of a great deal of effort to seek a compromise, and that there is broad agreement on the dates from most stakeholder organisations. The Committee therefore supports the proposed burning dates in the Bill.

Licensed out of season burning

650. The Bill also proposes allowing licensed out of season burning, which would be deemed beneficial in certain circumstances. The Policy Memorandum gives examples of such beneficial purposes as “habitat restoration or recovery from heather beetle infestation” and also to “allow research into the impacts of burning at different times of year, to improve understanding of wildlife behaviour and explore new potential uses for muirburn (such as pest and disease control).”

651. SNH noted that it was not the intention that these be used to carry out catch-up burning required because of poor planning. The intention was that they be used in extraordinary circumstances, such as the need to tackle heather beetle or for scientific study.

652. The Committee saw at first-hand the devastating effect that heather beetle (a beetle which spends the winter months, dormant, in the moss, before warmer temperatures in the spring encourage it to feed on heather and reproduce) can have when it visited Langholm moor. Burning was one of the more effective methods in trying to tackle the beetle effectively, and the timing of that burning was said to be very important. This was cited as an example of the need for licensed out of season burning.

653. Members questioned SNH on whether licenses would be granted in circumstances such as catching-up because of poor weather conditions. SNH confirmed that poor weather was something that due regard would be given to when considering an application, but it was reluctant to open up, say, earlier autumn burning, as the norm, as the intensity of the fire needed to be so much stronger in September, due to the greenness of vegetation, and this intensity had the potential to cause a variety of damage, such as peat damage and carbon release.

654. The written submission by SNH said that—

\[217\] Policy Memorandum, paragraph 170.
“We consider that it is important for licence applicants to be able to show that their plans can only be carried out in the close season and that the benefits to be gained will over-ride the underlying purpose of the close season. This will require the applicant to provide adequate information, and may mean that an ecological survey will need to be carried out.”\textsuperscript{218}

655. SNH gave further examples of this to the Committee on 29 September 2010, saying that there would be situations, such as the aforementioned heather beetle outbreak, that would not require a full ecological survey, as enough information was already known about the potential impacts and consequences, and other situations, where not much was known about the stated reasons and claimed benefits, where it would look for a survey or something similar. It would be a matter of judgement for SNH.

656. Plantlife highlighted the negative effects burning can have on certain habitats—

“From a plant conservation point of view, muirburn has very few, if any, benefits. Woody shrubs, lichens and bryophytes are all damaged by burning, with damaged populations taking decades to recover, if they can recover. It is our view therefore that muirburn should not be practised in sensitive habitats where the constituent plant communities cannot recover.”\textsuperscript{219}

657. Plantlife went on to argue for high altitude provisions to be added to the Bill—

“We would therefore encourage the committee to consider retaining power within the bill to limit muirburn at high altitudes, where recovery time is extremely slow for affected plant communities and on steep and rocky slopes of the West Coast where internationally important communities of rare bryophytes occur.”\textsuperscript{220}

658. The Committee is supportive of the provisions regarding licensed out of season burning for combating specific issues such as outbreaks of heather beetle and particularly poor weather during the season, and also to allow scientific experiments.

659. However, it is important that full account is taken of the effect such burning could have on various soils, habitats and wildlife and that all out of season burning is appropriately monitored and managed in strict adherence to the muirburn code.

Poor practice and compliance with muirburn code

660. The muirburn code is published by the Scottish Government and contains information on how and when muirburn should be practised and a list of offences which could result in prosecution. The introduction to the most recent version of the code states that—

\begin{footnotesize}
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\item \textsuperscript{218} Scottish Natural Heritage. Written submission to the Rural Affairs and Environment Committee.
\item \textsuperscript{219} Plantlife. Written submission to the Rural Affairs and Environment Committee.
\item \textsuperscript{220} Plantlife. Written submission to the Rural Affairs and Environment Committee.
\end{itemize}
\end{footnotesize}
“Changes in agricultural support are increasing the importance of this Code. The cross compliance requirements of the Single Farm Payment (SFP) require moorland to be maintained in Good Agricultural and Environmental Condition (GAEC), and the Muirburn Code will be used as the standard expected of managers. The Code applies to farmers and all moorland managers and forms part of the compliance requirements for Single Farm Payments. The Code applies to all areas, regardless of altitude or type of vegetation. It should not be seen as applying only to grouse moors, as the guidance applies equally to the management of all vegetation by fire.”

661. The Skye and Lochalsh Environment Forum (SLEF) argued in written evidence that urgent revisions to the muirburn code were necessary, and highlighted anecdotal evidence which was brought to the Committee’s attention during evidence taking of unregulated and uncontrolled muirburn taking place in Scotland, particularly on the west coast and western highlands and islands. The Forum drew the attention of the Committee to damage it said had been done to habitat, and to animals such as the otter, in February and March 2010, by burning carried out during unsuitable conditions, by inexperienced people, lack of manpower to tackle resulting fires and lack of appropriate law enforcement.

662. In terms of how best to tackle instances of bad practice, the Forum cited an example of using the SRDP as an incentive, as detailed in the code—

“...at present the only hope of non-legislative reform lies in the effect of Grazings Clerks being told by the Scottish Government’s Rural Payments and Inspections Directorate that their SRDP payments may be withheld if reckless muirburn is continued. At the instigation of S&LEF this was done on Skye with remarkable positive effect.”

663. The Forum also cites education as key to ensuring better compliance with the muirburn code—

“...there ought to be education programmes designed to instil awareness of the law especially as it relates to the protection of otters, badgers, water voles and ground-nesting birds.”

664. It also suggests that vicarious liability could play a part in better enforcement of the law—

“...key solution would lie in the Wildlife and Environment (Scotland) Bill making provision for all landowners to be held vicariously liable for the actions of their crofting tenants.”

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222 The Sky and Lochalsh Environment Forum. Written submission to the Rural Affairs and Environment Committee.
223 The Sky and Lochalsh Environment Forum. Written submission to the Rural Affairs and Environment Committee.
224 The Sky and Lochalsh Environment Forum. Written submission to the Rural Affairs and Environment Committee.
225 The Sky and Lochalsh Environment Forum. Written submission to the Rural Affairs and Environment Committee.
665. However, given that crofters have more or less complete everyday control over their land it would seem peculiar to the Committee to hold their landlords accountable for bad muirburn practice.

666. SEPA noted concerns with regard to soil damage—

“In response to the [Scottish Government] consultation’s request for views on the proposal that Scottish Ministers be given powers to restrict certain types of burning practice which risk soil exposure and erosion, SEPA’s original response strongly supported this proposal. SEPA notes that this proposal has not been pursued through the Bill and it is proposed to address it through further evidence gathering in the first instance. SEPA would welcome involvement in the consideration of that process [...]”

667. The Committee notes that muirburn can be a very helpful land management tool that has economic, social and environmental benefits. It is also aware that if poorly and/or irresponsibly practised it can have a negative effect on wildlife, such as ground nesting birds, habitat, soil and biodiversity. The Committee supports the muirburn code and regulations in trying to prevent poor practice. With regard to SEPA’s comments regarding muirburn causing soil damage, the Committee asks the Scottish Government if it is possible to withdraw or limit funding to any landowner who was not complying with the muirburn code and keeping their land in good environmental and agricultural condition and, if so, whether there have been any instances of this.

Notification

668. The Bill proposes making changes to the neighbour notification requirements under the 1946 Act, which made it an offence to make muirburn without providing written notice of the date, location and approximate extent of the burn to neighbouring properties at least 24 hours before burning.

669. The Consultation proposed removing this requirement entirely, but that met with some resistance. What the Bill proposes is a compromise position which would see those planning muirburn notifying proprietors and occupiers of the land within 1km of the planned burn of the intention to burn during the season. Further details should only be given on request. If there are 10 or more people to notify, it may be done by notice in a local newspaper and neighbours would have the option of opting out of notifications.

670. NFUS supported the amended notification requirements—

“[...] the more flexible notification requirement, to be introduced under the Bill should ensure that those interested in knowing when and where muirburn will occur will be informed, is a step in the right direction.”

226 The Scottish Environment Protection Agency. Written submission to the Rural Affairs and Environment Committee.

227 John Scott MSP dissents from this paragraph.

228 National Farmers Union Scotland. Written submission to the Rural Affairs and Environment Committee.
671. There was no disagreement to these proposals expressed in evidence.

672. The Committee supports the amendments in the Bill to the notification requirements with regard to muirburn.

PART 5: SITES OF SPECIAL SCIENTIFIC INTEREST

Background
673. Sites of Special Scientific Interest (SSSIs) are the primary statutory nature conservation designation across Great Britain. In Scotland they are designated by SNH and are areas of land or water which are deemed to be of special interest due to their flora or fauna or geological or geomorphologic (geological structure) features. There are currently 1442 SSSIs in Scotland, covering approx 13% of the land mass. Most are privately owned.

674. SSSIs were created under the National Parks and Access to the Countryside Act 1949, amended by both the 1981 Act and the Nature Conservation (Scotland) Act 2004 (“the 2004 Act”).

What the Bill proposes
675. The Bill makes relatively minor changes to the 2004 Act which seek to improve administrative efficiency, allow restoration of illegal damage without first resort to prosecution, allow boundary rationalisation of multiple and adjoining SSSIs, and allow for denotification of an SSSI in certain situations without having to use the current full procedure.

Merging SSSIs
676. The majority of those who commented on the SSSI proposals to the Committee were content with the provisions in the Bill. One exception to this was the Scottish Association for Country Sports, which had concerns regarding the possible merging of current SSSI sites—

“We still have reservations on the part of this which would allow two SSSIs to be combined without consultation. The concept of saving bureaucracy and expense is excellent, but there is still a loophole whereby a site which is notified principally for a specific species, such as a rare moss, could be combined with an adjacent site, and as a result ‘accidentally’ and unjustifiably become notified for bird species or heritage features which may not be relevant and which would in some cases be vigorously contested by landowners.”

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677. This was also of concern to Comhairle nan Eilean Siar, which asked for clarification from SNH of the circumstances in which such mergers would happen.

678. SNH told the Committee the merger was intended for situations such as neighbouring SSSIs which are notified for similar purposes, or for SSSIs which are within other SSSIs. It said the merger was not intended, for example, to be used for merging all SSSIs in one area. The basic rule of thumb was that mergers should only take place where there was a demonstrable benefit to all involved, and

229 Scottish Association for Country Sports. Written submission to the Rural Affairs and Environment Committee.
where they would provide clarity on what was sanctioned on what land and under what circumstances. All proposed mergers would be discussed with the relevant land owners.

Register of damage
679. The Scottish Wildlife Trust thought the proposals in the Bill could be strengthened by the addition of a requirement to publish a register of damage to SSSIs.

680. The Committee is broadly content with the proposals regarding SSSIs, which appear to be in the interests of simplifying the current administrative arrangements.

PART 6: GENERAL

681. This part contains general provision on Crown application and commencement. The Committee has no comment on Part 6.

FINANCIAL ISSUES

Financial Memorandum

682. The Finance Committee carried out level one scrutiny of the Financial Memorandum (FM), which involved it writing to the Scottish Government, Scottish Gamekeepers Association and Scottish Natural Heritage, to seek views on the financial elements of the Bill.

683. The Finance Committee subsequently sent the responses to the Committee, along with a covering letter. These are attached at Annexe B.

Resourcing of additional SNH duties

684. In evidence to the Rural Affairs and Environment Committee, SNH expressed a number of concerns about the extra resources that would be required to implement the proposed licensing schemes, noting that the number of licences issues by the Scottish Government increased by almost 250% between 2005 and 2008. SNH concluded that—

“We are discussing with the Scottish Government how the administration and monitoring of this extra workload can be accommodated at a time of severe financial constraints.”

685. SNH expanded on this when giving evidence to the Committee on 29 September 2010, saying that resourcing the additional provisions in the Bill in the face of a likely declining budget would be a “real issue” and that four full

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230 Scottish Natural Heritage. Written submission to the Rural Affairs and Environment Committee.
time equivalent posts were being transferred to SNH to handle the additional species licensing requirements.232

686. SNH said it was not clear on what the additional burden would be and what the exact resource implications of issues such as deer management, species licensing and muirburn would be. When asked for a ballpark figure, SNH said it would require additional hundreds of thousands of pounds. 233

687. The Minister told the Committee that, whilst understanding the concerns expressed by SNH, she was “confident” that existing resources, if deployed efficiently, could deliver the requirements contained in the Bill. She added that the Scottish Government and SNH disagreed on the level of certain costings, for example, the Minister said that SNH estimate that operating the species licence scheme would cost £24,000 more than it currently costs the Scottish Government to operate.

688. The Minister also noted that the Scottish Government’s draft budget was due for publication around the 18 November 2010, and that it would not be helpful to pre-empt the levels of funding for Government agencies.

689. The Committee notes the comments made by SNH regarding its concerns about how the extra duties the Bill places on it will be resourced in the current economic climate.

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The Committee reports to the Parliament as follows—

INTRODUCTION

690. At its meetings on 29 June and 7 September 2010, the Subordinate Legislation Committee considered the delegated powers provisions in the Wildlife and Natural Environment (Scotland) Bill at Stage 1. The Committee submits this report to the Rural Affairs and Environment Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

691. The Wildlife and Natural Environment (Scotland) Bill (“the Bill”) was introduced in the Parliament on 9 June 2010 by the Cabinet Secretary for Rural Affairs and Environment, Richard Lochhead MSP.

692. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

693. Correspondence between the Committee and the Scottish Government is reproduced in the Annexe.

694. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in sections: 5(3)(d) (inserting new section 2(5) in the Wildlife and Countryside Act 1981), 6(2) and (3) (inserting new section 10A in the 1981 Act), 10(a) and (b) (amending section 22 of the 1981 Act), 13(3) (inserting new section 11A in the 1981 Act), 14 (inserting new sections 14(1)(a)(ii), 14(2B), 14ZC(1) and 14A(1) in the 1981 Act), 26(4) (inserting new section 17A in the Deer (Scotland) Act 1996), 28(3) and (4) (amending section 23A and inserting new section 23B in the Hill Farming Act 1946), 31 (amending section 14 of the Nature Conservation (Scotland) Act 2004), 34(1) and 35(1).

Delegated powers provisions

Section 14(5) – Power to specify invasive animals and plants outwith their native range which specified persons must provide notification of.

New section 14B(1) of the Wildlife and Countryside Act 1981

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative procedure

695. New section 14B(1) provides that the Scottish Ministers may, by order, make provision about the notification of the presence of invasive animals or plants at any specified place outwith their native range where persons are, or become aware of, the presence of such animals or plants. An order may specify the persons (or

234 Wildlife and Natural Environment (Scotland) Bill Delegated Powers Memorandum
types of persons) who must make a notification. New section 14B(4) provides that it is an offence to fail without reasonable excuse to notify the presence of a specified plant or animal in accordance with the requirements of an order. Given the apparent breadth of the power and given the provision for criminal sanctions, the Committee was concerned that notification duties could be imposed on members of the public. The Scottish Government was accordingly asked for an indication of the types of persons whom it is intended will be subject to a notification duty and who will in consequence be subject to criminal sanctions consequent on a failure to notify.

696. The Committee notes that the Scottish Government’s intention is that the duty to notify will only be applied to persons who might reasonably be expected to identify the individual species, these being such persons as would be likely to come into contact with, and be able to identify, species in a professional or official capacity. If it is intended that this power is for this restricted purpose the Committee considers that the power as currently framed is too broad in its application.

697. The Committee recommends that the Scottish Government amends the power to make clear that the duty to notify invasive species can only be imposed on those persons who would be likely to come into contact with such species in a professional or official capacity. The Committee is content that the exercise of the power is subject to negative procedure.

Section 15 – Non-native species code

New section 14C of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Code of Practice
Parliamentary procedure: Draft laid before the Scottish Parliament at least 30 days before code is issued

698. New section 14C of the 1981 Act provides that the Scottish Ministers may issue a code of practice to provide guidance on the application of sections 14, 14ZC, 14A and 14B of the 1981 Act as amended, the application of any order made under any of those sections or licences granted under section 16(4)(c).

699. New section 14C(6) provides that failure to comply with a provision of a code does not, of itself, render a person liable to proceedings of any sort but the code may be taken into account in determining any question in any proceedings. New section 14C(7) provides that in a criminal prosecution for an offence under sections 14, 14ZC, 14A or 14B, failure to comply with a relevant provision of the code may be relied upon as tending to establish liability.

700. The Committee noted that the provisions of new section 14C(7) are in identical terms to, and have the same effect as, the provisions of section 37(9) of the Animal Health and Welfare (Scotland) Act 2006 ("the 2006 Act") in respect of animal welfare codes. The Committee noted that an animal welfare code under the 2006 Act requires to be laid before, and be approved by resolution of, the Scottish Parliament.
701. Given that a failure to comply with a relevant provision of an animal welfare code under section 37 of the 2006 Act or a relevant provision of a code of practice under new section 14C may be relied upon as tending to establish liability for a criminal offence, the Committee considers that the code has a legal effect of significance which justifies scrutiny by the Parliament. The Scottish Government argues that this would be an unnecessary use of Parliamentary time but does not give the Committee a clear indication as to why this is thought to be the case in this context in contrast to the view taken by the Parliament in relation to the 2006 Act.

702. The Committee does not consider that the Scottish Government has given adequate justification for the lack of Parliamentary scrutiny proposed in respect of the code under new section 14C. Since the code provides a standard which can be used as evidence to determine criminal liability the Committee recommends that the procedure chosen by the Parliament with respect to animal welfare codes under the 2006 Act should be adopted for the code under new section 14C, namely affirmative procedure.

Section 18(3) and (4) – Delegation of a licence granting power to a local authority

*New section 16A(4)(a) of the 1981 Act*

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** written direction or order
- **Parliamentary procedure:** no procedure or negative procedure

703. Section 16 of the 1981 Act deals with the licensing of activities which would otherwise be prohibited under Part 1 of the 1981 Act. Section 18(3) of the Bill inserts a new section 16A which provides for the Scottish Ministers to delegate their licensing functions under section 16 to SNH or to a local authority. There are accordingly 2 elements to the power – the first is delegation to SNH, which is to be made by written direction (new section 16A(4)(a)); the second is delegation to a local authority, which is to be made by order (new section 16A(4)(b)).

704. The Committee considered that it would be evident to the public from the publication and terms of an order that there had been a delegation to a local authority. The nature and extent of the delegation will accordingly be in the public domain. However, in respect of delegation to SNH by written direction only, the Committee was concerned that it might not be clear to the public that there had been such a delegation. The Committee therefore asked the Scottish Government how it intends to publish the fact that there has been a delegation of licensing functions to SNH, or otherwise make the public aware that there has been such a delegation.

705. The Committee notes from the Scottish Government response that both the Scottish Government and SNH currently exercise species licensing functions and that the responsibilities of each are contained on their respective websites. The Committee accepts that what is proposed with respect to publication of delegation
of licensing functions to SNH under new section 16A(4)(a) reflects what is currently done in this regard. The Committee considers this to be satisfactory.

706. The Committee is satisfied with the Scottish Government response. The Committee finds the proposed power acceptable in principle and that it is subject to negative procedure in respect of delegation by order to a local authority and to no procedure in respect of delegation by written direction to SNH.

Section 23 – Deer management code of practice

New section 5A of the Deer (Scotland) Act 1996

Power conferred on: Scottish Ministers
Power exercisable by: Code of Practice
Parliamentary procedure: Laid before the Scottish Parliament

707. New section 5A requires SNH to draw up a code of practice for the purpose of providing practical guidance in respect of deer management. The code once approved by the Scottish Ministers must be laid before the Scottish Parliament but it is not subject to any Parliamentary scrutiny.

708. The code is not binding nor does it create or have effect with regard to criminal offences. Failure to comply with a provision of a code does not render a person liable to any action in terms of the 1996 Act or to proceedings of any sort. However, amended section 7 of the 1996 Act provides that SNH will have to have regard to the code in exercising its functions with respect to control agreements, including forming a view on whether, in respect of a particular area, deer should be taken, removed or killed. It therefore appeared to the Committee that the code would accordingly have status as a driver and influencer for certain actions on the part of SNH. For this reason, the Committee sought to explore with the Scottish Government why it was considered that no form of parliamentary scrutiny was required.

709. The Committee acknowledges that (unlike the code of practice on non-native species under section 14C of the 1981 Act) the code does not operate as a direct trigger for statutory enforcement action. However, having regard to the provisions of section 7 of the 1996 Act as amended by this Bill, it appears to the Committee that the significance and effect of the code go beyond enabling SNH to provide practical advice and examples to assist deer managers as stated in the Scottish Government response. It will have a part to play in shaping SNH’s approach to control agreements. The Committee considers that it is for the lead committee to judge the apparent significance and effect of the code and whether in light of this it should be subject to some form of parliamentary scrutiny.

710. The Committee draws the attention of the lead committee to the role of the code of practice in relation to deer management by SNH and recommends that it should consider whether the code should be subject to Parliamentary scrutiny.
Section 27(7) – Protection of Badgers

New section 10A(4)(a) of the Protection of Badgers Act 1992

Power conferred on: Scottish Ministers
Power exercisable by: written direction or order
Parliamentary procedure: No procedure or negative procedure

711. Section 10 of the Badgers Act 1992 deals with the licensing of activities which would otherwise be prohibited under that Act. Section 27(7) of the Bill inserts a new section 10A which provides for the Scottish Ministers to delegate their licensing functions under section 10 to SNH or to a local authority. There are accordingly 2 elements to the power – the first is delegation to SNH, which is to be made by written direction (new section 10A(4)(a)); the second is delegation to a local authority, which is to be made by order made by statutory instrument (new section 10A(4)(b)).

712. The Committee considered that it would be evident to the public from the publication and terms of an order that there had been a delegation to a local authority. The nature and extent of the delegation will accordingly be in the public domain. However, in respect of delegation to SNH by written direction only, the Committee was concerned that it might not be clear to the public that there had been such a delegation. The Committee therefore asked the Scottish Government how the Government intends to publish the fact that there has been a delegation of licensing functions to SNH, or otherwise make the public aware that there has been such a delegation.

713. The Committee notes from the Scottish Government response that both the Scottish Government and SNH currently exercise licensing functions in relation to badgers and that the responsibilities of each are contained on their respective websites. The Committee accepts that what is proposed with respect to publication of delegation of licensing functions to SNH under new section 10A reflects what is currently done in this regard. The Committee considers this to be satisfactory.

The Committee is satisfied with the Scottish Government response. The Committee finds the proposed power acceptable in principle and that it is subject to negative procedure in respect of delegation by order to a local authority and to no procedure in respect of delegation by written direction to SNH.

ANNEXE

Correspondence with the Scottish Government

Wildlife and Natural Environment (Scotland) Bill at Stage 1

The Subordinate Legislation Committee considered the above Bill on Tuesday 29 June and seeks an explanation of the following matters:
Section 14(5) – Power to specify invasive animals and plants outwith their native range which specified persons must provide notification of

Given that the breadth of the power may appear to be disproportionate if it is intended to impose duties on ordinary members of the public, the Scottish Government is asked for an indication of the types of persons whom it is intended will be subject to a notification duty and who will in consequence will be subject to criminal sanctions in the event of a breach of duty?

Section 15 – Non-native species code

Given that the provisions of new section 14C(7) are in identical terms to, and have the same effect as, the provisions of section 37(9) of the Animal Health and Welfare (Scotland) Act 2006 in respect of animal welfare codes, and given that a failure to comply with a relevant provision of an animal welfare code under section 37(9) of the 2006 Act or a relevant provision of a code of practice under new section 14C(7) may be relied upon as tending to establish liability for a criminal offence, the Scottish Government is asked why affirmative procedure is adopted with respect to an animal welfare code under the 2006 Act but neither affirmative nor negative procedure is proposed with respect to a code under new section 14C?

Section 18(3) and (4) – Delegation of a licence granting power to a local authority

Given that delegation of licensing functions to SNH is to be made by written direction, how does the Scottish Government intend to publish the fact that there has been a delegation of licensing functions to SNH, or otherwise make the public aware that there has been such a delegation? Can this be made clear on the face of the Bill?

Section 23 – Deer management code of practice

Given that the code of practice on deer management will drive and influence certain actions on the part of SNH, why does the Scottish Government consider that some form of parliamentary scrutiny is not required?

Section 27(7) – Protection of Badgers

Given that delegation of licensing functions to SNH is to be made by written direction, how does the Scottish Government intend to publish the fact that there has been a delegation of licensing functions to SNH, or otherwise make the public aware that there has been such a delegation? Can this be made clear on the face of the Bill?

The Scottish Government responded:

Section 14(5) – Power to specify invasive animals and plants out with their native range which specified persons must provide notification of

The Scottish Government’s intention is that the duty to notify will only be applied to persons who might reasonably be expected to identify the individual species. Such persons would be likely to come into contact with, and be able to identify, species in a professional or official capacity. The Policy Memorandum provides a table of examples of categories of persons the notification duty might be applied to. The table is reproduced here for ease of reference:
<table>
<thead>
<tr>
<th>Species</th>
<th>Species Specified persons for notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese muntjac deer (Muntiacus reevesi)</td>
<td>Forestry/woodland managers; Professional stalkers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Cervus species (deer) excluding red deer (Cervus elaphus) on the refugia islands</td>
<td>Forestry/woodland managers; Professional stalkers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Carpet sea squirt (Didemnum vexillum)</td>
<td>Harbour Masters; Port Authorities; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>European and Canadian beavers (outwith trial reintroduction area)</td>
<td>District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Floating pennywort (Hydrocotyle ranunculoides)</td>
<td>District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials</td>
</tr>
<tr>
<td>Water primrose (Ludwigia grandiflora)</td>
<td>District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials</td>
</tr>
</tbody>
</table>

### Section 15 – Non-native species code

The code of practice is intended to be user-friendly and accessible so that it is of value to both professionals and the public. Given the subject matter of this code it is expected to require regular revision to ensure that it is up to date and relevant and incorporates new issues as they arise (which is likely given the nature of this subject). In addition the code may require updating as any new orders are made under the Bill.

The need not to take up an undue amount of Parliamentary time dealing with regular changes, together with the requirement upon Scottish Ministers when making or revising the code to consult SNH and any other person appearing to have an interest, are considered to justify that the Bill requires neither affirmative nor negative procedure.

### Section 18(3) and (4) – Delegation of a licence granting power to a local authority

Currently, both the Scottish Government and SNH exercise species licensing functions. Details of the responsibilities of each body are contained on their websites. If a delegation to SNH was made to change the current split in functions,
this would be noted on the appropriate pages of the Scottish Government and SNH websites. In addition to this the Scottish Government would inform relevant stakeholders prior to any change to the current split of functions. The Scottish Government does not consider that any statutory provision on this matter is necessary.

**Section 23 – Deer management code of practice**

Although the Bill requires SNH to have regard to the code of practice and monitor compliance with the code, a breach of the code does not operate as a direct trigger for statutory enforcement action. The code is intended to enable SNH to provide practical advice and examples to assist deer managers. It is therefore prepared by SNH for approval by the Scottish Ministers. The Scottish Government considers that this is the appropriate level of scrutiny for a code of this type, and that Parliamentary scrutiny is not therefore required.

**Section 27(7) – Protection of Badgers**

Currently, both the Scottish Government and SNH exercise licensing functions in relation to badgers. Details of the responsibilities of each body are contained on their websites. If a delegation to SNH was made to change the current split in functions, this would be noted on the appropriate pages of the Scottish Government and SNH websites. In addition to this the Scottish Government would inform relevant stakeholders prior to any change to the current split of functions. The Scottish Government does not consider that any statutory provision on this matter is necessary.
ANNEXE B: LETTER FROM THE FINANCE COMMITTEE

Finance Committee – consideration of the Financial Memorandum of the Wildlife and Natural Environment (Scotland) Bill

As you are aware, the Finance Committee examines the financial implications of all legislation, through the scrutiny of Financial Memoranda. The Committee agreed to adopt level one scrutiny in relation to the Wildlife and Natural Environment (Scotland) Bill. Applying this level of scrutiny means that the Committee does not take oral evidence or produce a report, but it does seek written evidence from affected organisations.

All submissions received are attached to this letter. I would particularly draw your attention to the comments made by Scottish Natural Heritage. If you have any questions about the Committee’s scrutiny of the FM, please contact the clerks to the Committee via the contact details above.

Andrew Welsh MSP,
Convener

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The formal consultation ran from June to September 2009, which SNH responded to. In addition to this, we attended a stakeholder meeting that was organised by the Bill team before the consultation period started, and have held regular meetings with the Bill team as the Bill has been developed.

In our consultation response, we noted that the transfer of all species licensing work to SNH would require additional resources. We have also discussed the resource implications with the Bill team.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

We did not give any figures for the likely financial implications of the Bill in our consultation response. However we discussed some of the likely costs with Scottish Government policy leads for different parts of the Bill after the consultation ended. The figures provided in the Financial Memorandum for the costs to SNH for operating the out of season muirburn licensing system reflect our initial estimates of the costs for setting up and operating this scheme.

It should be borne in mind that there are some elements of the introduced Bill that have changed since the consultation exercise and therefore some financial assumptions need to be adjusted to reflect this.

3. Did you have sufficient time to contribute to the consultation exercise?
Yes.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill covers a wide range of topics. Those that will have a financial implication on SNH are highlighted below, listed in the same order as in the Financial Memorandum:

Invasive non-native species
The Bill does not give SNH any new duties with respect to invasive non-native species (INNS), but will provide new powers to assist in future eradication schemes. These powers will be discretionary, and the figures quoted in the Financial Memorandum (para 217) are fair.

The Bill does not make provision for any coordinating body overseeing work related to the control or eradication of INNS, nor does it identify the need for an initial point of contact for anyone concerned by new infestations or wanting general advice. These issues have been raised in the Rural Affairs and Environment Committee discussions and SNH had indicated that it would be well placed to take on this more central role. There would be an additional staff cost to provide this function which we estimate to be in the order of £40,000.

The Code of Practice that is being developed by the Scottish Government gives guidance on managing INNS, and directs people to the SNH website for information on native ranges of species. We note that there is nothing in the Financial Memorandum about promoting the new Code of Practice but discussions within the Scottish Government’s Invasive Non-Native Working Group have recognised the importance of effective promotion of the Code. Our experience from the promotion of the Scottish Outdoor Access Code is that targeted awareness raising is essential to ensure effective adoption of the Code. Our Communication team have estimated that it would cost around £100,000 to do this well.

Species licensing
One of the proposals in the Bill is for all species licensing that is currently carried out by the Scottish Government to be passed to SNH. SNH already carries out some species licensing, so this proposal would mean that this is all carried out by one organisation.

The Financial Memorandum notes that there are 4 staff employed by the Scottish Government to carry out licensing work, with a combined annual cost of £109,769, and that a similar cost would be incurred by SNH. Our calculation of the overall cost of employing staff at equivalent grades to those mentioned in the Financial Memorandum to carry out this additional work is £134,050. These figures relate only to the licensing work that is currently carried out centrally by the Scottish Government, and do not include any costings for species licensing.
that is carried out by the Scottish Government Rural Payments and Inspections Directorate (SGRPID). We understand that this licensing remit will be retained by SGRPID.

The Financial Memorandum does not include any assessment of any associated costs relating to the transfer of the additional licensing remit to SNH. This includes costs for the development of guidance for use by licence applicants and SNH staff, staff training and the possible development of online licensing systems. These lines of work will be required before any possible transfer of licensing remit happens to ensure a smooth changeover. In addition there is a requirement for ongoing monitoring and evaluation of licence returns to determine the possible impacts of certain activities on the Favourable Conservation Status of some species and to avoid any possible infraction proceedings from the European Union.

Deer
There are three main areas of work for SNH that are derived from the Bill: the development of a Code of Practice for Sustainable Deer Management; the development and operation of a new general authorisation system for owners and occupiers to shoot deer during close seasons for certain purposes; and a review of competence amongst those who shoot deer if the Scottish Ministers do not exercise the power to introduce a statutory register of competence by April 2014.

SNH has started work on producing the Code of Practice, and we intend to stage a consultation exercise for this in Spring 2011. We estimate that this will result in a one-off cost of around £20,000. We are preparing for any possible review of competence in 2014 by determining the current level of competence, against which any future level can be measured. This initial research will cost about £10,000. We estimate that the cost of carrying out a review in 2014 will be around £15-20,000, depending on its terms of reference.

Badgers
The Bill proposes to pass the badger licensing work that is currently carried out by the Scottish Government to SNH. We already carry out some badger licensing work, and provide advice to the Scottish Government for the licences that are issued from Victoria Quay. We therefore consider that this will have a neutral effect on our workload.

Muirburn
SNH will be the licensing authority for the new out of season muirburn licences. The Financial Memorandum quotes estimates of the costs of setting up and operating the new scheme that we passed to the Scottish Government. The running costs are based on an assumption that we will receive 10 applications each year. Submissions made to the RAE Committee at stage 1 have suggested that the demand for out of season muirburn licences may be higher, and we now consider that it would be prudent to expect up to 20 applications per year, thereby doubling the annual costs stated in the Financial Memorandum to £17,214.
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Bill introduces many new areas of work for SNH, as highlighted above, which are not covered in our Grant in Aid settlement. Like other public bodies, SNH is facing unprecedented pressures on its budget and it is unlikely that we could meet the financial costs associated with the Bill without additional funds. We believe there is limited scope to charge for additional licensing services and that this may be counter productive to encouraging their uptake. This would also be a major change in policy that would have to be considered by our Board. If additional funds are not provided to support our implementation of the Bill's provisions then it is likely that this will not be fully effective, or delivery of some of our other functions, in particular some of those associated with the delivery of National Performance Framework targets and outcomes, will be hampered.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum concentrates mainly on the costs of carrying out the new provisions. It does not consider fully the likely start-up costs that will be incurred in preparation for the new processes, such as the costs of preparing guidance, staff training and wider awareness raising, that we have highlighted. There also does not seem to have been any consideration of phasing in of some of the provisions according to seasons. For example, the timetable for the passage of the Bill may mean that the new Act cannot be implemented before the start of the muirburn, new hare, or hind/doe close seasons. We would suggest that it would be better not to introduce the new muirburn and hare licensing provisions, or the changes to the owner/occupier exemptions for killing deer out of season while the relevant close seasons are under way in 2011. Instead these should be introduced in time for the 2012 close seasons.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The strengthening of the legislative means for dealing with damage to the environment caused by deer or invasive non-native species is likely to increase public expectation that problems will be tackled effectively. For example this means that public bodies that own large areas of land will have to show leadership to deal with invasive non-native species on their land. We have carried out an initial assessment of the work required on the land that we own or manage. This has shown that in some places these species can be controlled as part of our normal land management operations, but in some places significant expenditure will be needed. We may also face increased pressure to use our new discretionary powers in relation to deer or invasive non-native
species on other land, and if necessary pick up the costs where these cannot be recovered.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Although we propose to develop new guidance for the public and SNH staff before our new functions are passed to us, we will always keep this under review. We may also be required to review the Code for Sustainable Deer Management in the future, and to carry out further awareness raising campaigns in relation to aspects of the Bill’s provisions.

We are also mindful that some amendments could be made to the Bill at stages 2 or 3 that will pass more functions to SNH. In particular the possibility of requiring certain types of game shoots to operate under licence has been discussed at RAE Committee meetings. If this is introduced, with SNH as the licensing authority, we believe that this could amount to around 1fte of additional staff resource.

SUBMISSION FROM ABERDEENSIRE COUNCIL

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

   Aberdeenshire Council took part in the consultation exercise for the Bill, but no comments were made on the financial assumptions in it.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

   N/A

3. Did you have sufficient time to contribute to the consultation exercise?

   N/A

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

   In most circumstances the financial implications are accurately reflected. However, in reference to species licensing and licensing functions in relation to badgers, if option 3 were favoured, the figures cited may be considered low for Aberdeenshire Council, since we are likely to be involved in more cases than the average assumed within the financial memorandum: approximately 3 and 1 respectively. Thus our costs are likely to be in excess of the £1442 as suggested per local authority.
The costs are also based on staff who are experienced in fully determining and issuing licenses on a regular basis. It is a fair assumption that the time taken for staff that may individually only determine and issue 1 or 2 applications/licenses per year will be greater and therefore the cost of processing each license will increase.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

There is no scope within any current budget of the department who would likely be tasked with determining and issuing species licensing to meet these financial obligations. In light of probable future budget cuts the ability to meet these costs in the future seems even less likely. The departments/agencies that are currently dealing with licensing would see a budget saving, if the responsibility for licensing were shifted to another agency, and these savings could be reallocated to local authorities to meet the costs associated with this new function.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Unsure, the estimates and time scales given are only for a period covering 3 years. In considering species licensing and licensing functions in relation to badgers, as more land is developed and more development in the countryside takes place, it is likely that there will be an increased demand for licenses. There has also been a steady increase in the number of licenses issued in Scotland. Licenses pertaining to badgers issued for development purposes in the period 2005-2010 averaged 33 licenses/year, whereas in the previous period 2000-2005, only 15 licenses/year were issued. I would therefore suggest that although the figures cited for the short period up to 2014 may be accurate the likelihood is that the associated costs will continue to rise in future years.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The costs suggested in the financial memorandum would presumably not be affected by a wider policy initiative. However, depending on the impacts of the bill on wider policy, other related financial implications may become apparent.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
This could be a distinct possibility, but a full study of the impacts of any subordinate legislation would be needed to allow other costs to be identified.

SUBMISSION FROM THE SCOTTISH GAMEKEEPERS ASSOCIATION

The Scottish Gamekeepers Association thanks the Finance Committee for being offered the opportunity to comment on the Financial Memorandum and is pleased to respond as set out below. In essence, we believe that the Financial Memorandum provides a practical snapshot of known costs with regard to the draft legislation. We note however that there are costs associated with deer stalking competence, which remains to be adequately quantified. We also note discussion during Stage 1 evidence sessions around proposals for licensing which have not formed part of the draft Bill to date. We do not believe it is appropriate to consider these within the WANE Bill, and certainly not without a full review of the individual costs, the administrative expense and the overall biodiversity objectives.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, we did take part in the consultation exercise for the Bill. We made no specific comment on the financial assumptions made, except to observe that we did not want legislation to impose unnecessary bureaucracy. The WANE Bill started out with the intention of consolidating and simplifying a range of archaic legislation.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/A

3. Did you have sufficient time to contribute to the consultation exercise?

Yes, there was adequate time to contribute to the consultation exercise.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Snaring

The Financial Memorandum makes particular reference to the costs of snare training. The costs of training will ultimately fall on individuals wishing to be accredited. We believe that the figures identified in the Financial Memorandum in respect of snare training numbers and costs are a reasonable estimate of the likely take-up.

We note the assumptions made with regard to the costs to different constabularies. We think some saving can be made on these costs if there is consolidation in the number of constabularies, or if one constabulary (or perhaps a central police agency like the NWCU) holds responsibility for administration. This would also have the benefit of increasing administrative expertise.
Deer

The Financial Memorandum mentions the possibility that following review in 2014, Ministers may decide to implement deer stalking competence requirements. The Financial Memorandum suggests that this might cost between £80 and £280 per individual. Otherwise, the financial implications are not assessed. As with snare training, the costs of competence training will ultimately fall on individuals, rather than on an organisation, unless for instance a land management group or owner decides to bear part or all of the cost of training. By virtue of the increased costs, the implications for take-up are likely to be considerably different than those for snare training. Stakeholders would also have to consider the implications, not just for deer management operators, but also the impact on the stalking tourism market, of any competence requirements. We therefore believe that it should be a requirement to undertake a full review of the financial implications as part of any Ministerial review undertaken in or after 2014.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

It is possible that the SGA might choose to subsidise some training costs to encourage prompt accreditation, otherwise the burden will fall on individuals. There is some cost to us in ensuring that we have suitably trained tutors, but we are confident that we can meet these particular costs.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Subject, always, to unforeseen issues, the Financial Memorandum appears to make suitable allowance for margins of uncertainty in the estimates and time-scales for costs. We do however point out above that costs for Deer Management / Stalking competence training remain to be accurately quantified.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

We made the point in response to Q.1 that much of the Bill started out as a consolidation exercise. As consultation, oral and written evidence has progressed through Stage 1 evidence sessions, we note the introduction of discussion on Vicarious Liability and the possibility of land-owner / estate licensing. Neither of these aspects formed part of consultation, have not featured in the Stage 1 draft of the Bill and have not therefore formed any part of the Financial Memorandum. As they have not featured before now in draft legislation, we doubt the competence of subsequent introduction to the Bill, and certainly not without full review of the financial implications, which are considerable. Such implications not only impact in monetary terms, but may also have a profound effect on biodiversity resulting from the potential reduction in incentives for public and private land management.

Similarly, we are not clear that any increased administrative costs associated with licensing could be met by any overall gain in biodiversity benefits. The full impact of such proposals would need to be very carefully assessed in separate review.
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

We have identified that there are further potential costs associated with the Deer Management review in 2014, which have yet to be fully quantified.

We also refer to potential licensing in response to Q.7. This could result in considerable costs falling on individual land managers, when the overall benefits to biodiversity are far from clear. These costs are very difficult to quantify without full and separate review.
ANNE ExE C: EXTRACTS FROM MINUTES OF THE RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

15th Meeting, 2010 (Session 3), Wednesday 9 June 2010

Legislation on wildlife and the natural environment: The Committee considered its approach to forthcoming legislation on wildlife and the natural environment and agreed to authorise the Convener to make bids to the Conveners Group (and where necessary the Parliamentary Bureau) for any fact-finding visits or external meeting held as part of the Committee’s scrutiny of the bill; to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in respect of consideration of the bill; and to hold agenda items involving witness selection, the review of evidence and the consideration of drafts of the Committee’s Stage 1 report on the bill in private at future meetings. The Committee also agreed that the clerks should issue a call for views following introduction of the bill.

17th Meeting, 2010 (Session 3), Wednesday 23 June 2010

Wildlife and Natural Environment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Hugh Dignon, Head of Wildlife Management Team, Natural Resources Division, Stuart Foubister, Divisional Solicitor, Food and Environment Division, Legal Directorate, Kathryn Fergusson, Bill Manager, Wildlife Management Team, Natural Resources Division, Steven Dora, Team Leader, Landscape and Protected Sites, Natural Resources Division, and Angela Robinson, Policy Advisor, Biodiversity Strategy Team, Natural Resources Division, Scottish Government.

John Scott declared an interest as a farmer. Scottish Government officials agreed to provide further evidence on a number of matters.

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

18th Meeting, 2010 (Session 3), Tuesday 7 September 2010

Wildlife and Natural Environment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr. Colin Shedden, Director, British Association for Shooting and Conservation Scotland;

Libby Anderson, Policy Director, Advocates for Animals;

Alex Hogg, Scottish Gamekeepers Association;

Mike Flynn, Chief Superintendent, The Scottish Society for the Prevention of Cruelty to Animals;
Hugo Straker, Senior Field Adviser, Game and Wildlife Conservation trust;

Robbie Douglas Miller, and Malcolm Strang Steel, Scottish Rural Property and Business Association;

Jonathan Hall, Head of Rural Policy, National Farmers' Union Scotland.

John Scott declared an interest as a farmer. Peter Peacock declared an interest as a member of the Royal Society for the Protection of Birds and the Scottish Ornithological Club.

19th Meeting, 2010 (Session 3), Tuesday 15 September 2010

Wildlife and Natural Environment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Lloyd Austin, Convenor, Scottish Environment LINK WANE group, LINK Trustee and Head of Conservation Policy, Royal Society for Protection of Birds Scotland;

Dr Deborah Long, Convenor, Scottish Environment LINK Biodiversity Task Force, Chair, LINK Board of Trustees and Conservation Manager, Plantlife Scotland;

Dr Paul Walton, Member, Scottish Environment LINK Biodiversity Task Force and Head of Habitats and Species, Royal Society for Protection of Birds Scotland; and

Mike Daniels, Member, Scottish Environment LINK Deer Task Force and Chief Scientific Officer, John Muir Trust, Scottish Environment Link;

and then from—

Bob Elliot, Head of Investigations, Royal Society for the Protection of Birds;

Alex Hogg, Chairman, Scottish Gamekeepers Association;

Sheriff T.A.K. Drummond, QC;

Mark Rafferty, Special Investigations Unit, The Scottish Society for the Prevention of Cruelty to Animals; and

Constable David McKinnon, Wildlife Crime Officer, Grampian Police.

John Scott declared an interest as a farmer. Peter Peacock declared an interest as a member of the Royal Society for the Protection of Birds and the Scottish Ornithological Club.

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting.

20th Meeting, 2010 (Session 3), Wednesday 29 September 2010
Wildlife and Natural Environment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Ron Macdonald, Head of Policy and Advice, Robbie Kernahan, Unit Manager, Wildlife Operations Unit, and John Kerr, Policy and Advice Officer, Scottish Natural Heritage;

Finlay Clark, Association of Deer Management Groups;

Professor John Milne, ex-Chairman of Deer Commission for Scotland;

Dr Justin Irvine, Macaulay Land Use Research Institute;

John Bruce, British Deer Society.

John Scott declared an interest as a farmer. Peter Peacock declared an interest as a member of the Royal Society for the Protection of Birds and the Scottish Ornithological Club.

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

21st Meeting, 2010 (Session 3), Wednesday 6 October 2010

Wildlife and Natural Environment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr Harold Thompson, British Veterinary Association;

Professor Colin Reid, Professor of Environmental Law, Dundee University;

Patrick Stirling-Aird, Scottish Raptor Study Groups.

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

23rd Meeting, 2010 (Session 3), Wednesday 3 November 2010

Wildlife and Natural Environment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Roseanna Cunningham MSP, Minister for Environment, Kathryn Fergusson, Bill Manager, Wildlife Management Team, Natural Resources Division, Hugh Dignon, Head of Wildlife Management Team, Natural Resources Division, and Andrew Crawley, Solicitor, Food and Environment Division, Scottish Government.

John Scott declared an interest as a farmer and a landowner.

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.
24th Meeting, 2010 (Session 3), Wednesday 10 November 2010

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

25th Meeting, 2010 (Session 3), Wednesday 17 November 2010

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

26th Meeting, 2010 (Session 3), Wednesday 24 November 2010

Wildlife and Natural Environment (Scotland) Bill (in private): The Committee agreed its Stage 1 report.
ANNEXE D: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

The Committee took oral evidence at the following meetings:

23 June (17th Meeting, 2010 (Session 3))
7 September (18th Meeting, 2010 (Session 3))
15 September (19th Meeting, 2010 (Session 3))
29 September (20th Meeting, 2010 (Session 3))
6 October 2010 (21st Meeting, 2010 (Session 3))
3 November 2010 (23rd Meeting, 2010 (Session 3))

Wildlife and Natural Environment (Scotland) Bill

7 September (18th Meeting, 2010 (Session 3))

Written evidence

Advocates for Animals
British Association for Shooting and Conservation
Game & Wildlife Conservation Trust
National Farmers Union Scotland
Scottish Gamekeepers Association
Scottish Rural Property and Business Association

Supplementary written evidence

British Association for Shooting and Conservation
Game & Wildlife Conservation Trust Supplementary
Scottish Rural Property and Business Association Supplementary
OneKind

15 September (19th Meeting, 2010 (Session 3))

Written evidence

John Muir Trust
Plantlife
Royal Society for Protection of Birds (RSPB)
Scottish Environment Link
Scottish Gamekeepers Association
Sheriff T.A.K. Drummond
SSPCA

Supplementary written evidence
Sheriff T.A.K. Drummond  
RSPB  
RSPB 2  

29 September (20\textsuperscript{th} Meeting, 2010 (Session 3))  

Written evidence  

Scottish Natural Heritage  
Association of Deer Management Groups  
Professor John Milne  
Macaulay Land Use Research Institute  
British Deer Society  

Supplementary written evidence  

Association of Deer Management Groups  

6 October 2010 (21\textsuperscript{st} Meeting, 2010 (Session 3))  

Written evidence  

British Veterinary Association  
Professor Colin Reid  
Scottish Raptor Study Groups  

Supplementary written evidence  

Scottish Raptor Study Groups
ANNEXE E: OTHER WRITTEN EVIDENCE

The following written evidence was received by the Committee from individuals and organisations who did not give oral evidence:

Cairngorms National Park Authority
Colin McClean
Comhairle Nan Eilean Siar
Crown Estate
Dr Adam Watson
East Dunbartonshire Council
Falkirk Council
Grigor & Young
Hare Preservation Trust
Highland Council
Horticultural Trades Association
John Muir Trust
Kevin Wiggins
Law Society of Scotland
League Against Cruel Sports
National Farmers Union Scotland
National Trust for Scotland
Ornamental Aquatic Trade Association
Royal Horticultural Society
Royal Society for Protection of Birds
Scottish Association for Country Sports
Scottish Badgers
Scottish Countryside Alliance
Scottish Estates Business Group
Scottish Hawk Board
Scottish Power Renewables
Scottish Wildlife Trust
Shellfish Association of Great Britain
Skye and Lochalsh Environment Forum
SEPA
Simon Pepper and Andrew Barbour
Woodland Trust Scotland

Supplementary written evidence
Simon Pepper
The Convener: I welcome the Scottish Government’s bill team. Hugh Dignon is the head of the wildlife management team, in the natural resources division; Stuart Foubister is divisional solicitor, food and environment division, in the legal directorate; Kathryn Fergusson is bill manager in the wildlife management team, in the natural resources division; Steven Dora is a team leader, for landscape and protected sites, in the natural resources division; and Angela Robinson is a policy adviser in the biodiversity strategy team, in the natural resources division. All our witnesses are from the Scottish Government.

I invite you to make a short opening statement about the bill in general and to explain part 2 briefly—there is no need to discuss parts 1 and 6. Members will question you thereafter.

Hugh Dignon (Scottish Government Rural and Environment Directorate): The Wildlife and Natural Environment (Scotland) Bill covers a diverse range of topics relating to the protection of wildlife and the natural environment and the regulation of our use of those natural resources, but it has some overarching themes that link those policy areas together. The first intention is to modernise the legislation to ensure that the legal framework is fit for purpose. The second is to improve the welfare of wildlife when it comes into contact with human activities and to improve the protection of wildlife and of the natural environment, where weaknesses in the current legislation have been identified. We also aim to ensure that the legislation is responsive to the needs of economic and social development.

There are many competing interests and demands in relation to wildlife and the natural environment. The bill aims to balance those interests, maintain the high quality and biodiversity of our natural environment and recognise our natural environment’s vital role in the Scottish economy. The bill seeks to achieve those various aims by amending the current legislation that applies to each of those topics.

Part 2 is the largest part of the bill. In the main, it amends the Wildlife and Countryside Act 1981. It abolishes the game licensing regime and repeals poaching statute to bring game species and related offences within the scope of the 1981 act. That is one of the modernisation aims of the bill.

Part 2 also abolishes the areas of special protection regime, which is no longer considered to serve any useful conservation purpose. In other
words, that role has been overtaken by other means of protecting the environment. It also brings forward Government commitments on snaring. The aim is to improve animal welfare and standards for snaring operators. All snaring operators will have to undertake training and each snare that is set will have to have a tag attached, showing the operator's identification number.

Part 2 also addresses some duplication in the current species protection legislation and makes some changes to the licensing regime to provide Scottish ministers with further flexibility to decide on the most suitable licensing authority. It also adds an additional purpose for which a licence may be issued.

I hand over to Angela Robinson, who will say a few words about the invasive non-native aspects of part 2.

Angela Robinson (Scottish Government Rural and Environment Directorate): Sections 14 to 17 of part 2 deal with non-native species. The provisions were developed as a result of the debate in the Scottish Parliament in October 2008, when there was cross-party agreement that there are weaknesses in the existing legislation and the Parliament resolved to ask the Scottish Government to review it, to ensure that there is a coherent and comprehensive framework for dealing with non-native species.

The bill will amend and strengthen the release provisions in the Wildlife and Countryside Act 1981 and provide flexibility so that the release of beneficial non-natives can be permitted, if appropriate. It will provide new powers for ministers to prohibit by order the keeping of invasive species and to require by order the notification of specified invasive species. It will consolidate the law, where that is appropriate, and it will enable ministers to issue codes of practice to support the legislation.

The bill will introduce a new regime of species control orders, which will enable relevant bodies—the Scottish ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency and the forestry commissioners—to ensure that effective control and eradication measures can be taken, where appropriate.

The Convener: Thank you. On the repeal of provisions on game licences and the new approach to game, I think that water bailiffs still have powers of stop and search—and seizure, if that is justified. If that is the case in relation to fish in our rivers, why should it not be the case in relation to game birds, rabbits, hares and so on? Is the poaching of those animals less of a problem than the poaching of fish?

Hugh Dignon: The poaching of game birds, hares and so on is certainly a problem, but in practice it is probably less of a problem than the poaching of migratory fish. I guess that the main underlying reason for the different approach is that a different regime applies to freshwater fisheries. There is a statutory role for salmon fisheries boards, and the bailiffs have a role in that regard. The structure is different from that of most game businesses, which are run by private-sector landlords and are a matter of private property.

The Convener: How will the police be resourced to prevent poaching offences?

Hugh Dignon: In practice, the police currently do most of that anyway. It was clear from the consultation that many land managers are reluctant to send their own people out on a dark night to tackle poachers, who often carry firearms. Land managers realise the impracticality of doing that; they normally call the police. Given that the police are the first line of enforcement under the current arrangements, no major change is expected.

The Convener: Are you aware that a number of gamekeepers and land managers are special constables?

Hugh Dignon: Yes. There was a recent initiative on the part of some police forces to try to recruit more gamekeepers and other rural workers as special constables. The Government has supported the initiative.

The Convener: How does the system work? If a special constable suspects that poaching is going on, can they stop and search or arrest the person?

Hugh Dignon: I am not an expert on how special constables work, but I think that they need to be clear about the role that they are undertaking—if someone is acting as a special constable, I do not think that it is possible to mix that with their role as a gamekeeper, although it is clear that information that comes to their attention as a gamekeeper will be useful to the police in the more general sense.

John Scott: I am interested in what you said about how landowners or gamekeepers who suspect that an armed person is on their ground use the police as the first line of response. How quickly would you expect an armed police response to arrive in order to apprehend a poacher? I would argue that it is not a realistic defence—the police might not turn up for something like that in the middle of the night.

Hugh Dignon: It depends on the area of the country. In some more remote parts of the country, that is right, and landowners have made the point that it is difficult to get the police to respond.
John Scott: So there is no defence in many instances—there is no real way of apprehending poachers if they are armed.

Hugh Dignon: We would recommend that people call the police if they suspect that someone is on their land, armed with a shotgun. That would be the most sensible way to proceed, I imagine.

John Scott: Forgive me—I did not hear what you said.

Hugh Dignon: The most sensible way to proceed would be to call the police if a landowner or gamekeeper thought that there were armed people on their land.

The Convener: Do we have any idea of how many incidents of poaching are reported to the police and of how many prosecutions there have been?

Hugh Dignon: I am sure that the data on that are available, but I do not have them to hand.

Karen Gillon (Clydesdale) (Lab): I am interested in John Scott’s idea that people would get the police to respond. My understanding is that if someone has a weapon, an armed police response unit is needed, and those are not readily available in most parts of rural Scotland. It is an interesting thought.

Can Hugh Dignon take me through the stuff about rabbits? I am interested in the assumption that the landowner owns the rabbits on his land and so, if somebody takes a rabbit, that is in some way an offence. Rabbits have been part of Scottish eating culture for many years. Who makes the assumption that the landowner owns the rabbits?

Hugh Dignon: It is set out in statute. It is probably in the Ground Game Act 1880, originally.

Karen Gillon: Is that correct in modern Scotland?

Hugh Dignon: As far as I am aware, that act is still on the statute book and it still applies—until it is repealed.

Karen Gillon: Those provisions could be repealed under the bill.

Hugh Dignon: I think it is the intention that they will be repealed under the bill. Nevertheless, the ownership—

Karen Gillon: But they would be replaced with something else.

Hugh Dignon: The ownership of the right to take ground game will be retained under the bill.

Karen Gillon: You expect that only the landowner, or someone to whom he has given permission, will have the right to take rabbits.

Hugh Dignon: That is correct.

Karen Gillon: That is a ridiculous position.

Hugh Dignon: That is the current position.

Karen Gillon: It is—I am not saying that that is not the current position, but it is pretty ridiculous. Do we have any evidence that it is the landowner who puts the rabbits on the land in the first place?

Hugh Dignon: Most landowners would try to remove the rabbits on their land.

Karen Gillon: Indeed—that is why it is kind of a strange situation.

The Convener: I think people are supposed to ask a landowner if they wish to shoot rabbits on their field.

John Scott: Could I help in this regard? Most landowners are happy to get rid of rabbits; the problem arises when people take dogs with them on to the land, which might inadvertently cause sheep disturbance or worrying, or might spook cattle. It happens most often through the night: cattle can take off in groups of 30 or 40—they get frightened and they can run for 2 or 3 miles, taking fences with them and destroying everything in front of them. That is why landowners do not generally want people on their land without their permission. In most instances, they are more than happy to get rid of the rabbits in any way that they possibly can.

That is speaking for myself, at any rate—and I declare an interest, as a farmer.

The Convener: Elaine Murray has a question on game loss.

Elaine Murray (Dumfries) (Lab): Following up first on what John Scott was saying, I would have thought that the Protection of Wild Mammals (Scotland) Act 2002 controlled the extent to which people could use dogs in the pursuit of rabbits. I thought that we had dealt with some aspects of that in legislation already.

I return to the subject of my question. Someone can be convicted of poaching on the evidence of a single witness, which is not the case in relation to the illegal poisoning of birds of prey, for example. Why is a single witness permissible in cases of poaching? Why cannot we extend that degree of corroboration to cases of poisoning of wild birds of prey? As we have seen, that is a significant problem in Scotland.

Hugh Dignon: Essentially, the bill simply replicates the current position. Under Scots law, single-witness evidence is sufficient for a conviction for poaching whereas nearly all other crimes require corroboration. I guess that it would be possible to change the current position. That said, the argument would be why should wildlife
crime be prosecuted on single-witness evidence and not other—

Elaine Murray: In that case, why poaching? In rural areas, having more than one witness to a crime of laying poison to kill wild birds of prey is very unlikely. I assume that the argument for having single-witness corroboration in cases of poaching is that it happens in unpopulated areas where it is unlikely that more than one person will witness what is going on.

Hugh Dignon: I understand that that is correct. The original reason for having single-witness evidence was the difficulty of getting corroboration. Often an individual—for example, a gamekeeper—is the only person who can provide evidence.

Elaine Murray: Perhaps something could be done in the bill about the poisoning of wild birds.

Hugh Dignon: Potentially, yes.

Elaine Murray: I turn to the issue of hares, which is slightly different from that of rabbits. Like Karen Gillon, I am a little confused about the situation in relation to rabbits, which are a pest—they undermine river banks and all the rest of it. I am not sure why hares, which are an endangered species in certain respects, should be treated the same as rabbits. Why have you decided on a close season for hares as opposed to full protected species status? The Hare Preservation Trust is pleased about the close season, but it would like the argument to be taken further and says that hares require full protection.

Hugh Dignon: We saw no conservation evidence that such provision was required. The close season is a welfare measure rather than a conservation measure; it is to protect hares when they have dependent young.

Elaine Murray: What sort of evidence would you require to give full protection to a species such as the wild hare?

Hugh Dignon: In the first instance, we would look to SNH to provide us with advice that it thought that was required. We have not had such advice.

Karen Gillon: Under Scots law, having single-person burden of proof is a special circumstance. What is the policy objective behind retaining that?

Hugh Dignon: As I said, the policy objective was not to disturb the current situation and, as I said, poaching offences require only single-witness evidence. The various pieces of archaic poaching legislation were simplified and consolidated into the single piece of legislation that is the Wildlife and Countryside Act 1981. At this stage, we did not wish to change the policy or the way in which that was done; it was more a matter of simplification and of bringing everything under a single regime. That is why we have ended up with the current situation of retaining single-witness evidence for poaching.

Karen Gillon: But there is no reason why that cannot be changed under the bill.

Hugh Dignon: I think that that is right, yes.

Peter Peacock (Highlands and Islands) (Lab): I return to the point on bird poisoning. Obviously, you are aware of the serious incidents of golden eagle, red kite and other species being killed. I am unsure whether it is yet clear whether all of them were poisoned, but it looks as if that was the case. Indeed, it looks as if those deaths are part of a pattern—a growing incidence of bird poisoning. In that context, it is puzzling that there is nothing in the bill per se to strengthen the provisions to tackle this serious crime, given the fragile natural environment for some of those species. Has policy consideration been given to strengthening the law on bird poisoning or has that been positively ruled out?

Hugh Dignon: It has not been positively ruled out. There is an argument that we already have a strong legal framework for the protection of wild birds in the Wildlife and Countryside Act 1981 and now need more effective enforcement. The ministers are keeping the issue under review in light of the recent events on shooting estates in the north of Scotland. They wish to think about whether any further provisions would need to be introduced to the bill, but no firm decisions have been taken.

Peter Peacock: I will take the question slightly further and try to link grouse management and moor management to bird poisoning. There is evidence that, because the market for grouse shooting is quite buoyant and affluent, new grouse moors are being brought into active operation and intensively managed. There is also at least anecdotal evidence that the management practices on those moors do not necessarily accord with the traditions that we have had in Scotland but are new management techniques imported from elsewhere. There is a school of thought that an increase in the incidence of bird poisoning is part of what accompanies that intensification.

In that context, have you explicitly considered introducing vicarious liability, so that the owner of the estate would be put in the frame? Notwithstanding the fact that we have quite tough laws, incidents of poisoning appear to be on the increase, so perhaps further steps are required.

Hugh Dignon: Yes, is the short answer to that. Vicarious liability is one of the options that we would propose as part of any review of possible measures. That would be based on the report “Natural Justice: A Joint Thematic Inspection of
the Arrangements in Scotland for Preventing, Investigating and Prosecuting Wildlife Crime” by Her Majesty’s inspectorate of constabulary for Scotland, which recommended that the partnership for action against wildlife crime’s legislation sub-group consider vicarious liability. That sub-group has done some initial work on it and continues to consider other options.

Vicarious liability is definitely one of the measures of which ministers are aware, but I stress that no decisions have been taken on it as far as I am aware. It would be one of the measures that we would present to ministers if they asked us for options.

Peter Peacock: Okay. As I understand it, the bill repeals the game licensing provisions. You might be able to help me, because I am not entirely clear how that system currently works. I know that a small fee—about £6—is paid for such licences but I am not sure whether they license the whole estate, a grouse moor or an individual to shoot. Perhaps you can clarify that.

A second way to tighten up provisions that might discourage poisoning would be to ensure that grouse shooting was a licensed activity. Perhaps an entire estate or moor could be licensed for shooting and one of the penalties, if there were sufficient evidence of successive poisonings, would be for the estate or moor to lose its licence. If that happened, there would be a real financial penalty for the estate. The argument would be that because of that possibility, the management regime would act against the poisoning of important bird species. Has that been considered in the context of the repeal of game licences?

Hugh Dignon: Currently, the game licence is a licence for an individual to shoot. It does not have much bearing on anything—it has no conservation value, raises no revenue, exerts no control over shooting and is not well complied with—so we think that the appropriate thing to do is to abolish it.

People have suggested to us the licensing of grouse moors; we are aware of it as an option. All I can say is that we would certainly include it for ministers’ consideration if they asked us to give them options, but it is a fairly large-scale and radical proposal to consider introducing at stage 2 of the bill.

10:30

Peter Peacock: From what you are saying, people have an open mind on tightening up some of these policy areas. You have given your point of view and I accept that ministers would have to determine what happens, but at the moment the door seems to be open.

Hugh Dignon: Ministers started out accepting the argument that the legal framework is sufficiently strong and enforcement is the key requirement. As more cases come to light, ministers will keep the situation under review and those are the options that they will consider as part of that review.

Bill Wilson (West of Scotland) (SNP): An individual who commits a wildlife crime, but does not use a firearm, cannot have their firearms licence automatically removed. Being guilty of illegal snaring or of poisoning birds suggests a level of irresponsibility in an individual that means that they should not possess a firearms licence. Will any consideration be given to the automatic removal of a firearms licence from someone who has committed a wildlife crime?

Hugh Dignon: The major obstacle to any consideration of that suggestion is that the matter is reserved and we cannot determine it one way or another. Whether people get firearms licences is a matter for chief constables rather than ministers.

Bill Wilson: I wrote to many of the chief constables to inquire about the matter and they suggested to me that they lack powers. That is my understanding of their replies. That suggests that there could be room to change the law.

Hugh Dignon: As I say, I understand that Westminster legislation controls firearms licences.

John Scott: Am I right in thinking that the repeal of the current licensing situation would bring Scotland into line with England and Wales?

Hugh Dignon: Are you talking about game licences?

John Scott: Yes.

Hugh Dignon: That is correct.

John Scott: So we are in the anomalous position of having game licensing in Scotland, but not in England and Wales.

Hugh Dignon: Yes. England repealed that legislation two or three years ago.

John Scott: Peter Peacock made a point about the potential licensing of grouse moors. If that were to be considered, what would the likely costs be? I agree with Peter that wildlife crime is a problem and that it should be stamped out, but licensing grouse moors could be like taking a sledgehammer to crack a nut. What is your view on that?

Hugh Dignon: We have not looked at the issue in any detail, so it is difficult for me to say, but, on the face of it, it seems to be one of the more radical and large-scale proposals. Vicarious liability has also been proposed, which might be quite a significant change in the law, but it would
have less than the major impact of the licensing scheme that Mr Peacock mentioned.

**The Convener:** We move on to areas of special protection.

**Aileen Campbell (South of Scotland) (SNP):** In your opening remarks, you said that ASPs will no longer be needed because there are other ways of protecting the environment. How will birds in the ASPs be protected if the designation is removed? What legislation is in place that gives you confidence that those birds will be protected?

**Hugh Dignon:** I will hand over to my colleague, Steven Dora, whose area this is.

**Steven Dora (Scottish Government Rural and Environment Directorate):** The protection provisions of areas of special protection are duplicated by provisions of the Wildlife and Countryside Act 1981. That relates to things such as egg collection and the disturbance of nest sites. In relation to the public access provisions, the Land Reform (Scotland) Act 2003 gives everyone statutory access rights to most land if those rights are exercised responsibly. However, powers to restrict access are available to access authorities, with the Scottish ministers’ approval, under section 11 of that act and through bylaws.

**Aileen Campbell:** The policy memorandum says that SNH is satisfied with the measure. Did it raise any concerns with the Government about the abolition of ASPs?

**Steven Dora:** No—absolutely none. The majority of the designations are now completely redundant. In at least one case, the birds for which the special protection area was originally designated are absent. They came and went some time ago. SNH is entirely satisfied that it is an outdated designation.

**Aileen Campbell:** Did any other bodies raise concerns through the consultation?

**Steven Dora:** A concern was raised by a non-governmental organisation, which has written to the minister on the issue. We are considering that.

**Aileen Campbell:** Will you elaborate on that? I do not know whether it is in the public domain. If it is confidential correspondence with the minister, perhaps we can discuss the issue at a later date.

**Steven Dora:** If I may, I will confer with my colleague Kathryn Fergusson. Is the correspondence public?

**Kathryn Fergusson (Scottish Government Rural and Environment Directorate):** Overall, the consultation revealed broad support for abolishing ASPs but, as Steven Dora said, one NGO raised a concern—in public, so we can talk about it—about whether the other available options will be put in place for a specific site. The concern was not whether other provisions are in place to replicate what ASPs were designed to do; it was whether ministers would consider it appropriate to use those provisions.

**The Convener:** We will come back to that. As there are no further questions on ASPs, we will move on to snares.

**John Scott:** In a consultation that was carried out in 2006, more than 50 per cent of the respondents said that they were absolutely against snaring. The Government has chosen not to go down the route of a complete ban and I agree with that decision. Why did the Government choose not to go down that route?

**Hugh Dignon:** The decision was taken by Mike Russell in 2008, after careful consideration of the range of arguments that were made. The decision could be summarised by saying that Mr Russell was convinced that it was essential for land managers to carry out pest and predator control to protect crops and livestock. There are a number of ways of carrying out pest and predator control, but not all the methods work all the time, and snaring remained one of the key tools that land managers needed in certain circumstances. The minister decided that to remove snaring would be to remove one key tool from their toolbox. At the same time, the minister was convinced that significant improvements could be made to the way in which snaring is carried out, to improve the professionalism of the people who carry it out and the animal welfare impacts. That has been our policy on the issue for the past couple of years.

**Elaine Murray:** We recently passed the Marine (Scotland) Act 2010, which acknowledged that seals are predators and that they require to be controlled, but introduced a pretty strict system of licensing for those who exercise that control. Has the Scottish Government considered the possibility of using a similar system for snaring?

**Hugh Dignon:** The bill will introduce a system that will require snare operators to be trained and to demonstrate that they have completed that training before they are given an identification number, which they will have to use every time they set a snare. We thought that a licensing system was not appropriate in this situation, given the bureaucracy and the cost that would be involved. The important thing is to ensure that people are adequately trained and can demonstrate that they are.

**Elaine Murray:** So people must demonstrate that they are adequately trained, but they are not required to prove why they have to use a snare, rather than another method of control.

**Hugh Dignon:** No. That decision is appropriately left to the land manager in such circumstances.
Liam McArthur: I will follow up Elaine Murray’s line of inquiry. The former Minister for Environment, Mike Russell, refused to ban snares because he was persuaded that, in certain circumstances, other means of pest and predator control did not work. To some extent, that leads one to assume that there was a presumption against snaring, but that it would be permitted in circumstances in which other methods of control had proved to be unworkable. However, that presumption is not in the bill, and it was not in Mike Russell’s earlier decision. Was it considered at the time, perhaps along the lines that Elaine Murray has suggested?

Hugh Dignon: I am not sure that I follow you. Are you suggesting that landowners would need to justify when they use snaring?

Liam McArthur: In a sense. There is evidence that other states operate perfectly well and profitably without the use of snares; there are certainly bans on snares in other countries. I accept that there may be circumstances in which other forms of pest control do not prove to be as effective in every instance, but I would have thought that that would lead to an argument for a presumption against snares without ruling out their use in specified circumstances. Have ministers and officials considered that?

Hugh Dignon: In considering the arguments, ministers and officials were persuaded that there are a wide range of land use objectives and ways in which land is managed, and that it was not a sensible way forward for Government to set a prescription for how and when certain techniques could be used.

Liam McArthur: There is a risk of saying, “It’s aye been thus”. It is not that the other methods of pest control do not work, but that traditionally snares have been used. Although we might tighten up the way in which snares are used, the extent to which they are checked regularly and all the rest, they are used because they always have been, not necessarily because the other methods have been tried and proved to be unworkable.

Hugh Dignon: We were presented with the argument that the main alternative to fox snaring, which is probably the most contentious form of snaring, is shooting. That is clearly a useful way to control foxes. Most foxes are controlled by lamping and shooting at night, but there are circumstances in which shooting is inappropriate. Those include a range of fairly common situations such as where there are high levels of vegetation so the fox cannot be seen, where there is broken ground so a rifle cannot be used, where there are public safety issues with shooting or where there is no vehicle access to carry out lamping operations. The land managers with whom we spoke told us that snaring would be the front-line form of predator control in those circumstances.

Liam McArthur: One point that has been raised is the extent of an estate—the larger the estate, the more impractical it would be to control pests solely through shooting. By the same token, however, one would have thought that the size of an estate would militate against the requirement to check snares. In a sense, therefore, you are setting up a system to fail, because unless there is a vast increase in manpower on a large estate, there is very little chance that snares will be checked as often as required.

Hugh Dignon: That does not really accord with the advice that we got from the Game and Wildlife Conservation Trust, which recommends that snares are set in limited numbers, and advises that snares that are set carefully and professionally and are checked regularly are likely to be more effective than a large number of snares scattered around the place.

10:45

Bill Wilson: As the training is partly based on welfare issues, will any welfare bodies, such as the Scottish Society for the Prevention of Cruelty to Animals, be involved in the training programme or its design?

Hugh Dignon: The people who provide the training have discussed it with the SSPCA. Although the SSPCA is not in a position to endorse the training because it is fundamentally opposed to snaring—and I would not want to say this without confirming it with Mike Flynn of the SSPCA—I understand that he discussed the training with the providers and expressed some contentment that it meets animal welfare objectives, or at least that it addresses those objectives.

Bill Wilson: To return to an earlier theme, snares are often placed in isolated areas and whether they catch a non-target species or are placed illegally might be observed by only a single witness. Is that not a perfect example of a situation in which a single witness should be able to report the crime, in line with the situation for poaching?

Hugh Dignon: It could be.

Bill Wilson: If the bill does not ban snares, will it be possible to ban them later without making primary legislation?

Hugh Dignon: Primary legislation would be required to ban snares.

Bill Wilson: There is nothing in the bill that would allow snares to be banned if we decided somewhere down the line that the new provisions...
had not worked and we wanted to ban them after all.

Hugh Dignon: There is not.

Bill Wilson: Could such a measure be included in the bill? Is it bad to conclude that if further research shows that the provisions in the bill are not working, we can introduce a ban through a statutory instrument?

Hugh Dignon: I need to take advice on that.

Bill Wilson: I would be obliged if you would reply to the committee later on.

Hugh Dignon: Yes.

Karen Gillon: Perhaps you will also need to come back to us with answers to these questions. I am interested in some of the facts and figures about snaring and whether you know how many people in Scotland are currently trained to use snares. How many snares are in operation and how many snaring offences have been reported under the provisions of the Nature Conservation (Scotland) Act 2004?

Hugh Dignon: The numbers are pretty hard to come by, but we think that about 5,000 people are setting snares in Scotland. That is an estimate from industry sources. The training has only just started and I do not know how many people have completed it, but it will be hundreds. Data on snaring offences are available, but I am afraid that I do not have them to hand.

Karen Gillon: If we do not know how many people are setting snares in Scotland, how will we know that they have all been trained to comply with the provisions of the orders? I suppose that the answer is that we will not know and that they will not all be trained. Given the vagaries of who would report those people and how they would be reported, how do you enforce the current legislation?

Hugh Dignon: As I mentioned earlier, there will be a strong link between the identity tags and the snares. Any snare that is set will need to have an identity tag on it that will identify the operator. The number on the tag will be provided to the operator by the local police, who will not provide that number to the snare operator until they have been satisfied that the snare operator has the certificate that shows that he or she has completed the training.

Karen Gillon: What is the timescale? We think that 5,000 people are putting down snares and a few hundred have been trained. I take it that you would not be able to get a tag until you had been trained. What happens to the people in between? Are we saying that when the bill comes into force, if you have not been trained and do not have a tag you will not be able to lay a snare?

Hugh Dignon: Yes, when the provision commences.

Karen Gillon: When will the provision commence?

Hugh Dignon: I do not think that we have finalised that yet.

Karen Gillon: So we have no idea of the likely timescale.

Hugh Dignon: I do not think that it will take very long for the training to be completed. We are talking about a year or so.

Karen Gillon: How many people are carrying out the training, given that 5,000 people need to be trained?

Hugh Dignon: Several organisations are keen to provide the training.

John Scott: I question whether 5,000 people across Scotland require to be trained.

I presume that, as far as vermin are concerned, setting snares is largely for fox control. Can you confirm that, by and large, that is what we are talking about?

Hugh Dignon: In the main, yes.

John Scott: From my recollection of farming, part of the reason for the use of snares is that foxes move at night, so if snaring were not available, the alternative would be to have more people with guns on the landscape at night. Is that your understanding of the situation?

Hugh Dignon: That would be a result, to the extent that lamping could replace snaring.

John Scott: Do you have any figures that tell us the level of damage that foxes inflict on livestock across Scotland? What is the cost of that and what effect does it have on the viability of hill farms in remote and fragile upland areas? In my experience, it is possible to lose 10, a dozen or 15 lambs in a morning because of a fox, but my evidence is only anecdotal. Do you have any figures on the problem?

Hugh Dignon: I am afraid that I do not have any figures with me, but we certainly have research that Science and Advice for Scottish Agriculture has carried out on behalf of Scottish agriculture on the impacts of predators on livestock in Scotland.

John Scott: Could you let the committee have that information? We would be extremely grateful.

Hugh Dignon: Yes.

Peter Peacock: There is another point about snaring that I want to address. Notwithstanding the fact that many people are completely opposed to snaring and will dislike immensely—even if they
accept—the fact that it may continue under the proposed tightened provisions, they will be concerned about how those provisions will be enforced. I hear what you say about the tag, but that obviously does not cover illegal snaring. There will be no tag on an illegal snare, so it will not necessarily be possible to know who set it.

As regards the provision for checking snares every 24 hours, how do we know that that will be done? Given the nature of the terrain, the geography and so on, surely we will not have snare police going round looking at snares—or will we? Will part of the training be that people who set snares will have to report on where they have set snares so that someone could check them if they wished to? What consideration has been given to the proper enforcement of the proposal?

Hugh Dignon: The first thing to say is that members of the land management community—the people who set snares—are acutely aware of the delicate situation that they are in, in as far as there is a strong movement to ban snaring. They are well aware that bad publicity and reports of bad snaring incidents and crime that is connected to snaring are likely to push the practice into being banned, so there is a strong imperative, especially among professional land managers, to ensure that snaring is done properly. They are keen to support the training and the efforts to improve the welfare aspects. There will always be illegal snaring. Even if we were to ban snaring, I do not suppose that that would stop. We cannot legislate for that.

There is no intention to have people out patrolling the countryside specifically to check on snares. Our belief is that most professional land managers are law-abiding people who will do their best to abide by the law, as they will recognise that it is in their interests to do so.

Peter Peacock: In that sense, the provision will be entirely self-policing and will depend on a high level of trust. On occasion, someone who is out walking in the countryside may come across a snare that has not been set properly, which they will be able to report if there is a tag on it, but that will not happen terribly often. Essentially, the provision will be self-policing.

Hugh Dignon: As you say, large numbers of people walk in the countryside and lots of them take a very close interest in those sorts of thing when they find them. If a snare has a number on it identifying who set it, people will be much more inclined to ensure that it is set properly, checked regularly and does not fall foul of the regulations in some way.

Peter Peacock: If an incident was reported and the police or whoever followed up on that and asked the land manager how often snares were checked and so on, they would be entirely dependent on the land manager’s word for what happens. There is no other evidence that they actually check the snares every 24 hours.

Hugh Dignon: The evidence that a snare was not being checked would be finding an animal that had clearly been in the snare for more than 24 hours. If snares were found in a self-locking state because they had rusted or become damaged in some way, that would also make it clear that they had not been checked and that would also be an offence.

Peter Peacock: Is the use of dogs, ferrets and so on to get foxes out of fox holes, rabbits out of rabbit holes and so on controlled by other parts of statute?

Hugh Dignon: Hunting with dogs comes under the provisions of the Protection of Wild Mammals (Scotland) Act 2002, which is the main legislation in that area.

Peter Peacock: Does that also cover the use of ferrets and so on?

Hugh Dignon: I do not think so.

Peter Peacock: Perhaps you could write to us about that.

Bill Wilson: To return to the conversation about foxes and lambs, there is of course a solid body of scientific evidence by authors such as MacDonald and Hewson, showing that foxes do not attack live lambs. A long period of research involving dietary analysis and radio telemetry has consistently produced the same results. If you are going to send us evidence, I request that you check those and similar authors in order to give us a full picture of scientific opinion on whether foxes predate live—I emphasise live—lamb.

Karen Gillon: I am trying to get it clear in my head why we have not gone as far as licensing. We have taken the steps of training people, verifying their training and issuing them with tags so that we know who they are. What is the barrier to giving somebody a licence so that they are then legally responsible? We are almost there. I do not understand what is stopping us from taking that final step.

Hugh Dignon: It was a matter of judging where the appropriate level of intervention lay. What you described is what ministers decided was the right approach.

Karen Gillon: Was there any policy basis behind that decision?

Hugh Dignon: The general policy that underlies it is to keep intervention to a minimum and a desire not to intervene unless it is necessary.

Karen Gillon: So we rely on people’s word for things.
Hugh Dignon: It is rather more than relying on their word. We require them to have training, to demonstrate that they have had it and to show that they are responsible for each snare that they set by putting their identification number on it.

Karen Gillon: What additional burden would be placed on somebody if we moved to a licensing regime?

Hugh Dignon: It would mean, for example, that we would have to maintain a register, with all the attendant costs and data protection issues, and decide when people should be put on or taken off the register. We would, in effect, legally sanction particular people to become licensed snares operators. I do not think that the Government felt that that was necessary or required.

Karen Gillon: In Scotland, there is a strong lobby of people who do not want snaring and another who want the right to snare. I think that there is a case for having a legal basis on which to allow people to carry out the activity or to prevent them from carrying it out—that is the key thing. It is not the ability to snare, but the ability to prevent from snaring those who can be shown not to have complied with the law. I am trying to get my head round whether there is anything in the bill to prevent somebody who has set and tagged a snare that has been found not to have been set appropriately from setting another snare in the future.

Bill Wilson: There is concern that, because there is no named body to lead on INNS in the bill, some species or actions may fall through the gap.

Why has the Government decided not to go for a lead body, such as SNH?

Angela Robinson: Obviously, SNH is the lead body on biodiversity. However, there is such a wide range of invasive non-native species, habitats and impacts involved that the work tends to be spread over different organisations. Other work is going on. Agencies are currently—I hope—signing up to a rapid response protocol, which has been considered in Great Britain work. That protocol is about being able to respond rapidly to invasions of new species. Things need to be kept flexible, because, obviously, we do not know what the future problems will be. We had to keep that in mind in considering the improvements to the bill.

Bill Wilson: I understand and would not dispute that flexibility is needed, but the concern is that, with a large range of bodies and sometimes complex issues being involved, there is a slight risk that something will not be done. There is concern that too many bodies will work on things and that no one will have the authority to say, "Okay. I'll take charge of this circumstance." That is where the lead body concern arises.

I will move on, as we are short of time. The consultation document says that the Government has commissioned research into the costs of INNS. Can you give us any of the headlines from that research?

Angela Robinson: The report has not yet been finalised, but it will be over the next few months. We expect that we will have it over the summer. We can send a copy of it to the committee once it is available.

Elaine Murray: The bill will introduce a new regime of species control orders. Can you give us examples of where species control orders might be used to address problems with non-native species? Could they be used to help to control grey squirrels, for example?

Angela Robinson: First and foremost, it is important to say that we do not envisage species control orders being used in a widespread way. If somebody had Japanese knotweed on their land, say, they would not automatically be asked to clear it. The idea behind species control orders is that the relevant agencies can use them to target work so that they can deal with new populations that arrive. If, say, somebody had bullfrogs in their garden that were about to spread, that could have significant implications for Scotland. If access to that land was not permitted, not much could be done about that. The purpose of the orders is to enable something to be done about new populations of species where there are obvious problems. If a national or local strategic plan was in place and there was a threat to it as a result of
an individual not allowing access to their land, for example, a species control order could be used. That is how we see those orders being used.

Elaine Murray: Would you envisage a species control order being used if there was a population of grey squirrels adjacent to a population of red squirrels and you did not want the grey squirrels to invade the red squirrels’ area?

Angela Robinson: I cannot say whether a species control order would actually be used in those circumstances, but the bill would allow that to happen.

Elaine Murray: Section 20 makes provision for wildlife inspectors to take enforcement action in relation to the new offences in the bill. How many wildlife inspectors are there in Scotland, and do you have any details of the number of full-time wildlife crime officers employed in Scotland?

Angela Robinson: Hugh Dignon is best able to answer that question.

Hugh Dignon: The provisions on wildlife inspectors consolidate the different people who can take samples and pursue enforcement action under the bill. There were people described in legislation as “authorised by the Scottish ministers” while others were described as “wildlife inspectors”, so we are essentially bringing them all together into the single regime of wildlife inspectors.

There are wildlife inspectors currently in Scotland, who are largely employed to deal with operations such as bird ringing under schedule 4 to the Wildlife and Countryside Act 1981 and the enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Although they are authorised by the Scottish ministers, in the main they are paid by the Department for Environment, Food and Rural Affairs, which carries out work under an agency arrangement on behalf of the Scottish ministers—the schedule 4 work in relation to birds in particular. There are about a dozen, but I could not be certain how many operate in Scotland at present.

Elaine Murray: As you are placing additional duties on people employed by DEFRA, what discussions have you had with DEFRA about the impact on its resources?

Hugh Dignon: We are talking about business that is done on behalf of the Scottish ministers, and therefore we rather than DEFRA would resource it. However, we do not envisage that the changes will have a major impact on the work of wildlife inspectors.

The Convener: As no one has any more questions on INNS, we will move on to species licences.

Peter Peacock: On the way to doing that, can I ask a question about the impact on our cities of an invasive native species, the seagull—not the sea eagle? Seagulls have become resident in our cities and towns and go to the supermarket to be fed, so at one level they are quite domesticated. Did you think about including any controls on seagulls in the bill?

Hugh Dignon: Seagulls can already be controlled, when there are good reasons to do so, under the licensing system. When they are a threat to public health or safety or for similar reasons, there are licensing options to control them, usually involving the removal of nests or oiling of eggs, although there can be lethal control of gulls as a last resort. That happens in a number of cities—in Glasgow, Aberdeen and Dumfries, for example—but we are also mindful that some of the species are becoming somewhat rare: herring gulls and black-backed gulls, for example.

Peter Peacock: I am going to weave this question in now, convener, as I cannot find anywhere else to do so.

I notice that the Wildlife and Countryside Act 1981 gives protection to certain insects. Does that include bees? I recall some interesting correspondence on whether the Scottish bee is, in fact, a native species and therefore deserving of protection. There was an argument that it was brought here by the Romans, but there is great dispute about the issue—some people say that it is a native species. Given the genuine threat of and danger from declining bumble-bee and honey bee populations, was any consideration given to tidying up the law to afford better protection to bees in future?

Hugh Dignon: Bees are regarded as a farmed animal rather than a wild animal so they do not usually come within the ambit of the Wildlife and Countryside Act 1981, although bumble-bees do. Honey bees are not dealt with by my bit of the office, I am afraid.

Peter Peacock: No consideration has been given to that.

Hugh Dignon: Certainly not to farmed bees.

Peter Peacock: That is part of the argument. When is a farmed bee a farmed bee? We will perhaps come back to that.

Moving on to the issue of species licences, I note that the bill provides for things done “for any other social, economic or environmental purpose” to be included in the activities that are exempted from the protection of the act and therefore for which a licence may be issued. That seems slightly broader than the current provisions. What lies behind that?
Hugh Dignon: The reason for that was that there are animals that are protected under domestic legislation—schedule 5 to the 1981 act—that, in practice, receive a greater degree of protection than species that are protected under European legislation. For example an otter is a European protected species. If someone wished to build a school that required an otter's holt to be disturbed, they could do so under licence if they could show that it was necessary to do so, and if the appropriate mitigation measures were put in place. However, by comparison, if someone wished to build a school that required the disturbance of red squirrel drays, they would be unable to do so because red squirrels are protected under domestic legislation rather than European legislation. The aim of the policy is to make similar licensing options available to disturbed species that are protected under domestic and European legislation.

Peter Peacock: I understand the reasoning behind that. On the other hand, there is concern, particularly given the recent flurry of news coverage—which may not have been entirely accurate—about licences potentially being granted for killing buzzards and other raptors because they were audacious enough to take reared and released pheasant and red-legged partridge. It is a bit bizarre that we might license the killing of protected species in order to protect an introduced species that is hand-reared. There is an underlying concern that widening the definition is a way of relaxing the controls on killing buzzards in relation to pheasant releases and so on.

If someone is a land manager for whom pheasant shooting is part of their business, it is in their interests to increase the number of pheasants. However, they should not be surprised if there is also an increase in the number of buzzards. Who is to blame? There are quite complex arguments here. Should we read this as a signal that provisions are being relaxed to allow more taking of birds—principally buzzards—in relation to pheasant releases and partridge?

Hugh Dignon: No. As you say, licences in relation to buzzards and pheasants and so on are a separate issue that has nothing to do with the bill. The species under schedule 5 to the 1981 act, which is what this is about, do not include any birds. I cannot remember all the species under schedule 5, but the main ones that will be affected are the water vole and the red squirrel. It is primarily a matter of trying to bring that into line with existing legislation that applies to European protected species. There is no wider policy intention to relax licensing. The issue in relation to pheasants and buzzards is a preliminary attempt to clarify the situation under current law, which has not been completed yet. The newspaper reports were inaccurate.

Peter Peacock: Let me take you back a step to the provisions on non-native species. Pheasants are a non-native species. Will any of the provisions in the bill on non-native species apply to pheasants and other introduced bird species?

11:15

Hugh Dignon: Angela Robinson might want to respond to that. The bill makes an exception to allow for the release of pheasants and partridges, even though they are non-natives.

Angela Robinson: The provisions on release apply to non-native species because they take a precautionary approach. Most of the other bits of the bill relate to invasive rather than just non-native species. In relation to the provisions on species control orders, requirement for notification and prohibition on keeping certain species, we have in mind the species that we know are invasive and want to regulate and control; those bits of the bill will not apply to pheasants or red-legged partridges.

Peter Peacock: I want to go back to the issue to do with buzzards and pheasants. Are you saying that no part of the bill will touch on the provisions in schedule 5 to the 1981 act in relation to licences to kill buzzards to protect pheasants and so on?

Hugh Dignon: The preliminary work that I mentioned is on guidance on the protection of game birds under section 16(1)(k) of the 1981 act. I am not aware of any proposal to change the law as it stands. Certainly nothing in the bill will do so.

Peter Peacock: You are recommending that local authorities, as well as SNH, be given the authority to grant licences. However, the consultation seemed to indicate that people are pretty much against giving local authorities such a power. What is the argument for doing so? What worries did people have about the approach?

Hugh Dignon: The argument is that local authorities already apply tests that central Government applies in relation to licensing. For example, if a local authority is considering an application for planning consent and part of the proposal involves disturbing a protected species in some way, the authority is required to consider whether the activity falls within a licensable purpose, whether there are satisfactory alternatives to what is proposed, whether there will be an impact on conservation status and so on. Those are the same tests that we or SNH would carry out if we were doing the licensing so, to some extent, there is duplication. Given that local authorities already undertake consideration in relation to disturbance to protected species, it made sense to us that they should go a step further and issue the licence.
In quite a number of consultation responses, concern was expressed that local authorities would not develop a sufficient body of experience, because they would not carry out such work as frequently as SNH or the Scottish Government did.

Peter Peacock: Is that not a legitimate concern? A degree of expertise is required, which SNH will have as a result of the frequency with which it deals with the issues. An individual local authority will not develop such expertise.

Hugh Dignon: That is a legitimate concern. However, local authorities already examine such issues, as I said. Furthermore, local authorities will be required to consult SNH on issues such as conservation status, which is a key area in which expertise will be required.

Peter Peacock: What steps will the Government take to check that local authorities—and SNH, for that matter—are meeting the required standards and expectations? Will there be some quality control?

Hugh Dignon: Local authorities already carry out a large number of licensing and control functions. For example, they implement European regulations on behalf of central Government. We depend on authorities to do what is required of them in the way that they do in other areas. We have not proposed a formal system for checking in relation to licensing.

Peter Peacock: Will guidance be issued?

Hugh Dignon: Certainly. We expect to issue guidance on how that should be done.

Elaine Murray: I have a couple of quick questions. The first relates to the insertion of the words “for any other social, economic or environmental purpose” into section 16(3) of the 1981 act. Could that make it easier for a local authority to apply for a licence to control lesser black-backed gulls, for example, on the basis of their somewhat antisocial and environmentally detrimental activity?

Hugh Dignon: The provision would not apply to that. There are already straightforward methods of licensing control of gulls where they are a public nuisance. I am not aware of any situation in which we have told a local authority that it cannot control gulls where they are a public nuisance. There are difficulties in implementing such controls—we are not saying that it is an easy job to do—but the licensing regime is not the main obstacle.

Elaine Murray: That is interesting. I am not sure that Dumfries and Galloway Council takes that view—it seems to think that it cannot do anything about the problem.

The bill removes a number of species, including marine species, from provisions of the 1981 act. Has thought been given to extending protection to other marine species such as sharks, spurdog and tope?

Hugh Dignon: Certain species are being removed because—

Elaine Murray: I appreciate that those species are being removed because they are already covered by other regulations. Is it possible to use the bill to extend protection to other species?

Hugh Dignon: The Joint Nature Conservation Committee, on behalf of all of the nature conservation agencies in Great Britain, conducts a quinquennial review in which it proposes species for addition to and deletion from the 1981 act. Such a review is under way at present. That is the procedure by which species are added to or removed from the protection of the 1981 act.

Elaine Murray: When is that likely to happen?

Hugh Dignon: It is happening now.

The Convener: That concludes questioning on part 2. Before we move to part 3, which relates to deer, we will have a short comfort break of, at most, five minutes.

11:22

Meeting suspended.

11:27

On resuming—

The Convener: We move to part 3, which is about deer.

Liam McArthur: The provisions in part 3 stem from the review of the Deer (Scotland) Act 1996 that the Deer Commission for Scotland carried out and which flowed into the Government’s consultation. The Scottish Parliament information centre note on the bill points out that the Deer Commission, following its review, recommended a duty to manage deer sustainably and referred to the voluntary system “failing to protect the public interest.”

The Government seems to have moved away from that in the bill. It would be interesting to know the reasons for that and what is felt to be unsustainable in the current system of deer management.

Hugh Dignon: To take the last part first, we would not go as far as to say that all deer management is unsustainable, but there are parts of the countryside in which deer are not managed in a way that protects the public interest. The impacts include damage to protected sites and
fragile environments, and overgrazing. That unsustainability is the main issue in the countryside. There are also the issues of deer in urban environments and around road systems, with the risk of road traffic accidents. All those issues lead to the requirement for deer management.

We have moved away from a duty to manage deer sustainably. However, the point is not that we do not want deer to be managed sustainably; rather, it is that, on reflection, we consider that a legal duty in the bill to manage deer sustainably basically would not work. It would be insufficiently precise and would not focus on particular individuals. It would not be sufficiently clear in telling people what it meant.

**Liam McArthur:** Was the Deer Commission wrong to make that recommendation following its review?

**Hugh Dignon:** I do not think that it was wrong. We share the aim and absolutely agree that deer should be managed sustainably.

11:30

**Liam McArthur:** The commission clearly had misgivings about the voluntary approach.

**Hugh Dignon:** The Deer Commission has never thought that the voluntary approach should be thrown out altogether, although it thinks that the approach has shortcomings. We certainly agree that there need to be robust intervention powers to step in when the voluntary approach breaks down. However, ministers are persuaded that, in the first instance, the voluntary approach should be pursued, but that there should be the option of robust and useable intervention powers when that approach fails to deliver what is in the public interest.

**Liam McArthur:** You talk about having robust powers in reserve. There are already powers to impose control schemes, but my understanding is that they have not been used to date. Is there an explanation for that, given some of the problems that have emerged in the recent past and which the bill aims to address? What are the shortcomings in the powers that SNH already has at its disposal?

**Hugh Dignon:** It is true that control schemes have not been used, but they are the second step in a two-step process. There are control agreements, which come before control schemes. Control agreements have been used in the past and are being used now, but it has been difficult to translate them into control schemes when the Deer Commission has thought that to be necessary. We have considered legal analyses of the problems and we think that some of them can be fixed. That is what we have attempted to do by amending the intervention powers through the bill.

**Liam McArthur:** So there is an acceptance of the need, in certain instances, to move from control agreements to control schemes and a willingness to do so, but you have been frustrated by anomalies in the legislative framework.

**Hugh Dignon:** That is generally right, yes.

**Peter Peacock:** I want to pursue the issue of why you stepped back from the consultation proposals about managing deer sustainably. In response to Liam McArthur, you said that there was a lack of precision and clarity about what a duty to manage sustainably would mean. However, there is surely a lot of evidence about maintaining habitats and what would widely be regarded as an acceptable rate of natural regeneration through reducing grazing pressure. It is widely held that the significant growth in deer numbers—particularly of red deer—in recent decades has had profound impacts on the natural environment and biodiversity of certain areas. I presume that there are quite a lot of data on that. Therefore, there could be agreements between SNH, estates and advisers about what constitutes the sustainable management of a piece of land, and there could be plans to do that, which could be monitored. In fact, is it not the case that support that SNH or the Forestry Commission has given to certain estates in the past has been based on sustainable management concepts? I am not clear that there is not enough evidence for that.

**Hugh Dignon:** As I said, we do not dispute the need to manage deer sustainably. That is the policy plank on which all the measures are built. However, we think that a better approach to achieving that is to take all that evidence and to build it into the code of practice, which is being developed with the DCS—which will soon be part of SNH—and in consultation with stakeholders.

The code of practice will be a key document. It will set out in detail what we mean by sustainable management, and it will have a role to play under the statute. The code will be taken into account when SNH decides whether to use its intervention powers. That is a more useful approach than just setting out in the bill a general duty to manage deer sustainably. It is more useful to describe in the code of practice what that actually means, and to link that with the intervention powers.

**Peter Peacock:** I understand that argument but, ultimately, unless there is a statutory duty on landowners to manage sustainably, the approach that you suggest will always be a lesser provision than that which was originally proposed—a duty in law, albeit backed up by a code and so on—and which would have been stronger. You have
stopped one step short of making that an explicit duty in the bill, and I am not entirely sure why.

**Stuart Foubister (Scottish Government Legal Directorate):** The essential problem with the duty approach is that it applies equally to private and public bodies—perhaps more to private persons and bodies than to public bodies. If general duties are included in statute for public bodies, there is a reasonable expectation that they will simply be observed; with private persons, that really needs to be backed up with criminal sanctions to make the duties have any force or teeth. It would be unreasonably vague to impose on individuals a general duty of sustainable deer management that was backed up by criminal sanctions. That would not meet tests under article 7 of the European convention on human rights.

**Peter Peacock:** Would a criminal sanction always be required? Some of the cross-compliance measures for European funding routes and so on would be very powerful. There could also be powerful licensing arrangements. The provisions that we are considering would not necessarily end up in the criminal law, would they?

**Stuart Foubister:** That would mean trying to find mechanisms to make a general duty work, when the mechanisms in the bill can deliver sustainable deer management—it would be about having a general duty for the sake of having a general duty.

**Peter Peacock:** So you do not think that having a statutory duty adds anything at all to the provision in the bill.

**Stuart Foubister:** Not if the duty was unenforceable.

**Peter Peacock:** So it is more a legal question than a policy question. Is that right?

**Hugh Dignon:** There are two elements to the matter. We were conscious of the legal advice that we were getting: the policy objective could not easily be achieved, although there are other ways of achieving it—and we think that we have now achieved it.

**John Scott:** Would it be fair to say that sustainable deer management is a policy objective that everybody is generally signed up to anyway?

**Hugh Dignon:** Yes—I do not think that anyone would seriously disagree with the need to manage deer sustainably. There are plenty of people who might query what is meant by the term “sustainable deer management”; that is why we think that the code of practice will have a key role to play in setting out exactly what we mean by that, so that there is no misunderstanding.

**John Scott:** For the avoidance of doubt.

**Elaine Murray:** I appreciate that you have stepped back from having a statutory register of people with the appropriate competence to kill deer. However, a register could still be introduced if it is felt that the voluntary approach is not working. We do not take the same approach with other animals that are shot, such as foxes. What is special about deer that it might be necessary to legislate on the basis of competence to shoot them, whereas that does not happen for other species?

**Hugh Dignon:** There is a general acceptance among the public that the larger, more iconic mammals require a greater degree of care. In their case, welfare issues are more to the fore in the public’s mind, and we wish to reflect that. There are also issues around public safety. People who shoot deer are using high-powered rifles in public spaces. There are further issues around carcass management and food preparation—these things are entering the food chain.

We thought that competence was worth taking into account, and we are not on our own in that regard. The deer industry agrees that those are desirable objectives, as is demonstrated by the fact that its representatives have offered to work with us to achieve an increase in demonstrable levels of competence.

**John Scott:** What is deerstalking’s safety record? Is there a problem with it? Are you somehow suggesting that competence does not exist?

**Hugh Dignon:** We are not suggesting that at all. The safety record is extremely good as far as the public are concerned. It is less clear that deer are always shot to what could be considered an acceptable level of humane practice and welfare. The general standard is that a deer should be killed within five minutes of being shot, and according to evidence that we have seen from the Deer Commission and anecdotal evidence, it is not always obvious that that happens. It is also clear that, although professional deerstalkers and keen recreational stalkers usually have high standards, there are those who are less interested in the welfare aspects of shooting deer. If someone views deer as a pest that needs to be dealt with, they might be less interested in maintaining high standards of welfare and humane practice. The picture is not uniform.

**Liam McArthur:** Another area in which the Government appears to have moved away from what the Deer Commission proposed is with regard to amending the way in which the close season operates. What is the basis for that change in emphasis and approach?

**Hugh Dignon:** The original proposals were part of a package that suggested that, once the
competence register was in place, local deer management groups might be able to set local close seasons to reflect the issues in their areas. A number of deer management groups and others in the sector raised strong objections to that. There were also legal concerns about having varying close seasons throughout the country. Ministers decided that, on balance, the Deer (Scotland) Act 1996 is flexible enough to allow the adjustment of close seasons if necessary, so there is no need to get involved in major changes to close seasons and they decided to leave it for the time being.

Liam McArthur: You have identified the concerns about the approach that the Deer Commission proposed. Have similar concerns been raised about the move away from that approach? Is it generally felt that the current legislation can be made to work and that it is not a source of concern?

Hugh Dignon: There are arguments on both sides, as with most aspects of deer management. Some people would like the season to be extended to allow more deer to be shot during what is currently out of season. As I said, ministers are not minded to do anything about that at present.

At some point, we will possibly consider—I use the word “possibly” because it is not part of the bill, given that the 1996 Act already contains the power to vary close seasons—whether the close seasons could be better focused to reflect the time of greatest welfare dependency of deer with their young. It is not clear that the current close season for female deer best reflects the time when their young are most dependent.

Liam McArthur: Are you likely to come up with a view on that during scrutiny of the bill? I appreciate that it does not depend on the bill, but it has a bearing on our consideration of the bill.

Hugh Dignon: We are not working on it right now, but we are conscious of it and have said that we will consider the issue.

John Scott: For information, what is the close season for deer and how would you propose to change it? I am fascinated by the suggestion that there is a need for change and the point about the dependency of calves.

Hugh Dignon: There is not a single close season but various close seasons for different species and sexes of deer, so it is not straightforward. I have a table of them with me, so I can read them out if you want.

John Scott: It would be helpful if you could let us have the table, but do not spend hours telling us about it now. Thank you for the offer, just the same.

11:45

The Convener: I am conscious that I did not ask whether you wanted to make an opening statement on deer. We are short of time. Do you want to make an opening statement on badgers and muirburn, or can we move straight to questions?

Kathryn Fergusson: We are quite happy just to answer your questions.

The Convener: Thank you. Aileen Campbell has some questions on the protection of badgers.

Aileen Campbell: As you know, the bill makes a number of changes to licences that are issued to permit otherwise prohibited activity, makes it an offence knowingly to cause or permit certain acts, and increases the penalty for killing badgers. I understand that there is general support for the proposals, but concerns have been expressed that it will be difficult to establish proof and that legitimate land management practices might be restricted. What does the latter concern refer to?

Kathryn Fergusson: To be honest, I am not sure what it refers to, because the legislation already sets out when licensing may be applied for with regard to badgers. The changes to the offences are limited to adding the “knowingly causes or permits” offence to offences that are not covered by it at present. The Nature Conservation (Scotland) Act 2004 includes the “knowingly causes or permits” offence in relation to interference with setts, and we are extending that to include other offences in relation to badgers.

In the consultation, some parties expressed concern that badgers receive too much protection in legislation. I am not sure whether that is what you are referring to.

Aileen Campbell: I think that my question was just about why there is concern that the bill might restrict legitimate land management practices. Is the concern that land could be damaged?

Kathryn Fergusson: There is a belief that badgers are susceptible to persecution because of their ability to adapt to different habitats, but the bill does not touch on any of the tools that are currently available to land managers for badger control, should that be required.

Aileen Campbell: There is always concern about the relationship between badgers and tuberculosis. I understand that Scotland has been TB free since 2009. Is that relationship kept under scrutiny? Does it have any implications for the bill?

Kathryn Fergusson: As I have said, we do not consider that to have any relevance to the bill because we are not looking at specific areas such as that. The bill is limited to extending the “knowingly cause or permit” offence and changing
the procedure to allow greater penalties for some

_Aileen Campbell:_ Are there any figures on prosecutions under the Protection of Badgers Act 1992 for taking or killing badgers?

_Kathryn Fergusson:_ I do not have any figures to hand, but we will get them from the Crown Office and forward them to the committee.

_The Convener:_ Can I take you back to the point that badgers have been carriers of TB? That has certainly been the case in England. There was a case of bovine TB recently and there were two badger setts in close proximity to the cattle. That is not a big problem in Scotland at the moment, but will the provisions in the bill be adequate if we find that badgers are carrying TB here?

_Kathryn Fergusson:_ The 1992 act contains provisions on disease control in badgers. The bill does not amend those provisions, which will still exist. The current legal framework should provide for the scenario that you mention.

_Bill Wilson:_ It occurs to me that the concern about the restriction of legitimate land management practices might refer to snaring. Might that be the case?

_Kathryn Fergusson:_ I am not sure. As I said, from my reading of the consultation responses, the concern appears to be limited to the protection that badgers have at the moment, rather than covering any problems that land managers have in relation to badgers.

_The Convener:_ We move on to questions on muirburn.

_John Scott:_ The Government’s consultation on the bill contained proposals that relate to night-time burning, neighbour notification and restriction on the type of burning, but those proposals are not in the bill. Why are they not being taken forward?

_Kathryn Fergusson:_ It was decided that the Fire (Scotland) Act 2005 is the appropriate forum in which to take forward the proposal on the night-time burning of suppression fires, as it will allow fire services to give authorisation to landowners for such fires. That is why the proposal is not in the bill.

With regard to neighbour notification requirements, the bill includes some changes to the current requirements. Land managers currently have to notify neighbours 24 hours before burning, but that is considered to restrict good practice and to be a burden on good management.

The bill proposes that the land manager will notify all those within 1km of the burn before the start of the season of when they propose to burn. The notified occupiers will have the opportunity to request further information if they want it. The idea is that those who want to know about when a burn may be happening get the information that they need, without the need for an unnecessary burden to be imposed on those who have to notify people.

_John Scott:_ So it is sufficient for someone to notify their neighbours at the beginning of the season that they would like to burn if conditions are suitable during the season.

_Kathryn Fergusson:_ Yes. We recognise that, depending on the land involved, a large number of people may have to be notified, so there are additional provisions that should make notification easier. For example, if there are more than 10 occupiers within a 1km radius, the land manager can put an advert in the local newspaper rather than writing to everyone individually. The bill provides for the facility for people to be notified electronically, so someone could get a text message advising them of muirburn if that was their chosen form of communication.

_John Scott:_ There is an argument that restricting the permissible burning dates will limit the ability of land managers to carry out management burning under good conditions. I see that the dates have been reduced in the bill.

_Kathryn Fergusson:_ The dates have changed. The muirburn season currently runs from 1 October to 15 April the following year. That can be extended, with landowners’ permission if appropriate, to 30 April for land at altitudes below 450m above sea level and to 15 May for land at altitudes of more than 450m above sea level.

The bill produces a standard muirburn season that runs from 1 October to 15 April. The extended season makes no differentiation for altitudes, and runs from 15 April to 30 April, for which—if it is appropriate—landowners’ permission would be required. The change is that the ability to burn in the first two weeks of May at altitudes of more than 450m above sea level is removed.

_John Scott:_ I understand that, but I do not understand, given the predicted change in climate and the likely increase in precipitation, why you would not consider extending the burning season to the middle of September. I appreciate that many people would not necessarily use such an extension, but conditions may often be better in mid-September than they are throughout the rest of the year. I cannot see that that would have any detrimental effects on land life, as it would have in the spring.

_Kathryn Fergusson:_ We are aware that there is some support for extending the muirburn season into September. The bill does not propose to take that forward at present, principally for two reasons. First, the bill provides for an out-of-season licensing system under which an individual
could apply for a licence for September burning. That could be for conservation or restoration of the natural environment, or for research purposes.

Secondly, we consider that further evidence needs to be gathered on the impact of September burning. For example, there is a risk of peat fires because the heather is likely to be wetter in September; there may be an inclination to burn in drier weather given the associated risks. An additional concern would be the impact on other species. We feel that further research is required before the muirburn season could be extended to September.

**John Scott:** So you are saying that you would not want to extend it into September because it might be too effective.

**Kathryn Fergusson:** No, we are not saying that at all and I apologise if I did not make myself clear. A number of people consider that September burning would be a good idea, but more research needs to be done because of the risks of peat fire and the impact on species.

**John Scott:** Is that because the land is too dry?

**Kathryn Fergusson:** No; the principle is that, in September, the heather may be wetter and the inclination would be to burn when it is drier. It would not be good muirburn practice to encourage burning in conditions where it might not be ideal.

**John Scott:** I am afraid that I do not understand what you are telling me. It may be clear to others why you would not want to burn in September, but it is certainly not clear to me. You would make a better job of it. What do you mean by saying that the heather would be wetter and, therefore, you would not want to do it? It would be no wetter than it is in October or November.

**Kathryn Fergusson:** Possibly not, but that is what we are advised at the moment about the potential risks. We are not saying that it would necessarily be the case; we are saying that further research is required.

**The Convener:** We move on to part 5, which concerns sites of special scientific interest.

**John Scott:** Why is there a need for a provision in the bill to allow the combining of two or more SSSIs? Is there a real example of where that might be relevant or beneficial?

**Steven Dora:** I do not have information to hand on a specific real example. The purpose of the provision is purely to streamline administration. There are instances in which two or more SSSI notifications apply to the same land or are adjacent to one another. In such instances, two or more different lists of operations that require consent relate to the same land. That can be confusing for owner-occupiers and also increases the risk of inadvertent non-compliance with the legislation and of possible damage to protected natural features. There are also costs associated with the maintenance and listing of each SSSI notification in corporate databases, the SSSI register, periodic statutory documentation review and boundary maps.

**John Scott:** Will you give us an example of an SSSI that might be a candidate for denotification under the circumstances that are relevant to the bill?

**Steven Dora:** I have not received any information from Scottish Natural Heritage on that.

**The Convener:** We can ask SNH about that when it gives evidence.

As there are no more questions on the bill, I thank the witnesses very much for the information that they have provided. I ask them to provide the clerks with any supplementary written evidence that they have agreed to provide.

That concludes the public part of our meeting. I thank everyone in the public gallery for attending.
Wildlife and Natural Environment (Scotland) Bill: Stage 1

13:38

The Convener: Agenda item 2 is continued stage 1 consideration of the Wildlife and Natural Environment (Scotland) Bill. After our first panel of witnesses, we will have the open-mic slot that I mentioned and then a second panel.

I welcome to the meeting: Dr Colin Shedden, director of the British Association for Shooting and Conservation Scotland; Libby Anderson, policy director with Advocates for Animals; Alex Flynn from the Scottish Gamekeepers Association; Mike Flynn, chief superintendent of the Scottish Society for the Prevention of Cruelty to Animals; and Hugo Straker, senior field adviser for the Game and Wildlife Conservation Trust.

To maximise the time available, I will move straight to questions. How much of a problem is the poaching of game birds, rabbits, hares and even raptors? What are the panel’s views on police enforcement with regard to poaching and the loss of special powers for landowners and gamekeepers to apprehend poachers?

Dr Colin Shedden (British Association for Shooting and Conservation Scotland): The question is very important because the national wildlife crime unit's most recent figures indicate that poaching is the most frequently reported wildlife crime in Scotland. To the list of species that you mentioned, I would add deer, because over last winter deer poaching was the most commonly reported wildlife crime in Scotland after hare coursing. As I say, the issue is important and has been well addressed in the bill. For example, we have lost—or, I hope, will lose—a lot of very archaic language. With the definition of poaching as the illegal removal of game or other wildlife species from land without permission, the whole thing has been very much simplified.

Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals): Like the national wildlife crime unit, we have seen a marked increase in reports of poaching, although I have to say that it is probably not the traditional type of poaching that the bill is aimed at. For example, people on the outskirts of cities are causing tremendous suffering with the use of dogs, crossbows and air rifles. The police are taking a lot of action. We have been involved in joint operations in West Lothian, Fife, Tayside and Grampian to try to target moving gangs who come up with lurchers in the back of their vans. We have done a lot of work to try to encourage landowners to report such activity to the police, because the people do not just take animals; once they are there they will attack the farm buildings, and all that kind of stuff.

Alex Hogg (Scottish Gamekeepers Association): Gamekeepers tend to be at the sharp end of the stick. We are usually the first guys to apprehend such people. I agree with Mike Flynn that a lot of them are criminals who break into the farm buildings and steal whatever is there. It is vital that we try to stop such poaching.

The Convener: It is not the traditional image of “one for the pot”.

Alex Hogg: No.

John Scott (Ayr) (Con): What are the witnesses’ views on the loss of special powers for landowners and gamekeepers to apprehend poachers?

Alex Hogg: The issue is difficult, because our evidence must always be corroborated anyway. Whenever I have been in court, the court has wanted other witnesses. The loss of the power will not really affect us.

Another issue is that we have shotgun and firearms certificates and we do not want to apprehend those guys face on sometimes, because we can end up landing in trouble because of the firearms. It is better if we watch the guys and the police come and deal with them.

Dr Shedden: In our submission, we suggested that the provision on single witness evidence should be removed. We discussed the issue with the police and the courts. No case has come to light in which single witness evidence has been used without corroboration.

We do not advise our members to approach poachers. Poachers are involved in other things and there have been incidences of violence towards gamekeepers and other people in the countryside. We always advise people that if they suspect that poaching is taking place they should take what notes they can, for instance about the vehicles, and get in touch with the police as soon as possible.

Bill Wilson (West of Scotland) (SNP): Do the other members of the panel have views on the current law on single witness evidence?

Mike Flynn: There is a place for it. It originally applied to the stealing of birds’ eggs, given the remote nature of the places where that happens. That is a problem whether we are talking about taking birds’ eggs or poaching; it is not happening at the end of the street in front of 20 witnesses. As Alex Hogg said, in the majority of cases the evidence has to be corroborated anyway, but Alex could say that he saw somebody poaching and that he found the carcass of the animal that was...
Shedden seems to take a different view. Being two witnesses must be quite low. Dr get to a crime scene and the likelihood of there grounds that it takes a long time for the police to be more important to extend the provision for would much rather have the police come and deal with something right from the start.

Bill Wilson: Do the other witnesses want to express a view on the current law on corroboration? The law came about because the crimes that we are talking about tend to take place out of the sight of people and there is often only one witness. It has been suggested to us that given that a large range of wildlife crimes are carried out out of the sight of people, with perhaps only one witness, single witness evidence could be extended to a wider range of crimes, such as illegal poisoning or shooting of birds. Do the witnesses have a view on that?

13:45

Mike Flynn: I would welcome such an approach. As I said, there is always secondary corroboration, because there is a poisoned carcase, for example. It comes down to the credibility of the witness and the interpretation of the court.

Libby Anderson (Advocates for Animals): I agree with Colin Shedden that there is always likely to be corroboration in a court case. However, before we even get to the problem of single witness evidence, we have to think about enforcement. The experience of many people who come across what they think are offences in the countryside is that the police do not come and address the problem. Evidence needs to be looked at quickly, because it can disappear. Before we even think about the admissibility of evidence, enforcement is a serious issue.

Alex Hogg: We have been working with the partnership for action against wildlife crime Scotland on that. We always try to get the police to come and deal with a crime scene—every time. However, due to our being so far away from police stations and whatnot, it is difficult for them. We would much rather have the police come and deal with something right from the start.

Bill Wilson: I am getting the sense that it might be more important to extend the provision for single witness evidence than to remove it, on the grounds that it takes a long time for the police to get to a crime scene and the likelihood of there being two witnesses must be quite low. Dr Shedden seems to take a different view.

Dr Shedden: Yes. The general impression that we get is that single witness evidence does not get far when it reaches procurators fiscal, who think that they need much more than that. The police contacts with whom I have spoken gave the impression that the provision is rarely used. To extend it to a wider range of rural crimes could lead to an awful lot of reporting of potential offences but very little action being taken. I think that everyone round the table would like the people who commit crimes in the countryside to be taken to task through the courts. I would be concerned if more and more of fiscals' time was taken up in looking at cases with which they would decide not to proceed.

Karen Gillon (Clydesdale) (Lab): I suppose that in this day of modern technology there are lots of ways in which you can get corroboration, but there might not be lots of ways in which you can get two people on the ground at the same time. You could corroborate an incident because someone's mobile phone was in the area or in various other ways, but you might have only one witness to the act. That is the issue. Only this morning, an instance of bird poisoning of buzzards outside Arbroath, was reported. We need to do something, and extending the provision might be one way of making people realise that we are serious about it.

Libby Anderson: That is relevant for anyone who takes a particular interest in the issue. We have a field research officer who will look for examples of practice in the countryside that support our campaigns on some of our welfare issues. Inevitably, he comes across whatever he believes are offences, but he often has difficulty getting anyone to investigate. He would normally document things, as Karen Gillon suggests, to have that back-up evidence, but even then, it can be difficult. For instance, in a recent case, he thought that he had found some illegal snares and he informed the police about them, but they were unable to attend. The incident took place in Strathclyde, but he was advised to go to his local police station in Gayfield Square in Edinburgh and give a statement, which would be passed back to Strathclyde Police. That is not really taking forward the issues of enforcement and investigation. I realise that we are getting a bit off the subject of evidence standards and single witness evidence, but it is all part of the wider question of how we address potential offences in very remote areas.

The Convener: We are taking evidence from the partnership for action against wildlife crime—PAW Scotland—at a future evidence session, so we will not dwell on the issue at the moment.

Karen Gillon: My question is for the gamekeepers. On your concern about the incorporation of game species into the Wildlife and
Dr Shedden: I possibly take a slightly more relaxed view because I come from an organisation that represents a wide range of shooting sports and disciplines, including the shooting of ducks, geese and waders. All those species are already named in the Wildlife and Countryside Act 1981. I think that there is a logic to putting all the quarry species, as it were, together. We need to recognise that things can change. For example, we have lost some quarry species in the past—the last one was the capercaillie, because of its population decline. I think that the flexibility could be useful if other species become much more abundant in Scotland and become legitimate quarry for game-shooting interests. I think that the flexibility works both ways.

Bill Wilson: I am just curious about one point. Would not the logic of Alex Hogg’s argument be that the pheasant and the red-legged partridge should simply be considered indigenous birds and be treated in the same way as the other indigenous birds that are referred to?

Alex Hogg: That would probably be the route to go down. As long as we could call all of them game, as we did in the past. In that way, we could have seasons that are recognised as such.

The Convener: We come to our next area of questioning, which John Scott will lead.

John Scott: What are the panel’s views on the proposals to protect hares through the establishment of a close season and the proposed offences of poaching rabbits and hares?

Dr Shedden: We recognise that close seasons provide a lot of welfare protection for mammal species. For instance, we are pleased that the suggestion to remove close seasons for deer has been put to one side for the time being. The introduction of close seasons for the mountain hare and the brown hare will not compromise shooting or management interests. The start date of the seasons is an issue for us. Many people on the ground want to push forward the date by one month to allow essential management. In the past, no one has shot hares or taken them in any other way during the spring and summer, when they have dependent young. The proposal would formalise what takes place at the moment. As I think Hugo Straker agrees, we are quite relaxed about the introduction of close seasons for hares.

John Scott: Do all the panel agree on that? What are your preferred dates for the close seasons? I understand that the seasons would be different for brown hares, mountain hares and blue hares.

Libby Anderson: I do not feel qualified to offer a view on the season. As Colin Shedden said, it is absolutely fundamental to protect mammals when they have dependent young. If a lactating mother...
is killed, her young die a death that is not quick and easy. In principle, on animal welfare grounds, we are pleased that close seasons have been included in the bill.

**Alex Hogg:** We agree. We could manage brown hares in the month of February before they breed in March, so the close season would be from March to the end of August. The close season for mountain hares would start one month later than that. The most prolific hare counts are found on shooting estates; there are thousands of white hares on those estates. The Game Conservancy Trust undertook a count, albeit that it was difficult to do. As I said, the most prolific numbers are found on estates with managed shoots.

**John Scott:** Why is that?

**Alex Hogg:** Hares are prone to fox predation and so forth, especially the young—the leverets. Hares have a far greater chance of survival on ground that is keepered and managed.

**John Scott:** We have heard that white hares are being culled systematically on estates in the eastern Highlands. That might, or might not, be a breach of the habitats directive. I think that the hares are being culled because of the ticks that they carry.

**Alex Hogg:** Lyme disease has been on the increase since 2000, when there were 30 cases. I think 675 cases were recorded last year. Lyme disease is on the up and we have brought that to the attention of Parliament. Estates are being forced into managing white hare and deer to try to keep down tick numbers. The same number of hare are taken off the estate each year; it is like a crop. It is not causing a decline in the hare population. We have to try to find an answer to the tick that causes Lyme disease. The Scottish Parliament is encouraging people to access the countryside, but some areas of the country are absolutely ridden with ticks. Hugh Dignan from the Scottish Government is in the public gallery. I went up to the Highlands with him one day to look at snares. Within 10 minutes, his legs were covered in ticks. It is a serious problem.

**John Scott:** In fairness, the evidence was on the effect of ticks on grouse chicks.

**Alex Hogg:** The hare carries the louping ill virus, which I reckon came originally with the sheep. Unless the virus can be tackled, it will not only kill 80 per cent of the grouse on an estate, it will kill 80 per cent of lapwing, curlew and other wader chicks. Anyone who has seen wee chucks covered in ticks on their heads and so forth will agree that it is an absolutely horrible sight. We need to try to find a way in which to subdue tick numbers.

**John Scott:** So, we are talking about something that is specific to mountain or white hares. You know more about this than I do, but there are two completely different types of hare. Low-ground hares are essentially brown hares.

**Alex Hogg:** Yes.

**Hugo Straker:** For clarification, the hares amplify the ticks. They carry ticks, and a tick will feed next door to another tick. The hare acts as the means of a co-feeding process, and the louping ill virus will pass from tick to tick through the hare’s bloodstream.

Brown and blue hare populations are increasing throughout Scotland. Their population density is 10 times greater than that of their cousins in Europe. That is the result of the active management that has been undertaken by shooting estates through good muirburn practice and good predator management. The populations are therefore in a great state, and one could argue that there is no conservation reason for putting a close season on hares. As we have identified, management is done naturally. Good land managers and good gamekeeping naturally leave the hares alone at the time of the year when their young are dependent on them.

**The Convener:** We now move on to the part of the bill that deals with snares.

**Karen Gillon:** That part of the bill is probably one of its pinch points and the one on which we will hear the most diverse range of opinions. This morning, we were out on a hill, and we have seen first hand what a snare looks like. Many of us have seen photographs that back up the other side of the argument. Why does the Scottish Gamekeepers Association think that snaring is necessary? What would the consequences be if we introduced a ban on snaring through the bill?

**Alex Hogg:** If snaring is banned in Scotland, the Government will wreck Scotland’s biodiversity for the future. We seriously need snares; they are the last tool that we have in the toolbox. Does the Government have something to replace them? We have racked our brains trying to think of something that might replace them, but we cannot come up with anything.

We have gone with snares. We have pulled out all the stops and we now have 600 keepers trained. We phoned people throughout Scotland and managed to arrange meetings. Colin Shedden and Hugo Straker have done some training days, so we have guys trained.

Snares now have stops that prevent them from choking anything. They are holding devices. If the snare is checked within 24 hours, the animal should be held. A non-target species such as a
badger can be released. We all carry cutting gear to release badgers. Most of the horrific pictures of snaring that we have seen in past years are of snares of non-professional poacher types around urban areas. We have really tidied up our house, and we are trying our best to work with the new snaring, tagging, stops and all the regulations that go with them. A snare cannot be set any more where it would get entangled in a fence, a fox could be strangled by it or it could be dragged away, and it must be held by a good anchor.

We have jumped through all the hoops. If we lose snaring, we will have no other means to control the fox population, which is on the up.

The Convener: What proportion of the number of gamekeepers in Scotland are the 600-odd people who have gone through the course?

Alex Hogg: I would bet that around 95 per cent are gamekeepers, but there are many guys out there who have wee shoots who will come on the course. Initially, we caught up many keepers because they were keen to come and get the course done.

Karen Gillon: So, they go on the course and put out their snares. The gap in the snares that we saw today seems to be very narrow and tight for a fox’s head or neck.

Alex Hogg: The part of the snare that you are referring to is not for a fox’s head.

Karen Gillon: Is it for a fox’s neck?

Alex Hogg: No.

Karen Gillon: If I put my hand into the snare and pull, I can see how tight it will get.

Alex Hogg: The snare that you have is for deer or a dog’s paw. It will help in terms of anything that you would not want to catch in it. Years ago, deer were terrible for going into snares, and they would get caught by the leg.

Karen Gillon: I understand that, but the snare seems to be very tight for a fox’s neck. I can see how a fox struggling in it could do itself a bit of damage. The wire is quite thick, although I take it that it could also do serious damage if it were thinner. Something struggling in it would be cut into. Is the loop big enough? What would happen if a tag were put on a snare and it was found that it was not set properly? Would the person not be allowed to set snares any more, or would they simply be told not to set a snare like that again? Would it be up to the landowner?

Alex Hogg: Those snares are set at certain times of the year to try to protect ground-nesting birds and lambs from foxes. Nine times out of 10, the animal will go into the snare in the hours of darkness. When it enters the snare, its instinct is to lie like a dog or hide, especially in the hours of darkness. When we check our snares first thing in the morning, which we normally do—we have a snaring round; we check the snares at daylight and onwards through to breakfast time—we will dispatch the animals that have been held in them. The snare must close to a certain tightness to be able to hold the animal. The old-fashioned snares locked, so the tighter they got, the more the animal was strangled. However, the snares that we now have are non-locking; they can slip back again. They will hold the animal in the same way as a choke lead on a dog that is pulling too hard.

As far as setting a snare illegally is concerned, if we were accused, or found guilty, of setting a snare next to a badger sett or whatever—guidelines exist—we would be charged under the Wildlife and Countryside Act 1981 and we may end up losing our jobs because we would not be able to snare any more. There are rules and regulations to make sure that we comply with the law.

Karen Gillon: Mr Straker, you were involved in some work in England and Wales, and you have been involved in setting the diameter of a legal snare. We are all intrigued as to how we got to this point. It would be helpful if you could talk us through some of what you have been doing.

Hugo Straker: Much of the research on snares that is being done in the UK is being done by the Game and Wildlife Conservation Trust biologists. A lot of the work is being done with the Department for Environment, Food and Rural Affairs, and a report will be published on or around 1 October. I urge the committee to see the results of that work before making any firm decisions.

The research that we have been doing on foxes has been extensive. I return to your point about the stop being fixed—as it now is in Scottish law—at 23cm, or 9in, from the running eye of the snare. Every one of the foxes that we have captured—it is an awful lot—has been restrained, and many have been released, strangely enough, with a radio collar attached to enable us further to understand fox behaviour. A lot of what we have been doing has been captured on camera, and a snare of 23cm has held a fox comfortably without causing it any harm. We must balance humaneness with visibility, and the 2mm diameter wire has been found to be most effective while allowing badgers, which have greater pulling power than foxes, to get away. I have here an example of the type of snare that is currently being considered. The break-away is the little metal ring by which the noose is attached. At a certain pulling
pressure, that ring will open and allow any animal larger than a fox to be removed. We are always looking for opportunities for snares to be target-species specific, so that they can hold the problem animals, such as foxes, but not non-target species such as brown hares and badgers.

Our courses also alert keepers to better management practices. A lot of keepers may set snares at a standard height that, arguably, could be too low. Through our courses, we are encouraging them to set them to at least 7in off the ground in order to minimise the capture of badgers. However, keepers in this room who have caught badgers will know that, should badgers be caught, a snare such as the one that I have here will hold a badger without harming it. That is particularly true now that the law says that a keeper must not set a snare where an animal is likely to become entangled, or partially or fully suspended, or where it may drown. Good practice today, under law, says that the snares must be set outwith any hard vegetation that would encourage entanglement.

The risks of harm being caused to non-target species have been greatly reduced, and the snares that we have today are great, in as much as they are restraining devices.

Karen Gillon: I take it that Libby Anderson and Mike Flynn have a slightly different perspective on that. In the evidence that we have received from Advocates for Animals, you mention that snares may contravene the habitats directive and you cite a case that was on-going in Spain, although I understand that the courts have found against that case. How does that affect your views on the habitats directive, on snaring and on how these things work?

Libby Anderson: First, that was a historical case from a few years ago. I was really questioning whether snares would come under the heading of non-selective or indiscriminate traps, as described by the habitats directive. In that case, the court accepted without question the fact that snares were in that category of traps. That is why I referred to that case.

May I comment on what Alex Hogg and Hugo Straker have said, or would you like me to say more about the habitats directive?

Reference has been made to the regulations that we now have, which are, in effect, replicated in the bill—the bill will consolidate the rather new status quo. Hugo Straker has shown you a stopped snare and a snare of cable of the diameter that I am showing you with my hands. I have made available to the committee photographs that show numerous breaches of the regulations, including an incident in which deer were snared and an incident in which a badger was virtually sliced in two around the abdomen through being caught by a stopped snare that used that type of cable. Later, the snare had moved up so that the badger was caught under its front legs. Again, there was a very deep wound in the animal, which had to be put down.

I fully recognise the efforts of what we might call—I do not want to be rude—the acceptable face of the snaring industry, but the regulations, well intentioned as they are, are simply not going to be effective, because as long as snares can be set, people will take a chance that they can set them and leave or neglect them, set them inappropriately, or set them in the wrong areas. Those chances will be taken because those acts are so unlikely to be detected. The cost in animal suffering is so high that I would like the committee to consider what is acceptable and what we should legislate for. On the one hand, we hear that there might be the relatively mild impacts that Hugo Straker described and which Alex Hogg mentioned in relation to best practice, but at the other end of the spectrum—this starts not too far down the scale, in my opinion—the suffering of animals is appalling. Does the committee want to legislate to allow that to continue?

Karen Gillon: We heard evidence this morning that when the moor was left unmanaged, with no snaring and no shooting, the foxes had a catastrophic impact on other species. The other side of the argument is that, if we want to protect other animals, we might need to snare foxes.

Libby Anderson: I am not here to argue against control of predators, although we might have that discussion on another day. However, snaring is only one part of fox control. Only about 25 per cent of foxes are killed using snares. Snaring has a role in that management, but nobody has shown the evidence that it is absolutely indispensable to the conservation of biodiversity or indispensable in terms of the economics of the shooting industry. That is often said, but it has never been evaluated and quantified.

John Scott: The 25 per cent of foxes that are killed using snares could probably not be killed in any other way—at least, not at the moment. What do you propose as the best way of controlling those foxes?

Libby Anderson: As I said, the majority of foxes are shot. You were up on Langholm moor today, and I know that the keeper there shoots foxes at earth as well as snaring. I do not know what the proportions are of those activities, but there are alternative methods if fox control is necessary.

John Scott: Such as?
Libby Anderson: Such as lamping, shooting and habitat management. Around pheasant pens, more people are using electric fencing, for example. I am not saying that those things will be the perfect solution to the problems of fox predation, which is natural—the prey is there for the animals and foxes are part of our environment. The question is how acceptable it is to use a potentially extreme means that can inflict so much suffering in order to protect economic interests and biodiversity—and not to protect 100 per cent, but just the amount that would be at risk if the particular tool of snaring was withdrawn.

Karen Gillon: Let me take us away from the shooting fraternity. Say that I am an upland hill farmer, I am lambing on the hills and I have a fox problem. If I do not set snares, I am going to lose my lambs.

14:15

Libby Anderson: You could shoot the fox if you needed to.

Karen Gillon: The reality is that I might not hit the fox. I might be out all night and miss it because it is in heavy bracken and I cannot see it. It might still get my lambs. That farmer needs his income, because his family relies on it. If I stop snaring, am I in danger of impeding his income stream, thereby making his family life more difficult? Is there a human consideration as well as an animal consideration?

Libby Anderson: I would never argue against human considerations. Clearly a single incident is never a good reason for making policy, but it is perfectly valid to consider that example.

The advice from Science and Advice for Scottish Agriculture is that snares are used relatively little on farms. I know that NFU Scotland is giving evidence later, so perhaps it could give you hard figures as to the extent of snare usage on farms. The SASA paper that I read recently suggested that it is not that significant.

Elaine Murray (Dumfries) (Lab): I want to follow up on the alternatives to snares. We have had evidence that in other countries snares are not used at all, but we have also been told that in some of those countries other forms of predator control, such as poisoning or gassing, are used, which we would not find acceptable in this country.

You visited the Langholm moor project this morning, which uses lamping as well. If lamping could deal with all the foxes, surely people would just rely on lamping. If they set snares, they have to go out and check them in the morning—there is a lot of work in setting snares. If the foxes could be adequately controlled through shooting, should they not all be controlled by shooting?

Libby Anderson: I am sure that that is the case. I know that Colin Shedden is desperate to comment, as he is the authority on shooting. There will be times of the year, such as when the vegetation is high, when it is not so suitable to shoot foxes. I perfectly understand that. How much loss would there be if snaring was not available at that time and is that loss bearable in economic or convenience terms when you consider the downside of snaring? What we are trying to demonstrate is that the downside is very severe.

Elaine Murray: There have, however, been developments in snares. I was a bit worried by the snare that Karen Gillon was showing us earlier. I would be worried not just about a fox’s neck—a fox is quite a small animal—but about the fact that badgers are occasionally caught in such snares. It is very likely that that sort of circumference around a badger’s neck would cause it considerable suffering. However, it looks as if attempts are being made to develop snares that a badger would be able to get out of. Is it possible that this method of restraint can be refined to such an extent that it would overcome the animal suffering that you have been describing?

Libby Anderson: What we have so far—the legislation on stops, the legislation on inspection and the legislation on drag poles, which I have seen being ignored—has not stopped animals being strangled, eviscerated and left to die, because the inspection regulations are not being observed. We have regulations—a genuine attempt by the Government and the industry to address bad practice—but they are not working.

Alex Hogg: I disagree with that. The few pictures that you have shown us, Libby, have definitely not come from shooting estates; it is the poaching element that is setting some of these snares.

Libby Anderson: The pictures have come from shooting estates, Alex.

Alex Hogg: I disagree.

Dr Shedden: I want to pick up on a couple of points that have been made in the last 10 minutes or so. Alex Hogg mentioned the importance of biodiversity. Let us not forget that the main reason for using snares is the economic reason to which Karen Gillon referred. The economics are incredibly important for the shooting world. Work that we did in 2006 showed that shooting is worth £240 million to the Scottish economy and employs the equivalent of 11,000 people. We are talking about important social and economic drivers.

Libby Anderson said that 25 per cent of the foxes that are controlled in Scotland are snared. We have some information that suggests that the rate is as high as 40 per cent. In some locations
and circumstances, practically all fox control is done through snaring. From a farming and shooting point of view, snares are important at many times of the year and in many different locations.

Alex Hogg said that 600 participants have been through training courses. The response so far has been good, given that the courses started only in March this year. Government estimates and our estimates are that between 3,000 and 5,000 gamekeepers, farmers and others use snares in the Scottish countryside. We have made a start, but the target is to train between 3,000 and 5,000 people to use snares legally and as humanely as possible.

Bill Wilson: Was a welfare organisation such as the SSPCA involved in the design of the training course? If not, would there be any advantage in including such an organisation? Perhaps Mike Flynn will respond to that.

Karen Gillon talked about enforcement. Does Alex Hogg see any advantage in making the licence to snare conditional on attending the course? Should there be provision for the removal of a licence if a person does not meet the course requirements when they are snaring?

Mike Flynn: The SSPCA’s only input to the industry in that regard was at a meeting with Colin Shedden, Hugo Straker and the Scottish Government, at which I said that if the provisions in the bill are enacted, the code will enable people to comply with the law. That does not mean that we endorse what is happening. The SSPCA is firmly against snaring.

Many arguments have been going about this morning. I think that a main reason why snares are still used is that they are a cheap and labour-efficient way of catching predators. As Karen Gillon said, she could be up all night and still not shoot a fox. Shooting foxes is labour intensive. However, someone can lay 500 snares—I would argue that so many snares cannot be checked properly—and catch a fox, without having to stay up all night to do it. In the meantime, an animal can suffer.

There is a lot of bad practice, as Alex Hogg pointed out. He mentioned that people who have a part-time shoot do pest control. I have debated the issue with Alex for years. No one who is in part-time employment should be snaring, because they are not checking their snares properly.

Alex Hogg probably knows about the most recent horrible case that we had—I did not circulate the pictures to the committee. Three weeks ago, outside Aviemore, a snare that had been set by a very reputable SGA member on a very reputable estate caught a dog, which was owned by the next-door neighbour. The injuries were horrific. The dog had not been in the snare for more than 12 hours, because it had last been seen 12 hours before it was found. The guy took our inspector to the snare and said, “You show me that I’ve set that wrong.” The snare was totally in accordance with the Snares (Scotland) Order 2010; there was nothing that the dog could have got tangled in. Karen Gillon talked about the stop being fixed at 9in. As Alex Hogg rightly said, that is about preventing a deer’s leg from being caught. However, if an animal gets caught by the torso, or if a badger gets caught around its neck, the animal will be injured.

The gamekeeping fraternity has done well to try to improve its practice and I know that Alex Hogg and good old Bert Burnett have spoken out publicly about people who misuse snares. However, bad practice still goes on. I am adamant that no one should be snaring on a part-time basis.

On Bill Wilson’s question, we discussed the code with the Game and Wildlife Conservation Trust and the BASC.

Alex Hogg: Bill Wilson asked whether people should lose their licence to snare. I think that that would be covered by the law. If a snare has been set wrongly or not checked, the gamekeeper will likely be charged. If someone is charged under the Wildlife and Countryside Act 1981, they might not be able to work under general licence, for example, so there are currently things in place.

With regard to the dog that was running about and was caught in a snare, it must be brought to everyone’s attention that it is bad practice to allow your pet to roam the countryside. Dogs must be kept under reasonable control. I would worry to death if one of my dogs disappeared for 10 minutes at home. That is bad practice, and it is not the dog’s fault—it is the fault of the people who look after the dog. The poor dog in question was caught in a snare, but the main thing is that it was still alive, because the keeper checked his snare every 24 hours. We hear stories about dogs being caught in snares, and the reason for that, quite often, is that the owner has not looked after the dog when they have been out walking in the countryside or it has run away from home.

Mike Flynn: I would like to respond to that. I used the dog example to show that snares are totally indiscriminate. Badgers are a prime example, along with deer and dogs. Bad practice on the outskirts of cities means that cats are getting caught quite a lot, too.

Our inspectors do not go out looking for snares—we do not have that role. Every time we attend a snaring incident, we do so because a member of the public has reported it to us. It has already come up in discussion that the biggest
problem with any wildlife crime—I am not saying that snaring is a crime—is that it happens in a remote area, and enforcement is pitifully low. The police just do not have the resources to deal with any such incidents. I think that the committee will address that at a future meeting.

Elaine Murray: My question follows on from the points that have been made. As has been said, the sanctions appear to be insufficient to deter other people from setting snares, so they think that it is worth taking the risk. Do you have any suggestions about how, if snaring continues to be used as a restraining device, the sanctions can be increased and the enforcement improved so that it is no longer worth while setting a snare unless you have to? What happens if someone does not bother to go to the training and continues to set snares? Is there sufficient likelihood that they will be caught because they have not done their training and be punished as a result?

14:30
Alex Hogg: Peer pressure has already brought snaring to everyone’s attention, and everyone has a far tidier house.

Elaine Murray: I am not necessarily talking about the gamekeepers, who want to stick by the rules, but about the bad guys, who might think, “Snaring is still allowed, so I can set a snare and no one will catch me. I’ll be all right.”

Alex Hogg: How do you legislate for the bad guys? It is similar to what happened when pistols were banned. The bad guys were always going to use them, no matter what laws were introduced. They are the guys who will set illegal snares. We have just got to try and catch them and get them to the police somehow or other. It is extremely difficult.

The Convener: With all snares being tagged and identified, it should be possible to root out the really bad guys in the gamekeeping fraternity and establish how many snares are set illegally by poachers or the criminals we talked about earlier.

Alex Hogg: That will help, as long as the criminals do not steal some of our snares and go and set them somewhere else.

Aileen Campbell (South of Scotland) (SNP): I am interested in finding out your thoughts on whether, when a gamekeeper is prosecuted for setting a snare wrongly or badly, the right person is prosecuted. Given that tied houses are often associated with gamekeeping posts, are some gamekeepers suffering from being directed by a more senior gamekeeper or a landowner about how they should set snares or being told to be a bit more relaxed about how they set them? Is the person who sets a snare badly always the person who is culpable and the one who should be prosecuted? If they are not, that bad practice could continue, regardless of whether that person is prosecuted.

Alex Hogg: I believe that the person who sets the snare is the one who is culpable. If it is a young person, they should be trained properly; if it is an older person, they should know, through peer pressure and the courses and so on, what is right and what is wrong.

An old farmer across the road boasted to me last week that he had caught a fox in a snare hanging on a fence. I said, “You can’t do that any more.” That will take time to work its way down through the system. It will take time for everyone to catch up and get an explanation of exactly what is needed.

Bill Wilson: Is that not almost an argument for saying that a person has to be licensed to set snares and must attend the course to get the licence?

Alex Hogg: Maybe attending a course would be a good thing.

The Convener: I ask Bill Wilson to direct his questions through the chair, as I have a queue of members waiting.

Bill Wilson: Sorry.

Peter Peacock (Highlands and Islands) (Lab): I want to pursue the point about enforcement. I guess that Alex Hogg is right that it will always be difficult to catch the illegal snare setter. We have heard that about 3,500 people are potentially licensable, if that is the right expression, and so have to check their snares every 24 hours.

Dr Shedden: Potentially, yes.

Peter Peacock: However, I just do not know whether that is happening, and nor do the police or, I guess, the estate owners. There is a high degree of trust. As we have heard, there is potential suffering, notwithstanding the measures that have been taken to improve snares. Given that, are there things that we can do to better enforce the system? That has already been asked, but we did not really get an answer.

How do we know whether a gamekeeper has checked a snare? This is just one idea, and I am not pushing it, but I rather suspect that every gamekeeper has a mobile phone and it probably has a digital camera in it. If someone checks a snare every day, would it be possible for them to snap a photograph of it and keep a record, with the number on the snare, so that if anybody wanted to check—from the police or another enforcement agency, such as Scottish Natural Heritage—they could ask to see the records? That is one example. Are there other things that we...
could do to make the system more policeable and the enforcement more trusted?

Libby Anderson: I will be as brief as possible. The original consultation on the bill mentioned a requirement for record keeping and for records to be produced to police officers, for example, on request. However, that is not in the bill. If the committee is not minded to do as I would prefer—which is to amend the bill to ban snares—it might want to consider reinstating that requirement on record keeping.

I want to return to Elaine Murray’s question about sanctions and enforcement. The bill provides that every snare must have an identity tag on it. The ID tag will be issued by the chief constable if he is satisfied that the person has been trained to a satisfactory level to set snares. My problem with that is that the training is already being delivered—pre-emptively, we might say—by the industry and, as far as I can discover, it has no independent animal welfare content. The Game and Wildlife Conservation Trust website talks about the courses that the trust delivers, which cover humane dispatch, the use of stops and the appropriate setting and siting that Hugo Straker referred to. That is all about legislation; it is not about animal welfare. We would like independent veterinary advice to be included, explaining to people who set snares what the adverse welfare impacts are on the animals that are trapped—the stress, hunger, thirst, fear and pain and potential pressure necrosis and after effects. All that was identified by the independent working group on snares. If there is to be training, that should be part of the content, at the minimum.

Dr Shedden: I want to return to the question on records. Although the legislation does not demand that records of snaring or trapping activity be maintained, the guidance that we have produced clearly states that it is very good practice to keep such records. That will be equally important if we get to the stage at which tags are attached to snares. If someone checks their snare line of 20 fox snares in a morning and finds that one has been interfered with, tampered with or removed, they should make a record stating, “On Tuesday morning, I lost one of my snares.” We strongly advocate that people keep records of—

Peter Peacock: May I interrupt? Given that position, would you be happy for the bill to state that records should be kept, to reassure people who might be suspicious that the system is not well policed or well conducted that, actually, it is?

Dr Shedden: I cannot speak for other organisations, but I can see no downside to having that as a requirement.

Karen Gillon: Similarly, on the point that Libby Anderson made, is there anything to preclude the training courses including an element of training on animal welfare and the issues that have been raised?

Dr Shedden: I will pass the question to Hugo Straker, because the course that we are running in Scotland is based on the regional GWCT course, which had some proviso on animal welfare.

Hugo Straker: The issue has always been a concern of Mike Flynn’s—the SSPCA has an open invitation to attend a course at any time and we hope that it will take that up. The GWCT operates under a Home Office licence that allows us to conduct much of our research. Much that is in the course came from work by the Game Conservancy Trust, as we were known then, on fox snare research under a Home Office licence. That has satisfied a number of the concerns that members raise.

I take Libby Anderson’s point about veterinary concerns, but the Veterinary Association for Wildlife Management endorses the course, which takes place on the back of supporting organisations. I repeat that we would welcome the attendance at our courses of any organisation of such standing to approve—if you like—what we do.

We are confident that welfare issues—are issues of cruelty and suffering—are threaded through the course that we deliver. The SSPCA’s stance on snaring is clear but, when we met Mike Flynn before we rolled out the courses in March, he was initially satisfied from the course paperwork that the welfare issues would be addressed.

Mike Flynn: At that meeting, I was satisfied that, if the course reflected the GWCT’s document, people would comply with the law. I can never support snaring, but I asked for an invitation from all the organisations involved to attend the training. I have recently received an invitation from the British Association for Shooting and Conservation Scotland and I will definitely attend its training.

I return to Mr Peacock’s point about keeping records. We are strongly in favour of that, for a few reasons. Such a measure should be in the bill. One reason for that is to protect gamekeepers. If one of their snares is missing and somebody has put it somewhere illegally, they will have records. However, the main reason is that records should be available to an estate’s owner or factor.

Two or three years ago, our inspector found a line of just under 300 snares on an estate. The estate claimed that they were placed by the gamekeeper who had left three months before and that it did not know where they were. Those snares represented 300 potential animal injuries waiting to happen, and a couple of dead animals were found. I totally believed the estate—the
gamekeeper had been fired, had left and had told nobody about his snares. Keeping records would prevent such problems and preclude vicarious liability for an estate or any allegations from being made. The task is not overonerous.

Liam McArthur (Orkney) (LD): We have talked about the identifiable tags process. It has been suggested that Olympic numbers of snares are deployed on some estates. This morning, the feedback was that gamekeepers set the number of snares that they know they can check and which complies with the law. Is there an argument for saying in the bill that, in granting tagged snares, a chief constable should take into account whether any estates or any people who set snares have the capacity to check every snare for which they have a tag?

Dr Shedden: I have one small point: the chief constable will issue not tags but a number that will be transferred to tags. We are considering manufacturing techniques for tags.

I am sure that Alex Hogg and Hugo Straker would agree that gamekeepers do not set a number of snares that they cannot effectively check and manage once every 24 hours—that is usually done in the early morning. As the day length changes and mornings become shorter, the number of snares that can be set is seriously reduced.

Liam McArthur: Do checks and balances exist? Could something be done through the process of giving each snare a numbered tag to ensure that an estate did not put in for 5,000 snare tags with no evidence that it could check them manually?

Dr Shedden: An estate might require to go for a big bulk of tags that could be attached to snares by several keepers over several years, so restricting the number of tags that could be obtained would not help. In practice, responsible gamekeepers do not set the 300 to 500 snares to which Mike Flynn referred. I like to think that that would not happen under the training and endorsement that we are talking about.

Alex Hogg: If a gamekeeper could lose his job and his house, there is every chance that he will check the snares every 24 hours. The rules are very strict.

The Convener: I will give Mike Flynn the last word on this because we must move on. I am conscious that Alex Hogg will be in front of the committee again.

Alex Hogg: No problem.

Mike Flynn: It is a good point. There should be a limit on what we do. Not every estate limits the numbers, and we have found plenty of cases where the snares have obviously not been checked within 24 hours.

To me, a lot of that is about the changes in land practice. Alex Hogg is probably dealing with exactly the same amount of pests as he did 10 years ago when he had twice the number of employees on the estate. A man from an estate in Caithness gave evidence to Parliament that he does the same amount of work and controls the same number of species as 10 keepers were doing a decade before. One of the big answers is to put bodies back on the ground in the countryside.

Alex Hogg: It is happening to an extent. The owners have said that they will check only a certain number of snares, and they need a certain amount of manpower for that, so they need to raise it.

Mike Flynn: You must also remember that people can and do get ill. If there is a single keeper on the estate and he is ill, and the records are not kept, no one will check those snares.

14:45

The Convener: We move on to non-native species. Elaine Murray will kick off with a question on that.

Elaine Murray: The issue is probably slightly less contentious than snaring, but the bill proposes certain amendments to the Wildlife and Countryside Act 1981 to deal with invasive non-native species, which can cause environmental and economic problems. The proposals in the bill suggest that a number of organisations—Scottish ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency and the Forestry Commission Scotland—would all be able to issue species control licences. What are your views on the proposed powers for those bodies? Would it be better if one single organisation were responsible for issuing such orders?

Dr Shedden: We are pretty relaxed about the proposed licensing system. We recognise that in Scotland, and around the world, non-native
invasives can and do cause a massive amount of damage, and the sooner that such situations are nipped in the bud, the better. There are a number of developing situations in Scotland, and it would usually fall to one of those agencies to deal with them. As I said, we are pretty relaxed because we recognise the extent of the damage that can be caused by non-native invasives.

**Alex Hogg:** I agree with Colin Shedden.

**Mike Flynn:** There are a lot of sensible proposals in the bill. I like the proposal that a list will be made, and that people will have to register if they are keeping a non-native animal. If muntjac deer get up here, that will cause a real problem. We welcome the vast majority of the proposals on non-natives.

**Elaine Murray:** Earlier, Alex Hogg touched on the exceptions in the bill to allow the release of partridges and pheasants, describing the concerns around and the different ways of dealing with those species. If those exceptions remain in the bill, should there be additional ones? It was suggested that species such as rainbow trout are released outside their native range, and there are other species such as edible dormice, which are now naturalised in the United Kingdom. Should anything else be on the list of exceptions?

**Dr Shedden:** I take the point about rainbow trout, because I wondered where they fell within the proposed legislation. We accept the significance of red-legged partridge and pheasant. They are certainly not invasive. They may, in some people’s books, be non-native, but they are naturalised—they have been here for a very long time—and, with the exception of one or two circumstances that I am aware of, the release of pheasants and red-legged partridges has not caused any massive problems. Most people accept that the biodiversity benefits from habitat management of 4.4 million hectares in Scotland vastly outweigh any small, localised impact that they have had. The guidance from the GWCT, which is endorsed in the code of good shooting practice, makes it clear that these birds should not be released in densities that the habitat cannot sustain.

**Elaine Murray:** Advocates for Animals has suggested that the species control orders should contain safeguards for the animal welfare of the species that are being controlled. What would you like to see in that respect?

**Libby Anderson:** By and large, we have no problem with the provisions on not releasing, or not keeping, non-native species, which are sensible.

Rather like Colin Shedden, I am fairly relaxed about who imposes species control orders; the issue is when they are imposed, on what species and what definitions bring a species within that sphere. When it comes to a control order for an animal that is deemed to have an adverse affect on social or economic interests, I would like to have a great deal more clarity about what that implies.

Finally, in all control programmes, animal welfare tends to be a bit of a poor relation. We have come across that with regard to grey squirrels in particular. Grey squirrels have been here quite long enough to be considered native in any case, but, given that there is such a strong lobby for their control, it is essential that, for them and for other species, the measures should be subject to some welfare assessment. For example, we referred earlier to seasonality. If mammals have young and the young are dependent on them, consideration must be given to whether it is acceptable to kill the mothers at that time. Many other aspects of animal welfare could be included in a formal assessment. That could be provided for in the bill and included in any control order. That would be a very helpful improvement, which would enhance protection of animal welfare.

**Elaine Murray:** You are in red squirrel country down here. We are not quite so keen to see their grey cousins coming over here, but I accept that there are some horror stories about grey squirrels being put in sacks and thumped over the head and that sort of thing. There may be a need for definitions of what methods of control are appropriate for the species.

**Libby Anderson:** SNH commissioned research into acceptable methods of lethal control of grey squirrels. By and large, I think that it thought that striking them over the head was the preferable one—I am not sure that we would agree—but the time of year was not really looked at. There is tremendous public aversion to the use of other methods such as warfarin or drowning. That needs to be considered. We are obviously also in favour of red squirrels.

**The Convener:** Okay, as we have exhausted that subject, we move on to species licensing.

**Peter Peacock:** I hope to deal with the issue fairly quickly, convener. Both the Gamekeepers Association and Hugo Straker’s organisation have put the argument to the Government that there should be a more relaxed approach to giving licences to kill what would otherwise be protected species when they are preying on young pheasants, partridge or whatever. What do you think about the bill’s proposals in relation to what you have been arguing?

**Hugo Straker:** Are we talking about the species licence, which you have just brought up?

**Peter Peacock:** For buzzards or whatever.
Hugo Straker: Buzzards or ravens. Certainly, the populations of those species are a matter of considerable conservation concern to a number of the species that we are talking about. There are red squirrel down here, and farmers have concerns about their lambs. Red grouse managers have their stocks of birds to consider. There are black grouse and grey partridges, which are biodiversity action plan species. Potentially, they will all be impacted.

Species such as the raven and buzzard are of good, healthy conservation status, and we support a licensing procedure. Following the considerable amount of work that the GWCT and the SGA have done on how individual applications might be assessed and processed, our organisation recognises the conservation status of some species and their impact on many other species.

Peter Peacock: Forgive me, but I had the impression that part of the argument was about protecting released and hand-reared birds, such as pheasant, partridge and grouse.

Hugo Straker: Indeed. Alex Hogg is well known for his comments on this subject. He is a practising gamekeeper on an estate. Alex can speak for himself, but many other estates similar to the one that he works on rely on the release of their partridges and pheasants to provide an important income stream and employment stream in their areas.

Alex Hogg: The law states that we should have a licence to protect livestock should serious damage be occurring. It has to be livestock—and we decided that a pheasant poult was livestock if it was in the pen or in close proximity to the pen.

When it came to triggering the licence, however, we could not decide what “serious damage” meant. We are still talking. In my experience, when we have tried every deterrent in the book to scare off buzzards—hanging up bags, putting wires across rides, spinning compact discs, playing radios and anything else that we might think of—they become, to use the only analogy that I can think of, like seagulls at a resort: they have no fear of people whatever. When we drive up to the pen, the buzzards will arrive on the scene. When we try to feed the pheasants, the buzzards will sit there and, with the patience of a saint, they will drop down and kill a poult after waiting for an hour or so.

I only have a problem with young rogue buzzards. If I could deal with those specific ones, the problem would stop, I am quite sure. A lot of money would be lost to the rural economy if every shoot in Scotland ended up losing poults. A pheasant poult is worth the same as a lamb—it is worth about £35 when it is shot, and that is a huge amount of income for the rural economy. All that we are asking for is something to deal with specific rogue birds. We do not feel that a huge number would be involved, but we would need to find a way to balance the situation.

Peter Peacock: Is that situation limited to buzzards? I have heard about goshawks falling into the same category. There was a situation in the past couple of years—I regretted it personally but, nonetheless, it was done—where sparrowhawks were being caught and relocated in order to protect racing pigeons. What worries me about suggestions of that sort—it will worry a lot of people—is that they could be the beginning of a slippery slope. Is it not frankly ridiculous to take out—to kill—species that are protected under European law in order to protect unprotected, hand-reared species? Where do you draw the line? How do you stop that move continuing? More and more arguments are being made to take out protected species.

Alex Hogg: Take buzzards and ravens. Their numbers have increased by 500 per cent. We now have a local buzzard in Peebles, and it is attacking walkers. You have to stop protecting species and start managing them. If we do not manage the species we will end up with one protected species eating another protected species. At some point, we have to decide which one needs more protection.

Peter Peacock: But, with respect, you are arguing for protected species to lose their protection in order to protect unprotected species that are abundant.

Alex Hogg: No, those unprotected species are livestock—they are like lambs to us. Our pheasant poults are termed as livestock so we should have the right to protect them. If we do not have the right, we will end up with no money coming into the rural economy as shoots will shut down because of the sheer pressure of predation from buzzards.

Peter Peacock: Is it not a circular argument? The more hand-reared pheasants and other species you rear and release, the more buzzards there will be, because that is a natural part of the cycle. How would you ever control the situation? That is my real worry. What are the criteria? You are arguing for a relaxation of the protections, but what criteria should be introduced so that we do not have just a wholly relaxed situation in which we take out more and more protected species? The birds are behaving naturally—they are not trained to take poults—and they are protected in European law because they have required that protection. They would not exist in numbers if they had not had that protection—we know that from all the history.
Alex Hogg: You used the phrase “behaving naturally”. Thirty years ago, buzzards behaved the opposite of how they do now—they have learned to predate the pheasant poult. They change as things change.

Buzzard numbers are at an all-time high, and we have to introduce some form of management. It would have to be licensed and relate to when serious damage occurred. There would have to be a loss that was registered, after which someone could phone up for help. I am the first to say that I do not want to shoot the buzzard. I would be happy if somebody came from Government, caught it in a trap and released it somewhere else. However, we need some form of management to control ravens and buzzards, because their numbers have climbed to an all-time high.

Dr Shedden: A lot of what has been discussed is contained in the Wildlife and Countryside Act 1981, which provides for licences for the protection of livestock and wild birds. A number of people have suggested—I generally support this—the provision of licences to control birds such as buzzards to protect the economic or sporting resource. At the moment, someone can apply for a licence to protect grouse if the grouse are at a low population level and their conservation status is compromised, but they would not be able to get a licence to protect them as a valuable natural asset or sporting resource. That is one legislative area that could be considered under the bill—an expansion of the licensing provisions to protect, in this case, grouse moors.

Peter Peacock: As well as advocating that, do you have arguments on how to introduce sufficient safeguards to ensure that the regime does not become too liberalised? We could end up changing or relaxing the economic impact criteria so that we kill more and more protected species in order to protect what could be argued are narrow economic interests.

Dr Shedden: I agree. The protocols that are in place for existing licences, and I hope for any future licences, include the condition that SNH would seriously consider the conservation status of the species of bird to be controlled. It has done that with respect to raven licences that have been issued in recent years, and it would certainly do that with respect to any licence for other predatory birds. I feel that a safeguard is in place, in that SNH would be obliged to consider the conservation status.

The Convener: Okay. We will move on to deer with John Scott.

John Scott: I want briefly to pick your brains on deer. We are expecting a panel to discuss the whole deer issue in a few weeks, but since we have you here today I will ask whether you would like to contribute anything to the debate. I know that there has been a lot of discussion and that many amendments to the initial proposals have been brought forward in the bill. Is there anything in particular that you would like to say?

15:00

Dr Shedden: No, because the issues that caused us concern one or two years ago have been adequately addressed by the good consultation that we have had with officials in preparing the bill. The main contentious issues for us have been resolved. The Scottish Gamekeepers Association was concerned about the removal of close seasons and the introduction of mandatory testing of all deer managers in Scotland. Those issues have been resolved to our general satisfaction at this stage.

John Scott: Good.

Alex Hogg: I agree with Colin Shedden.

John Scott: So, by and large, all of you are happy with the proposals in the bill.

The Convener: We move on to protection of badgers.

Peter Peacock: The principle was covered in my previous series of questions.

The Convener: We move on to muirburn.

Liam McArthur: This time last year, we discussed the muirburn provisions of the Climate Change (Scotland) Bill. At that stage, there appeared to be a great deal of controversy among the various interested parties. It appears that in the intervening months, while the bill became an act, a considerable amount of work was done to bring the parties together. However, the Game and Wildlife Conservation Trust appears to be concerned about the reduction of the muirburn season from the middle of May back to April. Its evidence suggests that that could be damaging. Would Hugo Straker like to comment further on the issue? In our discussions this morning, there appeared to be agreement that licensing people to burn outwith the season might be the best way of addressing on-going concerns and bringing us more into line with the situation south of the border.

Hugo Straker: The GWCT questioned whether there was evidence that stopping burning in May would reduce impacts on nesting birds. That said, we had a good discussion this morning about Langholm moor. Collectively, we felt that reducing heather burning to a close season on 30 April would be generally acceptable. However, we also discussed giving people the opportunity to access licensing for out-of-season burning—during the early part of the season, for example, in
September—so that other moorland management issues can be addressed. One of the interesting issues that we discussed this morning was using out-of-season burning as a mechanism for the control of heather beetle.

Liam McArthur: South of the border, out-of-season licences have not been requested to the point that, de facto, the season is extended because they are used so widely. The experience is that use of such licences is targeted, for targeted benefits, whatever those may be.

Hugo Straker: The situation south of the border is different; in Scotland, we are faced with climatic and topographical differences. However, all of us would be happy with what was discussed this morning. The key measure that we seek is the opportunity to secure and get quick decisions on out-of-season burning licences, especially at the beginning of the burning season, prior to 1 October.

Liam McArthur: I know that areas north and south of the border differ in climate and topography. However, is the speed with which out-of-season burning licences are granted south of the border seen as generally effective? Is there a timeframe towards which we should work?

Hugo Straker: Forgive me, but I cannot comment on the issue, as I have not been directly involved with it. However, I can provide the committee with the information that you seek.

Dr Shedden: Generally speaking, we are happy that there is an overall relaxation from the tight season that was imposed on us before. There is the flexibility that we will need for the changing landscape of Scotland.

John Scott: From the evidence that we have heard this morning, it seems that the relaxation in the granting of special licences is very much welcomed where efforts are being made, as at Langholm moor, to restore former grouse moors. Taking on board what was said this morning, it seems that that tool is required to enable out-of-season burning to restore grouse moors.

Alex Hogg: In Scotland, we have a small weather window for burning. If we could get those licences—they would have to be licences for the next day in September—that would be a great asset.

The Convener: There is an issue about the time that it takes from application to approval. We will take that forward.

Peter Peacock: I have several questions. Before I begin, I should make it clear that I am a member of RSPB Scotland and the Scottish Ornithologists Club.

Bird poisoning has become a serious and worrying issue. On the face of it, the poisoning of some of our raptors is on the increase. We have recently had some awful cases of golden eagles being poisoned, and we know about the poisoning of peregrine falcons, red kite and other species. The issue resonates with the public in a way that very few other issues do. Despite all the efforts that have been made and the potentially tough regime and penalties, bird poisoning seems to be on the increase. Some have argued to me that there is a relationship between poisoning and the new ways in which some grouse moors are now being managed. What we saw this morning at Langholm moor is very impressive in many ways, but I suspect that it is atypical of what is happening everywhere else. What can be done about the increase in bird poisoning, and is there a relationship between new ways of managing grouse moors—but not the Langholm experience—and the increase in the incidence of poisoning?

Dr Shedden: We have one thing at least in common, as I, too, am a member of the SOC. I declare that as an interest.

There have been arguments about whether the number of recorded cases of poisoning of birds of prey is stable or on the increase. That is academic, as cases are still coming to light annually and, in our view, one case is one too many. There are a large number of grouse moors in Scotland that manage their grouse in association with populations of birds of prey successfully—certainly this year, as they are enjoying a very good grouse season. There is no clear indication that it is necessary to use illegal methods of raptor control to maintain good grouse populations, but evidence is coming forward that, in some areas, there is a trend towards a no-tolerance policy with respect to birds of prey. That is to be regretted, and it is something on which I have been working as a member of the Tayside partnership against wildlife crime. I know that others, in other areas, are working hard to stamp out poisoning. The shooting community has no tolerance of bird poisoning.

Mike Flynn: The recorded incidence of bird poisoning is certainly on the rise. I do not know whether that is because more people are aware of it and are reporting it or whether it is because SASA is doing a better job. However, the bottom line with wildlife crime is that it happens in very remote and rural places. The recorded crimes are only those that we know about—God knows how many we do not know about—and we just cannot catch the people who commit them. Unless they are witnessed by two people with a substance in their hand, putting it down and leaving a baited carcase, you are on a hiding to nothing. You can take the poison to SASA and prove that it has
been left illegally, but it is really dangerous not just to the wildlife but to the public. Some of the poisons that are being used can kill a person. I am sorry to harp on about it, but we must do something about enforcement in Scotland.

**Alex Hogg:** We have worked hard to reduce wildlife crime, and anybody who is caught poisoning any birds of prey will be thrown out of the SGA. Nevertheless, I point out that the numbers of birds of prey in Scotland are at a fantastic high. We have 440 pairs of golden eagles and more than 700 pairs of harriers, whereas there is nothing in England at all. Our raptor population has not stopped rising since the 1960s. The incidence of bird poisoning rose last year, but I am sure that, through peer pressure over the next couple of years, it will go down to nearly zero, although we will not get rid of poisoning. It is like rape and murder—it will always be there. We will try our hardest to drive it out of the country. However, we also need some means of managing the raptor population, the raven population or whatever population we are trying to balance with our work in the countryside.

**Peter Peacock:** You are not seriously suggesting that we should start to license the killing of golden eagles, are you?

**Alex Hogg:** No.

**Peter Peacock:** I am glad that you clarified that—

**Alex Hogg:** Only raptors, to a population level that SNH would be happy with—a level that could be controlled in a small number.

**Peter Peacock:** I guess my worry is that, despite the tough penalties that are potentially available, we are seeing a rise in the number of poisonings of some of our top-level species—species that are, frankly, still very rare in many parts of Scotland. It has been argued that we should ratchet up the penalties a bit further, to create further incentives on landowners in relation to the staff they are employing, or indeed the agents they are employing, who may in turn be employing staff—that in itself might be an issue. I think that Colin Shedden’s group has been doing some work on this, so he may wish to comment. The notion of vicarious liability has been raised. It has a certain appeal to it, in that it involves pinning responsibility directly on someone in the hope that the message runs right down throughout the management system that under no circumstances is any bird to be poisoned. Dr Shedden, would you care to comment on that, based on the work that you have been doing?

**Dr Shedden:** I am a member of the PAWS legislation, regulation and guidance group that is chaired by Sheriff Kevin Drummond—it may be known to some of you. He has produced a paper that we have discussed in recent months that looks specifically at the issue in relation to the Wildlife and Countryside Act 1981 and the pesticides acts. A clearer link could be made between employer and employee, and a clear statement could be made that the employer needs to know everything that the employee is doing. Work is moving forward in that direction, and there are parallels in other forms of employment legislation, so we do not see too much of a problem with that.

**Peter Peacock:** You think that that is quite a workable proposition.

**Dr Shedden:** A form of vicarious liability with respect to poisons legislation could, from what I have seen, be workable.

**Peter Peacock:** I expect that we will explore vicarious liability quite fully in the next few weeks. However, another argument is that legal complications could arise—for example, if a bird is poisoned on one estate and then crosses the boundary and dies in another estate.

It has also been argued that an alternative would be to license the estate for the activity of grouse shooting. If, against certain criteria, there was evidence of a persistent problem with poisoning in that vicinity, the licence could be removed, and grouse shooting would end. That would be a serious and direct financial penalty. Have any members of the panel considered that possibility?

15:15

**Dr Shedden:** My major concern with such an approach, which appears on the face of it to be quite logical, is that it would be very difficult to define what a shoot is. As I said earlier, 4.4 million hectares of Scotland’s land area is influenced by shoot management. That is about 67 per cent of the whole land area. It is an important driver. That ranges from a small duck-flight pond, which may be one or two acres, up to an estate of 10,000, 20,000 or 30,000 hectares. It will be difficult to define what a shoot is—that is the major stumbling block to that approach.

**Peter Peacock:** But it is not the principle of that that you find difficult; it is the practicalities.

**Dr Shedden:** I find elements of the principle difficult as well, because individuals are currently licensed by the police according to their suitability to have a shotgun or firearms certificate. That is the approach that society has taken over the past 100 or so years—to license the individual rather than to license the nebulous concept of a shoot. It is difficult to make that approach jump from the individual, who is responsible for his own activities, to a much larger entity. A lot of innocent people
could lose out because of the behaviour of one individual.

Peter Peacock: A slightly different argument, related to the issue of how you might define a licensed estate as opposed to an unlicensed one, would involve there being some obligation to manage a grouse moor sustainably.

You touched on the issue of some new management practices coming into Scotland principally via agents who are brought in to manage estates when the owner opts for that rather than following the traditional route of working directly with their own employees. There appears to be evidence that some of those new management practices amount to a scorched earth policy whereby the managers eliminate anything that might be of danger to a grouse population, which involves taking out raptors—illegally, potentially—killing all weasels and stoats; killing hares, because they might carry ticks; cutting down trees because birds might roost in them before going hunting; and so on. That is not environmentally sustainable; it is the pursuit of a single economic goal with ruthless management techniques. In that context, how would a duty to manage estates sustainably help to create the kind of thing that we have seen in Langholm today?

Dr Shedden: I have heard the estates that you mention being described as a monoculture of grouse, and I would put my organisation on the side of Langholm rather than of pure monoculture. I do not think that a pure monoculture of any individual species has any place in Scotland’s landscape. My preference would be for a much more traditional approach that provided a surplus of grouse but also had deer, hare—which are important for eagles—and a wide variety of other species.

Peter Peacock: What is your view about a sustainability requirement being placed on estates that want to operate in the grouse-shooting marketplace?

Dr Shedden: I would love the voluntary approach to be endorsed so that we did not even have to discuss the sustainability requirement on individual landholdings. Many estates are already doing what you are talking about, and it would be a pity if they were to be placed under some form of legal obligation under a sustainability banner because of the actions of a small number of private estates.

John Scott: Peter Peacock is rightly outraged, as we all are, about the continuation of poisoning. Something needs to be done, but it seems to me that there is also an issue of enforcement. Libby Anderson has also raised that issue in relation to snaring.

Do you have views on how we can get better enforcement? Do you have comments that we should be taking back to ministers with responsibility for justice about better policing in rural areas, or are there better ways of achieving better enforcement of existing legislation? That is where it is all falling down.

Mike Flynn: Our inspectors regularly deal with wildlife crime, because the national wildlife crime unit has finally acknowledged that the vast majority of wildlife crime impacts on animal welfare. We can deal with a lot of wildlife crime under the existing animal welfare legislation, but there is a big gap in the Wildlife and Countryside Act 1981, which means that only constables can do certain things without warrants and that we have to jump through hoops in order to get warrants and so on before we can do those same things, by which time evidence can be lost.

I have more than 100 officers out there, from Shetland to Stranraer. They work with the fiscals, the wildlife police and all the other agencies at any time. If we had the same recognition under the Wildlife and Countryside Act 1981 that we do under the Animal Health and Welfare (Scotland) Act 2006, it would be a great help.

I have big concerns over the impending cuts to police forces. The Government cannot tell a chief constable what to do. A lot of wildlife crime officers are part time. Two forces just have civilian wildlife crime officers, and civilians are going to be the first to go in the cuts.

Enforcement is really bad at the moment, and I can only see it getting worse.

Alex Hogg: I feel that wildlife crime would stop in the next two or three years if we could address the question that Mike Russell asked, which was how many is too many. How many hen harriers does Langholm need? How many raptors, ravens, rabbits or whatever does an estate need? An estate needs to be managed and kept in balance with nature. It is dead easy to make a political decision about enforcement—to say, “We should jail people for 20 years”—but we should try to get people around a table to try to get them to come to a commonsense solution that everyone will benefit from. People who are involved in wildlife tourism, grouse shooting and the private estates all want the same thing, so we must be able to get around a table and thrash out the issues until we get an answer.

Mike Flynn: The problem with what Alex Hogg is saying is that the courts can do nothing if the person is not caught in the first place. The fact is that the people are not there to catch those who are doing it. I disagree with Alex. Wildlife crime will not stop, because it is not just about some estate owner saying, “Poison the birds or you’ll lose your
job.” Wildlife crime is a massive area. It is about birds, egg theft, badger baiting—this, that and the next thing. Legal estates have nothing to do with badger baiting. Wildlife crime does not just focus on bird poisoning.

Libby Anderson: As Mike Flynn said, poisoning of any animal including raptors is a serious animal welfare issue. As far as we are concerned, whether it is an iconic species such as a golden eagle or a sea eagle or whether it is a buzzard really does not matter when an animal has suffered unnecessarily.

Secondly, to go back to John Scott’s question on enforcement, enforcement after the event is always a bit of a failure because the offence has taken place. We could say that the police should be resourced without limit and should be swarming all over the hills, but we know that that is not going to happen, so we should attempt to be more realistic. In that respect, we should consider the value of vicarious liability, because when everyone who is involved in the management and practices on the estate is held to account, the incentive to reform the practices from above will be much stronger.

In recent years, there has been a move to withdraw subsidy from some estates. That is probably not within the scope of the bill, but such forms of deterrence might have a greater effect. We can talk about education as well. Education is going on, but it is a bit of a slow burn. When a case is identified, the greatest form of deterrence that can be developed through the bill or other means would assist.

The Convener: Aileen Campbell did not catch my eye earlier. She is dying to ask a question on deer.

Aileen Campbell: It was just because we skipped past the issue.

We have spoken about the balance in the environment. This morning, we saw land that is managed, and we have heard from many different people about a lot of land that needs to be managed. You all said that you are quite content with the way in which the deer issue has been dealt with in the bill, but others are not as content given that there is overgrazing by deer and that, apparently, only half of the deer management groups have management plans and there is no sanction if they fail to produce a plan. How can we reconcile everyone’s desire for good, well-managed countryside with a general contentment about deer being left to roam with no natural predators?

Dr Shedden: I was surprised by some of the figures in some of the responses, especially the ones relating to deer management plans and the number of deer management groups that monitor the level of culling that takes place. I know that every individual estate keeps records of the number of deer that it shoots, for instance, and that most of those are fed into deer management groups, so let us not think that deer management groups are the failures that some seem to point them out to be. Let us also recognise that deer management has been pretty effective in Scotland in the past 30 or 40 years and that most if not all of that has been at no expense to Scotland as it is privately funded.

There are one or two areas in which deer numbers have perhaps created problems and there has been overgrazing. A number of those have been or are being addressed by section 7 agreements, but the interesting point is that at no point has a section 8 control scheme had to be introduced in Scotland. There might have been legal barriers to that, but there has been no great list of areas to go into section 8 control agreements.

The fact that deer numbers are so stable, albeit that the number of roe deer might be increasing, and that 87 per cent of the deer Natura targets were achieved—it was not 100 per cent, but it was pretty close—indicate that deer management in Scotland is not as bad as some people might want to paint it to be.

The Convener: As I said, we will have a wider look at the issue of deer at a future meeting.

I thank all the witnesses for the evidence that they have given us. If there is any supplementary evidence that you think of on the way home—if you think, “Damn it, I wish I’d mentioned that”—please make sure the clerks have it in writing as soon as possible.

I will suspend the meeting for no more than five minutes for a brief comfort break and to allow people time to tell James Drummond if they want to take part in the open-mic session.

15:29

Meeting suspended.

15:42

On resuming—

The Convener: We move to the open-mic session. We have two people who wish to say something. I call Duncan Orr-Ewing first.

Duncan Orr-Ewing: Thank you for taking my question. My interest in the bill is that I work for RSPB Scotland. My question revolves around pheasant and red-legged partridge releases. As someone who works for RSPB Scotland I have been involved with the reintroduction of several native species, such as the white-tailed eagle and...
the red kite. Stringent licences have been required
to allow their reintroduction into Scotland. It seems
rather odd that one is still able to release 25
— some say more than 30 million—
pheasants in the UK, a large proportion of which I
imagine are released in Scotland, without any form
of regulation whatever.

It seems that, as part of the bill, the release of
red-legged partridges and pheasants is being
made a special exception. There are obviously
some justifications for that, but it seems to us that
there should be provision somewhere to allow the
regulation of such releases, given that they occur
in such large numbers and have the potential to
cause damage to certain habitats where the birds
are released in large numbers. In our experience,
not many people follow the guidance that is
produced by the GWCT on sustainable pheasant
releases. Although it is welcome, it seems poorly
used in practice.

That is my question.

The Convener: As I think I made clear at the
beginning, we are not here to answer questions,
but we will certainly take on board what you said.

I call Bill Braithwaite.

15:45

Bill Braithwaite: I am a retired Forestry
Commission ranger and I have been dealing with
deer for well over 40 years. The deer got kind of
short shrift this afternoon, but you are talking
about red deer and I know that the legislation
ecompasses all the deer in Scotland.

Since just after the first world war, we have
created absolutely ideal conditions in Britain for
deer, especially in Dumfries and Galloway. Since
the 1960s, 70s and 80s there has been a great
proliferation of private forestry companies and
landowners, which all want to get the grants and
so on. Landowners and forestry companies were
not getting paid a lot for venison, so they did not
take on proper people. The deer could be
managed properly without the aggressive, Deer
Commission Scotland way of managing them.
Glenfeshie is a classic example where deer are
coralled and shot out of season, and where
heavily pregnant does and hinds are shot. They
can be managed properly if you employ more
people.

The British Government and the Scottish
Government go on about healthy eating. There is
no more healthy meat than venison. They should
be promoting it as a healthy alternative.

We have created the ideal conditions; we should
supply the things. I do not think that you need all
these draconian laws that are coming in.

I am trained, but there are licences for this and
licences for that. You have to jump through hoops
to get your firearms certificate and jump back
again to get a variation or whatever. It is really
difficult.

Management has to be done better, and
landowners and forestry companies have to
employ more people to do it, rather than managing
aggressively through, for example, out-of-season
shooting and night shooting.

You have said that the golden eagle is iconic.
There is nothing more iconic than a red deer or a
beautiful roe deer.

The Convener: Thank you for your
contributions.

I welcome the second panel: Robbie Douglas
Miller and Malcolm Strang Steel are both from the
Scottish Rural Property and Business Association;
and Jonathan Hall is head of rural policy for the
NFU Scotland. Welcome again—it does not seem
that long ago that we had you before us on the
Crofting Reform (Scotland) Bill.

Jonathan Hall (NFU Scotland): We are
obviously in trouble again.

The Convener: I invite Liam McArthur to start
this question session.

Liam McArthur: In its evidence to the
committee, the SRPBA suggested that the
reference to the natural environment in the context
of the Wildlife and Natural Environment (Scotland)
Bill might be somewhat misleading. The evidence
that we saw on Langholm moor reinforced the fact
that we were looking at a spectacular
environment, but that it is the product of active and
ongoing management. Your point was an
interesting observation, but, over and above that,
are there practical implications of our considering
a wildlife and environment bill as opposed to a
wildlife and natural environment bill? Do you wish
to make any detailed observations to support the
point that you made?

Malcolm Strang Steel (Scottish Rural
Property and Business Association): The short
answer is that we are making the same point that
Alex Hogg made earlier: there has to be some sort
of holistic management. In some instances, hands
are tied behind backs. Snaring is one valuable
means of controlling predators for the benefit of
not just lambs and game but ground-nesting birds
and brown hares, which from my experience have
been at risk. That is the implication of our
comment. What we have is largely man made, for
better or worse. It will continue to be managed and
it should be managed holistically.

Liam McArthur: You are bravely foraying into
snaring before we are ready to do so.
Malcolm Strang Steel: I was using it only as an example.

Liam McArthur: From your perspective, would it be helpful to the purpose and extent of the bill if the “natural” element was qualified, or if something was included to clarify that we are talking about a process that requires a level of active engagement, investment and management, whatever objectives we seek to achieve?

Malcolm Strang Steel: It is simple: you could make the point by dropping the word “natural”. Over the years—over the centuries—the people who managed different bits of the land had different objectives. What we have at the moment—the land of which we are proud—is the result of all that. It is important that that diversity of management is not lost. Today’s current wisdom is not necessarily the wisdom of tomorrow. In my lifetime, which is not very long, I have seen that happen in the agricultural world, and I am sure that it will happen again.

Jonathan Hall: It is excessive to include the word “natural” in the bill. Talking about the environment, environmental management and environmental legislation is sufficient to capture everything. The word “natural” is misleading. The vast majority of, if not all, Scotland’s land mass is managed in some way, shape or form; it has the intervention of man somewhere upon it. Indeed, 5.6 million hectares, or about 80 per cent of the land mass, is under agricultural land management. As I said, describing the land mass as a “natural environment” is misleading. Focusing purely on the wildlife and environment that we are to manage responsibly and prevent in various ways and conserve in others would remove the possibility of ambiguity and prevent the formation of misleading views.

Liam McArthur: Poaching is another area about which there could be misconceptions, if not misleading interpretation. You will have heard in the first evidence session the notion that poaching is simply “one for the pot”. If that was ever true, it is no longer. We are interested in your views on the extent of poaching. What impact will the repeal of the game laws have? In particular, I am interested in the capacity of landowners and land managers to take action where necessary.

Robbie Douglas Miller (Scottish Rural Property and Business Association): I will give an illustration. I chair our district fishery board in Sutherland. We have a number of poaching problems in our area. One of the most difficult issues that our bailiffs encounter is the police response time. Our police station in Lairg closes at 5.30 pm. The nearest police station to Lairg is at Golspie, which closes at 11 pm, and the nearest one to that is in Inverness, which is nearly two hours away. If, at two o’clock in the morning, eight people in two transit vans arrive from Glasgow—I have nothing against Glasgow, but we are closer to Glasgow than I thought—we have a real problem.

In support of Alex Hogg and the other previous witnesses, I give an example of the nature of some of the people we come across. Last year, we had instances of gangs of poachers using semi-automatic weapons on herds of deer. The problem is not strictly within our jurisdiction, given that we look after the rivers, but the deer are in the area, too. The poachers would pull up at the side of the road and, from the side of a van, fire 40 or 50 rounds into a herd of deer perhaps 80m to 100m away. The poachers would then go and hack off the pieces that they wanted and could take in a short period of time, but they would leave everything else—including deer that were wounded, wandering around waiting to die. That is a real issue.

Liam McArthur: Is the issue a combination of the greater prevalence of such poaching and its changing nature? On the police response time, if the police cannot be there to see the poaching take place or to apprehend the people in the vans, in a sense it makes little difference whether the police are 20 minutes late or two hours late—

Robbie Douglas Miller: Or come the next day. The problem for those of us on the ground is what to do with people we have detained, especially if there are more of them than there are of us. What do you do with someone in the middle of the night? Ringing the police might be fine, but—

Liam McArthur: The suggestion is that they should not be detained or approached at all.

Robbie Douglas Miller: Exactly. However, when there is a direct confrontation, what should we do? Should we walk away? They know who we are, so if we walk away, they know that it is free rein and they can just come back tomorrow. It is a difficult problem.

Malcolm Strang Steel: On Liam McArthur’s question about whether the nature of the problem has changed, the answer is that, yes, it has changed quite a lot since the Game (Scotland) Acts were passed in 1772 and 1832. Those acts were aimed largely at what one might call low-ground game such as birds. Alex Hogg might shoot me if he is listening, but I do not think that the poaching of grouse, pheasants and partridges is actually an issue. The market value of a dead pheasant is very low indeed, if not non-existent. However, the gangs who go after deer and salmon, which are covered by separate legislation, are still very much an issue.

Of the things that were protected by the legislation on day and night poaching, hares are probably the most vulnerable. As the man from the
SSPCA said earlier, hare coursing remains quite an issue. I think that I am right in saying that the first—and possibly the only—successful prosecution under the Protection of Wild Mammals (Scotland) Act 2002 was of some people who were caught coursing outside Broughty Ferry shortly after that act came into force.

Jonathan Hall: The convener was very up-front about the committee’s role in the stage 1 process as being to look at whether the bill is fit for purpose. From our perspective, I do not for a minute think that the bill will single-handedly tackle such criminal activity, but it could nevertheless support or complement other pieces of existing legislation. That takes us into the whole issue of enforcement, as the previous panel highlighted, and what are the right actions that individuals should take in the circumstances. The bill as drafted will not fix the problem of poaching, but I hope that it will make a positive contribution as part of a package of legislation. More important will be how matters are enforced and prosecuted so that poachers are deterred as much as anything else. As someone said earlier, you can pass as much legislation as you want on any issue, but unless it can be enforced practically and efficiently, whether it is fit for purpose remains a very open question.

Liam McArthur: Is the biggest impact the financial loss or is it welfare concerns? Certainly given the deer poaching that you described earlier, the most striking issue is probably that of welfare.

Robbie Douglas Miller: Yes, it is horrific. The welfare issue is probably of primary concern. The economic loss is not necessarily measured by what is taken or killed on the night in question, as it depends on how things are taken or killed.

For example—this would be on the river rather than on the hill—a team of poachers might pour a tin of cyanide into a particular pool on the river in order to kill everything in the pool. After putting in a net, they will scoop up most of the fish from the pool and then push off. They might get 20, 30 or 40 fish. They probably do not appreciate that they have killed every fish, including all the juvenile fish, in every one of the 10, 20 or 30 pools below them, depending on the amount of cyanide that they have put in. They have killed not only the stock in that pool, but the stock that was going to replenish it. Taken to an extreme, they could wipe out a whole river system very quickly. Obviously the person who is doing that is not particularly interested in the river system; they are just there for the quick 50 quid for which they can sell the fish.

16:00

John Scott: On that subject, what are your views on the maintenance of single witness evidence provisions for poaching offences? Should they be maintained? How should we go about that?

Malcolm Strang Steel: I am rather assuming that, as far as the poaching aspects of the bill are concerned, it is almost a consolidation bill. Conviction on the evidence of a single witness was written into the acts that are being replaced, which is why the provision is still there.

Incidentally, I would like to correct something that was said earlier. There was talk about a single witness and corroboration. If there is corroboration, someone is not being convicted on the evidence of a single witness alone, which is what we are talking about. We can have corroboration without evidence having to come from two people.

My information is that single witness evidence is not hugely important because fiscals are looking for corroboration anyway. If a gamekeeper stood up and said to John Scott, “I saw you do this terrible thing and I am taking you to court”, the fiscal would neither take up the prosecution nor sanction a private individual to take up the prosecution, which he could do at the moment.

Scots law has always said that uncorroborated evidence is a bad principle. Single witness evidence is an exception because it is a hangover from 150-plus years ago. I do not think that we would be desperately upset if it disappeared. However, we would be desperately upset if it came in through the back door in relation to anything else. Corroboration is an extremely important principle and should be maintained, unless there is a very strong reason otherwise, and I cannot think of one within the context of what we are talking about at the moment.

Robbie Douglas Miller: I concur completely.

Elaine Murray: You have probably touched on this already, but I will just check your views on the bill’s proposals for the close season on hares and the proposed offences of the poaching of rabbits and hares. I am slightly surprised to see that there is an offence of rabbit poaching, given how many rabbits there are in this part of the world. There are an awful lot of them around and it would be difficult to identify whom a particular rabbit belongs to.

Malcolm Strang Steel: As a matter of law, they do not belong to anyone when they are in the wild. Only the owner of the land on which they are present or, in some cases, the occupier of the land is entitled to shoot or take them.
Rabbits were a valuable resource. They were originally brought into the country to provide food through the winter, and they were kept in warrens. You can still find the warren woods where they were fenced in. Rabbits are still of value, so it is quite right that they should continue to be protected from being killed by unauthorised people, in the same way as it is proposed that other game should be protected.

Jonathan Hall: On the principle of close seasons generally, as was made clear earlier, it is absolutely right for that to be established because it is an animal welfare issue. However, there must be the option or opportunity to seek out-of-season licensing for specific reasons and to address particular management requirements. That takes us back to the earlier point that we do not live in a purely natural state and that although animal welfare is an important issue, it is not the only issue that legislation and licensing need to address. The close season principle is important.

With specific reference to hare, particularly mountain hare, several references were made earlier to tick management. I suggest that hare management is not the only tool in tick management and that sheep can have an effective role as tick mops in particular situations. That is another vital component if we are to safeguard the interests of wildlife, the viability of driven grouse moors and so on. We need a range of tools. As we always say, there must be tools in the toolbox that can be developed and deployed in appropriate situations.

Karen Gillon: I want to take you back to the issue of single witness statements. It strikes me as surprising that, following all the consultation that has taken place on the bill, the Scottish Government has put back into the bill something that nobody wants. At our first meeting on the bill, before we took any evidence, the committee realised that there was an anomaly. Perhaps the reason why everybody has suddenly converted against the single witness provision for poaching is that the reality is that we might want to introduce that for other forms of wildlife crime, such as bird poisoning, for example. Is that why there has been such a conversion?

Malcolm Strang Steel: I cannot speak for the Scottish Government and its consultation and why it included the provision in the bill. As I said, I assume that it did so because the provision was in the old statutes and to a large extent, the first part of the bill is a consolidation of those statutes, integrating them into the Wildlife and Countryside Act 1981 framework.

Karen Gillon: I suppose that I am asking whether, in your submission to that consultation, you argued the position that you now argue, which is that we should get rid of that provision.
must not lose sight of the importance of that complementarity between the activities of some individuals and some land-use interests.

The loss of snaring would have extremely adverse consequences for hill farming in particular, but I will also mention forestry, foxes and snaring. The mixed land use in which we have blocks of Sitka spruce next to open hill ground is not necessarily the best designed or most integrated in the world, as we all know. Those blocks of forestry provide all sorts of havens and shelters for fox populations to flourish. The forester, as well as the gamekeeper and farmer or shepherd, definitely has a role and responsibility to work more coherently to address fox issues. I look to the Forestry Commission and Forest Enterprise as much as anybody else on that.

John Scott: What has their record on that been?

Jonathan Hall: They have a written fox policy in place, but my experience suggests that it is not adhered to at all.

Robbie Douglas Miller: I own an upland property on which I have a full-time shepherd and a full-time keeper. We have a sheep flock, for which the shepherd is responsible, and we run a small shoot—it is not commercial; it is really for my own fun. My keeper spends a great deal of his time setting snares on our neighbouring sheep farmers’ properties at certain times of year to protect their livestock from foxes. He does that with their full consent and co-operation. He is qualified—he has been on the course on snaring and knows what he is doing—and prevents a great deal of suffering that would otherwise take place in our area.

Malcolm Strang Steel: In a low-ground situation, snaring is absolutely critical for fox control. Often, through the summer, crops are up and we cannot see the foxes to shoot them. They are rural foxes, not the ones that committee members might run over in the Queen’s park on the way to Holyrood, so they quickly learn what flashing lights are about and they are off when they see them. That leaves us with snaring.

Since 1 February, we have killed 24 foxes on my ground; 22 of them have been snared—not because we have not been trying the other methods but because the practice is that important. Indeed, I question the earlier statement that only 25 per cent of foxes are killed in snares. I do not know where that figure comes from. It might be true in other situations, but in mine, which is quite a common low-ground situation, I suggest that the overwhelming number of foxes are killed by snaring.

16:15

Robbie Douglas Miller: A human welfare issue is also attached to this. As anyone who has taken part in a lambing season knows, you have to work 24/7 and it is extremely tiring for a very long time. It is also extremely distressing to find out that your young lambs are being harassed or predated by foxes and to find the sometimes dead carcases and sometimes still living remnants. It is a huge mistake to suggest that shooting, which is very time consuming and haphazard, is the alternative to snaring. Lamping a fox is a professional job. It is not normally an easy task and my experience is that farmers are not as equipped as keepers to carry it out. At certain times of year, particularly at lambing time, you do not have the time to spend three, four, five or six hours of the night driving around your property, looking for a fox that might or might not be killing your or your neighbour’s lambs. Everyone is sufficiently tired and bad-tempered to be done with that sort of thing and adding such pressure at a key time of the year is simply unnecessary.

Jonathan Hall: I entirely support those comments, which very neatly illustrate the relationship between shepherd and gamekeeper—or indeed between farmer and gamekeeper—and the reliance of the former on the latter with regard to that kind of predator control.

The farm units and businesses that we are talking about are the most marginal in their economic viability, the sort of land they occupy and so on, and the impact at critical times of predators—not just foxes; we should also bring ravens, sea eagles and other species into the equation—only stretches their viability. Those with blackface hefted flocks on the west coast of Scotland are doing pretty well if their lambing percentage is 80 or 90 per cent. If that figure gets pulled down to 60 per cent because of predators—although I point out that that is not the only reason why lambing percentages might be low—you really have to wonder whether, despite single farm payments, less favoured area support and so on, that unit can remain in business at all. It contributes to abandonment, because it gets to the point where it becomes unsustainable to keep people and sheep on that land.

Bill Wilson: You have all referred to foxes predateing live lambs. However, research by Professor David Macdonald at Oxford University and Ray Hewson in the far north of Scotland indicates that foxes do not normally predate and I have certainly met shepherds who will state that that is unusual. Are you able to point the committee to any studies that show that the earlier work of Macdonald and Hewson is incorrect?

Secondly, we heard evidence from people in Langholm that 80 per cent of foxes were being
killed by shooting and 20 per cent by snaring. I might have got those figures slightly wrong; if so, I apologise. If, as you say, snaring is more intensive in your area, is that perhaps because you have fewer staff?

Robbie Douglas Miller: I am familiar with the situation in Langholm, as I have been involved in the project in a small way and visited the place a number of times. The number of keepers on the ground in this area is not necessarily typical of the current situation on most Highland estates—it is higher, largely because they are trying to regenerate something from a very low base.

Predation is one of the primary reasons for the low base in Langholm, and enormous effort and energy are required to put the area back on a sustainable footing. I am not suggesting that any of the processes that have been tried and tested at Langholm are right or wrong; it is early days with regard to drawing any factual conclusions about what is happening in relation to diversionary feeding of hen harriers and to other land management uses.

Bill Wilson: The percentage ratio of 80:20—or 75:25—that we heard about earlier is perhaps the product of the fact that Langholm has a higher level of staff, which you have hinted at. The situation in Langholm is unusual, as in general people tend to shoot rather than use a snare. I want to get an idea of how critical the level of staffing was in achieving that ratio.

Robbie Douglas Miller: I am not able to elaborate on that much further. I suspect that the situation is different in every place, depending on whether there is an emphasis on shooting or farming, or a combination of both.

Jonathan Hall: You asked for evidence on the extent of the problem of predation by foxes—I would probably stretch that to include predation full stop. I have found no concrete evidence in peer-reviewed literature, or anything like that, but I have significant evidence from individual holdings. On those holdings, the number of lambs stands at 150 to 120 per cent when pregnant ewes are scanned but, by the end of the hill lambing season in May, only 60 or 70 per cent of the lambs are there. Those losses cannot all be attributed to predation, from any source, but it is without doubt a significant factor.

Depending on the area, predation is a problem. Once those margins are reached, the viability of the hill units is significantly tested, given that ewe replacement of 25 to 30 per cent is required from within the same flock. How many lambs does that leave to be sold? What is the productivity—in terms of the gross margin—of each ewe?

You are right to raise the issue of evidence; we all require evidence to prove a point. Nevertheless the significant amount of single witness evidence out there suggests that predation is a major issue.

Bill Wilson: From the committee’s point of view, there is obviously a difference, with regard to making a decision on snaring, between predation by foxes and predation by corvids, for example. Such a decision would depend on what is doing the predation rather than the fact that there is a high level of predation.

Jonathan Hall: Yes—and that will vary from place to place. There is not a single fox on the Isle of Mull, but there are 10 pairs of breeding sea eagles and a lot of juveniles. There is a predation problem, but it is of a different sort and requires a different management solution, which involves absorbing the impact of sea eagles rather than controlling their numbers in any way.

Such flexibility is necessary in terms of how land is managed in different places at different times. If we remove the ability of the right people—professionals who know what they are doing—to utilise snares properly and effectively, we are without a doubt inviting predation issues to escalate. That would have a severe impact on the viability of hill units throughout Scotland, and particularly up and down the west coast and in the Highlands.

John Scott: I declared an interest as a hill farmer a moment ago, and I want to comment from a practical perspective and for the committee’s information—Bill Wilson’s in particular. Having done three lambings a year for 25 years, I have gone out on all too many mornings at first light when no other predators are about—crows, ravens and seagulls do not get up until after first light—to find dead lambs that were certainly not there at darkness the night before.

Bill Wilson: They may not have been killed by predation.

John Scott: They were killed by foxes. The professionals—gamekeepers—were called in to lamp and shoot foxes. They got the fox and the predation stopped. Bill Wilson might regard that as circumstantial evidence, but I have seen fox predation in my own flock all too often

Bill Wilson: I am not sure—

John Scott: And I am sure that there will be many people in this room who regard it similarly.

Bill Wilson: I think that we would need more solid evidence—

The Convener: Can we move on? Elaine Murray will pose some questions on non-native species.

Elaine Murray: I want to hear from the panel about whether they support the general approach on non-native species. The previous panel
seemed quite relaxed about the proposals in the bill, but I know that SRPBA has suggested that it is not such a useful concept and that the major consideration should be the potential of the species to cause harm rather than the fact that it did not originally come from these islands. Will the witnesses say more about that?

On the release of species, surely we do not know how much harm a species might cause or how invasive it is until it has actually got out. For example, I do not suppose that anybody who originally kept a rhododendron in their garden had any idea of the devastation it would create in natural woodlands.

Malcolm Strang Steel: As I think that we said in our written submission, we think that the approach is flawed. It is what we might call the hair-shirt approach—that anything that has been introduced into Scotland, whenever that was, is to be regarded as non-native. At a conference last September, I asked somebody whom I think may have had a hand in preparing the bill whether she thought that non-native species meant everything that had appeared here since the ice age, to which I got an affirmative reply. For a start, that rules out as non-native anybody descended from any Dalriadic Scots.

We would like a much more pragmatic and realistic approach. A great many of such species—animals, birds and plants—have been here for a very long time, have become well established and perhaps naturalised, and are not harmful. One or two species are harmful. They tend to have come in more recently, although I am not saying that there are not a few more out there that we would regard as harmful if they came in.

By adopting the extreme philosophy behind the bill, you are creating difficulties. The special references to pheasants and partridges were mentioned earlier. I cannot remember exactly when they were introduced; I think that the Romans were responsible for bringing in pheasants. They have been well established here, and many people would be rather surprised to hear that they are not native. They would also be surprised to hear that the brown hare is not native, according to the definition that we have in the bill.

We think that there should be a rethink on that aspect. That is not to say that we are against control of new species. It makes sense to have controls as in recent years a number of species have come in and proved to be very detrimental. Signal crayfish, not far from here, are one example, and I remember the Colorado beetle being a bit of a difficulty. We are therefore not against control, but the philosophy of what is regarded as native and non-native is currently wrong.

On the question of invasive species, one rationale for changing the existing law in the Wildlife and Countryside Act 1981, which I must say is not far off the mark in what it says, was that we should depart from lists that are never up to date and which always have to be changed by ministerial order. However, in the bill we have another list of what is to be regarded as invasive that the minister will be able to change from time to time. That approach has not solved the problem that was identified, although I do not see how we can get away from lists. When something is identified as invasive, it is right that it should be controlled and, if possible, eliminated.

16:30

If I may say so, there is one quite major difficulty. This may be a lawyer's point rather than a farmer's point, but I will make it anyhow. It will be a criminal act to plant a non-native species "in the wild", but there is no definition of that phrase. A great many of the types of tree that are regularly planted, such as Douglas firs, larches, sycamores and beeches—you name it—fall within the definition of non-native species in the bill, but we are not told what the phrase "in the wild" means. The civil servants say, "Oh, we're going to put an exception in the code of practice," but that cannot be done. If a crime is created under a statute, the only way of exempting somebody from being charged with it is within that statute or another statute. Codes of practice are about behaviour, not about what are essentially matters of fact, such as whether something was planted "in the wild". I urge the committee to consider that point and try to get a definition of the phrase "in the wild" into the bill.

That occurs throughout the bill. References to "sustainability" appear in different contexts in different places. Sustainability means different things to different people, particularly in deer management. I am not quite clear what SNH is being asked to supervise.

That was a long-winded answer. I am sorry about that.

Jonathan Hall: I entirely support the points that Malcolm Strang Steel has made. Greyish tints remain around the definitions of invasive and non-native species. The problem is the "and/or" bit. Our concern is whether something is invasive rather than whether it is non-native.

In general, legislation is not very good at recognising spatial and temporal changes. A Scotland-wide piece of legislation that sets out what might be offences with respect to invasive non-native species might—dare I say it?—be interpreted differently in different parts of Scotland because of the contexts in which people find
themselves. Scotland’s landscape and its wildlife constructs and management structures are very varied, and I am concerned that the bill as drafted will not necessarily be able to reflect any of that variation. What is deemed in one place to be in some aspect an invasive non-native species that therefore causes an issue may not necessarily cause an issue somewhere else.

The temporal aspect is that things are warming up, as we are constantly reminded. The behaviours of animal and plant species are therefore constantly changing as well. The classic example that affects agriculture is that of geese. The migratory patterns of geese have changed: they stay for longer in greater numbers, but they are also establishing what might be described as a native population. They are not migrating to Iceland and Greenland, as they might have done previously; rather, they are staying in Caithness, Orkney and various other places. Their behaviour has changed simply because the context has changed. I am not sure how one picks those things up. How do we deal with migratory species and migration patterns changing? There is a question in my mind about that. Somebody will put me right.

The Convener: That is not a question for this piece of legislation.

Bill Wilson: I would like Malcolm Strang Steel to clarify something. Leaving aside the precise definition of “native”, which is fraught with countless difficulties—we could add fallow deer and several more species to the list without difficulty—are you arguing that, if a species has been in a small part of Scotland for a few hundred years, individuals should be able, without regulation, to move it to any new part of Scotland and artificially to extend its range?

Malcolm Strang Steel: We are getting on to the issue of foxes on Mull.

Bill Wilson: I was not necessarily thinking about that.

Malcolm Strang Steel: There is also the issue of hedgehogs on Uist.

Bill Wilson: Hedgehogs on Uist are not a bad example. Would you allow people to take hedgehogs to islands where they are not present at the moment?

Malcolm Strang Steel: Probably not, on the basis that they are invasive on Uist, rather than that they are not native. Jonny Hall is saying that, if the hedgehog is native to Dumfriesshire but has never been seen on Uist, it should be controlled. I do not disagree. Hedgehogs have had devastating effects on Uist. The issue is that they are invasive.

Jonathan Hall: We have a specific example of that right now. I am sorry to show a Mull bias but my wife is from there, so I tend to talk about Mull quite a lot. There are recent reports of pine martens on Mull, but there is not much evidence that they were there before. The pine marten is clearly a native of Scotland, but it is not necessarily a native of Mull or of some other islands. If the pine marten population on Mull develops and flourishes, what will be the impact—not necessarily on agriculture, but on other species? I am thinking particularly of ground-nesting birds. There is a hen harrier population on Mull; there is also a sea eagle population, which happens to nest in pine trees.

The Convener: Peter Peacock has a question about species licensing.

Peter Peacock: You will have heard the earlier discussion on the arguments around licensing the taking out of currently protected species in order to protect other species. Those are set out in the SRPBA’s paper, but Jonny Hall hinted at the issue in an earlier answer. It is not clear to me from the SRPBA’s evidence whether it is arguing for licensing on economic grounds or in order to meet the provisions of the birds directive in relation to the taking of other species. Can you clarify the issue? Do you see it as an economic question or as a conservation question?

Malcolm Strang Steel: The Game and Wildlife Conservation Trust addressed the issue in detail in its evidence. We support what it said. We believe that section 16 of the WCA does not fully reflect what article 2 of the birds directive says about taking into account economic and recreational issues, as well as everything else, when deciding how protection is to be created. The trust has suggested a small amendment to section 16, to amend one of the reasons for the granting of licences to take out what would otherwise be protected species. We support that. The amendment reflects the provisions of the birds directive, as it must.

Peter Peacock: So there is no economic motivation for your position.

Malcolm Strang Steel: One of the words that the amendment proposes to insert is “economic”, so there is certainly an economic aspect.

Peter Peacock: I invite Jonny Hall to comment on the issue.

Jonathan Hall: Licensing as a principle remains vital to the management of any species, because of both economic and conservation interests. We cannot wrap one species in cotton wool and expect everything else to continue unhindered or unaffected. No matter what level of protection that species has, some flexibility is needed.

A lot of people talk about numbers—someone referred to Mike Russell’s question, “How many
hen harriers is too many hen harriers?"—but what no one has mentioned so far is that the key thing is impact, not numbers. That is our view on all these matters. That impact could be economic, as is true of the impact of sea eagles and ravens on hill farming but, equally, there could be an impact that resonates with conservation interests.

Let me give an example. In recent weeks we have looked at the impact of greylag geese—which are a quarry species and have a season—on land management in a place such as Tiree, where a third of the UK’s corncrake population resides because of the type of land management practices that go on there. I am talking about fairly intensive management of grassland and machair, and cropping patterns that involve barley production and so on.

The farmers and crofters on Tiree are caught between a rock and a hard place because at the same time that they are being incentivised to manage the ground in the interests of corncrakes, to ensure that their numbers increase and they become a conservation success—that is working pretty well—the escalating greylag geese population in the area and the lack of availability of pragmatic measures to control their number mean that the very habitat that the farmers and the corncrakes rely on is being hammered by the geese. It is critical to get the economic and the conservation interests in balance, so there needs to be some sort of licensing mechanism—that is possible with greylags—whereby they can be shot out of season. It might be necessary to do something even more drastic—I am talking about real population management to pull the rug from under the impact that the geese are having, such as egg oiling or egg pricking.

Peter Peacock: I want to pick up on that. If there were to be a licensing system, which both the NFUS and the SRPBA would argue is required to allow exceptions to the general rule of protection, who would be best equipped to issue those licences? The Government has suggested that that role could be delegated to SNH and/or the local authority. Do you have views on that?

Jonathan Hall: It should be delegated to whoever would act the quickest.

An important point was touched on during this morning's visit. The Scottish Government will not issue a licence without understanding exactly what the ecological and conservation impacts of doing so might be, and that advice must come from SNH. With the best will in the world, that might be quite a slow, tedious process. On top of that, SNH and the Scottish Government are likely to have less and less resource in the future.

In theory, I think that we should be looking at multi-annual licences, which we have already delivered for raven management. There needs to be an effective tool to which farmers, gamekeepers and whoever have recourse. We do not want to wait for the problem to happen and then have to close the stable door after the damage has been done. If we are talking about mitigating the impacts of populations of species on a conservation or an economic interest, a tool that prevents rather than cures needs to be available up front. Otherwise, the damage will already have been done and we will forever be chasing our tails. Licensing is essential, but we need some means of delivering the licence almost up front—a vehicle that says that that tool is available to those who require to use it.

Peter Peacock: Are you not contradicting your earlier argument, which was that the assessment must be ecological, primarily?

Jonathan Hall: The assessment process is continuous—SNH has a rolling function to monitor all sorts of populations. If someone wants a licence to control X number of ravens or whatever, by the time it is understood what the ecological impact of that might be on the local population and that information is relayed to the Scottish Government office that issues the licence, I am afraid that the damage will well and truly have been done. I cannot see that being a pragmatic or effective way forward. In those circumstances, the licence almost becomes ineffective.

16:45

Malcolm Strang Steel: Jonny Hall is talking about speed, which is critical, whoever grants the licence. Peter Peacock asked who should grant the licence, and I do not think that the SRPBA has a view on that. My personal view is that it probably ought to be SNH, rather than the local authority. SNH is equipped to deal with the matter—it is involved in granting some licences already, whereas local authorities have no experience of that. The argument in favour of the local authority granting the licence is that every area is different and different considerations will apply. I hope that SNH, which has offices all over Scotland, will be able to cope with that, however. I stress that that is a personal view, not a SRPBA view. I do not know whether Robbie Douglas Miller agrees.

Robbie Douglas Miller: I completely concur with that.

The Convener: Let us move on to deer management. I will let Aileen Campbell take the lead.

Aileen Campbell: We heard some useful comments earlier about shortcomings within deer management. There is evidence that the current voluntary approach to deer management is working, but bodies such as Scottish Environment
LINK and the RSPB have said that it is falling short. What are your feelings on that? Is there any evidence to suggest that there has been a failing in effective deer management?

Robbie Douglas Miller: From what the previous witnesses were saying, we seem to be focused more on red deer than other deer that occupy lowland Scotland. My personal view, which I believe to be that of the SRPBA, is that any voluntary management mechanism is preferable to compulsory measures. You will hear later from the Association of Deer Management Groups, the British Deer Society or one of the other relevant organisations, and I am sure that they are better qualified to give a view than I am. My personal view, however, is that if we can encourage deer management on a voluntary basis, with collaboration across key areas, that will work better than any overarching single piece of legislation, which might not be entirely appropriate to the area concerned.

Aileen Campbell: If that approach does not work, should the Government make things a bit more mandatory?

Robbie Douglas Miller: It depends on the definitions of success and failure. I might use the analogy of the district salmon fishery boards, which operate on a voluntary basis throughout Scotland and seem to work very successfully. They have been around a bit longer, and they have perhaps had one or two more key issues to deal with than the deer management groups have had—they have had to pull things together, sort things out and get fisheries operating effectively. Now that the problem is known about and people want a solution to it, I am inclined to let things run for a while.

Aileen Campbell: There are issues around training and competence. Should the approach to that be voluntary, too? Who should deliver training?

Malcolm Strang Steel: As I understand it, and as was mentioned earlier, there have been discussions about that. I think that a training programme is in the course of being prepared, on a voluntary basis. That explains why the bill is proceeding, and they are well ahead as far as I am aware.

There is a great difficulty in sweeping three different issues concerning deer into one pot. First, there is a red deer issue. Underlying many of the representations that the committee has received is the perception that the devastation in the west Highlands is entirely the result of overgrazing by deer, but a lot of people dispute that. I know of one person who has a deer forest on the west coast, and his problem is that there are not enough deer, as a result of which tenants are not coming to stalk with him. That is one issue.

Another issue concerns roe deer on low ground, in areas such as mine. I have never heard of an issue with overgrazing by roe deer. If trees are planted, there is a problem. If the population is big—in my area, it is not big enough—it might cause a problem with crops. Existing legislation and the bill contain mechanisms for dealing with that.

The third issue—it will be added to section 1 of the Deer (Scotland) Act 1996—is the urban and peri-urban position. “Peri-urban” is a new word to me and is rather a mixture of Latin and Greek. I understand—although I have no direct knowledge—that issues arise with road accidents and dealing with roe deer and other deer that get into parks in towns and so on.

Three distinct issues arise, for which the solutions—if I can use that term—should probably differ. In my area, where roe deer are present, no deer management group exists and it would be extremely difficult to get one together. I do not think that roe deer are a problem to anyone. Different people have different management objectives. As I said, it is important to maintain that diversity of management objectives, whether on low ground or in the Highlands.

Aileen Campbell: In your submission, you expressed concerns about repealing the requirement for evidence of “serious damage” and replacing it with a reference to just “damage” before a control scheme might be implemented. Will you expand on that?

Malcolm Strang Steel: The reference to damage is in the section that deals with emergency action by SNH. If the situation is an emergency, the test should be that serious damage rather than just damage has been caused. “Damage” means one deer eating one tree; “serious damage” might mean a herd of 50 deer devastating a forest. Emergency action would obviously be required in the second case but not in the first.

Aileen Campbell: So you would like us to distinguish our roe deer from our red deer and—

Malcolm Strang Steel: I would like you to retain the word “serious”—that would be more realistic.

John Scott: Is that the view of everybody on the panel?

Jonathan Hall: I will comment on deer management in the agricultural context. That goes back to a comment that I made earlier. The presence of deer can have different impacts. What has not come out so far is the fact that deer can cause significant agricultural damage. Deer
impacts also manifest themselves at designated sites and in road traffic accidents. Deer welfare is an overarching issue.

I am glad that, following the consultation, the mandatory competence requirement was removed and replaced by voluntary measures to establish the ability and professionalism of those who take or kill deer. That is exactly the right way to go. I would be equally concerned about compulsory deer management plans that covered different species in different regions, because deer have different impacts. Such plans would create a mess of the situation and would be difficult to put in place. Who would pick up the bill for all that? I am not sure whether such intervention would have a public benefit.

From an agricultural point of view, it is essential that we are able to manage deer when they cause an impact. That relates to all sorts of other matters. Such management might involve using out-of-season control measures or occupiers' rights, provided that those who exercise occupiers' rights do so to the highest welfare standards.

Aileen Campbell: Will you expand on the damage that deer cause to agricultural land?

Jonathan Hall: Hill farmers and crofters are very aware of what red deer do in the winter—they can come down and cause a serious impact on forage crops such as neeps.

I slightly disagree with Malcolm Strang Steel’s comment that in predominantly roe deer areas, roe deer cause no agricultural impact. They can certainly work their way through a newly sown crop pretty neatly; if they are hungry enough, they could probably work their way through pretty high-value crops—brassicas, carrots and all sorts of other things. They are herbivores so, in significant numbers, they will have an impact. The issue is to do with that impact in a confined situation, which can be extremely damaging.

Malcolm Strang Steel: The occupier has the right to deal with such situations.

Jonathan Hall: I recognise that, and we have to retain that occupier’s right, but I also recognise the fact that, if they are going to exercise that right, they need to do so with animal welfare very much to the fore.

Aileen Campbell: How are farmers dealing with the issue? Is there a collaborative approach with the gamekeepers? How are they managing it on their own farms?

Jonathan Hall: Traditionally, farmers have not been directly involved in deer management groups, particularly in the red deer range. One or two local deer management groups cover roe deer areas. In many ways it is a bit like the snaring situation. An awful lot of professional deer management is not carried out by the farmer, who allows individuals to come on to their land to control and manage deer numbers. In the roe deer area, members of the BASC, in particular, and other organisations are responsible for an awful lot of deer management practice, from which farming benefits. Therefore, we need to retain the ability of people who are qualified in one sense to carry out the operation. The same argument is used in relation to snaring. To remove the ability to deal with the matter would raise a real issue from our point of view.

The Convener: Before I bring in Bill Wilson, Mr Strang Steel has mentioned his lowland area several times. For the Official Report, will he say where it is?

Malcolm Strang Steel: It is in Kinross-shire—the south side of the Lomond hills.

Bill Wilson: If we reinsert the word “serious”, is there not a real danger that we might never be able to do anything? Let us say that deer come down on to some agricultural area, causing a lot of damage, and SNH thinks that a control order is needed. Damage is clearly being done and the control order can duly be given. However, what if the requirement is that “serious damage” must be caused? Someone might say, “Ah, but they have eaten only 25 per cent of the crop and it is necessary for them to eat 40 per cent for it to be serious,” or, “Only 40 per cent of the crop has been damaged, and it needs to be 45 per cent.” Is there not a risk that the introduction of the word “serious” is an obfuscation, because “serious damage” is difficult to identify?

Malcolm Strang Steel: I do not know where the motivation for removing the word “serious” came from, but perhaps you do.

Bill Wilson: No.

Malcolm Strang Steel: It seems to me that if you are dealing with an emergency situation, it ought to be clear that there is a problem and that it should be dealt with. The phrase used should therefore be “serious damage”; if it is just “damage”, there is scope for the sort of argument that you are talking about.

Bill Wilson: Surely the argument arises if you introduce the word “serious”, because then there will be a big debate about whether the damage is serious. Once you put in a bar such as “serious”, you have to spend a lot of time arguing about what exactly is “serious”, whereas “damage” is clear. I do not imagine that a control order will ever be put in place for some minor event, but “damage” is clear; you can see that there is damage. How do you define “serious”? I believe that you have a legal background.

Malcolm Strang Steel: You are right. Do you?
Badgers predate lambs and attack older sheep.

For example, when we discussed issues. For example, when we discussed spread bovine TB; there are all sorts of other issues. It is not just about the possibility that they might cause mayhem in the wood, there is serious damage and emergency action is clearly required.

Bill Wilson: Here is my problem. Let us say that someone then objects to SNH taking action, because they say that although there is a lot of damage, it is not serious. Does the insertion of the word “serious” not give the opportunity for someone to object and say that damage is not serious?

Malcolm Strang Steel: They have that opportunity whether or not you put in the word “serious”.

Bill Wilson: If the bill just says “damage”—

The Convener: Bill, we will stop there. You can take up the issue the next time that we discuss deer. You are like a little terrier. Can we move on to badgers?

Karen Gillon: After Bill’s badgering of the witnesses.

I have a quick question for Jonathan Hall. Are you concerned that the provisions in the bill will preclude our dealing with an outbreak of bovine tuberculosis, should it occur in Scotland and should it be proved that badgers are carrying it?

17:00
Jonathan Hall: Yes. Whether the bill would allow sufficient action to be taken in time to arrest an outbreak of bovine TB remains to be seen. We just do not know. I would not say that such an outbreak is probable, but it is possible and I question whether the bill is sufficient in itself. I do not have too much difficulty with what the bill says about badgers, but we have concerns about badgers, full stop, and it is not clear whether the bill will enable farming and other land management interests to overcome some of those issues. It is not just about the possibility that they spread bovine TB; there are all sorts of other issues. For example, when we discussed predation, we did not mention the fact that badgers predate lambs and attack older sheep.

The land where they dig out setts is sterilised in terms of development, they undermine—literally—all sorts of economic activities, not least railway lines and so on, and there is very little recourse available to land managers. In extreme circumstances, licences could be awarded—that is currently the case, as I understand it. We have no new concerns about badgers in terms of the bill, but there remain outstanding issues about badgers and badger management because of the fact that they can sterilise land and stifle economic activity.

Karen Gillon: Although we are tight for time today, it would be useful to get some more information on that. If you could send us some information on those issues, I would be interested in it.

Jonathan Hall: Fine. Other organisations—particularly commercial forestry interests—will be equally prepared to provide examples of how the presence of badger setts can sterilise a piece of woodland that has taken 35 years to grow but then has no economic value whatever. In such circumstances, there is nothing that the individuals can do, and the situation is the same for other developments in rural Scotland.

The Convener: The Government is developing a policy on badger control. Is it taking into account the possible relationship between badgers and the spread of bovine TB?

Jonathan Hall: I hope so and will endeavour to ensure so. We are not in a dairy area here, but there is an area not too far from here that relies heavily on the dairy industry, in which there are very tight margins for all sorts of reasons. There are bovine TB hot spots in Cheshire and parts of Wales, and if we suddenly get those in Dumfries and Galloway—in the Stewartry, for example—we will have to look closely at whatever causal relationship there is between badgers and the spread of bovine TB. It might be in the wider public economic interest for there to be a localised cull of some sort. I am not suggesting that that is what we are calling for, as I do not think that we are in that position yet, but in such a situation we might need to have that recourse. Dumfries and Galloway has an agricultural economy and remains the stronghold of the Scottish dairy industry, which is shrinking fast outside Ayrshire, Lanarkshire and the odd other place. Dumfries and Galloway remains the stronghold for that industry, and there are fewer than 1,000 dairy farms left in Scotland.

The Convener: It is the UK Government that is looking into the policy.

Bovine TB is probably often spread by unregulated cattle movements. We must ensure that badgers are not being tarred with a reputation
for spreading the disease, when the issue could also be cattle movements, as I know from my experience in the north-east.

**Jonathan Hall:** I would not suggest that the problem is exclusively down to the badger or anything else. However, if there is ever an outbreak and it is identified that the proximity of badgers to a dairy herd was the issue, some mechanism for taking action will need to be in place, albeit that I hope that action will be temporary and localised.

**Peter Peacock:** The witnesses heard us discuss bird poisoning with the previous panel. Despite all the penalties that exist, particularly for killing raptors, the problem is not going away and seems to be getting worse. This year a number of golden eagles have been killed, and the people who monitor eagles think that those cases are the tip of the iceberg and that up to 50 golden eagles are being killed every year. Malcolm Strang Steel screwed up his face at that figure; it is the figure that I have heard. I look forward to hearing more about that in due course. There is a serious problem, whatever the level.

A debate is taking place about ratcheting up penalties, to reduce the incidence of poisoning. The question of vicarious liability has been raised. I would be interested to hear Malcolm Strang Steel’s legal view on that, as well as the SRPBA view.

**Malcolm Strang Steel:** First, the SRPBA is on record as utterly condemning the poisoning of raptors or indeed anything else that it is not legal to poison. An open letter to that effect was signed by me and many other members—I think that that was after the report of the Skibo incident. I cannot comment on whether 50 golden eagles are at risk, because I have no idea what the provenance of that figure is.

On vicarious liability, if an employer, factor or anyone else has been involved in a crime that their employee has committed, the person who is implicated is guilty of the crime art and part under existing law. That is not vicarious liability, but it is liability. If an individual employee goes off and commits a crime off his own bat, whether it is murder or the killing of a golden eagle, I do not see why an employer who had nothing whatever to do with the crime—and might condemn it, if he knew that it had happened—should be liable for the murder of the golden eagle any more than he is liable for the murder of the human being.

**Peter Peacock:** I was impressed by the letter that was signed by all the landowners, but in the following week one of the signatories found that a bird had been poisoned on their estate. The signing of a letter does not of itself stop bird poisoning. I accept that the SRPBA has expressed a will to see less poisoning, but the problem continues, even on the estates of people who signed the letter—

**Malcolm Strang Steel:** I cannot comment on that.

**Peter Peacock:** I am not asking you to comment; I am making an observation. You have set out reasons why vicarious liability is not a way forward. Nonetheless, the Parliament might say that it wanted more action because what is happening is not acceptable. Another approach that has been postulated in the evidence that we have received is that estates could be licensed for the purpose of grouse shooting and so on. If there was enough evidence over time to demonstrate that there was a problem with an estate, it could lose its licence, which would be a direct financial penalty. The argument is that that would require all the management regimes in place to put on constant pressure to eliminate bird poisoning. Some people argue that the motivation for some of the poisoning is economic—to protect grouse and so on. What is your view about moving to a licensing system for estates?

**Malcolm Strang Steel:** Let me first outline what the existing penalties are for anyone found guilty of one of those offences, quite apart from the penalties that might be imposed. The automatic reaction of the rural payments and investigations department is to halt the single farm payment—sometimes, frankly, the department is not entitled to do that. Often, that involves very considerable sums. I am aware of one such situation involving an employee of a shooting tenant—it was nothing to do with the landlord at all. In many instances, that is already a pretty hefty penalty. Keepers have their guns removed and—for that reason, if not for any other—are likely to lose their jobs. If the factor, landowner or whoever else is involved in art and part, as I mentioned earlier, they will be subject to those sort of penalties too. The penalties are pretty stiff as it stands.

As far as licensing is concerned, it would be hugely expensive and, as was mentioned earlier, there would be all sorts of practical difficulties. I really do not see that it is necessary. There are no particular advantages to it, and it would be bureaucratic and expensive for the Government.

**Peter Peacock:** I hear what you are saying—that the existing penalties are strong enough—but the problem is continuing and, indeed, increasing. Something else is required in the equation to try to make things better. If you do not support vicarious liability and you do not support a licensing regime, what does your organisation advocate to help us move forward?

**Malcolm Strang Steel:** The mere fact that something is illegal does not stop people doing it.
Murder has as high a penalty as you can get, but people still go off and do it. If you have any power and influence over people, you do your best to make them keep to the law, but if people are determined enough to break the law, they will do it.

Peter Peacock: Do you believe that there is nothing else that we can or should be doing to try to reduce the problem? I think that you were here earlier when I was rehearsing the arguments about what has been described to me as new management techniques that are being introduced to some estates—not every estate, by any means. Someone described it as a kind of monoculture, involving the management of almost every other species to protect one species. If such practices are going on, does your organisation condemn that, or do you support it? Is such an approach appropriate? What measures would you implement to bring about more pressure for change?

17:15

Malcolm Strang Steel: You have moved on to an issue of management techniques, rather than crime. Perhaps Robbie Douglas Miller would like to talk about management techniques.

Peter Peacock: That was very neat. Well done.

Malcolm Strang Steel: Well, you altered the line of discussion, Mr Peacock, not me.

Peter Peacock: I will come back to you on that.

Robbie Douglas Miller: Peter, when the previous panel of witnesses were sitting here, you declared an interest as a member of the RSPB. Perhaps I ought to declare that I am a life member of the Game and Wildlife Conservation Trust.

The particular issues that you keep coming back to are vicarious liability and licensing. You keep trying, perhaps, to drive the discussion in that direction. Personally, I do not see what advantages you would get from that, for the reasons that Malcolm Strang Steel has already explained. The law already is the law. People break the speed limit every day, even though they take a test and have a licence that tells them that they cannot do that.

I encourage you to look at some of the positives that have happened in the past few years. The engagement of a lot of conservation organisations, particularly the RSPB and the GWCT, with land managers who are trying to make an economic return in certain parts of Scotland that, frankly, have a low economic return—I specifically refer to grouse moor management—has been one of the great strengths of the Scottish Parliament to date.

You mentioned Langholm moor, which you visited this morning. There are no new techniques at Langholm. There is only the trialling of certain techniques that we all hope will provide a solution to the conservation conflict of raptors and red grouse in particular, but also other game birds. The conflict exists and it will not go away whatever anybody does unless the Scottish Government decides that it simply does not want to allow shooting to take place in Scotland.

The Convener: I must wrap up the meeting in five minutes, so I ask Peter Peacock, Karen Gillon and Bill Wilson to keep their questions short. I will take them all together and then the witnesses can answer them all together.

Peter Peacock: I applaud a lot of the changed practices in recent years. Some good things have gone on. I applaud what has been done in Langholm to try to improve things further, and the attitudes that we saw this morning, but nonetheless, the problem persists and is getting worse. Now, if—

Robbie Douglas Miller: That is simply not true. When you say that it is getting worse, do you mean that it is worse than in the 1950s, the 1940s, the 1960s—

Peter Peacock: It is getting worse over recent trends. There is an increasing trend of apparent poisoning and taking raptors out. I do not think that that is in much dispute, to be honest.

Robbie Douglas Miller: Taking one year on one year is not, in my opinion, a trend.

The Convener: Let us not go over old ground, Peter.

Peter Peacock: My point is that, if the Parliament says—

Robbie Douglas Miller: My problem is that, the more that you drive this, the more you alienate all those who are trying to resolve the conservation conflict, which is real and a difficult issue to resolve. The more you try to drive a wedge between the various parties, which always seems to be happening, the less likely you are to provide a solution.

Peter Peacock: I think that you are misunderstanding my point. I am saying that there is a live debate about the issue, with one argument for vicarious liability and another for estates to be licensed in the way that I described. My question is, if neither of those is acceptable and the Parliament wants to do something else, what else ought it to be seeking to do?

Robbie Douglas Miller: Perhaps I could try to answer your question by saying—

The Convener: Do not answer that yet, Mr Miller. I ask Karen Gillon and Bill Wilson to put
their questions so that they can all be answered together.

Karen Gillon: I am probably the least animal-welfare person in the Labour team here, but I am becoming increasingly frustrated about birds of prey being killed. I just cannot understand it. I have sensed people's tension at every discussion that we have had about buzzards and ravens. People are taking them out because they do not like them and they are a pest to people who work on the land. We can talk round it, and we can pretend it is not happening and that things are getting better but, in my time as an MSP, I have been aware of more and more cases—only today, another two buzzards were killed. I cannot believe that we can allow that to continue. We have powers and stringent measures in place, but they are not working. We have a bill before us and we are going to have to do something in it to make the situation better. If you guys cannot come up with another alternative, the alternatives that are on the table are the ones that we will have to consider.

Bill Wilson: I hope that my question lies within Malcolm Strang Steel's legal expertise. If a member of the public is killed because of the action or negligence of individuals who are employed by a company, can that company not be held responsible for the negligent actions of its employees and, if so, is that not vicarious liability, and a parallel to what we are talking about?

Malcolm Strang Steel: That is a civil liability, if the employee is acting in the course of his employment. I hasten to add that that is not my field, but that is my understanding. It is not a criminal liability. As far as I am aware, a vicarious criminal liability would be completely novel.

Robbie Douglas Miller: I will try to answer Peter Peacock's and Karen Gillon's comments, as I share their frustration. In fact, I would go as far as saying that I am potentially more frustrated than they are by the continuing actions of a few people who undermine all the good will and the effort and energy that are being focused on trying to provide a solution that will work for all parties. Much of the work that is being done, particularly that at Langholm, is quite new. We do not yet have the answers to many of the problems, but they will come out of that work. To jump in now with vicarious liability, licensing or even further penalties will only polarise the issue; it will not help to bring everyone together and bring a solution to the table.

I do not suggest for a moment that more cannot be done. The industry could still make significant improvements. Some form of self-licensing or self-regulation might be the way forward to try to assist with the problem. Everybody is hugely aware of the problem and striving extremely hard to provide a solution. At this time, Government interference— if I can put it that way—would not be helpful. In the long term, it would work out to be a much better solution if the various parties that are round the table were allowed to come up with a recommendation for Government to approve.

The Convener: That concludes our questions. I thank the witnesses for giving evidence. If you have any comments to supplement your answers, please send written evidence to the clerks as soon as possible.

That concludes the public part of the meeting. The committee will now go into private to review what we have heard and consider what we want to take forward in further meetings.

I thank everyone in the audience for attending. The committee very much enjoyed our visit to Langholm, and I hope that people have found the meeting interesting. The Official Report of the meeting—a verbatim report of everything that was said—will appear on the Scottish Parliament's website shortly. Thank you very much, and safe home.

17:23

Meeting continued in private until 17:30.
On resuming—

Wildlife and Natural Environment (Scotland) Bill: Stage 1

The Convener: Item 5 is continued consideration of the bill. I welcome the first of the two panels, which comprises representatives from different organisations that belong to Scottish Environment LINK. Lloyd Austin is the convener of Scottish Environment LINK WANE group, a LINK trustee and head of conservation policy with the Royal Society for the Protection of Birds Scotland. Dr Deborah Long is the convener of the LINK biodiversity task force, the chair of the LINK board of trustees and conservation manager for Plantlife Scotland. Dr Paul Walton is a member of LINK’s biodiversity task force and head of habitats and species for RSPB Scotland. Mike Daniels is a member of LINK’s deer task force and chief scientific officer of the John Muir Trust.

To maximise the time that is available to us, we will not ask the witnesses to make opening statements, but will move directly to questions. Bill Wilson will start.

Bill Wilson: You are probably aware that we have received evidence in favour of expanding single witness provisions to other aspects of wildlife crime and of ending them altogether. What is your view on single witness evidence?

Lloyd Austin (Scottish Environment LINK): From the bill it is obvious that the single witness provisions of the old game acts and in relation to birds’ eggs have been carried forward unchanged. However, because the issue has been dealt with purely as a consolidation measure, there are anomalies in that the provisions will apply to some wildlife crime offences but not to others. Removal of such anomalies would be a logical step. The provisions exist in the first place because the crimes take place in remote and rural areas where the likelihood of having two witnesses is lower than it would be in, say, a city street. Our preferred option would be to extend them to a wider range of offences, notwithstanding our complete acceptance that corroboration must also be provided alongside a single witness statement.

We also perfectly accept that it is a logical position to seek to remove the provisions entirely. Nevertheless, although the two options are logical solutions to removing the anomalies, we would, as I said, prefer the provisions to be extended to all wildlife crime offences because we feel that this is a serious problem that requires additional measures if it is to be cracked.

Bill Wilson: While we are discussing witnesses, I note that in its submission RSPB Scotland seeks "A reconsideration of admissibility issues—to ensure that any evidence of wildlife crime is accorded sufficient weight to permit prosecution and that, for instance, the civil wrong or irregularity of trespass ... does not, unnecessarily, prohibit prosecutions."

Would you care to expand on that suggestion?

Lloyd Austin: That question also falls to me. That comment is about the issue of witnesses or potential witnesses being on certain land and the court having to determine the admissibility of their evidence. In many circumstances, witnesses might be on land because they are exercising access rights under the Land Reform (Scotland) Act 2003, but it could be argued in certain cases that they are not exercising such rights because their purpose for being on the land is outwith those rights. The court will have to balance the public interest benefits of pursuing a prosecution against the private disbenefits of the civil wrong or potential irregularity of trespass, and the prosecutor might well decide not to pursue a case. We are suggesting that if a potential witness has been on land to carry out activities that would otherwise come under the access rights that are set out in the 2003 act, their evidence should be deemed admissible. Does that make sense?

Bill Wilson: If I understand you correctly, you are saying that if a hillwalker who is striding across the hills finds a poisoned bird, that would be deemed to be evidence because he is exercising his hillwalking rights. However, if an individual from the RSPB is sent to look for and finds such a bird, it would not be deemed to be evidence because he has been on the land to look for a poisoned bird, not to go hillwalking.

Lloyd Austin: That is correct.

Bill Wilson: Great—well, not great. [Laughter.] I mean that I understand what you are getting at.

Liam McArthur: In last week’s discussion of the issue it emerged that because of the requirements of the Procurator Fiscal Service, we could end up with more cases being brought but not proceeding to court. That would be the worst of all worlds: we would raise expectations that something is being done while prosecutions and any such actions are regularly thwarted. How would you respond to that assertion? Have you discussed the matter with the fiscals themselves?

Lloyd Austin: It is an issue on which the next panel will certainly want to comment. If you are saying that the law should be constructed on the basis of whether you have the resources to carry out prosecution in the types of cases that are reported to the prosecuting authorities, that sounds like the wrong way round. It should be determined on what you believe the public interest is and what will create a sufficient deterrent to prevent crimes from taking place.
Liam McArthur: The question was less to do with resources and more to do with the requirements of corroboration. There would be an expectation that a single witness statement was sufficient, albeit that in practice, I think, it is not really accepted as applicable in any circumstances.

Lloyd Austin: There are existing cases in which there is single witness provision, and they do not include just rural and wildlife crime cases. For instance, there is in one of the environmental protection acts existing single witness provision in relation to littering, and there is a similar provision in relation to dog fouling. The police, other reporting agencies and the fiscal service have a lot of experience of circumstances in which single witness provisions arise. I would have thought that the reporting agencies would either have already or would develop knowledge of the type of corroboration that would be sufficient. They would therefore not bring lots of cases in which there was not sufficient corroboration.

Liam McArthur: That is helpful.

John Scott: This, too, will probably be a question for Lloyd Austin, but before I start I should declare my interest as a farmer—I should perhaps do it at every one of these meetings.

In essence, the bill will add game birds to the schedule of quarry species. The RSPB Scotland evidence states that

“The bill retains, as legitimate quarry, a number of native wild birds whose conservation status is less than robust”

You are not seeking removal of those species from the quarry list—correctly, I am sure. Will you explain your position on that a little more fully?

Lloyd Austin: The quarry list includes many wildfowl and waders as well as the game birds that are being moved into the quarry list in the Wildlife and Countryside Act 1981. Many of those species have a less than robust conservation status, but in the circumstances we do not think that removing them from the quarry list is the best way to address the issue.

We suggest that a system needs to be put in place better to monitor mortality through hunting and shooting. The question is whether we can introduce a system of recording bags, take and so forth, so that the Government can be better informed in the future about whether any decisions need to be taken. It is not necessarily appropriate at this time to decide to take birds off the list or to put others on it, but we need a better reporting system so that future discussions and decisions can be better informed.

Dr Paul Walton (Scottish Environment LINK): The point is particularly relevant with regard to geese—I am thinking about the resident breeding greylag geese in the Western Isles and inner Hebrides in particular. There is serious agricultural damage in a number of instances, and it is likely at some stage that collectively we will have to move towards an adaptive management scenario for the populations. That can be based on science and done in such a way that we can pretty much guarantee that the conservation status of the target species will be maintained and not threatened and agricultural damage will be minimised, but we can do that only if the science is informed properly about the mortality levels.

At the moment, the gathering of bag statistics in this country is generally poor in comparison with other countries. We do not know for sure how many birds are shot for sport by estates. We know some other pieces of information on mortality—for example, we have an idea of the number of birds that are shot under licence—but there is no robust mechanism for us to be absolutely confident in the mortality levels. If we are not confident of those levels, the science and, therefore, our whole adaptive management approach falls apart and it becomes more difficult for conservation bodies such as the RSPB to support it.

We want to use the opportunity that the bill provides to set in train a process that will provide us with properly robust gathering of bag data. In Iceland, the provision of gun licences is dependent on people reporting what they shoot; people have to supply the right wing of every goose that they shoot. There was a huge furore when the system was introduced but, after about a year, things settled down and now everyone is pretty happy with it. I am not suggesting that exactly the same model should be adopted in Scotland, but it is possible to get good bag statistics. In our opinion, those will be needed.

10:30

The Convener: I cannot believe that you do not think that estates count what they shoot, as that is one of the points on which they compete with one another. Each gamekeeper will know how many brace of grouse and other things are shot per day. The figures will appear in their records. Are you saying that those records are not widely available?

Dr Walton: I am. In a number of instances—for example, on South Uist estate—we have had difficulty getting information about how many birds have been shot. When we get it, it is verbal and varies quite a lot. There is no compulsion on estates to reveal those data. I agree with you that estates have a long history of detailed recording of bags, but that information is not necessarily made available to third parties.

John Scott: From anecdotal evidence, we know that there is a growing problem throughout
Scotland of geese overwintering on agricultural land. Is there any provision in the bill to deal with the problem? If not, should there be?

Dr Walton: The point that we are making is important, but we should remember that a review of the national Scottish provisions on the goose and agriculture issue is under way. That review will report to the national goose management review group, which is chaired by the chief agricultural officer. We will look at the report this autumn, so that is imminent. The review concerns the seven local goose management schemes throughout Scotland that have been set up to address the issue.

I will set out the broad political background. During the 1980s, when very serious damage was being done to big, important agricultural units on Islay, for example, argument about the issue reached fever pitch. Broadly speaking, the seven local goose management schemes that have been established since then, which are overseen by a national group of stakeholders that is chaired by the Government and for which SNH provides the secretariat, have worked reasonably well. However, in Orkney there is a growing issue that will be difficult for the Government. The population of Icelandic breeding greylags that used to come down to the whole of Britain is stopping in Orkney now, because grass is growing there through the winter. There may be a financial issue.

John Scott: It appears that climate change may be changing the birds’ migratory patterns.

Dr Walton: That is a fair comment.

John Scott: Any further evidence that you have on the issue would be of interest.

Dr Walton: All that I can say is that the matter is being examined in considerable detail at the moment. However, arrangements are in place to manage severe goose problems fairly successfully. There are precedents for that—Islay is a good example.

John Scott: Presumably, you have records for the number of geese that are shot there.

Dr Walton: Yes, when it is done under licence. It is more difficult to establish how many are shot on sporting estates. There is also the issue of people coming to this country as visitors and shooting with agents. There is no way of getting accurate figures for how many are shot in that way or of recording the information formally. That is done in other countries and will be needed to inform the science that will properly underpin goose policy.

Liam McArthur: Are the proposals that emerge from the process in relation to geese and agricultural land likely to be published within a timeframe that will allow amendments to the bill to be lodged, if that is seen to be necessary?

Dr Walton: I believe so. I am not in a position to guarantee that, though.

Liam McArthur: Thanks.

Dr Walton: We have not seen the report yet and we do not know how contentious it will be, or what the ministers will think about it.

Elaine Murray (Dumfries) (Lab): What are your views on the need for a close season for brown and mountain hares? As you know, the bill proposes to introduce a close season. The Scottish Gamekeepers Association has recognised the benefit of a close season but does not feel that the times proposed reflect the time between the breeding seasons. The Game and Wildlife Conservation Trust argues that the numbers of both types of hare are healthy and that culling of hares on grouse moors is therefore not jeopardising their status. On the other hand, the Hare Preservation Trust argues for full conservation status and says that, because of their capacity for carrying ticks, the culling of hares is in breach of the habitats directive. Could you add anything to that rather divergent set of views?

Lloyd Austin: First of all, in relation to the game law proposals generally, you will see from the LINK evidence that LINK members collectively have made no assessment of that issue, so I refer you to the submissions from the RSPB and the Scottish Wildlife Trust. We think that the introduction of a close season for the breeding period of any mammal species is a good thing. That is a welfare issue relating to nursing mothers and so forth, so it is not within our area of expertise, but we acknowledge the issue.

The management of ticks and so forth is an area that needs some investigation, particularly in relation to the mountain hare species, which is covered by the habitats directive. That issue needs to be considered to ensure that it is done sustainably. It is another area in which information relating to the numbers that are being taken is unclear. The science would be better informed if we had more information on the population impacts.

Elaine Murray: Okay. We move to snaring, which is probably even more contentious. We had conflicting views about the need to use snares when we visited the Langholm moor demonstration project last week. Simon Lester, the head gamekeeper, told us that in some cases there was no alternative. He had lain out on the moor with guns, trying to take foxes. However, in some circumstances, snares were the only way in which he could control predators. Obviously, that is not the view of groups such as Advocates for Animals. What are the views of LINK members on...
snaring? Do any of your members use snaring? Do you believe that it is necessary, particularly for successful grouse shooting or game management? What are your views generally on the argument that snaring is an indiscriminate trap? We heard evidence last week from Hugo Straker that fast-release devices have been developed that would allow badgers and so on to escape if they were caught in fox traps.

Lloyd Austin: Rather like the previous question, this is an area that is very much dominated by animal welfare issues, which are not an area of our expertise, which is much more in conservation and population management issues. That is why, collectively, LINK has not done any work on snaring. I will ask the panel members who represent organisations that are land managers to comment.

I will kick off, from the RSPB’s point of view. In the past, our main concern with snaring was related to the bycatch of capercaillies in snares that have been poorly set or set in the wrong place. There are unfortunate examples of capercaillies being caught. The improved regulations have helped to address that problem, but bycatch is the one conservation issue that must be addressed.

Our elected council has approved a vertebrate management policy for our land holdings, and we abide by that. The council has taken advice on the methods that we use from the Royal Society for the Prevention of Cruelty to Animals and the Scottish Society for the Prevention of Cruelty to Animals, as we have properties north and south of the border. On the basis of their advice, we have decided not to use snares as a form of vertebrate management.

As far as we can tell, our fox control and the other activities that we carry out on our land are as successful as we want them to be. They are subject to scientific monitoring and so forth and use alternative methods. I am aware that you are visiting estates in Strathspey, including ours, next week. No doubt you will be able to see that on the ground.

I ask Mike Daniels and Deborah Long to comment from the points of view of their organisations.

Mike Daniels (Scottish Environment LINK): The John Muir Trust does not generally do predator control, and we certainly do not snare. As a landlord, we have crofting land, and crofters have rights to carry out predator control. As far as we are aware, some snaring goes on there. Our main reasons for not snaring are, first, that we are not into individual species management and, secondly, that we are concerned about the indiscriminate nature of bycatch, with otters, pine martens, wildcats and other species getting caught in snares. As Lloyd Austin has indicated, we do not really take a position on the welfare side, although we are obviously aware of concerns from some of our members about welfare issues in relation to snaring.

Dr Deborah Long (Scottish Environment LINK): Similarly to the RSPB, the board of Plantlife Scotland has approved a vertebrate control policy to which we all adhere on the land that we own and manage. That means that we do not use snaring as a form of vertebrate control. We will control vertebrates only where they are having a damaging impact on the plant interest for that site.

Elaine Murray: If you do not use snares, what are the main alternative methods of predator control? Lamping?

Lloyd Austin: As I understand it, our main method of vertebrate control on our land is shooting. You will get a lot more evidence on that next week, when you visit Abernethy.

Mike Daniels: Generally, we do not carry out predator control but, where we do, it is lamping.

Aileen Campbell (South of Scotland) (SNP): I am trying to reconcile today’s evidence with what we heard in Langholm last week. We were told that people had been out in the hills all night but could not shoot the foxes. If you are saying, Mr Austin, that your main control is shooting, I am trying to work out what you do differently or how that is successful for the areas that you control.

Lloyd Austin: I am sure that, because of factors such as the weather on a given day or the state of the vegetation at a certain time, there are circumstances where attempts to shoot are unsuccessful. As I understand the overall success of fox control, however, our monitoring of fox numbers and their impact on prey species shows that the efforts that we have made have been as successful as we wanted them to be.

Aileen Campbell: You might have different levels of need in the respective areas that you manage. I am trying to work out how you manage with shooting but others do not.

John Scott: I do not wish to put words in your mouth, but could the explanation be that the operation that we saw at Langholm was essentially a commercial one? Commercial operations might relate to grouse, to farmers’ crops or to lambs, for example. Your interest might be more environmental than commercial. Could that be a reason?

Lloyd Austin: That might contribute to a slight difference in emphasis, but I would not argue that we are in any way less commercial. We have shooting tenants on some of our land, and they
are just as successful as any other shooting enterprise. We also work with farming tenants and graziers who work in just as commercial a style as any other grazing tenant or farm partnership. There are circumstances in which productive activity of various types takes place alongside and within nature reserve-type situations. The JMT’s situation is much the same.

10:45

Mike Daniels: The JMT does not do predator control, as I said. We are not producing a crop and we are not about single-species management. It is possible to demonstrate different methods of predator control, but we do not really have to do any of it.

Elaine Murray: As I understand it, some of the witnesses’ arguments are less about animal welfare than they are about bycatch. Does habitat play a part in choices about methods of predator control? The people who work on Langholm moor strongly argued that they were not about single-species management when we saw them last week, but they said that there was little evidence of bycatch in the snares that they had set. I think that they had set 500 snares and, apart from foxes, caught two badgers and one other species.

Mike Daniels talked about how snares have the capability to catch wildcats, pine martens and a range of other species. Are snares inappropriate in habitats where many other species could be caught?

Lloyd Austin: We certainly have in mind situations in which birds such as capercaillie could be caught as bycatch. We want to try to avoid that. There is also a more general issue to do with predator-prey relationships and the quality of habitat, which Paul Walton will talk about.

Dr Walton: If someone is growing a crop of potential prey species at a high density, it is likely that predators will respond. Predator populations are often limited by prey density. It might be that, because the conservation bodies are aiming for species diversity, we end up with lower densities of predators. However, that is not necessarily always the case.

This might appear confusing but, in policy terms, the RSPB simply does not have a locus on the welfare issue. If we were to start being an animal welfare organisation, we would spend all our time doing animal welfare, because it is such a huge issue. We leave that policy area to other, capable non-governmental organisations. However, on our land we choose to adopt a higher standard of welfare than is required by the law, because we are aware that when a conservation organisation owns land there is an animal welfare dimension to what it does. That is our choice as a landowner.

Foxes and small predators can have impacts on birds, particularly ground-nesting birds. It is increasingly evident that in the absence of larger predators those effects can be intensified. We have an active programme of research into habitat-mediated solutions to predator problems for rare and declining species. We aim to manage our land in such a way that the effects of predators can be reduced. There are a number of ways of doing that. We can use fences in the short term—that approach is used more often in southern Britain—and we aim to reduce the suitability of areas of cover for small predators such as foxes in locations that are close to wader breeding areas, for example. We choose not to use snaring, because we choose to adopt a higher standard of welfare than is required by the law.

Bill Wilson: The people in Langholm said that they shoot 80 per cent of the predators, so they might be snaring a relatively small number.

Do any of your shooting tenants think that the lack of snaring is leading to inadequate predator control, or are they content with the situation?

Dr Walton: We have shooting tenants where the retention of shooting rights in an area was a condition of sale of the land. You will get more detail on the issue when you visit the RSPB reserve at Abernethy, because the forest reserve there has a small grouse moor on it. The family who sold us the land retain shooting rights on that part of the reserve and, as I understand it, they are completely satisfied with the way in which the land is managed and with the predator situation.

Peter Peacock: I want to move on to the issue of invasive non-native species. The general provision is that it is a bad thing to allow the release of non-native species that might be invasive but we might not know that at the time. There are two exceptions to that in the bill—the red-legged partridge and the pheasant—and we have also received written evidence from the shellfish growers who are asking for a specific species of oyster to be added to the list of exceptions. We heard evidence last week that there can be adverse environmental impacts from the mass release of red-legged partridges and pheasants. What are the panel’s comments on that? Do you think that those two species should be excepted from the provisions in the bill generally, or might the Government retain some power to have another look at them if they become a problem at some point?

Dr Long: The general approach is that non-native invasive species are a problem for biodiversity conservation, and it is accepted that they are its second biggest threat. That is why we are so keen to see good provision in the bill to protect Scotland. Islands particularly—Scotland is part of a small island chain—have a special
biodiversity and we pride ourselves on our environment as part of our international image. That environment is susceptible to non-native invasive species because we are an island. The selection of species here has evolved as part of a unique package, and new introductions to that package have a great capacity to disturb that balance. A good parallel to our situation is New Zealand, which has similarly innovative legislation to protect its special environment against the impact of non-native invasive species. That is why LINK members believe that the bill will enable us to take an important step. The precautionary approach that is embodied in the no-release presumption is an innovative way of looking at the issue.

Dr Walton: It is quite surprising how little research has been done into the environmental impact of pheasants and red-legged partridges given that, by biomass, they are the most abundant birds in the country. However, the research that has been done has revealed that they can have a negative impact, particularly at high densities. They can reduce the species diversity of ground vegetation layers, particularly in woodland. They can alter hedge structure, and some work has shown that impacts on declining farmland bird nesting habitats, such as those of yellowhammers. They can reduce the availability of overwintering invertebrates, which are an important food source for native wildlife. They can cause the overnutritification of soil; they add nutrients to soil and leave it with nutrient levels that go way beyond what would be expected in woodland. There is also quite a bit of evidence that, at high densities, there can be disease transfer to native birds, particularly at feeding areas.

There is published scientific evidence that pheasants and red-legged partridges can have negative impacts. LINK is therefore asking the Government to give itself some capacity to regulate releases at locations where, in situations in which and during periods when negative environmental impacts are materialising. There is one case of a site of special scientific interest in Perthshire at which a high-density release of red-legged partridges led to damage being caused to the SSSI, and important moss and liverwort communities were seriously damaged. It was difficult to make an appropriate response to that through any regulation.

At the moment, the bill’s total exemption for pheasants and red-legged partridges gives too little scope for regulating, especially given the potential for negative impacts. It is not just the RSPB or LINK that is saying that there could be negative impacts. The Game and Wildlife Conservation Trust provides guidelines on the release of those species that make some good and sensible points. Among those are the recommendations that release pens be kept quite small—they should not occupy most or all of a woodland—and that the density in release pens is kept below 1,000 birds per hectare. It is quite hard to find information on this, but what information is available suggests that the average density in release pens is twice that—2,000 birds per hectare—and can be much higher in some instances. The reason why the GWC has said that there should be a limit is that it feels that, above that, there could be environmental damage. There is an indication that that level is already being exceeded in some instances. As research results are produced and we look in more detail at the impacts, there will be the potential for regulation.

That is not to say that we want to ban hunting or pheasant releases everywhere—that is far from our point. Indeed, like the RSPB, we acknowledge that there are certain environmental benefits to the shooting industry. One of those is the retention of woodlands in the lowlands, which are retained by land managers largely because they support small pheasant shoots. That has biodiversity benefits. The provision of game cover can also have biodiversity benefits for small birds such as finches. We are not saying that it is a bad thing altogether but, nevertheless, it would be folly to allow super-high density releases to proceed with no capacity for regulation.

Peter Peacock: That is very clear. Thank you. I want to pick up another point that Deborah Long touched on, which is a particular interest of mine. You touched on the integrity of islands. On Colonsay, the native Scottish black bee remains, although there are all sorts of arguments about whether it is actually native and wild or whether it is livestock. Would your thinking on the introduction of non-native species apply, for example, to taking imported bees to places such as Colonsay? If you want time to think about it, please write to us subsequently.

Dr Long: I should refer that question to colleagues in Buglife and the Bumblebee Conservation Trust.

Peter Peacock: That would be helpful. My other point is on the Government’s general policy position. I think that the Scottish Rural Property and Business Association told us last week that the focus of this bit of the bill is misdirected and that, instead of being concerned about whether a species is non-native per se, we should be concerned about whether it is invasive and damaging. What is your view on that?

Dr Walton: I have heard the idea that there is a false polarity, if you like, but I strongly disagree with it. A huge proportion of global biodiversity exists because evolution proceeds independently in different regions because of barriers such as
oceans, mountain ranges, rain shadows and deserts. That means that areas are biologically separate. Because of that, we end up with the tiger as the forest cat in India and the jaguar as the forest cat in Amazonia. That effect works throughout the living world. When people move animals and plants across those barriers, they break down that isolation with the result always being a decline in biodiversity regardless of the mechanism, which can be predation, disease transfer—which would probably be an issue with the bees—hybridisation or any of a range of different mechanisms. The net result is always a decline in biodiversity. Therefore, the concepts of native and non-native have a very important ecological sense.

The argument that you are citing, which was put forward by the SRPBA, says that it is just a matter of semantics and that feeling that the introduction of non-native species is not a good thing is just a kind of xenophobia whereby conservationists do not like things that are not Scottish. That is absolutely not the case. It is much more about our responsibility to address effectively the fundamental ecological principle that, when biotas are mixed, problems are caused and biodiversity is reduced.

11:00

I commend the Government’s proposals in that respect. What is good about the no-release presumption is its simplicity. Around the world, and in Europe in particular, one of the big difficulties has been the fact that the legislative provisions for non-native species have been complex, very difficult to work with and poorly enforced pretty much universally. We have not managed to stop the problem.

It is also worth bearing in mind the urgency in all this. There is strong evidence that, as climate change proceeds, the new species that have been deliberately introduced by people—not those moving under their own steam as a result of such change—will find it easier to become established. At the moment, quite a few species that get released into the wild hit a Scottish winter and die out. Increasingly, that will not be the case. I was very interested to hear mention of the Pacific oyster, because it is a case in point. When there was a proposal to farm such oysters in this country, a wee risk assessment was carried out and at the time—this was back in the 1970s, I think—scientists reckoned that the oysters could not breed because it was too cold. Well, they were wrong. Pacific oysters are now breeding and spreading in this country as non-native species. As climate change proceeds, the pressure on our ecosystems will increase. Indeed, with the globalisation of trade, more and more non-native species will arrive, so we really need to shore up our arrangements and ensure that we protect the very high-quality ecosystems that we have in Scotland.

Peter Peacock: That was a very clear answer. However, from my recollection of discussions about the Marine (Scotland) Bill, I believe that the Pacific oyster is breeding in the south of England but not yet in Scotland. Is that right?

Dr Walton: That is my understanding, but there is also evidence of breeding further north in the Republic of Ireland. It seems to be moving up. We should not forget that over the past 15 years or so there has been a 1°C increase in sea surface temperature in the North Sea, which is quite big as far as these species are concerned. Water temperature is absolutely critical to spawning. Look, for example, at the chub in the river Endrick. That fish, a non-native freshwater species that was probably introduced by anglers, is recorded once every two or three years, but fish biologists reckon that the water temperature during spawning time needs to increase by only 0.3°C for it to spawn successfully. That is a serious problem waiting to happen.

The Convener: I see that John Scott, Bill Wilson and Liam McArthur want to get in. Perhaps if they ask their questions our four panellists can decide among themselves who will answer them.

John Scott: Do you agree that the habitats that we are seeking to preserve and enhance and that are used in particular for rearing pens for pheasants and partridges have often been created by landowners, who are perhaps the most conservation minded group of people in the countryside? These habitats were originally created for hunting—and, indeed, shooting—and are primarily kept now for shooting. Going back to Peter Peacock’s initial question, I wonder whether you can indicate the scale of the problem of the overpopulation of release pens. How much land is affected? Does its biodiversity recover? Finally, do you agree with my understanding that were pheasant and partridge not to be put down annually in their thousands they would probably die out very quickly? Is that not fair comment?

Dr Walton: I am not sure whether your last comment is fair. Both species probably have an established breeding population in the wild. The British Ornithologists Union classifies them as sort of naturalised, which I think is true in southern Scotland, anyway.

As I said before, I fully acknowledge that the hunting industry has provided and continues to provide certain environmental benefits. However, my point is that the practice is not always universally beneficial. For example, we know from the literature that, at times, very high densities of
The pheasant and red-legged partridge releases can have negative environmental impacts, some of which we probably do not even know about yet.

**John Scott:** What is the scale?

**Dr Walton:** It is very difficult to get sound data on that. As far as we can tell from the Department for Environment, Food and Rural Affairs poultry register, there were 5 million pheasants and red-legged partridges—4 million and 1 million respectively—in Scotland in 2009. We cannot say how many are released.

A Public and Corporate Economic Consultants study in 2006 showed that, as far as it was possible to tell, the number of pheasants that are released in the countryside in the UK as a whole is increasing sharply. Interestingly, the number that are shot is not, so the surplus is not being utilised, and it appears to be growing.

The data are not great in this area, and I cannot comment on the overall scale because we simply do not know. I reiterate that in the complete absence of the ability to regulate outside designated areas, the approach seems to us not to be proportionate or viable.

**John Scott:** I suppose the physical aspect of a pheasant release pen is around half an acre, or perhaps not even that: around 40m or 50m by 40m or 50m. We are talking about perhaps one or two pens for each estate, which might cover 3,000 or 5,000 acres. The scale of the impact around the pens is very localised, is it not?

**Dr Walton:** Any pheasant release pen on that scale would—as long as the density of birds was not greater than a thousand per hectare—be within the GWCT’s guidelines. From what we can tell from the limited published evidence, there is a strong density effect.

That type of small-scale pheasant release is almost certainly benign, and in some ways potentially beneficial because of the associated habitat management, but it is far from universal. Some pheasant release pens cover five hectares.

**John Scott:** I did not know that.

**Dr Walton:** Some of the pens can be big, and the densities can be very high. I worked with pheasants in their native range in southern Asia, and they occur naturally at a very low density, as opposed to the super-high densities that some commercial pheasant releasers are working with. There are all sorts of problems such as diseases—pheasants have to be injected, for example.

**John Scott:** Are there any 5 hectare pheasant release pens in Scotland? That is 12 acres; I know what 5 hectares looks like.

**Dr Walton:** I am not sure whether there are any in Scotland, but there are certainly some in northern Britain. As I said, there are not much recorded data on that.

**The Convener:** Bill Wilson and Liam McArthur can both ask their questions before any of the panel members answer.

**Bill Wilson:** One thing occurs to me from what you have said. It sounds as if it would be economically inefficient to produce a lot more red-legged partridge than people are going to shoot, or am I missing something? Can you give us an idea of how you propose to regulate the area? Would it be a complex system, or is it straightforward?

**Liam McArthur:** I accept the point about species xenophobia, and I do not for a moment accuse the witnesses of that, but where do we draw the line with regard to non-native species? Plenty of species are now widely considered to be native simply by dint of having 3,000, 4,000 or 5,000 generations in the graveyard. To what extent should we be able to apply the provision retrospectively in weeding out non-native species? Which point in history do we define as the point at which our biodiversity was set and anything that came thereafter can be deemed a non-native species?

**Lloyd Austin:** I will start by answering Bill Wilson’s second question, which was a technical point about how the system might operate.

Pheasants and red-legged partridges are covered by the bill as a sort of permanent exemption. We propose that the permanent exemption is removed from the bill, but we would expect those species to be covered by the provisions in section 14(2) of the bill, under which ministers can specify the types of animals to which the presumption does not apply. We would expect ministers to make an order as the bill comes into effect that would effectively create the same exemption as the one that is currently proposed.

In the immediate future, we would expect a different method to be used to achieve the same result. If the evidence that Paul Walton described of a serious issue in a particular place or at a particular time appeared, ministers would be able to amend the order to say that the exemption no longer applied in such circumstances or in such places.

We would not expect the bill’s introduction to cause a dramatic change of practice overnight. We suggest that ministers should give themselves the power and the flexibility to put in place a more adaptive management regime, rather than anything that is permanent and inflexible, which is how we perceive the regime as drafted.
Deborah Long will answer Liam McArthur's question on drawing the line.

**Dr Long:** I will talk about drawing the line between what is native and what is non-native. I trained as a palaeoecologist, so I spent many years looking at the vegetation history of Britain and Scotland, and the issue was central to that research. We are lucky in Scotland, because we had a glaciation about 10,000 years ago that wiped the slate clean, in effect. After that, species came into the environment in their own way. As they evolved as part of an ecosystem, that ecosystem was ecologically balanced—until about 5,000 years ago, although when the change happened is much debated. That is the approach from which we come.

The debate has occasionally been hijacked by xenophobia; that is not our angle. We are interested in retaining the ecological integrity—the ecological specialness, if you like—of Scotland's ecosystems. One of the biggest threats to that integrity is non-native invasive species. That is why a precautionary approach is appropriate. That is the best approach to ensure that we maintain ecological integrity and that the system does not get out of balance.

At the last count, in a recent SNH survey, about 1,000 non-native species were present in the wild in Scotland. It is important to remember that not all those species cause a problem. The rule of 10s means that a small percentage of the species in the wild cause a problem in the wild. Where they cause a problem, that is where we want to put our energies, because those species have a bad influence on the rest of our environment. The bill could give us more tools to control the impact of such species.

Is that enough?

**Liam McArthur:** Yes.

**The Convener:** Can we move on? Liam McArthur has other questions on non-native species.

**Liam McArthur:** Dr Long talked about species in the wild. The bill creates the offences of releasing an animal outside its native range and of planting or causing to grow in the wild a plant outside its native range. Concern has been expressed that those concepts could be vague. Do the panel members agree?

**Dr Long:** Those definitions have been the subject of much debate in the Scottish working group, on which LINK members sit. We have been fully engaged in those discussions. We are convinced that we can define those terms clearly and have useful definitions that will support the bill. Those discussions have been long and they continue. We think that the code of practice that is being developed will be strong enough to help to define those terms in a way that is useful to the bill.

**Liam McArthur:** As the bill creates criminal offences, the degree of legal certainty needs to be pretty high. From the discussions that you are having, are you convinced that that legal certainty exists?

**Dr Long:** We will get there through the Scottish working group. A range of organisations are members of that group, so we can draw on a huge range of expertise to contribute to the discussion.

**Liam McArthur:** The RSPB, possibly within LINK, has expressed concerns about the lines of responsibility on invasive non-native species. Will you expand on those concerns and on which agencies you would like to have that responsibility under the bill?

11:15

**Dr Walton:** I will answer that. If you are going to take action to combat the threat of invasive non-native species, it is critical that you act at the earliest invasion stage possible. It is preferable to prevent establishment in the first place. Once establishment has happened, it is preferable to nip it in the bud as early as possible. That is not just desirable in ecological terms; it makes financial sense on an enormous scale. Some invasive non-native species are costing us millions of pounds that could have been saved if the invasion had been nipped in the bud. In principle, therefore, it is important to act.

In our experience, it is important to have clear, short lines of responsibility to achieve that, but they do not exist at the moment. One example that involved the RSPB was with the species called crassula helmsii, which is also called the New Zealand pygmy weed and has a number of other common names. It is a highly invasive freshwater aquatic plant from New Zealand. It could never have come here other than by human agency—by people bringing it—as it could never have arrived naturally.

It is not well established in Scotland yet, but we know from evidence elsewhere that it can be highly invasive and spread very easily. We found some of it growing in a wee pond outside a visitor centre at our Lochwinnoch nature reserve. We set to work getting rid of it, but the worry was that there was more of it in the surrounding area and perhaps the local catchment, which feeds into the Clyde.

My job was to phone the relevant authorities. I knew that there was an SSSI in the area, so I phoned SNH. The area staff's view was that it was probably a matter for the Scottish Environment
Protection Agency, but when I phoned the relevant people in SEPA their view was that it was probably a matter for SNH. We were left in a situation in which neither of the agencies nor anyone else was clear about who would take a co-ordinating role.

We needed there to be some monitoring in the local area to find out the extent of the problem and we needed some decisions to be made on the appropriate action to take. It fell to the RSPB to find a local botanist who had expertise in identifying the species. We gave him some money and he carried out a quick survey. We then pulled together the local stakeholders and, luckily, in that instance the Clyde Muirshiel regional park authority took the lead co-ordinating role. We are grateful to it for doing that, but our worry is what would happen if there was such an invasive establishment somewhere other than on an RSPB reserve. That is bound to happen, and it will happen increasingly.

We are calling for some mechanism whereby there are clear lines of responsibility. The difficulty is that imposing a duty on just one agency would be a pretty heavy burden. Invasive non-native species issues are unpredictable and can happen in all different sectors: there are coastal, freshwater, upland and woodland elements, and there are elements that involve sporting estates and so on. The imposition of a duty is one route that people might want to take, but an alternative might be a requirement to produce implementation plans for the species identified by the Scottish working group as the most dangerous and to identify in those plans the appropriate body to take the co-ordinating role. That should be done by statute so that it is absolutely clear. It would mean that there was a central body whose task is not to solve the problem but to take the lead co-ordinating role to ensure that monitoring happens and so on.

That is our thinking on the detail, but the principle is clear: without short, clear lines of responsibility, obfuscation is inevitable. Given budgetary concerns, it is difficult for organisations to park money for unforeseen circumstances, particularly at the moment, but there will be delays if we do not identify the lines of responsibility. That is why I think it is important.

Liam McArthur: There is an irony in a country that is exalted for its approach to non-native invasive species sending invasive weeds over here.

On the focus of that endeavour, Dr Long highlighted that there are a number of existing invasive non-native species that would need to be the priority. There is an on-going piece of work on the presumption against release and dealing as early as possible with those species that are present. Within budgetary limitations, what would be the focus of that co-ordinated effort? Would it be enforcement of the presumption against an early intervention? Would it be dealing with some of the worst effects of current invasive non-native species? What do you see as the key task?

Dr Walton: It is difficult to be absolutely prescriptive. Broadly speaking, there is the principle of prevention, then control and eradication or long-term regulation—that is the three-stage approach that is recommended by the Convention on Biological Diversity, which is the framework that has been broadly adopted by the Great Britain-wide non-native species process in which Scotland is involved. The principle is, as I said earlier, to act at the earliest possible stage of invasion. That is a cost-effective way in which to do it.

Let us not forget that invasions are happening as we speak. Only a few days ago, I got reports of four separate sightings of stoats on Orkney. You may have heard about that.

Liam McArthur: It wisnae me.

Dr Walton: They were almost certainly released by some well-meaning individual—as were the hedgehogs on the Uists—but it is a serious issue. The experts at controlling Mustelids, the gamekeepers, tell us that they are pretty successful in controlling some species but that stoats can be difficult. It is a potentially very serious invasion that is happening right now and which needs to be nipped in the bud. I am glad to say that as we speak SNH is engaged in that and is bringing experienced mink trappers from the Western Isles to address the issue.

The Convener: We must move on. I ask members and panel members to keep their questions and answers brief.

Bill Wilson: Is there some disagreement between Plantlife and RSPB Scotland on the INNS issue? Plantlife is calling for “a duty to control, eradicate or contain priority invasive non-native species, as listed by the GB secretariat on non-native species”,

but Dr Walton seemed to imply that a duty is not the way to go. Can you clarify the situation?

Dr Walton: What I said was that a duty may be one way in which to do it but that, if that was deemed too difficult, there are other ways in which to do it. With this sort of thing, people often say that a duty would be incredibly difficult and would extend SNH’s remit into areas that belong to other agencies, so we cannot have a duty. All that I am saying is that it is difficult to identify lines of responsibility. It is a complex issue and we do not want to fall at the first hurdle.
Bill Wilson: So, you would like a duty but you would settle for—

Dr Walton: We would certainly settle for a duty.

Dr Long: The confusion perhaps stems from the fact that, ideally, we would like a duty to control or at least do something. There is also the duty to have a co-ordinating body responsible for ensuring that action is taken. We have used the same word in two slightly different ways.

Bill Wilson: Who will have the duty?

Dr Long: Paul Walton talked about it in relation to having a co-ordinating role. That is how we would—

Bill Wilson: So, it would not be a duty for local authorities. You are talking about a single body, whether SNH, SEPA or—

Dr Long: As Paul Walton said, that is one potential solution. That is one mechanism that we recommend that you consider.

Bill Wilson: Could you estimate a cost for that duty, or is that a how long is a piece of string question? The cost of eradicating one species in England was estimated to be £3 million.

Dr Long: That was specifically for crassula helmsii, and England has many more sites of crassula helmsii than we have in Scotland. Because we have so few sites, the cost would be lower. Apart from that, though, I am afraid that it is a how long is a piece of string question—it depends on the species.

Bill Wilson: I presume that that emphasises the importance of getting in early.

Dr Long: Yes.

Dr Walton: Absolutely. Some estimates have been made of the relative costs of early and late action, and it can be between 100 and 1,000 times more cost-effective to act at the early stage of an invasion. If it can be stopped before there is a serious problem, that is far cheaper. It is common sense.

Bill Wilson: You referred to prohibition, then control and eradication—

Dr Walton: Prevention.

Bill Wilson: Sorry—prevention, then control and eradication. Normally, one might think of prevention, eradication and then control. Could you clarify that?

Dr Walton: We prevent release. We want to stop these non-native species getting into the wild. We now have a no-release presumption. That does not finish the issue, of course. We have to deal with species such as crassula helmsii that are not well established but small populations crop up here and there. We need provisions to deal with that. We also need to deal with more chronic species such as Rhododendron ponticum. A strategic approach is needed to these species; we have to choose priority habitats where we want to prevent the spread of these species. We will never eradicate species such as Rhododendron ponticum in this country, but we can prevent them from degrading high-quality habitats.

Elaine Murray: My questions are on section 18, on species licensing. I will save time by putting my two questions together. First, the provisions of section 18 enable species licences to be issued “for any other social, economic or environmental purpose”, so long as significant benefit is achieved and no other satisfactory solution can be found. Secondly, section 18 enables the delegation of licence-granting powers from the Scottish ministers to Scottish Natural Heritage or a local authority. In the latter case, the authority has to consult SNH. The provision appears to enable local authorities to issue licences to themselves—for example, for the control of gulls. What are your comments on the provisions?

Lloyd Austin: We completely agree with the principle that circumstances should exist under which licences are granted to kill or take protected species. That principle is contained in the derogation licences in both the birds and the habitats directives. As Paul Walton said earlier when talking about geese, we completely accept that circumstances can make that necessary. The important point is that the circumstances need to be well defined. The case that has to be made for the social and economic—and even the conservation—purpose of taking or killing a species should be significant and serious. For example, the directives use the phrase: “serious damage” to livestock and fisheries. In the LINK/RSPB evidence, as is the case in other evidence such as that from the Scottish Wildlife Trust, we say that we find the phrase “any other social, economic or environmental purpose” too wide and ill defined on how and where those circumstances might apply. The argument could be made that anything falls under the camp of “any other ... purpose”. We are concerned that the phrase gives too much perspective for licences for purposes that do not meet the serious circumstance that should apply.

I turn to the delegation arrangements. We completely understand the potential benefits of putting all the licensing provisions within SNH. There is logic in having a single authority, and not some licensing being done by the Scottish ministers and other licensing by SNH. There is also logic in consideration being done by the statutory conservation body that has the scientific
expertise to reach a conclusion on whether the circumstances are serious enough to permit a licence and so forth. We do not object to the delegation to SNH. We understand the logic of putting all the responsibilities on to one single body.

Finally, I turn to the question on local authorities. I have nothing against local authorities, but resource constraints mean that they do not have the expertise that SNH has. In most cases, authorities want to consult SNH to seek its views—

Elaine Murray: I think that they are required to do that.

11:30

Lloyd Austin: Yes, they are required to consult SNH and get its views, so why not just use SNH as the body? We do not know what the arrangements would be if SNH gave advice and a local authority chose to do something different. Would ministers intervene in that circumstance? There is a lack of clarity on that. Before the Protection of Birds Act 1954, which is going back a long way, local authorities had such powers. The 1954 act and the 1981 act consolidated all the powers and gave them to central Government and its agencies to ensure consistency throughout the country.

Having said all that, one issue on which the Government has stressed that local authorities have a role is when a licence comes about as a result of a planning decision that is related to the development of a project that has been given planning consent or whatever. We can see logic in simplifying that process, but there is no reason why SNH cannot be involved so that the process is streamlined.

Peter Peacock: I want to clarify something that Lloyd Austin said in his answer to Elaine Murray’s first question. His answer embraced animals, plants and birds, but the provision under which a licence can be issued

“for any other social, economic or environmental purpose”
does not appear to apply to birds. I ask Lloyd Austin to clarify whether that is his understanding.

Lloyd Austin: Yes, that is my understanding. The 1981 act is framed differently because it is a transposition of the two directives—the birds directive and the habitats directive, which deals with plants and other animals. The provision in the bill applies only to the other animals.

Peter Peacock: We had evidence last week from Alex Hogg, who is sitting behind you in the public gallery. He argued strongly, as others have, that there ought to be a system for licensing the taking of otherwise protected birds if they were impacting on, for example, pheasant and red-legged partridge—we touched on that earlier. What is your view on that? We have touched on the issue in relation to geese, but what is your view on buzzards and other raptors that might be caught?

Lloyd Austin: I simply repeat what I said earlier, which is that we have no objection to there being provision for licences to take otherwise protected species. Those provisions exist in the birds and the habitats directives. The important thing is that the provisions are robust, that the tests are applied robustly and that the circumstances in which licences are given comply with those tests.

Dr Walton: I agree. We are not saying that there are sacred cows and that certain things must never be done. It is worth remembering that the European nature directives work. The way in which annex 1 species have fared since the introduction of the directives has been an extraordinary turnaround for some of Europe’s most threatened species. The directives are delivering the public good of nature conservation. The tests that they prescribe for licensing make sense and we believe that they should be the minimum provision. There is plenty of evidence to indicate that that is a sensible approach.

Peter Peacock: I am grateful for that.

Convener, I should have clarified earlier, for the record, that I am a member of the RSPB and the Scottish Ornithologists Club.

Aileen Campbell: I apologise to the panel members: I have to move an amendment in another committee meeting, so I might have to shoot off at some point.

Several submissions mention the environmental impact that deer have on peatland and woodland and the increasing number of deer. Will you say a bit more about the environmental impact that deer numbers are having? We have heard that it might be a bit too simple just to say that deer numbers are increasing.

Mike Daniels: I think you are right. It comes back to one of the themes that we have touched on this morning; the data on deer are not great. We do not have great numbers from population counts; we have estimates for some parts of the country. The general trend across the northern hemisphere for ungulates is that their populations are rising. That is to do with climate change and a range of other factors.

The focus in Scotland is on impacts on the ground rather than numbers. Our general concern is that although the bill is a step in the right direction it has not quite gone far enough. The
Government published a national strategy for deer a couple of years ago. It recognised all the multiple benefits of this iconic species for our country but recognised the damage that they do, whether on peatlands or in stopping regeneration. There is a strategy and there is recognition that, to deliver it, we need some sort of planning system.

We have had 50 years of voluntary deer management groups. Some answers to parliamentary questions suggest that that approach has not worked very well and that we need to take our approach to the next stage and, to answer your point, to look at local circumstances. It is important not to make generalisations and say that there are too many deer or there are too many this or that; it is necessary to look at the impacts on habitats, on peatlands and on carbon sequestration in local areas and get to a position where we are not looking only at private sporting objectives but taking the general public interest into account.

Aileen Campbell: Would anyone else like to comment?

In the 50 years of the voluntary system, have there been changes of practice that have led to increasing numbers, or has practice remained the same?

Mike Daniels: What evidence there is—I repeat the caveat—from looking at Deer Commission for Scotland count reports is that there has been a general, steady, increase in the population from about the time the system started, but we are really not concerned about that as a generalisation; it is only in specific areas that you need to think about it. For example, there has been a huge increase in forestry as a result of planting in south-west Scotland, so there are big deer populations in a habitat that can sustain higher numbers than there were previously, but that is not the point; the point is the damage that they are doing to some of our special habitats, either within or outwith designated sites.

Aileen Campbell: Last week we heard from the landowners’ organisation—the SRPBA—that it did not feel or believe that the roe deer population was as big a problem as the red deer population up in the Highlands. Can you differentiate between geographical areas and say that some may need more close scrutiny, or would you say that, on the whole, we need to improve deer management across the country?

Mike Daniels: There are certainly very different issues with roe deer, as they do not form big herds and they do not roam over open habitat, but there are increasing concerns about, for example, vehicle collisions, and if we are trying to achieve Government targets on carbon sequestration through planting, there will be issues with deer management in lowland areas, which are more likely to be roe deer areas. No matter where the situation occurs, a framework has to be in place to manage deer effectively and collaboratively.

Aileen Campbell: Why is there a difference of opinion between Scottish Environment LINK and the SRPBA, which suggests that it is perhaps not a big problem in the south or in lowland areas?

Mike Daniels: I cannot speak for the SRPBA. Generally, the original consultation document recognised that the current system of voluntary deer management groups had to be addressed—it is easy to kick something, but it is not fair because they were not set up to do the job that they are now required to do; they were set up as a way of collaborating on sporting objectives and since then a whole lot of access legislation and reforms have come in, so they now have to deal with things that they are not really constituted to do—and that we need more of a statutory framework to manage them in. We understand that there were not many objections to that in the responses to the consultation, so we are slightly surprised that the bill does not take that approach and puzzled as to why it seems to be rolling back on it.

I do not think that there is a big difference in respect of recognising that deer management groups do not work. When you speak to the SRPBA and landowners, you find that a lot of them are frustrated with the current process, although maybe for different reasons and they may have different objectives. Because the deer management groups do not sit within a framework, people sit around and discuss things and the process takes up a lot of resources but does not deliver very much. Less than 10 per cent of deer management groups have any plans in place or collect data in a way that they can use.

Aileen Campbell: If there were a greater obligation on deer management groups to have such plans and strategies, what would you use to inform decisions about the objectives or about agreeing cull levels? How would those be determined? How would the system work in practice if there were a greater obligation to produce plans?

Mike Daniels: There are examples. Under section 7 of the Deer (Scotland) Act 1996 there are agreements around designated sites. There is good coverage of at least half a dozen sites across the country, from Glen Feshie to Breadalbane. We have just signed up as a landowner for one in the Breadalbane area. Obviously, that is about a designated site, but the current system takes into account social and economic factors, and when a deer management plan is produced the first bite is given to local landowners and deer managers to try to agree what kind of habitat monitoring is required and...
what targets need to be put in place. We have a system that works already, but there are areas to work on. That system has to work. We have to sit around the table and discuss the objectives.

What will be difficult is the more general test of what is the public interest in deer management. SNH, which took over the functions of the former Deer Commission for Scotland, is developing a code, on which we have input. It is a bit like the discussion that we had earlier about non-native species. We have to come up with a form of words that defines the public objective in deer management and covers carbon sequestration, biodiversity, tourism, venison and the income and employment that derives from sport shooting. Deer management delivers a range of objectives and it is a case of thrashing out a plan that will deliver all those objectives rather than just one sporting objective in an area.

Aileen Campbell: I would be interested to find out a wee bit more about other ways that are used to control deer. You spoke about using fences, for example. Are such methods common in the area that you control? Are they effective or is there a need for the cull?

Mike Daniels: Fencing tends to be controversial for lots of reasons. If you are planting new trees, which are very palatable, in an area where there is no seed source, in most circumstances you will need to protect them somehow. More generally, under current guidance, if you fence an area out and exclude deer, on welfare grounds you should do a compensatory cull of the deer that were dependent on that area for shelter or habitat. So, fencing an area off does not mean that you will not need to kill extra deer; you will still need to kill the deer that were living in that area. If you have too high a density of deer, all that will happen is that you will move the problem elsewhere. Fencing is a tool that land managers use along with lots of others, but it is not a universal solution. Equally, on our own properties, we are not just concerned with one particular habitat; we are concerned with habitat ecosystem health from the summits right down to the bottom. Rather than fencing one area, we would have to fence the entire property, which is not a practical or cost-effective mechanism.

Aileen Campbell: It is proposed that SNH would take the lead in this. The committee is led to believe that SNH currently has a number of powers. Is there a way for it to employ those powers better, whether the powers under the Nature Conservation (Scotland) Act 2004 or others, to improve deer management? Do you think that that needs to be up-front in the bill?

Mike Daniels: The principle, which is that we need to have a responsibility for sustainable deer management, needs to be up-front in the bill. I defer to Lloyd Austin. I am not sure what the best technical way of doing that is. We have some proposals. At the moment, the proposal seems to be that there is a code or a duty on SNH to do something, but it has no force in law. I am not sure how a code for a public body will deliver something. What we need is a statutory framework or plan. There is a precedent for that kind of national resource. SNH is the obvious partner to lead on that, but I will leave it to others to sort out the details.

Lloyd Austin: I want to add to the point that Mike Daniels made about the statutory duty. You will recall that the Government’s original consultation paper proposed a statutory duty for sustainable deer management to apply to everyone, but that has not come forward in the bill. You heard in evidence from the Government officials that there were legal technicalities from a human rights points of view that prevented that, because, in the form that I have just described, it would be an unclear type of statute; if you were to charge someone with not carrying out sustainable deer management, it would not be clear what he or she was intended to have done or not done. We recognise that that difficulty needs to be got over.

What we propose is that the solution is not to say, "We won’t have a duty, then," but to make the duty clear, and that means having a statutory form of planning system. We might encourage deer management groups to produce clear management plans, but if that does not happen, we believe that SNH should have the power to step in and produce plans. Alternatively, you might take the approach that, as public bodies determine how to plan for natural resources throughout the country—for example, SEPA produces flood management plans and river basin management plans and local authorities produce development plans—SNH should take the lead in producing deer management plans but that it should do so in a participative way.

11:45

There are different ways of producing deer management plans, but once a plan is in place, land managers should have to comply with it, in the same way that householders and developers have to comply with development plans. The plan should contain a clear definition of the actions that people are supposed to take. In effect, that will produce a duty for sustainable deer management, although technically we could say that it is a duty with a small “d” in that it is a requirement to comply with all the detail in the plan rather than, somehow, to know out of the blue what sustainable deer management means.

To some extent, the proposals in the bill that revise sections 7 and 8 of the Deer (Scotland) Act 1996 start to go along that road. Our argument is
that that is a good start but we are not convinced that it goes far enough to deliver an overall step forward towards a really sustainable system.

**Aileen Campbell:** Throughout the questions and answers that we have heard, there has been a lot of talk of giving SNH powers to do this and that. It seems that the duty that you would require it to take on is quite onerous. How practical would it be for SNH to do that when there is less money in the coffers?

**Mike Daniels:** On a point of principle, we talked earlier about the cost benefit of nipping things in the bud in relation to non-native species, and a similar thing applies in relation to deer. Downstream costs arise from having too many deer in certain areas, such as carbon release from trampled peatlands, not getting carbon sequestration from woodland growing, flood catchment issues, and a loss of biodiversity. We tend to think in the short term, and I know that the parliamentary session is short, but there are long-term gains to be had here, so I make an appeal that we need to do the right thing.

I take the point about resources. However, on the point about how practical the proposal would be, I have the pleasure of sitting on four or five deer management groups—usually there is an SNH staff member on the group, or previously a DCS member, and a Forestry Commission representative—but those groups are unable to do anything because there is no framework for them to operate in. We are not talking about huge resources. To put it in context, there are 50 or so deer management groups and they meet once a year. As I said, SNH has experience of doing section 7 agreements, as did the DCS, and we are signed up to a couple of those. They are not vastly resource intensive and the experience and expertise are there, so it is not a question of imposing a completely new duty on SNH. It has expertise in the area and it is able to deliver.

**Aileen Campbell:** So it is about getting a much quicker response to what is going on and acting quickly to prevent the problem, and I believe that the resources are there if you rejig things a wee bit.

**Mike Daniels:** Yes. Obviously I cannot comment from SNH’s point of view, but that is the perception from the outside.

**John Scott:** Can we turn to different types of muirburn practice? How do you think the power for ministers to make orders that vary the muirburn season in particular areas, particularly on grouse moors in August and September, would be used? What evidence exists that that would allow muirburn to be prohibited on sensitive habitats? One of the submissions mentions that. There are a whole lot of questions there. Discuss.

**Lloyd Austin:** In general, we welcome the introduction of greater flexibility. The changes of dates that the bill proposes in relation to muirburn on grouse moors have been discussed at considerable length with all stakeholders, through Scotland’s moorland forum, and there is considerable consensus that the proposed dates are acceptable to all parties.

It is worth pointing out that that means that there has been a compromise and that changing the proposed approach would upset the apple-cart one way or another—if we move one way we will upset some parties and if we move the other we will upset others. We very much support the compromise that is proposed, because it has agreement across the board.

The concept of flexibility is important, because of different circumstances such as weather events. Also, as members will see next week, we are interested in having the ability occasionally to burn within regenerating woodlands, to encourage blaeberry and other ground vegetation for the benefit of woodland grouse, for example. Such activity constitutes burning for an environmental or conservation purpose, so the Scottish ministers’ ability to grant licences for out-of-season burning for research, scientific or conservation purposes is welcome.

I have mainly talked about pure moorland—grouse moor—situations, in which the dates issue arises from the need to avoid the egg laying and breeding season for ground-nesting birds. In other circumstances, muirburn has serious consequences for vegetation. In that regard, I will hand over to Deborah Long, who is the plant expert.

**Dr Long:** The main issue is the moss and liverwort communities. Those communities grow all year round and have no quiet time, which is why timing is an important issue, particularly for bryophytes and lichens.

Plantlife and the British Bryological Society are particularly concerned about the oceanic heath, which is a very sensitive habitat. Scotland has the most extensive distribution of oceanic heath communities in the world: they are heather and blaeberry communities that are underlain by a special and internationally important layer of bryophytes and liverworts, which are very sensitive to burning.

There has not been much research on oceanic heath communities. We know that they are special and that the largest remaining extent of such habitats in the world is in north-west Scotland. Ireland was formerly a headquarters for the species, but environmental degradation in Connemara has meant that a type site for oceanic communities has in effect disappeared.
Burning and overgrazing have a severe impact on oceanic heath communities. We want ministers to retain the flexibility to ensure that the habitats are protected from burning. In this context I am talking exclusively about oceanic heath communities on the west coast, in particular on steep and rocky slopes. If the muirburn code is adhered to, those areas should not be burned anyway. We want there to be the flexibility to protect those important communities in areas that should not be burned.

John Scott: That was fascinating, thank you. Do the other witnesses want to talk about oceanic heath communities?

The Convener: I ask the other witnesses not to do so unless they really want to. Time is pressing.

There is a specific problem in Langholm with the heather beetle, which means that burning might have to take place outwith the normal burning season. Do the witnesses have no objection to such burning, if its purpose is to tackle a specific problem?

Lloyd Austin: We would have no objection as long as the burning did not take place in the ground-nesting bird breeding season. That is why we support the flexibility that we have spoken about.

Peter Peacock: In its submission, the RSPB talked about the Loch Garten area of special protection. In layman’s terms, what is the difference between the current position and what is proposed?

Lloyd Austin: Loch Garten, which, under its designation in the 1954 act, is known colloquially as a bird sanctuary, was turned into an area of special protection in the Wildlife and Countryside Act 1981. There are seven such areas but, in the bill, ministers propose to abolish the designation because more modern legislation can provide the same levels of protection against, for example, disturbance. In theory, we agree with that, because the Land Reform (Scotland) Act 2003 and the Nature Conservation (Scotland) Act 2004 both contain mechanisms—either byelaws or ministerial orders—that can provide the same levels of protection as an ASP. However, if you abolish the ASP provision in the 1981 act without replicating its effectiveness in byelaws or ministerial orders, you are effectively doing away with the status quo, if that makes sense.

I said that there are seven ASPs. With regard to six of them, we agree with the Government that they are redundant; they reflect the circumstances in which the designation was made and since then things have changed. However, we believe that Loch Garten’s ASP designation serves a very valuable purpose in protecting ospreys and capercaillie and enabling us to run what we hope is a successful tourist operation that lets people see the birds up close without disturbing them. By drawing people in to Loch Garten to see the ospreys and capercaillie, we are helping to protect other areas in Strathspey from being disturbed by people going elsewhere to try to see them. Without the ASP designation, it will be much more difficult to manage the site as we do at the moment with not only a number of staff but lots of volunteers, who find it much easier to refer visitors to the ASP designation and tell them that in certain months of the year they cannot go into the area, than to explain the whole Scottish outdoor access code and so on. As a result, we disagree with SNH’s current analysis that we see whether it is possible to work with the responsibility mechanism in the code rather than with some form of protection mechanism. We feel that, before ASPs are done away with, a simple nature conservation order, byelaw under the 2003 act or some other mechanism in that modern legislation needs to be put in place at Loch Garten.

In summary, we agree in theory that ASPs are replicated in other legislation, but we think that such replication should be enacted on the one site that is important to our conservation and business needs.

Peter Peacock: So if you had a guarantee or commitment that one of the triggers that you suggested would be enacted, you would be quite happy.

Lloyd Austin: Yes. If we get a copper-bottomed guarantee that something else will be implemented, we will support the abolition of ASPs.

Elaine Murray: During the passage of the Marine (Scotland) Bill, you convinced the committee of the virtues of having a requirement to establish an ecologically coherent network of marine protected areas. In your written submission, you suggest that the bill could do the same with Natura 2000 sites, but that the opportunity has not been taken. Can you convince us of the virtues of such a move as you did with regard to marine protection sites in the Marine (Scotland) Bill?

12:00

Lloyd Austin: I will kick off and see whether anyone else wishes to add anything.

No protected area exists on its own; it is part of the wider countryside, the wider ecosystem and the wider environment. That is one of the reasons why ecologists talk about the kind of coherent network of protected areas that, as you say, is now set out in the Marine (Scotland) Act 2009. We support such a great step forward and are grateful that the committee moved in that direction.
In that respect, however, this bill has missed an opportunity to make it more than the sum of its parts. It consists of lots of different bits about deer, non-native species, species licensing and other issues that we have talked about but, at the moment, it is silent on what I would describe as the big picture or long-term conservation objectives. Most of those long-term vision statements exist in policy statements rather than in legislation; I agree that it would be difficult to set down a vision in law, but nevertheless we feel that the delivery of those vision statements is often weak. A classic example is the Scottish biodiversity strategy, with its 25-year vision of where we want to get to with biodiversity in Scotland’s terrestrial and marine environments. As the recent Audit Scotland overview of environmental delivery in Scotland noted, the delivery of and outputs from the strategy have been very weak. In its section on biodiversity, the organisation concluded:

“The duty on all public bodies to promote biodiversity has had limited impact, due to a lack of sufficient guidance on how to implement it and the absence of any monitoring or reporting system to enforce it.”

The bill could take this opportunity to link vision statements in the biodiversity strategy, the land use strategy, ministerial speeches or whatever to delivery, implementation, monitoring and enforcement. For example, it could improve the biodiversity duty and link it to the idea of an ecological network across Scotland. There is already talk in the national planning framework of a green network in the central belt; although that is very welcome, we need to hardwire some of these ideas about habitat networks, habitat restoration and so on and the links between protected areas and the wider countryside into day-to-day delivery across Government departments and agencies. An opportunity to have a big picture overview exists to bring together all the bits of this bill and existing legislation and make something that is greater than the sum of its parts.

John Scott: I am quite taken by your idea about land use planning, but would the spatial planning and land use strategy exercises that the Government is carrying out at the moment not be the place to feed in such suggestions? I am not saying that the bill is not the place for it, you understand.

Lloyd Austin: The answer to your question is yes. Indeed, that is what we are doing. However, the bill provides another opportunity to say to the Government that although there are good initiatives in the Scottish biodiversity strategy, the land use strategy, the national planning framework and so on, some of those initiatives and vision statements are not being delivered on the ground. The bill could refer to those different duties and initiatives and create a mechanism that puts more responsibility on local government, agencies and so on to hardwire delivery into their budgeting and prioritisation processes.

The Convener: Unless members have any pressing questions, I will end this particular evidence session. I thank the witnesses for their evidence. Any supplementary evidence that they wish to provide should be given to the clerks as soon as possible. We would, for example, be particularly interested in the number of pheasant pens in Scotland rather than in north Britain.

I suspend the meeting for five minutes to allow a changeover of witnesses.

12:04
Meeting suspended.

12:10
On resuming—

The Convener: I welcome the second panel: Bob Elliot, head of investigations at RSPB (Scotland); Alex Hogg, chairman of the Scottish Gamekeepers Association; Sheriff T A K Drummond QC; Mark Rafferty, from the special investigation unit of the Scottish Society for the Prevention of Cruelty to Animals; and Constable David McKinnon, a wildlife crime officer with Grampian Police.

Again, we will move straight to questions, and Peter Peacock will go first.

Peter Peacock: I want to start with the general tightening up of wildlife offences in the bill, principally in relation to game law, snaring, badgers and non-native invasive species. Sheriff Drummond might want to comment on his separate paper about poisoning, although we might come to that later if his paper also relates to the issues I am raising.

In the panel’s view, are the proposed changes necessary? Will they improve the law and the business of enforcement in relation to game law, snares, non-native invasive species and badgers?

Sheriff T A K Drummond QC: I am slightly concerned about the direction that the law is beginning to take. Professor Colin Reid has already expressed a similar view. The law is becoming fragmented, so it is getting difficult to find and to see the direction in which it is going. If it is difficult for people such as myself and academics such as Professor Colin Reid to find the law, I only ask the committee to have sympathy for the operators who are trying to apply it on the ground.

So I open with a plea for sympathy for the operators and enforcers of the law, and for an
attempt to focus the law more on the practitioner rather than on the academic. I do not know if that makes any contribution to answering the question.

**Peter Peacock:** What would you propose to do about that? The bill seeks to tidy up various issues that require tidying up because they have been lying around in different places for a while. Do you have any suggestions other than to make some kind of consolidation act, which would be quite complex?

**Sheriff Drummond:** Mr Peacock, I have been involved in the broad area for 30 years as a prosecutor, defender, trainer and judge. It used to be a pleasant and happy little legal backwater, but in recent years we have had a legislative tidal wave. If you think back, over the past few years, we have had the Protection of Wild Mammals (Scotland) Act 2002, which included the hunting legislation but never mentioned a horse, the Nature Conservation (Scotland) Act 2004, which amended the Wildlife and Countryside Act 1981, some of which is being amended again, the natural habitats regulations, and the Animal Health and Welfare (Scotland) Act 2006, which introduced some substantial issues. The snaring issue has arisen and the bill proposes to replace the snaring provisions in the 1981 act.

The situation is becoming overwhelming for the practitioner on the ground. I know that Professor Colin Reid strongly expressed the view that codification is necessary, but I fear that we might be getting past the stage at which codification is a realistic possibility.

Nobody has authorised this or asked me to do it but, in my function as the chair of the legislation, regulation and guidance committee of the partnership for action against wildlife crime Scotland—PAWS—I am trying, as far as I am able, to focus the committee on the production of forms of guidance, codes of practice or whatever for the benefit of the practitioner, which can eventually be gathered in some form of highway code for the countryside. I know that Professor Reid does not share my view on that. He sees the growth of codes taking us further away from the primary legislative source, and I share that view. Nevertheless, I am trying pragmatically to resolve some of the difficulties that practitioners on the ground experience and that I have to preside over, regrettably, routinely.

12:15

**Peter Peacock:** That is a helpful insight. Does anybody else have any comment to make on that or on the wider point that I raised?

**Bob Elliot (RSPB Scotland):** Sheriff Drummond's comments are well made. The law is complex and I remember that, when I started my job, I wondered where to start with some of the Wildlife and Countryside Act 1981. It is, though, strong legislation. In this backwater, as it has been described, we have made some serious changes, and it is the Scottish Parliament that has done that in Scotland. We have a tradition of being speedier on our feet in legislating than is the case south of the border. I attend many conferences with police officers and so on south of the border, and we can say, with some pride, that we have some very good legislation in place. Interpreting that legislation can be an extreme challenge—I defer completely to Sheriff Drummond on that. However, there are still some fairly straightforward offences that we are having a lot of trouble in getting enforced. Perhaps we will return to that in a minute.

**Peter Peacock:** If there are no further answers to my original question, I am happy to leave it there.

**Bill Wilson:** Before I ask my main question, I have a quick question on wildlife crime. I understand that, at the moment, wildlife crime is not a recordable offence. If that is the case, does that give us any difficulty in understanding the incidence of wildlife crime and where the crimes are happening? Would it be useful to have it as a recordable offence?

**Constable David McKinnon (Grampian Police):** If it was officially recorded, that would give us some statistics to work from. All eight Scottish police forces submit monthly returns to the national wildlife crime unit, which collates returns for the United Kingdom. Quite detailed incident reports can be produced, but whether incidents are properly recorded as crimes and recognised in crime statistics is another matter.

**Bob Elliot:** There is quite a good recording system in the Scottish intelligence database. Quite a lot of work has gone into trying to get wildlife crime into that, but it still does not feature highly. In numerous cases, I have been incredibly frustrated by speaking to senior police officers, who may not necessarily have expertise in wildlife crime, who do not see the data on their system. I have tried to explain about some criminality that has been going on for X number of years, but they have looked at me and said, “That’s really interesting, but the system is telling me that there’s been no such crime in my area.” We have a long way to go to get wildlife crime offences properly recorded. As Dave McKinnon says, the national wildlife crime unit has made a lot of effort to do that, but it is a small unit. Thankfully, it is based in Scotland, but it has a United Kingdom remit and faces huge challenges just now. With budget cuts on the horizon, that can only get worse.

We do not want to see police officers—especially wildlife crime officers—unduly burdened...
with an enormous amount of extra paperwork, so the system must be slim and tight and must be modelled on the existing systems. We are not asking for some new bureaucracy to be created—I can see people’s eyes glazing over. We are not always lucky enough to be working with a full-time wildlife crime officer such as Dave McKinnon—Grampian Police lead the way on that side of things; in some instances, we will be dealing with just a police constable, an area community constable or someone else who has no expertise in wildlife crime, and we have to try to persuade them to record the crime and ensure that the national wildlife crime unit and so on get the information.

**Sheriff Drummond:** I suspect that part of the problem is that there has never been a definition of what constitutes wildlife crime. It may be obvious when people see it, but as far as the number crunchers are concerned, there has never been a definition that allows them to tick an appropriate box. We now have a definition, although I have no idea whether it is a working definition that enables those involved in the collation of statistics to operate.

**Mark Rafferty (Scottish Society for the Prevention of Cruelty to Animals):** As a former police officer of 22 years and a wildlife crime officer in the Scottish Borders, I would add that because wildlife crime is not a recordable crime, senior management in the police tend not to put suitable resources into it. They are not judged on their performance in relation to wildlife crime, so it is perceived that they do not need to put the associated resources into it. If wildlife crime was elevated to a group 5 crime, they would be judged upon their ability to detect and investigate it. That might have the effect of encouraging senior managers in the police to put more resources into wildlife crime investigation.

**Bill Wilson:** Several members of the panel have mentioned resources, which brings me to my next question. There are clearly concerns about substantial budget cuts. Such cuts might impact on, for example, the amount of police time that can be spent on wildlife crime, or on procurators fiscal and wildlife and environment crime officers. Constable McKinnon, are you about to become an endangered species?

**Constable McKinnon:** Hopefully not. In my force, we have a resource of 1.7 full-time equivalents committed to wildlife crime, with a network of about 10 active part-time officers. Proportionally, for our force in Grampian, that is not a huge commitment. For the 10 part-time officers, wildlife crime investigation is a specialist skill that they have acquired, like any other specialist skill in the police force.

**Bob Elliot:** I am sure that even now there are challenges for the Grampian model with the amount of resource that the police force has. Although we in the RSPB would always ask for more, we would not say that huge amounts of police resource should be applied to wildlife crime. We are asking for a proportionate model to be put in place, which is really what happens in the Grampian model. At the grass-roots level, if something is discovered in the countryside, I know that I can get hold of a wildlife crime officer by contacting David McKinnon—he is on speed dial on my mobile phone. That is the simple reality of having someone available to co-ordinate. I suppose that Constable McKinnon has to take leave at some point, but even then someone else is able to attend to the situation. There is a system in Grampian Police that recognises that.

Fundamentally, though, there are senior officers in Grampian Police who get it—who understand the wildlife crime issue. They understand the issues that the committee has heard about, such as the economic benefits and so on of tackling wildlife crime. They read research papers that demonstrate that in some areas there are absences of various species, and they apply some resource to doing something about that. That is really successful. It is not about creating a massive force of police wildlife crime officers.

**Mark Rafferty:** Grampian Police is an exception to the rule, certainly for policing in Scotland. I am part of the special investigation unit of the Scottish SPCA, and as such we cover the whole of Scotland. We have statutory powers under the Animal Health and Welfare (Scotland) Act 2006 and on most occasions we work jointly with the police. Sadly, the reality is that most police forces see wildlife crime as low priority or no priority, and it is resourced accordingly. Certain police forces—I will not name and shame—do not have any commitment to wildlife crime. That poses problems when people report a crime, the SPCA goes to assist the police and no police officers are available, let alone wildlife crime officers.

The reality is that there is too little enforcement and that the police afford too few resources to tackling wildlife crime because it is too low a priority. There will always be a reason why the police cannot go. As a former police officer, I can accept those reasons. There are other angles that need to be investigated.

**Bill Wilson:** To follow up on that, it has been suggested that SPCA inspectors could be given the same powers in relation to wildlife crime as they have in relation to animal welfare. Will the panel comment on that suggestion? What kind of training would be required? Would it be expensive to do that? Are there other organisations to which such powers could be extended?
Mark Rafferty: The SSPCA has been a reporting agency to the Crown for more than 100 years. In 2009-10, it reported nearly 200 cases for prosecution to the Crown Office and Procurator Fiscal Service. The special investigation unit reported nearly 50 cases in its own right. Those cases involved animal welfare, but there is no restriction on what the SSPCA can report. For example, offences under the Wildlife and Countryside Act 1981 are routinely reported.

Prior to the introduction of the Animal Health and Welfare (Scotland) Act 2006, it was routinely accepted that the SSPCA dealt with animals and offences that related to animals, but it had no statutory powers to do so. The Animal Health and Welfare (Scotland) Act 2006 gave the inspectors—of whom there are 62 in Scotland at the moment, from Shetland all the way down to Dumfries and Galloway, supported by support inspectors—the powers to deal with animals and animal welfare. That extended to wild animals as well, but only in circumstances in which they were captive. Animals that had not been protected, such as foxes and wild birds, fell under the welfare legislation if they were captive, and the SSPCA could deal with such cases.

The wildlife police network came into force in the late 1980s or early 1990s. Prior to that, it was only the SSPCA and a selection of police officers with a particular interest in wildlife crime that investigated such cases. It is proposed that the SSPCA should be given additional powers—primarily, those that are contained in section 19 of the Wildlife and Countryside Act 1981—which would allow authorised inspectors to go on to land to recover evidence. Once they had recovered that evidence, the investigation could start. Sadly, as Bob Elliot will confirm, we come across incidents where an eagle might lie on a hillside for a week or two. By the time the police can resource the recovery of that piece of evidence, it is no longer there, which means that an investigation cannot take place and there is no detection or prosecution.

No additional legislation would be needed; section 19 of the 1981 act could simply be amended. The structure is already in place—the SSPCA inspectors are there. The positives would be that more crimes would be identified and investigated and there would be more detections as a result, which, in turn, would produce a reduction in, and would help to prevent, wildlife crime. People would realise that there was a real threat that someone who committed a wildlife offence in Scotland just might get caught for it, and that if they got caught for it, they would go to court. That could prevent wildlife offences from being committed and could stop people taking part in criminality. The cost would be absorbed by the SSPCA, primarily; very few resources would be required from the police.

That would take the burden off the police. Very often, such offences are committed in extremely rural places such as on hillsides and mountainsides. In reality, the further an offence takes place from the road, the less likely it is that a police officer will go to the scene. If an offence is committed at the side of the road, the police are likely to go; the further up the hill it is, the less likely they are to go. Ultimately, what is proposed would benefit animal welfare in Scotland.

The Convener: Are there any downsides to that?

12:30

Sheriff Drummond: Big ones. You have moved straight on to what is probably the single biggest area of fragmentation. Section 19ZC of the Wildlife and Countryside Act 1981, which was added by the Nature Conservation (Scotland) Act 2004, introduced the powers of wildlife inspectors—ministers may appoint wildlife inspectors. We now have a situation in which there are local authority inspectors, private inspectors—the organisational inspectors—and police officers. Nobody has yet given any cohesive thought to the various powers that the organisations and individuals should be able to exercise.

The statutes clearly distinguish between the powers of inspectors and the powers of constables. Someone who gave evidence this morning—I cannot remember who it was—that referred to trespass and the admissibility of evidence. I think that it was Bill Wilson who put his finger on the answer.

Those private investigators—or private inspectors, if I might so call them—should not have greater powers than the police officers; we cannot have them going in to carry out an investigation of a crime. Many convictions have been lost in this country because of the way in which investigations have been carried out.

Reference was made to trespass, but in 35 years in practice I have never dealt with a case of trespass; it is not a concept with which we live in Scotland. We are talking about people who go on to land to carry out an investigation of a crime where they do not have the authority to do so, and where a police officer would require to go to a sheriff and obtain a warrant to do so. It is entirely different from a hillwalker stumbling across a piece of evidence. That is where one of the single biggest areas of conflict arises.

To give a relatively recent example, during the course of some submissions that were made to me—which fortunately did not come to a full
discussion, otherwise I would not talk about them—it was not clear whether a wildlife inspector can interview a suspect. Can he caution him? What are his powers? Will the evidence that is obtained in that way be admissible? We have created an atmosphere of uncertainty, and we do not know where we are going. I do not see any certainty emerging at the end of the bill process.

The road that Mark Rafferty has just advanced is one road. Whether it would be the right road is another question, and that step should not be taken without careful consideration of much wider principles in relation to crime enforcement. We should remember that we are talking about crime in the context of the presumption of innocence and proof beyond reasonable doubt, and of the rules on the admissibility of evidence in court.

The committee touched on the question of single witness evidence and corroboration in the evidence session earlier today. We must not forget that we are operating in the context of criminal law—it is dangerous to fiddle with some of its elements in isolation.

It is that fear that gives me cause for concern about the direction in which we are going, and the uncertainties that we are moving towards because of the lack of cohesion in the broad picture of our wildlife legislation. The laws themselves are robust, and they are good, but there is an awful lot of detail on the fringes that requires careful attention.

John Scott: In that regard, you are talking about a tsunami of legislation in recent years, which others have to endure. You have been long on the analysis of the problem, but can you offer some solutions to give us a sense of direction?

Sheriff Drummond: My own thinking on the matter is to try to focus the crime element of environmental law—wildlife law—in the 1981 act, so that we do not have to chase through a variety of statutes. This is off the top of my head and not thought through, but if that were able to take place, it might be possible to extract from the Wildlife and Countryside Act 1981 the criminal element of the environmental activities and codify that single element. I have no idea whether that would be possible—that is just one suggestion.

We said that we will come to the paper that I produced a year ago in due course. It was an attempt to reconcile some of the complexities that we have moved into between the pesticide regulations, the Wildlife and Countryside Act 1981, with its various moving implications, and the biggest single problem that exists in wildlife crime: the poisoning of raptors. It is the poisoning of raptors that gets the most public attention and that, in my opinion, most needs to be focused on.

There is a lot of loose talk about vicarious liability. One respondent to the committee refers to vicarious liability being used or introduced as a sanction in the bill. Vicarious liability is a textbook all on its own; it is not a simple concept or a magic bullet that we can just introduce. The whole subject area must be looked at in the context of criminal law, the presumption of innocence, the need for proof beyond reasonable doubt and the ordinary rules of evidence. That is sometimes lost sight of in discussion of the broader environmental aspects, if I can put it that way.

John Scott: In that regard, is the bill, as it stands, adequate or inadequate? From your elevated position, can you see any way in which we can easily improve it? Can you make any suggestions—if not now, on reflection?

Sheriff Drummond: I hesitate to answer the question, as it is not my position as a member of the judiciary to tell the legislature what direction it should take.

John Scott: So, we have a conundrum.

Sheriff Drummond: We have a conundrum. I have been encouraged by what I have seen through the mechanism of the legislation, regulation and guidance committee of PAWS. I regard my function within that committee as being to focus the conflicting interests, to formulate what the conflicts are and to attempt to reconcile them. That seems to be a very good mechanism for approaching the subject, although it is in its early stages and we are all just feeling our way. Also, an administrative attempt is being made to restrict the committee’s size in order that it remains manageable. That kind of thing might be a useful mechanism, or a standing committee on the issue, but I have no idea. Those are just random thoughts off the top of my head.

The Convener: We will come back to vicarious liability. Let us go back a bit. Constable McKinnon, do you have anything to say about the idea of increasing the powers of other bodies?

Constable McKinnon: That is more a matter for policy at the level of the Association of Chief Police Officers in Scotland. In Grampian, I work closely with the SSPCA on the investigations side and with the uniformed inspectors. Joint working is not a problem. We often undertake joint inquiries, and the SSPCA will take on an inquiry after it has passed through us or we will take it on after it has passed through the SSPCA. That is not a problem. Mark Rafferty’s proposal of an increase of 62 inspectors in Scotland would provide a potential added resource. However, as we have a good working relationship with the SSPCA in Grampian with a 1.7 full-time equivalent resource, could the situation not be managed by the Scottish police service addressing that issue?
Bill Wilson: Sheriff Drummond, I understand that one of your concerns is that the SSPCA would have these powers but would not require a warrant, which is different from the position for the police. Would it not be possible to ensure that the SSPCA had to get a warrant before they went on to land to pick up the carcase? Clearly the problem is that because the areas involved are very large, it is often difficult for the police to get to the scene and it is very difficult to acquire the evidence in time. We clearly need to find some way around that. Would what I have suggested be a solution, or would you still not be happy with that?

Sheriff Drummond: I have no difficulty with whichever solution the committee chooses; you should simply be clear about what that solution is. At the moment, the proposals seem to be all over the place: limited powers are being given to wildlife inspectors; there are different categories of wildlife inspectors; and specific powers are being given exclusively in relation to constables. Other organisations would express concern about private bodies having the power simply to walk on to their land and carry out police investigative powers without being subject to the controls that exist in relation to police officers. There is no public control over the activities of the RSPB or the SSPCA. They are private bodies and charities and are able to operate within their own policy statements. They are not within the control of the Parliament, the judiciary or anybody else; they are free individuals. On the other hand, the police are a mechanism of the state and are under very clear control.

The question of the liberty of the subject begins to arise: to what extent do you grant power to a private individual—because that is what those bodies are—to interview, investigate and enter premises? The compromise that we have reached on this is that the form of the warrant under the Wildlife and Countryside Act 1981 enables a police officer with a warrant to enter premises accompanied by any person whom he chooses. Even that still gives rise to problems, because the police are supposed to be our lead in the investigation of crime.

I will give you an example. The police brought in computer experts to assist with a search that was conducted in connection with pornographic videos or videos of children. I cannot remember the details of the decision, but the issue that the court had to examine was whether the lead role in that search was being carried out by a person who did not have the authority to do it—namely, the civilian computer expert as opposed to the police officer.

I suggest that we widen these powers at some risk, given questions of personal liberty. Where the balance is to be struck has to be a matter for the legislature, but I simply urge you to be conscious of the fact that we are operating within the realm of criminal law. Do you authorise a private investigator to enter somebody's house? There is no recourse with private individuals, but there is recourse with a police officer.

12:45

Mark Rafferty: We are talking about something that is in place at the moment: SSPCA inspectors, as authorised by Scottish Government ministers. We are not acting as individual persons. As the law stands, throughout the whole of Scotland, both the special investigations unit and our uniformed colleagues in the inspectorate obtain warrants to enter houses in relation to animal welfare offences. That primarily involves domestic animals, such as cats and dogs, but it also involves agricultural animals, such as sheep, horses, cattle and the like. It also extends to wild animals that have been made captive, which would cover an eagle in a trap or a fox or badger in a snare. We have those powers at the moment under the Animal Health and Welfare (Scotland) Act 2006, which gives powers to both a constable and an authorised inspector—the position of SSPCA inspectors is defined.

Therefore, what the SSPCA is asking for is not new but has been in place since 2006. We are asking for a simple amendment to section 19 of the Wildlife and Countryside Act 1981, to extend our powers to cover circumstances in which traps or snares have been set or poisons laid but a live animal has not yet been caught. If there is a live animal in a trap we can exercise our animal health and welfare powers—we do not need new powers for that situation. However, if we find a line of 100 illegal snares that have not yet caught an animal, we do not have the power to deal with the situation and we rely on getting a police officer to come and exercise powers under the 1981 act.

Bob Elliot: From an RSPB perspective, the 1981 act is quite clear—I defer greatly to Sheriff Drummond on that, of course. Under section 19, a police officer can go on to land “without warrant”. Someone before I arrived took that big step to ensure that a police officer could go and seize the eagle or poisoned bait or respond to whatever had happened and collect the evidence. That is the bit that we are trying to get at.

Nobody is suggesting that there will be a team of mavericks out there, sweeping through people's private grounds. Let us think about the countryside that we are talking about. We are talking about mountains, moors and glens, well away from curtilage, buildings or anything else. That is the land that it is proposed that people should be able to go on to collect evidence under section 19.
I have spent far, far too many hours standing on a hillside—apart from Grampian, of course—next to a dead golden eagle, waiting for a police officer to respond. Sometimes the person on the main desk asks me to give a postcode for where I am. I can give a 10-digit grid reference, but I am nowhere near anyone’s house. I am not interfering with anyone’s livelihood. The degree of intrusion is zero, but time and time again I feel that blocks have been put in place to prevent us from collecting the evidence.

Of course the collection of evidence has to be done properly and fairly, which is why I want the police to be able to respond. The SSPCA’s idea is an absolute no-brainer. The SSPCA has trained, uniformed officers who have been doing the job for I do not know how many years and who have successfully investigated and prosecuted people not just for wildlife crime but for all sorts of offences.

It is funny that the police do not seem to mind the SSPCA dealing with lots of issues involving domestic animals. Mark Rafferty will correct me if this is wrong, but I think that it was the police who decided that the SSPCA and the RSPCA should do that, because they could not cope with all the incidents that involved cats, dogs and farm animals. We are at a point in Scotland at which the same can be said for some police forces in relation to wildlife crime.

I am a realist. Everyone is going through all sorts of cuts. I read about the doom and gloom, just as everyone else does. Chief constables are worried about all the areas that they must deal with, and wildlife crime will be at the bottom of the pile. A charitable body has suggested a solution with, and wildlife crime will be at the bottom of the pile. A charitable body has suggested a solution.

Of course, as Sheriff Drummond said, there must be checks and balances. There is a role for wildlife inspectors under the 1981 act, but traditionally that was to enable people who are experts in their field to check caged bird rings and do all sorts of other things; it was not for the purpose that we are talking about. Amendments could be made to section 19 to allow people to enter land.

**The Convener:** We will take the issue forward.

The committee has heard that many gamekeepers work as special constables. Do Alex Hogg and other panel members think that such an approach should be encouraged?

**Alex Hogg (Scottish Gamekeepers Association):** During the thematic crime review the SGA’s response was that all wildlife crime should be recorded, but that never happened. We also said that we support the police 100 per cent and we would rather that the police were trained to identify birds, feathers, eggs and so on. We would rather have a fully trained police force, because the police are neutral, which is important when we consider the different sides that are involved. People want to be treated fairly.

There has been a bit of uptake in keepers becoming special constables.

I just want to say that a quick phone around the country last night showed that keepers were involved in capturing paedophiles and murderers—in one estate alone, there had been seven murders—and dealing with drugs that had been dropped out of aeroplanes into remote lochs and so on. All of those things are noticed by the keeper, who is the first guy who has to deal with them and contact the police.

**The Convener:** Constable McKinnon, do you have information on special constables?

**Constable McKinnon:** My understanding is that Tayside Police ran a scheme, but I cannot comment on the uptake, as that is not my force. We have a special constable network in Grampian. The special constable who was assisting me with a wildlife inquiry last night is an air traffic controller, not a gamekeeper, but I would welcome greater participation by people who work in the rural community—stalkers, ghillies, keepers, bailiffs or whoever. We want to explore that through the Cairngorms National Park Authority. In my opinion, the pool of people who become special constables is far too narrow, and it should be widened to include anyone who has something to contribute and has an interest in their rural community.

**John Scott:** Sheriff Drummond, in terms of the right of an individual to private enjoyment of his own property and, therefore, not to have individuals who are not police officers on his land, would the European convention on human rights have an impact on the issues that we are discussing?

**Sheriff Drummond:** Yes. Indeed, when I was reading over some of the existing powers that are in the relevant legislation last night, I wrote, "query ECHR" in the margins. I do not know to what extent compliance has been checked in relation to some of the powers. I would like to think that the Government’s legal people had scrutinised the legislation properly, but I believe that it raises ECHR issues. Today’s discussion has demonstrated the sensitivities that exist in this area and the fragmentary nature of the problem that we face. The issue is right on the front line of the investigation of wildlife crime, and it has to be resolved sooner rather than later.

**Aileen Campbell:** There has been a huge increase in wildlife crime. To what do you attribute that rise?
**Sheriff Drummond:** To the fact that wildlife procurators fiscal have been appointed. Because I am known as having an interest in wildlife matters, fiscals will give me anything that involves an animal. I have found myself dealing with somebody who has gone away on holiday without leaving food for his cats, because someone thought that that was a wildlife crime.

There might well have been an increase, but I have no idea whether that is the case; I take no interest in that side of things. It might be that better reporting and better publicity have raised the profile of this area. However, it would be much more interesting to view the reporting figures and the conviction figures on a single graph.

**Bob Elliot:** The question is a good one. We dealt earlier with the problem of recording, but another issue concerns the number of incidents that are found every year. You will see headline news that says that more things have been found or fewer things have been found year on year, but that is because items such as poisoned baits and so on are rarely found. We know that more is going on there, but we just cannot get to it—hence our previous conversation.

We are slightly frustrated about the issue of the resourcing that we need to go and investigate these matters. It is almost as if we are looking at the countryside through a window and we cannot get to the bottom of what is going on. That is why we are building good partnerships at the moment with rural industries and individuals such as Sheriff Drummond.

The discovery of a poisoned golden eagle is an incredibly rare event, although we know that there must be more going on because research shows us that that is the case. It is the ecological trap idea that there is nothing breeding in those areas, overlaid with land management techniques.

The elephant in the room is that we are not finding everything that we could find. That is perhaps why we have had amendments to the legislation over the years. The Wildlife and Countryside Act 1981 is now quite bulky because we have tried to fill the gaps, and in Scotland we have gone further than anyone else has with such legislation. However, we have a lot more to do—that is a slight understatement—if we are to move on.

**Aileen Campbell:** So the figures might suggest better reporting rather than an increase in the incidence of wildlife crime, but at the same time we are only scratching the surface.

**Bob Elliot:** Absolutely. PAWS is quite a good network in Scotland. I do not think that the UK-wide PAW network works as effectively as ours does—but I would say that. A lot of education work is being done by countryside managers and other interested parties, and a lot more awareness raising is going on. We are able to speak directly to people such as you. The Science and Advice for Scottish Agriculture reports confirmed incidents every year. They are mapped, and we work hard with the SRPBA on that. The maps were published earlier in the year. We are starting to get there with our work to identify the extent of the problem. From an RSPB perspective, when I am trying to assist with something such as an eagle that has been poisoned, it just backs up for me what the science is telling us. It is one of those rare occasions when you see cause and effect and think, "I now know that that is true," whatever the concept is.

**Mark Rafferty:** There is a general feeling in society that our natural heritage and wildlife are extremely important to Scotland, and with that comes the attitude that the public do not want wildlife crime, that they want it stamped out, and that they want the authorities to do something about it. Between 2009 and 2010, the SSPCA dealt with 150,000 calls in which animal welfare issues were reported, some involving wildlife crime, and the figure goes up every year. As society realises the importance of its natural heritage, the authorities will come under increasing pressure to protect the resources and environments that we have in Scotland.

**Sheriff Drummond:** Please be careful, though. You heard one of the most fundamental errors of logic. Absence of evidence is not the same as evidence of absence, but those things tend to get conflated in the course of discussions such as ours. We assume that, because we are not finding stuff, it must be there. There might be many reasons—for example, the birds might have left—but the assumption is made, and that is where the resentments come in. When an investigation is carried out, nothing is found and it goes down as an investigation with no result. That is the kind of area in which damage is done on a public relations level between the investigator and the investigated. I would dearly love to see those being able to be merged.

**Aileen Campbell:** I want to ask about the dangers of our becoming overzealous and getting people to report wildlife crime or animal welfare crimes too much because they do not understand. How do we get the right balance to ensure that people are making appropriate reports?

13:00

**Mark Rafferty:** From experience, I have found that most people tend to say to police officers as well as to the SSPCA, "I’ve never reported this kind of thing before because I didn’t think you would do anything about it." However, people are slowly beginning to realise that they should report
these things. As a result, I think that there was very much an underreporting rather than an overreporting of these crimes.

**Bob Elliot:** On the question of research versus evidence on the ground, I have to say that there is hardly any evidence on the ground because no one is going to find it. That is the obstacle that we face.

Even research published over the past 20 years or so from people who are experts in their field, who eagerly monitor birds of prey time and time again and who have given us one of the best data sets ever about the raptor population in Scotland—it is absolutely second to none—shows ecological black holes. For example, a recent paper made it clear that, although the same number of red kites had been released on the Black Isle as had been released in the Chilterns, the Black Isle population was not growing as fast as the population in the Chilterns. That excellent piece of work was presented to the raptor priority working group, which is an offshoot of the PAWS network, and we found it to be compelling science that demonstrated that something was going on. We know that those birds are dying. They have been radio-tracked and have been found poisoned. Every single year, the Government publishes the Science and Advice for Scottish Agriculture-confirmed poison maps, which display geographically where the problems are.

**John Scott:** Are you not making a big leap in concluding that, because the birds have disappeared, they have been poisoned? You are talking about two climatologically different areas 500 miles apart that support environments for the species and yet you are saying in evidence to the committee that those birds have definitely been poisoned. Is that not a big leap?

**Bob Elliot:** No. What I am saying is that the birds that went to the SASA were definitely poisoned. Either a bird has been poisoned or it has not—either it will prove positive for a substance such as carbofuran or it will not.

**John Scott:** And all the birds that have disappeared have been traced and sent to the SASA.

**Bob Elliot:** No. What happens is that natural mortality will be considered in the research. You work out whether the food supply and productivity are the same and, in that regard, the fact is that the red kite population on the Black Isle produces just as many chicks as the population in the Chilterns. The issue is not food supply. The young raptors are slow to breed because they wander widely. Members will have seen the story in the press about Alma, the golden eagle. This bird, which had been satellite-tagged and was into the third if not fourth year of a particular study, had been roaming on the lookout for nest sites, but ended up dead, poisoned on the grouse moor.

In the east and south-west of Scotland you will see sub-adult juvenile eagles but not adults, even though there should be adults because there should be secure nesting opportunities for them. The research is very careful and rules out things such as a decrease in deer gralloch or other food, lack of nesting locations, changes in habitat as a result of an increase in forestry and so on. All those issues are taken on board in these peer-reviewed and published scientific documents. SNH's golden eagle document, which is one of the best I have ever seen, looks at all those factors, and the fact is that there are no eagles in the north-east or the south of the country. In fact, just after I started this job, we had the tragic poisoning of the golden eagle in the Borders. That was a nightmare to deal with, because she was half of the only breeding pair in the area.

All the breeding golden eagles in the UK are in Scotland. The pair in the lake district have not produced any young for a long time but must have produced an estimated 60 young, but where have they gone? The Borders pair produced young, but where have they gone? There is no pioneering going on, there are no new individuals, and the population is static.

**Alex Hogg:** I think that you have to be careful. As you guys saw for yourselves last week in Langholm, two pairs of harriers laid and then failed. If they had not been under such close scrutiny, the RSPB would have said right away, "Oh, they must have been poisoned." There are many different reasons why things happen.

**Bob Elliot:** Hen harriers do not get poisoned. They get shot.

**Peter Peacock:** This is rather intriguing stuff and I want to dig into it a bit deeper. It has been put to me that the number of poisoned birds that we discover is the tip of the iceberg and there are many more that we cannot discover, because people do not come across the evidence, given the scale of the territories that we are talking about. I do not know whether that is the case. I said last week that it had been put to me that up to 50 golden eagles a year could be poisoned. The evidence is not that they did not hatch, but that at a certain age of maturity, they vanished from the scene. The witnesses are involved with this issue day by day. Are we seeing only the tip of the iceberg? If so, how big is the iceberg?

**Mark Rafferty:** As a wildlife crime officer, I dealt with an incident in the Scottish Borders when I went on to an estate and recovered 25 poisoned birds in one day, which resulted in a conviction. The person involved had been a gamekeeper for somewhere in the region of 13 years. I have
consistently found that persons who are involved in the most serious levels of wildlife crime will also use all the lesser methods of criminality. That means that if they are poisoning animals, they are likely to be using illegal traps and if they are using illegal traps, they will be using unlawful snares. When you find one offence, you inevitably find a series of offences. It is a particularly difficult area to quantify. Given the resourcing difficulties, you are just not going to get a conclusive figure, but a significant amount of wildlife crime is happening in Scotland.

Bob Elliot: You asked how big the iceberg is. You must try to quantify these things properly and scientifically and not just pick things out of the air. I know that a paper on that subject is being prepared at the moment. Using the excellent golden eagle framework document, you could look at the 420 nest sites, see how many birds fledge and how many die and work out the figure.

Most eagle experts would say anecdotally that 50 eagles in Scotland are illegally killed every year. One would suppose that most of the golden eagles found in Scotland would not be illegally killed—people stumble over the birds, which go for toxicology testing, and the results come back negative. All those statistics are held by the SASA, so that work could happen—the number could be quantified. RSPB Scotland would welcome that sort of study to give us the figure.

The situation with the dead eagles that are reported to the police or to us is interesting. I really am generalising here, but if a bird dies on the west side of Scotland, where there is a breeding stronghold of birds, generally speaking, the death is from natural causes. In fact, we found a very old bird that had died of natural causes. Where the dead bird is a sub-adult bird that was pioneering, as Alma was, you will generally find that the poison tests will come back positive, because those birds are roaming. Adult golden eagles in the west of Scotland have their territories—they are very territorial and they really make sure that no other birds go there. They can live up to 40 years, so they will have really strong territories in the glens.

You get problems where the young birds are trying to pioneer to expand the golden eagle range in Scotland. They do not see adult golden eagles, for the obvious reason that no eagles are breeding in the area. Some of the nest sites that are named in the literature are historic sites. The birds are trying to pioneer; they see a suitable crag, which is probably ideal for eagles, they do not see any competitors, they probably see a good food supply and they hang around. That is when we get the problems of illegal killing.

Peter Peacock: The figure on which the eagle experts seem to be agreed—is the broad scientific basis that you set out—is really quite staggering. People get upset in Scotland when we hear of two or three eagle poisonings in the course of a year, but you are postulating that the number could be up to 50, as I understand it.

Bob Elliot: That is correct.

Peter Peacock: I am probing this issue because I want to know what the motivation behind the practice is, and we can seek to address that through the law. It seems to me that people do not go out and poison eagles for the sake of it; there must be an underlying motivation. For instance, eagles might not be the target and might end up eating poisoned bait or becoming ensnared in traps that are intended for another purpose. What motive do you attribute to the practice?

I do not have the figures to hand, but I understand that reported poisonings doubled between 2009 and 2010. In the short term, there seems to be an upward pressure, with the figures moving about a bit. What is changing in the wider management of the environment that is giving rise to what seems to be an increased rate of poisoning, which results in the kind of scenario that you have described?

Bob Elliot: There are lots of reasons why people put down a poison bait. Some of them might think that it is simply easier than doing lawful things, such as snaring.

In a lot of the problem cases in which I have been involved, a rabbit has been splayed open on a prominent rocky knoll at the top of a glen. That is designed to attract birds of prey, which like to soar along those levels. People who put those things there know what they are doing. That is a classic method of killing whatever you like.

Very rarely do I come across poisoned bait that is half buried and is probably meant to attract a fox or something. Usually, a member of the public trips over a rabbit carcass that is liberally covered in blue granules of poison.

The Convener: Mr Elliot, can you answer the question, which was to do with why people are poisoning eagles, not how they are doing it?

Bob Elliot: In some areas, it is to maximise game management. If you want lots of grouse, you do not want lots of predators.

In some areas, the motivation might be different. It might be general predator policy, pheasant protection or whatever. There are lots of motivations. However, whatever the motivation is, it is indiscriminate. One could find on the edge of an estate a dead cat that had eaten bait laced with carbofuran—bait that could have killed birds of prey, crows or whatever, although I am sure that 12 dead crows would not make the headlines.
Peter Peacock: As you wander about the countryside, do you detect a change in the broad practices of some estates that might give rise to an increase in poisoning while others continue in their usual steady state? Is something happening with regard to the commercial management of some estates that is giving rise to what, on the face of it, might appear to be at least a short-term increase in poisoning?

Bob Elliot: We should say, as well, that not everybody is poisoning wildlife. We sit around tables and discuss this issue a lot, when we are not talking to you. In some areas, we still have a big problem with poisoning. We are good at working together, but we are not actually seeing the results on the ground—that is, we are still seeing poisoned eagles and buzzards.

There has been a huge positive change in Scotland, particularly in low-ground areas. The resurgence of the common buzzard is a major success story, as is what has happened with red kites in the central belt and Dumfries and Galloway. There are some really enlightened land managers, farmers and gamekeepers. A gamekeeper rang us up and said that he had a kite stuck in a pheasant release pen, which was an absolutely excellent thing for him to do.

There have been a lot of positive developments, but some parts of the uplands area in the north-east and the south are no-tolerance zones for raptors.

Elaine Murray: I wonder what can be done when you find evidence of the poisoning of raptors on particular estates. The SRPBA states in its evidence that it is frustrated by the amount of poisoning that has gone on, and it has made public statements condemning estates that poison raptors. We have tried to explore what can be done when poisoning is found on an estate. Would it be helpful if the SRPBA was able to throw the estate out and not have it as part of its membership? Would it be helpful to name and shame estates so that people know what is going on? What sanctions should be taken when evidence comes to light that estates are behaving in that way? From the point of view of the estates, they will all be tarred with the same brush when such things happen unless something can be done to isolate the bad guys from the guys who are observing the law.

13:15

Sheriff Drummond: I have checked sentencing manuals, sentencing material and a document called “Costing the Earth” that was produced for magistrates in England and Wales and I have not found a single case in which there has been a successful prosecution for killing a bird of prey; not one. All the prosecutions have been for possession of pesticides, laying of poison baits or whatever. I am not saying that there has not been such a case, but they are rare. I hesitate in this context to say that they are like hens’ teeth: there are not many of them, yet we talk as if sentencing in such cases is the central issue. The first and most important thing is detection.

I have no idea whether what is being said is correct, but I am not prepared to accept that the absence of evidence is evidence of absence. We must get our investigative processes and our legal framework into a healthy state so that people stop engaging in speculation and we have some hard facts. We also want to have some legislation in place that acts as a real deterrent. I have no idea how section 15A, which prohibits the possession of pesticides, found its way into the Wildlife and Countryside Act 1981. Frankly, it is a waste of time. There was already legislation that prohibits possession of pesticides. It was suggested that the mechanism would enable the 1981 act to address the question of pesticides, but it did no such thing.

You cannot send a man to jail for possession of carbofuran when you would not for possession of heroin. There has to be some balance in our society and in our disposals for such things. Equally, simply because a man pleads guilty to possession of carbofuran or alpha-chloralose, we are not entitled to draw the inference that he has killed a bird or intends to do so. He is simply in possession of a prescribed substance.

Elaine Murray: If Mr Rafferty goes on to an estate and finds 25 poisoned birds, as he has done, or if SASA has recorded instances of poisoned birds in particular areas, that is not an absence of evidence. That is evidence. What sanction should be applied when such evidence is presented?

Sheriff Drummond: It is not a question of what sanction should be applied. The question is what structure will enable those things to be effectively prosecuted, because if that happens, the sanctions that already exist in the legislation are robust. What we find in those circumstances is that a plea is adjusted to the possession of carbofuran outwith its statutory container. That is the framework within which we are operating and it is that which needs to be strengthened.

Bob Elliot: Sheriff Drummond’s point about the rarity of somebody being prosecuted for killing a bird is entirely correct. We can contrast that with
egg collectors. We do not have too much of a problem with egg collectors any more, but it was all the rage a good number of years ago. In the early days, egg collectors probably thought that a fine was their membership fee, but as soon as sanctions came in, which meant that they could be jailed, many of them simply gave up. The threat worked and they stopped collecting eggs. People were being jailed. That happens more often down south because people come up here, nick all our rare stuff and go back down south again. I am generalising slightly again, but that is what happens. Golden eagle and osprey sites are targeted and such egg collections are coveted. Around 20 to 25 people are still involved in such egg collecting. They are always repeat offenders, so they tend to be treated severely. People regularly get six-month prison sentences for committing that offence.

Conversely, we really struggle to articulate property how serious the possession of carbofuran, for example, is, and we fail to make it clear why it is so serious. Traces of cocaine may be found on many £10 notes that are in circulation. If you swabbed the £10 notes in your pocket, you might find traces of cocaine on them, because cocaine is widely out there in the environment. Carbofuran turns up only in wildlife poisoning cases. It is a banned pesticide and is so toxic that it was taken off the list. It was banned years ago. Why should anybody have a bottle of it in their shed? We must wonder whether that is the equivalent of “going equipped” or “intending to use”. As Sheriff Drummond rightly pointed out, the bill does not give us a provision to suggest that. The issue is possession, and being dealt with. The circumstances of that and the history of the use of that chemical should be considered. People would never have it left over at home or have used it domestically. Finding it is incredibly rare.

Elaine Murray: Sheriff Drummond argued that pesticide provisions should not have been part of the Wildlife and Countryside Act 1981. He argued that that act is not the right place for them. Is there potential to address the matter within the scope of the Wildlife and Natural Environment (Scotland) Bill, or would such provisions still not be in the right place?

Bob Elliot: Suggestions have been made that need to be considered, one of which is to go back to vicarious liability. I would describe such an approach more as community responsibility. A selection of people who are concerned in the use of something would be involved. Pesticide results may be obtained via SASA from people’s knives, game bags, vehicles or whatever on an estate. However, things must be absolutely fair and proportionate. We do not want a disproportionate law, but it must be recognised that line managers and contractors, whoever they are, have a social responsibility to ensure that such practices are not going on.

We welcome the fact that 200 estate owners have written letters to say that they condemn wildlife crime, and we look forward to seeing results from that. We welcome that as a sea change in attitudes and a recognition that we have a problem. We all agree that we have a problem, but we are arguing about its extent. We are arguing about how many rotten apples are in the barrel, and the argument is circular.

In respect of legislation, we think that phrases such as “concerned in the use of” and “going equipped” could be used, but we need expert opinion on the matter to sit down and sort things out. Sheriff Drummond is an expert. It is individuals who get charged for possession of carbofuran—no one else. No connections are made. What is their line manager doing to stop that? Where are the checks and balances?

The Convener: We will come on to vicarious liability shortly. Sheriff Drummond was nodding his head vigorously, and Alex Hogg wants to say something. Could there be so many raptors and birds of prey that land management would be severely affected? Could land managers ask SNH, for example, for permission to control the number of raptors?

Alex Hogg: We are at that moment in time with the buzzard population. An inventory needs to be done of the wildlife on an estate each year. It would be fine if 10 pairs of buzzards were found, but if the annual inventory showed an increase to 30 pairs, it would be obvious that there was a need to reduce the species. As I said, we all need to sit round the table and find common ground. If a licence needs to be applied for, we should see whether we can work out a system and a protocol to allow it to be instigated. In saying that, the number of raptors must be at a level at which SNH can say that removing some of the population will not affect the overall population. Everyone has to agree on that.

The SGA has, ever since it was formed, been trying to stamp out poison. There was a lot of secondary poisoning of red kites on the Black Isle—the chicks were eating stuff that had eaten rat poison, and ten or so chicks died in the nest. No feeding goes on at the Black Isle as happens in the Chilterns. The big question that really bugs me is this: where are all the poisoned ravens, carrion crows and seagulls? If poison bait is laid on somebody’s land, the first things to eat it are those species—the most common species—but their remains are never found.

Also, if the golden eagle population is such that the least bit of interference could knock it off, why are we continuing to export golden eagles? We
have exported 75 golden eagles to Northern Ireland and the Republic of Ireland, where most of them have been poisoned. Those are my observations.

**Sheriff Drummond:** What Bob Elliot said earlier prompts me to ask the committee to refer to my submission. I will not quote from it now, but the committee may wish to do that at a later stage.

**Constable McKinnon:** In Grampian, I have dealt with two cases of poisoned indicator species. In one case, ravens were found poisoned and in the other common gulls were found.

**The Convener:** Bill Wilson has a question. I remind him that we have already touched on egg stealing.

**Bill Wilson:** I will curry favour with you, convener, by combining my two questions on single witness evidence into one. Can the panel give examples or first-hand experience of where someone was convicted for poaching on the basis of single witness evidence? Most witnesses heard the earlier evidence session and Alex Hogg also heard the evidence last week. What are your views on single witness evidence? Should it be held as it is, expanded or abolished?

**Sheriff Drummond:** In 35 years, I have never had a case that turned on the evidence of a single witness. Let us think of the situation of a prosecutor who receives a report of a case that will be contested. In effect, one person is saying, “Here is the evidence that points to guilt” and somebody else is saying, “That is not what happened.” The prosecution of the case may be weakened by the law saying that it can proceed on single witness evidence. I think that I have never in my entire professional career dealt with a case in which the only evidence was single witness. I see it as a gesture—

**Bill Wilson:** Have you had cases in which there has been single witness evidence with other corroborating evidence?

**Sheriff Drummond:** Hang on a second: if it is single witness evidence, there is no corroborative evidence.

**Bill Wilson:** I understand that. I was just expanding the question slightly.

**Sheriff Drummond:** On that basis, you could say in a murder case that you could proceed on the basis of single witness evidence. Single witness evidence is the absence of corroboration. In effect, it is statutorily saying, “There is no need for corroboration.” It is saying that the evidence from one single source is sufficient for conviction. The statutory effect is the total absence of corroborative evidence. Anyone saying, “Single witness plus corroboration” just takes us back to the ordinary law.

**Bill Wilson:** Previous witnesses have referred to single witness evidence plus corroboration. That is why I was trying to clarify the matter.

13:30

**Sheriff Drummond:** An awful lot of muddled thinking goes on about such matters, frequently by people who have never spent a day in court. Single witness evidence plus corroboration means the ordinary law. Those are the two sources of evidence that are required.

Let us remember that corroboration is the safeguard in Scots law against wrongful conviction. Single witness evidence must be regarded as the exception. There may be historic and social reasons for it, but do not forget that a fundamental concept of our criminal law is that we require evidence from two independent sources. We regard that as a safeguard against wrongful conviction. It is also part of the reason why a jury can return a majority verdict in a murder case. An accused person could be found guilty of murder by a vote of eight to seven in Scotland, but that could not happen in England. When you start to compare the jurisdictions, you compare apples and pears. Corroboration is an important safeguard within the structure of our criminal law. To say that single witness evidence can found a conviction is to provide a serious exception to the rules of corroboration and means that there is no corroboration of any kind.

I have said enough.

**Bill Wilson:** Would you abolish single witness evidence?

**Sheriff Drummond:** That is a matter for the legislature. Sometimes, it is a gesture but, sometimes, it may be an evidential necessity for the kinds of reasons that have been pointed to. If you want to expand it into other areas under the Wildlife and Countryside Act 1981, by all means do so. However, I have never in my career seen a case that turned exclusively on single witness evidence.

**The Convener:** That is helpful clarification.

**Peter Peacock:** Sheriff Drummond, I will ask you about vicarious liability, on which you helpfully circulated a detailed and complex paper. I will clarify two things and separate vicarious liability from the points that you began to rehearse a few minutes ago.

In your paper, you talk about the need to unhitch the regulations on the unlawful possession of poisonous substances and create a specific, free-standing offence. You state what the terms of that offence could be. Do you advocate placing those provisions in the bill to cover the point that you make?
Sheriff Drummond: That is a matter for the committee. I produced the paper about 12 months ago for the partnership for action against wildlife crime. I called it a discussion paper and said in the introduction:

“it will ... give members the opportunity of discussing the matters raised within their membership if thought appropriate”

and that

“I emphasise ... that this is no more than a discussion paper and would welcome alternative approaches”.

I have had no adverse reaction from any of the organisations. I have had some supportive comments, but purely in private conversations. The matter has not gone anywhere. I had no idea what was intended to be done with it. For that reason, I asked the committee clerk whether he was aware of it and I put it into the frame. I hope that the paper is carefully reasoned so that people can criticise it and come to different views. For the reasons that I set out in it, the framework that I identified provides the mechanism that might be necessary to address poisoning incidents.

Peter Peacock: That is helpful. You have anticipated my next question, which would have been to ask what reaction the paper got. You have given me the answer.

In large part, you describe in your paper how we would create a better offence and, therefore, a better chance of securing a conviction, which I understand. Vicarious liability has been mentioned as a way of trying to reduce the number of offences that occur in the first place by creating a pressure within the management regimes of estates that would, in effect, require owners, agents or managers to make it absolutely crystal clear to every employee that any bird poisoning would be verboten, so to speak. You are clearly sceptical about that. Will you rehearse the reasons?

Sheriff Drummond: It is not a question of scepticism; to say that vicarious liability will solve the problem is, frankly, to talk about the wrong thing. Vicarious liability is a well-recognised and well-identified legal concept, which is worthy of a textbook—indeed, there are textbooks exclusively on the subject.

We do not simply say, “And there shall be vicarious liability”. That is meaningless. We need to spell out specifically what is meant and consider the issues that arise. What happens if the person who is the principal in the illegal activity is acting outwith the scope of his employment? What happens if he is acting in the face of specific prohibition? A gamekeeper who lays poisoned bait might have a contract of employment that says that he will not do anything like that under any circumstances. What do we do about that?

Many of the larger estates might be owned by trusts. Let me read from a decision of the court of criminal appeal in the recent past:

“In summary criminal proceedings ... we are of opinion that the trustees are not personally liable for the acts of the trust.”

However, the approach that is proposed would make trustees vicariously liable. If we want some elderly solicitor from Jersey to stand in the dock and be vicariously liable, we are going in the right direction.

What I am trying to say is that to wave the flag of vicarious liability is largely meaningless. If it had any meaning, the people who are seriously minded to get round it would simply make the gamekeeper self-employed. There are so many ways round it. Vicarious liability has been floated as some kind of answer. It is not an answer and, with respect, it is being floated by people who do not necessarily understand the concept that they are talking about.

The issue can be more directly addressed under existing health and safety provisions. We make the employer answerable for the regulated substances of which his member of staff is in possession. The member of staff might possess many regulated substances, for the treatment of dogs or birds and some crops. Records will be kept of such substances.

If someone has a regulated substance in a gun bag, a glove compartment or a film container, the person is not storing the substance in the appropriate container or under the appropriate circumstances and is therefore in breach of the pesticide regulations, but with respect—and I do not underrate this—a breach of the pesticide regulations is all that is.

However, if we say that the possession of such a substance in such circumstances will give rise to a presumption that it is the same as setting and using poisoned bait—the formulation that I suggested was that

“such possession or storage shall, for the purposes of Sections 5 and 11 be presumed to be the equivalent of setting in position or use unless the contrary be proved”— we would be saying to the person, “If you want to carry some of that in your gun bag or your glove compartment and you are caught with it, you will be presumed to have been setting poisoned bait. The onus to show that you were not doing so will be placed on you.”

Peter Peacock: That was helpful, thank you.

Bill Wilson: Let us say that we find on an estate half a dozen carcases that have been laced with poisoned bait. How would your proposal deal with that situation? Would the estate be responsible because the carcases were on it?
Sheriff Drummond: In the next part of my submission I gave a bit more detail and addressed some of that. Remember where your starting point is: it is that you have found a person in possession of a poisonous substance that was not being stored in its appropriate container or under appropriate conditions but in what would be regarded in law as criminative circumstances. If my suggestion is adopted, the law will say to the person, “You’re going to have to offer an explanation for that, son.”

If you also find 25 poisoned carcases on the same piece of ground, which all happen to be poisoned with the stuff that you found in the person’s possession, you have instantly created statutorily the evidential link, as opposed to having to chase around trying to find causation and find out whether it is the same stuff and so on.

Some kind of protection for the employee must be built in. I address that in the next proposed subsection. The gamekeeper should be able to keep a register of the substances that he possesses. I suggest that, if he has carbofuran in his register and a reason for possessing it, the presumption does not arise. It will arise only where the substance is found in those criminative circumstances.

Bob Elliot: Apologies, but I have a point of clarification. People cannot lawfully have carbofuran.

Sheriff Drummond: Pick any pesticide—it does not matter.

Bob Elliot: People cannot have any pesticide with alpha-chloralose, in its pure form.

Sheriff Drummond: I am obliged. Pick any name—it does not matter.

If somebody is found in possession of a regulated substance, the presumption, it is provided, is that he possesses it for the purpose of committing a criminal offence. If he is in lawful possession of whatever substance, we would expect to find it in his register and we would expect his employer to have countersigned the register. The employer would have acknowledged, “That is what my employee possesses. I know that he has it and I am happy with the reasons why he has it.” That situation would give rise to exemptions. The guy we are trying to get is the man who has the stuff in the gun bag or the glove compartment.

The self-employed and hobby gamekeeper is a different kettle of fish. He should be addressed when he goes to a supplier and buys the stuff. The supplier should make the appropriate entry in his register.

Either way, that process would create traceability, responsibility and linkage to the employer, as it would create the knowledge in the employer’s mind. If the gamekeeper or other person was thereafter caught in possession of a substance, the short questions would be, “Why was it not in your book? Why was it not in its appropriate container? Why was it not in appropriate storage?” The person’s failure to do those things would give rise to the presumption that they possessed the substance for the purpose of setting poison or whatever. I suggest that that structure be examined and implemented.

The Convener: We must finish shortly, but I have questions from Liam McArthur, Aileen Campbell and Elaine Murray.

Liam McArthur: Sheriff Drummond alluded to the link through health and safety provisions between the employer and the employee. When the issue arose at last week's meeting, the SRPBA pointed to the art and part provision that was introduced by the Nature Conservation (Scotland) Act 2004. Does that provide an alternative link? Can you cite any examples in which the art and part provision has brought in an employer?

Sheriff Drummond: The causing and permitting provisions have been in the Wildlife and Countryside Act 1981 since it came in. Off the top of my head, they are to be found in sections 1, 5, 11 and 13. I am not aware of ever seeing a third-party prosecution, if I can put it that way, based on those causing and permitting provisions. A causing and permitting provision does nothing to up the state of the evidence. It is an evidential problem.

Aileen Campbell: I hear what you say about vicarious liability and all the rest of it, but I still cannot get over the fact that there are persistent cases of estates contravening the laws. No matter how many times we get rid of the gamey, it still happens. Who are those people being directed by, if they are managing the land poorly, putting down snares wrongfully or poisoning?

Sheriff Drummond: You are asking the wrong man.

Aileen Campbell: It is all very well to have things written in a contract of employment, but if there are other levers that do not have the same paper trail, such as a tied house, ultimately we will never get the person on whom we want to pin the blame. How do we get round that in legislation?

The Convener: Other panel members might want to answer that.
all the legislation on badgers, salmon and deer—including the WCA, as not fit for purpose. The scenarios that the sheriff refers to can clearly be dealt with as a section 15(a) offence under the WCA. I have had three convictions for that offence in Grampian; it is straight possession of a banned substance. The substance involved was carbofuran, which has been banned for 10 years. A whole range of pesticides that are regularly used in wildlife crime in the context of poaching are listed in the order.

The legislation exists in the WCA, but the frustration that we feel as wildlife crime officers—I speak for my own force, but I also speak for my colleagues in other forces—is reflected in a scenario that I encountered in Grampian. A stash of carbofuran was found, in a sizeable quantity—kilograms of it—and traces of carbofuran were found in a vehicle and in a bag in a shed. Some months later, a dead bird was found and sent to SASA, which confirmed that the bird died from ingesting carbofuran. To me, the people managing that land were concerned with the use of an illegal pesticide. However, the problem was linking that to an individual. The phrase “body corporate” is used in the Protection of Badgers Act 1992. That touches on the point that people manage the land as managers, owners and so on.

I do not know where I sit with vicarious liability, but I see the potential of another offence under the WCA, which is a good act, as it contains plenty of powers and good charges. However, the problem is linking the offence to an individual. If provision was made for linking the offence to a body corporate, in scenarios like the one that I have outlined in which there was a lot of circumstantial evidence, the prosecutor would have a very strong case. They could say that the managers of the land or whoever were concerned in the use of illegal pesticides, which are clearly listed.

Elaine Murray: I ask for two points of clarification, the first of which we have touched on already. If someone is in possession of an illegal pesticide, the law at the moment is sufficient to enable the prosecution of that person for a criminal offence.

Constable McKinnon: That is correct, as it stands.

Elaine Murray: My other point relates to the scenario that Sheriff Drummond outlined. If an employer has signed off, if you like, the pesticide and given permission for it to be kept or used in a particular way, but you find 25 poisoned birds on the estate, who comes under suspicion and could be prosecuted? Is it the employer or the person who is in possession of the pesticide? It could be that the employer has sanctioned the illegal use of the pesticide.

Mark Rafferty: May I answer that? We have one case at the moment in which an employee has been detected in possession of poison, laying poison and killing wild birds. He has accepted his part in it and he blamed his employer. He said that he was provided with the chemicals and instructed to do it. That case is currently awaiting trial and, obviously, I cannot comment on it. Apart from that case, there are very few cases in which an employee blames his employer.

Elaine Murray: Sheriff Drummond suggests in his submission that there is a protection for all employees if their employer has signed off the way in which they use what could be poison.

Mark Rafferty: Because the chemicals are completely illegal—

Elaine Murray: I am not talking about illegal substances; I am talking about the scenario that Sheriff Drummond painted for us, when the substance is legal but there are restrictions on how it can be kept and used.

Mark Rafferty: Situations involving legal substances are few and far between. A legal substance called carbosulfan has featured in one or two cases in Scotland. I have dealt with one case that involved carbosulfan, but cases involving legal chemicals are almost non-existent. It is completely illegal in the UK to have the chemicals that we are talking about under any circumstance, therefore I cannot see that a register or a registration scheme would be useful. To equate the situation to that of drugs, it is illegal to have heroin or cocaine, but people do.

I am personally aware of a number of problem situations in which employers instruct their staff in how to deal with the authorities, how to avoid detection and so on. They distribute leaflets containing that information. Although they insist that their staff sign a contract to say that they will not kill wild birds, they instruct them to do so thereafter.

John Scott: Can you give us the names of those people?

Mark Rafferty: I am more than willing to do so. Obviously, I will not do that in an open forum, but I can make those names available.

Sheriff Drummond: I am sorry, but I am going to be very critical of someone on a personal basis, which is not something that is in my nature.

Dave McKinnon referred to the existence of the term “body corporate" in the 2006 act.

Constable McKinnon: It was the 1992 act.

Sheriff Drummond: Indeed. That is the 1981 act, in its original form, and section 69 contains exactly the same provision. Merely making provision for the prosecution of a body corporate
does nothing to establish the liability of the body corporate. It is a question of the evidential link. In cases like the one that was just described to you, the evidential link is that the person who was found to be in possession of the substance says, “I got it from him.” That is your starting point, and you have the rest of the chain. You might also have corroboration for that. There might be another employee who says, “Yes, I heard him,” and the employer will then be charged with causing and permitting. However, that is a rare sequence of events, as has just been recognised.

The question that you posed concerned the issue of who gets prosecuted in a situation in which dead birds have been found and an employee is found to be in possession of a controlled substance. The answer is that the employee gets prosecuted, because there is no evidence to prosecute anybody else—there is evidence, but it is not evidence of the guilt of somebody else. However, if, in the course of that investigation, that employee says, “I was instructed to do this by him,” and, in further investigation, another member of staff says, “That’s right, he’s always getting told to do that,” you are up and running. It is a question of finding the evidence. The structure is already there. The mere existence of the words “body corporate” neither adds to nor detracts from that.

The Convener: We must leave it there. I thank all our witnesses for their evidence and ask them to make any supplementary evidence that they might have available to the clerks. We have some questions that we have not covered today, and we will ask you to answer them in writing.

That concludes the public part of today’s meeting.

13:53

Meeting continued in private until 14:01.
Wildlife and Natural Environment (Scotland) Bill: Stage 1

10:02

The Convener: Item 3 is continued consideration of the Scottish Government’s Wildlife and Natural Environment (Scotland) Bill. I welcome the first of the two panels from which we will hear today, which comprises representatives of Scottish Natural Heritage. They are Ron Macdonald, who is head of policy and advice; John Kerr, who is a policy and advice officer; and Robbie Kernahan, who is unit manager of wildlife operations and is also—as we found out last week on our visit to the Aviemore area—the panel’s deer expert. We will move straight to questions.

John Scott (Ayr) (Con): Good morning, gentlemen; welcome to the committee. What is your view on the success or otherwise of the voluntary approach to managing deer through deer management groups?

Robbie Kernahan (Scottish Natural Heritage): When putting together the advice that it submitted to ministers, the Deer Commission for Scotland recognised that voluntary deer management must be at the heart of deer management. However, the expectations on voluntary deer management groups to deliver a host of public benefits are probably greater now than they have been at any time since the groups were first put together 30 years ago.

Traditionally, such groups were set up to manage a common sporting resource. They did that reasonably well; some still do. However, with more complex land management and land ownership, it is difficult for voluntary deer management groups to deliver everything that we might expect of them today. Nature conservation designations, issues with road traffic accidents and growing public awareness of animal welfare are putting more pressure on the voluntary system. In our advice to the previous Minister for Environment, we recommended that some legislative change was needed to accommodate that.

John Scott: In that case, do you think that there is a need for statutory provision to improve the way in which the groups work?

Robbie Kernahan: We recognise that we need to be able to provide a better statutory basis on which to build better support and guidance for DMGs and that, at the same time, we need to have a more plausible and credible backstop when the voluntary system fails.

John Scott: How should disputes between owners with different objectives for deer management be resolved?

Robbie Kernahan: One of the key remits of the Deer Commission, prior to merging with Scottish Natural Heritage, was to provide some form of facilitation between estates that are managing for different objectives. That is becoming more commonplace; as community ownership grows, and as there is a more diverse range of ownership, it will continue to grow.

The voluntary system struggles with reconciling conflicting objectives, especially when they are two private conflicting objectives and there is perhaps not the clear, direct opportunity for our involvement—in other words, there is a lack of designated sites and so on. It is difficult for voluntary groups to reconcile two private land managers who have completely differing objectives. They do not necessarily have the capacity and, as often as not, they do not have the resources to bring in external facilitation if it is required.

Peter Peacock (Highlands and Islands) (Lab): To take a statutory approach, which is what the Deer Commission previously advocated, is quite a significant step. You have to do it on the basis of the public interest. What would the statutory approach be seeking to protect in the public interest?

Robbie Kernahan: The starting point for that is that no one owns wild deer; they own only the right to take deer. Wild deer are a common resource; as such, we have recognised for a long time that people need to work collaboratively to manage that shared resource and to derive the benefits that we get from deer, such as designated sites in good condition, animals shot well and managed to the highest welfare standards, and the sporting revenue that comes from the sporting resource. Deer provide a host of economic and downstream benefits to rural communities that may not have much else in the way of employment.

The impact of deer on habitats can provide a host of ecosystem benefits. Deer contribute to, and are a significant part of, a range of things. It is difficult to talk about the public interest in its wider sense because deer impact in a host of ways, but we can narrow that down to specific things that we have used as triggers for intervention in the past. Over the past five or 10 years that has been specifically to do with deer causing damage to natural heritage interests, agriculture and forestry, and areas where deer may pose a threat to public safety. However, other interests are coming to the fore.

John Scott: In your submission, you say that the public interest needs to be defined. Is what
you have just said your definition or is there anything that you would wish to add?

Robbie Kernahan: One of the things that came through in the consultation was concern about how we define sustainable deer management and the public interest. To a certain extent, we can already do that reasonably well; indeed, we have done so in terms of trying to justify what actions the Deer Commission and SNH will take. There is that element to it. However, it is also about trying to keep one eye on the future to see what else deer will have an impact on that may be in the public interest, such as carbon soils and carbon sequestration. It is about how well we equip ourselves legislatively to take action, and not only how we currently define public interest but how we might in the future.

John Scott: Is there anything more that you would like to add on sustainability? You thought that there should be a duty to manage deer sustainably, but that is not in the bill. Will you develop that thought?

Robbie Kernahan: I alert the committee to the fact that originally, in our submission, the Deer Commission—supported by SNH and the Forestry Commission—recognised that with the right to manage land comes a certain amount of responsibility. At the moment, the responsibility sits on SNH to manage deer or to co-ordinate the management of deer. We thought it only appropriate that that duty should be shared among those who have the rights to take deer. We recognise the difficulty of defining sustainability in legislative terms. We thought that that would be supported and underpinned by a code, which would have a lot of stakeholder buy-in. In other words, the code would be developed with stakeholders so that everyone would have an opportunity to help to illustrate and articulate what we mean by sustainable deer management in its broadest sense—not just the ecological impacts of managing deer, but the economic and social impacts.

John Scott: Are you developing a code as we speak? Will it be available soon, as the bill progresses? Where are we on that?

Robbie Kernahan: We have had one meeting to bring together a range of stakeholders to discuss and agree the outline structure of a code and what it might look like. Essentially, it will be designed to help to guide people’s behaviours in a range of circumstances. That one meeting was quite productive, and we have put together a timetable to coincide with the development of the bill to ensure that we have a draft code in time for the conclusion of the bill process. We have started the process: we have given it quite a lot of thought and are bringing in the right people to ensure that everyone is involved.

John Scott: For information, who are the stakeholders in those discussions?

Robbie Kernahan: The stakeholders include animal welfare charities such as the Scottish Society for the Prevention of Cruelty to Animals and the British Deer Society, the Scottish Gamekeepers Association, the Association of Deer Management Groups and the British Association for Shooting and Conservation. Those are the organisations that are foremost in my mind, but if there is any requirement to bring in any additional expertise, we will.

John Scott: I am interested to know whether landowners are represented on that group.

Robbie Kernahan: The Scottish Rural Property and Business Association and the ADMG are the key representatives of landowners’ interests. If required, we might need to think about bringing in NFU Scotland, to ensure that all the agricultural issues are dealt with adequately.

Aileen Campbell (South of Scotland) (SNP): In Langholm, we heard from NFU Scotland that it would be a good idea to have it on board with that.

Aileen Campbell: For information, who are the stakeholders in those discussions?

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Aileen Campbell: The Scottish Rural Property and Business Association and the ADMG are the key representatives of landowners’ interests. If required, we might need to think about bringing in NFU Scotland, to ensure that all the agricultural issues are dealt with adequately.

Aileen Campbell: I think that the JMT feels that there is a lack of management of deer at the moment and that something needs to be done. It feels that SNH is best placed to take action and that—because what was happening was not sufficient—SNH should have a stronger role.

John Scott: The Deer (Scotland) Act 1996 allows us to take action as and when we think it appropriate, when deer are causing damage. Some of the provisions in the bill will strengthen the opportunities that SNH has for taking action. I am not entirely clear what the JMT expects SNH to do over and above what it currently does. As you say, there are competing priorities and we have finite staff and budgetary resources. We tend to spend money in areas in which we think that the most urgent action is required.

Aileen Campbell: I think that the JMT feels that there is a lack of management of deer at the moment and that something needs to be done. It feels that SNH is best placed to take action and that—because what was happening was not sufficient—SNH should have a stronger role. However, given that we are all aware of the cuts and the different financial pressures that every
organisation faces, would you be able to deliver on that suggestion?

Robbie Kernahan: I go back to the commission’s original advice to the Government and our belief that voluntary deer management must be at the heart of delivering sustainable deer management. The majority of that comes from significant private investment, so we are already deriving public benefit and not at the expense of the taxpayer, which should continue. It is a question of being clear about the point at which it is appropriate for the Government or SNH to step in and take action. In developing the code, we will clarify what the triggers might be and we will ensure that they are quite closely aligned with the legislative powers that will be available to us through the bill. That is about as much as we can expect.

Liam McArthur (Orkney) (LD): I return to an issue that we touched on last week. We have already explored the public interest and public benefits. You will be aware that some concern has been raised about the shift in definition from “severe damage” to “damage” in the Deer (Scotland) Act 1996 for when SNH action would be triggered. Why is that necessary, and what would trigger SNH action under that criterion?

10:15

Robbie Kernahan: We must recognise that the 1996 act is not consistent in how it uses the term “damage”. An example relates to applying to shoot deer out of season under section 5 when deer are causing damage to unenclosed ground or the natural heritage. The bill uses the term “damage” in section 7, but in section 8 it refers to “serious damage”, as it does in sections 10, 18 and 26. Therefore, the term is not applied consistently throughout the act, and we hope that through this process it can be made much more consistent.

We must also recognise that, when considering compulsory action under section 8 of the 1996 act, the burden of evidence to demonstrate serious damage is difficult for someone who builds a case on the fact that they have tried the voluntary system under section 7, which makes reference only to damage.

If I am honest about it, we are probably quite relaxed about whether we go with “damage” or “serious damage”, but we would like the term to be applied consistently throughout the 1996 act.

Liam McArthur: Do you find that the 1996 act inhibits you from taking action that you want to take simply because there are definitional issues around “serious damage” and the evidential base that is required?

Robbie Kernahan: I am sure that you will hear more from John Milne, the previous chairman of the Deer Commission, in the next evidence session, but I know that the commission never used its compulsory powers under section 8 of the Deer (Scotland) Act 1996 partly because of the difficulty of being able to demonstrate serious damage, the costs and evidence base that are required to do that, and the possibility—indeed, the likelihood—of a successful challenge to any work.

In the past, the commission’s view was that the 1996 act is slightly unwieldy as it is currently worded, and any action under it would be subject to legal challenge. If we have an opportunity to clarify the term “damage” or to think about how we define it clearly and more concisely, that will be a significant improvement to the current legislation.

Liam McArthur: Do you envisage that change leading to a more interventionist approach by SNH?

Robbie Kernahan: One benefit that we see in the provisions is that there is a clear timeline that gives us an opportunity to negotiate an agreement with a number of owners. That is time bound and, if we have not secured agreement in that time, we can move on to compulsory measures, which clearly define why and when we would take such action.

Liam McArthur: That is helpful.

I want to move on to the competence of those who are permitted to shoot deer. Will you set out for the committee what you see as the rationale behind the requirements? It has been pointed out to us that similar requirements are not needed for the shooting of foxes or rabbits, for example. It has also been highlighted that the number of incidents in which accidents have occurred is limited—the one that has been brought to our attention involved a foreign stalker who had taken the competence test and would not have been debarred under the bill. Will you give us a better sense of the rationale behind the move?

Robbie Kernahan: The starter is that deer welfare must be at the heart of any legislation to ensure that we provide sufficient safeguards and security to everybody in Scotland that deer are managed to the highest possible standard. I do not think that anybody would disagree with that.

Liam McArthur: Nobody would disagree, but people would probably assume that there is, if we are looking to make a change through the bill, perceived to be a problem that needs to be addressed.

Robbie Kernahan: Deer welfare is an issue for 365 days of the year. Although under the 1996 act there are statutory close seasons to protect deer...
welfare at certain times of the year, the owner-occupier of ground can legally control deer throughout the year. It would be up to such individuals to decide whether their action to prevent damage is balanced against the possible welfare implications of leaving orphaned deer calves.

Under the 1996 act, there is an opportunity for those people to have a negative impact on deer welfare. We had hoped to ensure that anybody who shoots deer in Scotland—a professional stalker, a recreational stalker, a farmer, a forester or a crofter—would be clear about what we consider to be the basic level of competence for deer welfare, food safety and public safety in term of firearms management. We recommended that anybody who shoots deer in Scotland should have that basic level of competence and that their simply having a firearms certificate would not be sufficient to provide reassurance that deer are being managed and shot to the highest possible standards.

Liam McArthur: You have touched on the general licence for shooting out of season. What other provisions would need to be satisfied for the sanctioning of a general licence to enable owner-occupiers to shoot deer out of season?

Robbie Kernahan: Currently, anybody who applies to shoot deer out of season or at night must apply to the Deer Commission, and they have to demonstrate to SNH that they are fit and competent. However, those same tests are not applied to owner-occupiers of agricultural or forestry ground, who have the opportunity to shoot deer under section 26(2) of the 1996 act. We had hoped that anybody who wanted to shoot deer out of season would have had to demonstrate their competence, which would have required a change in the law.

Liam McArthur: You have also expressed the view that you envisage deregulation of the close seasons through the licences and system of authorisation. How do you see that working?

Robbie Kernahan: That goes back to our original advice. If everybody who wants to shoot deer in Scotland has demonstrated that they are competent to do so—if they have studied the theory and demonstrated practically that they understand the implications regarding shot placement, food safety and all the ecology associated with deer and their reproductive cycle—there may be an opportunity to deregulate certain elements and allow individuals to make decisions on the basis of their local circumstances. We would support that in principle. If everybody has demonstrated their competence, let them be empowered to make decisions about when they shoot deer and how many deer they shoot.

Liam McArthur: As you have expressed that, it seems to make sense. Have any concerns been raised about the implications of that? Would it be more of a free-for-all?

Robbie Kernahan: Yes. Inevitably, when that idea was consulted on, a lot of specific concerns were fed back. It was suggested that, if the close seasons were done away with or changed for both male and female deer, some greedy people may start to overexploit the resource. Our argument against that was that if the powers exist to safeguard the resource, those can be rolled out in the event of overexploitation in much the same way as we can use other powers if deer are causing damage and more need to be shot. The view of the commission and SNH was that we have sufficient safeguards in place to prevent that from happening.

We recognise that there must always be a close season to ensure that female deer and their dependent offspring are protected. However, there could and perhaps should be a little bit more flexibility around the close season for male animals to better reflect local circumstances. In situations that I am aware of, a bit more flexibility around the close season would be helpful to some; however, I recognise that that was not reflected in the feedback from the consultation.

John Scott: I want to develop that point about the necessity of the close season for male animals. In your written submission, you suggest that it is perhaps not necessary. Have I understood you correctly?

Robbie Kernahan: If you are talking about a close season based simply on welfare issues, the view of the commission and SNH is that it is entirely appropriate to have a close season for female deer to protect them at times when they have dependent young.

John Scott: Indeed.

Robbie Kernahan: However, we could not see any argument for having a close season for male animals on the basis of welfare. There is an argument about the protection of a sporting resource, but that is a separate issue.

John Scott: Yes. The other thing that I want to ask you about is the shooting of deer at night. I was not even aware that the practice took place. How much night shooting of deer is there? I presume that it is not done for sporting purposes but for culling.

Robbie Kernahan: Under section 18 of the 1996 act, we can authorise people to take deer at night when they are causing damage to agriculture and woodlands. Under that act, people have to be quite clear about the justification for applying for a night-shooting licence, and as often as not, it is in
circumstances in which deer are not present during the day. They might come into fields or woodlands at night, which might provide the only opportunity to prevent them from causing damage.

I am trying to think how many deer are shot at night. I think that the figure is approximately 6,000 or 7,000, but I can double-check. That gives a flavour of the scale of the activity.

John Scott: Goodness. Thank you.

The Convener: We move on to game and quarry species. The bill will add some game birds to the schedule of quarry species in the Wildlife and Countryside Act 1981. What information does SNH collect or hold about the conservation status of quarry and rarer game species such as black grouse and ptarmigan? Are you able to access bag records from estates? How would a decision be taken that a species has become so rare that it is no longer appropriate quarry?

Ron Macdonald (Scottish Natural Heritage): We do not routinely record population levels of game species. We carry out detailed research and surveys on species that are of particular conservation interest, such as ptarmigan. You have put your finger on an important point, convener. The current estimate of the game bird population is very low.

National game bag records are undertaken by the Game and Wildlife Conservation Trust, and by the British Association for Shooting and Conservation. SNH does not carry out that work.

The Convener: Are those other organisations quite liberal about sharing their information with SNH?

Ron Macdonald: Yes. Most of the information that is gathered about national game bags is available online, so everyone can look at it and make their own judgment about where the populations are going.

Peter Peacock: I want to move on to brown and mountain hare. We have had, on the face of it, conflicting evidence. The Game and Wildlife Conservation Trust said that brown and blue hare populations are increasing throughout Scotland, but the Hare Preservation Trust gave evidence that the brown hare population in Britain has fallen by 75 per cent since 1960. What is SNH’s information about the hare population?

Ron Macdonald: The most authoritative source is the Game and Wildlife Conservation Trust, which undertakes the national game bag census. That is an index rather than an absolute measure of population. The figure for mountain hare shows that no long-term significant changes have been detected, due to recycling populations. However, a 10-year trend shows a non-significant decline. That is also shown in an associated survey that was carried out by the British Trust for Ornithology as part of the breeding birds survey reports. On the basis that there has been no long-term decline, there is no case for an absolute ban.

On brown hare, the trend is unclear. Neither the 25-year nor the 10-year United Kingdom trend is statistically significant. Essentially, therefore, the population is at a standstill.

Peter Peacock: Is SNH happy to accept that the Game and Wildlife Conservation Trust evidence that you have just cited is robust?

Ron Macdonald: I believe that it is robust. We undertook some further research in 2008 in conjunction with the Game and Wildlife Conservation Trust and the Macaulay Land Use Research Institute, on the distribution of mountain hare. We found that there had been no change in the distribution of the species, so the species is healthy within the Scottish and UK contexts.

10:30

Peter Peacock: Okay. That is helpful. Thanks.

It has been suggested to us that, in some grouse moor estates, because hares carry ticks and ticks affect the grouse, a new policy appears to be emerging of the systematic culling of hares. Do you have a view on that? Are you aware of that?

Ron Macdonald: Yes, we are aware of it and we have concerns about the sustainability of culls of mountain hares in certain areas, which seem to be intended primarily to control ticks. For that reason, we commissioned further research last year to find a relatively quick method of assessing local populations of mountain hares, which will be relevant to any licensing regime that may be enacted—possibly through the WANE bill. We have concerns and we are taking steps to put in place appropriate methodology to measure changes in mountain hare populations at the local and regional levels.

Peter Peacock: You mentioned the issue of licensing. Let me put this in a wider context. The suggestions that have been put to us about the taking of hares extend to the taking of other species such as stoats and weasels, which might affect ground-nesting birds on grouse moors. It has also been implied that the same pressures lead to the trapping or poisoning of raptors. That seems to be part of a wider scorched-earth approach that is being taken on some estates—I stress that it is not all estates—that are introducing new management practices. In SNH’s experience, is the issue wider than just the culling of hares? How does it relate to the issue of licensing? Does SNH advocate, or have you considered, that
grouse moors should be licensed so that such matters could, ultimately, be better controlled?

**Ron Macdonald:** Obviously, we have grave concerns about the on-going persecution of birds of prey that is primarily associated with grouse moors. Although there has been on-going dialogue—the committee has visited Langholm moor—and we have made great strides in talking around the table and reaching a mutual understanding of what the key issues are, we are concerned that there has been no substantive progress in reducing the scale of the persecution of birds of prey. We have a continuing concern about that. We are keen not only to continue enforcement of the law but to seek other measures to bolster the current law. The committee has heard several suggestions of such measures from the likes of Sheriff Drummond.

On your specific point about the licensing of grouse moors, I think that that would be possible. We want to work towards the sustainable use of land, but whether a licensing regime would be the right way forward is an open question. The proportionality of that could be an issue, as it might mean putting a burden on the majority for the sins of the few. Also, what would be licensed? Would it be the person or the land? There is a series of issues that would need to be worked through. Nevertheless, the principle of a licensing scheme is worthy of consideration, particularly given the on-going persecution of birds of prey.

**Peter Peacock:** I will return to birds later. The point simply developed out of my question on a policy that appears to be emerging in relation to hares and other species including birds. Thank you for your comments on the idea of a licensing system. It is obviously something that SNH has considered.

I have a final question on hares. What is SNH’s response to the call from one organisation that the close season for hares should be shortened by a month?

**Ron Macdonald:** I have two points to make on that. First, our advice was based on the pregnancy rate that we have encountered in shot hares. In February, 47 per cent of the female brown hares that were shot were pregnant; in September, the figure was 44 per cent. There are comparable figures from March for mountain hares. If you shortened the mountain hare close season by a month, that would take out an appreciable proportion of pregnant female mountain hares and would have an impact on the welfare of leverets. We believe that it is an animal welfare issue.

My second point is about the impact on management. We have statistics from research that we undertook on the number of mountain hares that are shot. We reckon that just over 10 per cent of mountain hares are shot between March and August in commercial formal shooting. For unlet or informal shooting, the figure is 2 per cent. Shooting mountain hare in February does not seem to be very important to their management, so the impact on operations would be low. Most management is conducted from September to February, so March does not appear to be an important month.

**Bill Wilson (West of Scotland) (SNP):** I want to be sure that I have understood your comments. Did you say that hare populations are being estimated from the game bags?

**Ron Macdonald:** Yes.

**Bill Wilson:** Let us take the scenario that Peter Peacock described, in which the kill of hare increases in intensity—because of culling to reduce ticks, for example. I presume that that would increase what was in the game bag. Would that create the possibility of an increased intensity of killing and a higher game bag against the backdrop of a declining population? The game bag is not a direct measurement of the hare population.

**Ron Macdonald:** It is not an index, but the figures are smoothed over several years. We look across the country and we can reflect differences in a region. The statistical power is still sufficient to allow monitoring over several years—enough statistics are available. If any one estate performs intensive culls, that is balanced by areas elsewhere in the country doing less.

**Bill Wilson:** That is fine—I just wanted to check that.

**John Scott:** Are hare and deer still culled in Forestry Commission Scotland areas or private forests? Is that culling—particularly the culling of hare—part of the national statistics? I remember that practice from my childhood, when hare were shot on sight to protect young trees. I appreciate that we are not planting the number of trees that the Government would like.

**Robbie Kernahan:** I cannot quantify the volume of hares that are shot on the public forest estate, but I suspect that that is still common practice to protect the woodland resource. To allow young trees to become established, it is crucial to maintain deer management in woodlands.

**John Scott:** Does that go for hare and for deer, which do the same thing?

**Robbie Kernahan:** Yes.

**Bill Wilson:** You note in your submission that single witness evidence is a legal anomaly. Pretty much everyone agrees on that. However, we are not clear on whether you support abolishing that
Ron Macdonald: The provision is an anomaly and should not be extended. Corroboration is a basic tenet of Scots law. We see no need to extend the provision. Sheriff Drummond said that, even with single witness evidence, he would require separate corroboration. I hope that that clarifies our position. We are not saying that the provision should be extended; it is an oddity and we see no benefit in extending it to other crimes.

Elaine Murray: In your submission, you make an interesting point about the definition of “snare”. You say:

“it is uncertain whether snares are considered to be traps for the purpose of licensing”

under the Conservation (Natural Habitats, &c) Regulations 1994. People who use snares have tried to impress on us that snares are not used as a method of killing but are used to restrain an animal until the gamekeeper can get to the snare and despatch it. You say:

“SNH would support measures taken to include snares as traps including any necessary amendments to domestic legislation.”

What would be the effect of such an approach?

John Kerr (Scottish Natural Heritage): There is perhaps an anomaly in the legislation, in that there is a difference between the Wildlife and Countryside Act 1981 and the habitats regulations. The 1981 act refers to “trap or snare” in section 11, “Prohibition of certain methods of killing or taking wild animals”, whereas the equivalent regulation in the habitats regulations refers to “traps which are non–selective according to their principle or their conditions of use”.

The problem is that, although we can license the use of certain prohibited methods under the habitats regulations, the use of only the word “traps” in the regulations and the fact that the 1981 act appears to suggest that traps and snares are not the same thing mean that there is doubt about whether we can license the use of snares to take, in particular, mountain hares, which are an annex V species under the habitats directive.

There has been much doubt about that over the years. I understand that a case is pending that might clarify the position—I think that it will be heard in Inverness later this year. As far as I am aware, the legal fraternity has always had difficulty in establishing whether someone who is snaring mountain hares is falling foul of the habitats regulations.

Elaine Murray: So, what you suggest would not make any difference to the use of snares for trapping foxes, for example, or create the opportunity to license the taking of non-protected species.

John Kerr: No. It is just to clarify the intention of the legislation.
The Convener: We turn to species licensing. As I understand it, certain species, such as otter and wildcat, are protected under the habitats directive, and others, such as red squirrel and pine martin, are protected under the Wildlife and Countryside Act 1981. The bill would remove anomalies in species protection. Is SNH comfortable that the tests for issuing licences under the 1981 act, as amended by the bill, and the 1994 regulations would be the same?

John Kerr: Is that in relation to the new purpose?

The Convener: Yes.

John Kerr: The new purpose is intended to deal with anomalies relating to schedule 5 species, which are predominantly species such as red squirrel and water vole, as certain developments have been held up because no licence can be issued for the disturbance of the place of rest of those species. Those developments are not covered in the purposes for which a licence can be issued under the 1981 act. The new purpose is intended to address that anomaly.

Ron Macdonald: As John Kerr said, the policy context is the mismatch between the species that are covered by the European habitats directive, which includes a public interest test, and those that are not. The provisions were strengthened by the Nature and Conservation (Scotland) Act 2004, which created an absolute protection for places of shelter such as dreys and nests. That has created some difficulties for our staff in dealing with casework that involves planning applications, for example.

I will give an example from Grampian in your area, convener, which involved an application for the reopening of a quarry that was also the home of water voles. The water vole population was very disaggregated, with the burrows spread out across several areas, and the conditions were not the most healthy. We felt that if we could mitigate the situation, we could improve things for their welfare, but the advice that we got was that, because the protection for the burrows of water voles was absolute, it was not possible to introduce any mitigation that would benefit the water vole population. Ultimately, the quarry and accompanying operations had to be redesigned to avoid any impact on the water voles’ burrows. We felt that not only was that disproportionate in terms of development and the wider public interest, it was detrimental to the water vole population. The bill will allow us to consider reasons of economic and social purpose alongside the conservation of species in a way that is much more joined up and holistic. We believe that the provision is reasonable and will deliver benefits for species.

The Convener: That is a good example of where a law can have unintended consequences.

Ron Macdonald: Yes.

The Convener: You think that we are getting it right in the bill.

Ron Macdonald: I think so. The challenge will be in some of the guidance, for example in defining where public interest begins and ends. Certainly, that will be the case for SNH if ministers decide to delegate the licensing function to us. If a licensing scheme is introduced, it needs to be proportionate and not overly bureaucratic. For example, we are not in the business of stymieing forestry development. We have to devise systems that are protective and also proportionate and minimal in bureaucratic terms.

Peter Peacock: On another aspect of licensing for the taking of species, the SGA and others have put arguments to the committee for the need to control buzzards, particularly in relation to the release of pheasant and red-legged partridge on the basis that they could be regarded as livestock, having been hand-reared. What is SNH’s view on the need to control predatory birds, which are of course—by and large—protected species, in the way that the SGA has argued?

Ron Macdonald: The first point to make is that there is provision in section 16 of the 1981 act for people to apply for licences to control serious damage to livestock, so there will be nothing in the bill that is not currently available. Essentially, the test relates to what constitutes serious damage, whether there are any suitable alternatives that can avoid or mitigate the impact of the birds, and what the impact is on the conservation status of the species. A thorough, rigorous process is already in place and we have been working alongside the SGA and the Scottish Government to develop guidance, which will further inform the trigger points for serious damage in that context.

Peter Peacock: You see no need to change the law; it is about doing more to illustrate when the law might apply. Is that a fair summary?

Ron Macdonald: Yes, I think so. The other point is that it has to be clearly demonstrated that all reasonable efforts have been made to find a suitable alternative approach—in other words, the non-lethal control of buzzards. I think that the SGA and other land management organisations would support that. Lethal shooting of buzzards, which are a fully protected species, is a last resort. Lots can be done through the design of cages and scaring to avoid the next step.

Peter Peacock: But, in the final analysis, subject to the safeguards and other approaches
being tried first, SNH is not opposed to the removal of buzzards in defined, clear circumstances, is it?

Ron Macdonald: Not at all. As I say, the licensing regime allows for that, so we would not be in a position to oppose it.

Peter Peacock: It is a question of the level of the hurdles that have to be cleared before a licence is granted.

Ron Macdonald: Yes.

Peter Peacock: In evidence that was given to us at the committee meeting in Langholm, the SGA argued—it was certainly the implication of what it was saying—that if licences were more freely available, that would reduce bird poisoning. In fact, I think that the SGA representative thought that, if they were, bird poisoning would decline in a matter of years, which implies that bird poisoning occurs to control the situation that we are discussing. That implies that there would be a slightly lower hurdle than the one that you are perhaps thinking about for someone to get a licence. What is your view on that?

Ron Macdonald: It would be wrong to imply that, in developing guidance that will assist with the ease of making applications, SNH or any other Government body would lower the bar in relation to the evidence required. That evidence bar needs to be kept high, because we have obligations under the European birds directive and derogations in respect of the directive have to be fully justified by clear evidence of need and of the fact that there will not be an impact on the conservation of the species being controlled. Therefore, I would tend to disagree. The law is the law and we have to apply it in a way that fully protects the buzzard, which is a protected species.

John Scott: You would accept, nonetheless, that the success of conserving this particular species, the buzzard, has led to a growing problem for people who are rearing pheasant poults and red-legged partridges. How do you suggest that that problem be dealt with, given that there is obvious unhappiness about the current situation, which you are defending?

Ron Macdonald: I am not defending it; I am stating the status quo. I think that the way forward—it is something that we have been doing through the Scottish Government—is to develop the guidance. The SGA, the SRPBA and land managers have been actively involved in trying to tease out what are the trigger points and what level of economic impact in relation to pheasants would determine that a licence could be considered, alongside consideration of suitable alternatives and the impact on conservation. I recognise the frustration, but we are working together with the land management sector to try to revise and update guidance that will make it easier for people to apply without necessarily lowering the bar. The sector is happy to establish the bar but, up to now, it has felt alienated from the process. It is now part of the process, which is a major step forward.

John Scott: It is a work in progress, which you are optimistic will lead to a satisfactory resolution.

Ron Macdonald: Yes.

Bill Wilson: The bill would allow the Government to delegate the function of issuing licences to SNH and local authorities. Do you have a view on the idea that local authorities could issue licences?

Ron Macdonald: We consider that local authorities could be in charge of licensing. When they consider planning applications, it is normally part of their duties to have regard to conservation. For example, if European protected species are involved, local authorities are the competent authority under the habitats directive. They are fully aware of their responsibilities under the 1994 regulations and are well versed in the nuances of the licensing system, so they could carry out licensing.

Bill Wilson: You would be comfortable with local authorities carrying out licensing.

Ron Macdonald: We are comfortable with that. We obviously have a close working relationship with local authorities because, to mention only the European habitats directive, we tend to be consulted on most, if not all, planning applications that involve European protected species. We are comfortable with providing such advice to them.

Bill Wilson: In the case of the issuing of licences, would SNH want to be a compulsory consultee for the local authorities? I presume that a local authority might decide not to consult you. Is that possible?

Ron Macdonald: It is possible. It would be highly desirable if we were consulted, because we can provide the necessary expertise, but I am neutral about whether that requires to be compulsory. It would be preferable if we were consulted.

Elaine Murray: In some circumstances, local authorities themselves might apply for licences—for example, for the control of seagulls or protected species that are a nuisance in particular areas. Would there be a problem with local authorities being able to issue licences to themselves? Would there be a need for safeguards or would it facilitate the process?

Ron Macdonald: Currently, SNH considers applications from its own staff on national nature reserves for the conservation of species. We have
no difficulty in separating the roles of our licensing section and our front-line staff. In much the same way, I do not imagine that there would be a difficulty with local authorities considering licences for their own staff provided that there was clear separation of the licensing function.

**John Scott:** I will take you on to a question about resources and the costs of licensing. Your workload has already increased significantly—by 250 per cent between 2005 and 2008—and, were goose licensing to transfer to you from the Scottish Government rural payments and inspections directorate, that would add another function. At the moment, you have allocated a cost of some £109,000 to that. The bill considers adding on licensing in connection with the taking of hares and rabbits, and snaring. How do you intend to resource that additional workload, given the declining budgets that you are almost certain to face?

**Ron Macdonald:** That is a good question, to which I have a part-answer. My chief executive, Ian Jardine, wished to raise that issue with the committee. We are in a phase that is being called the age of austerity or decline in public sector funding, so we have a real issue.

There is agreement that the proposal to transfer some of the species licensing that our sponsor division—the natural resources division—currently carries out would amount to four full-time equivalent posts transferring over to SNH. Beyond that, there is no further provision at the moment. Either we would have to provide that resource ourselves by reprioritising our work within SNH or else we would get additional grant in aid from our sponsor division.

11:00

**John Scott:** You said that you wanted to raise that issue with the committee, but I point out that we are the Parliament, not the Government. It might be more appropriate to raise it with the Government. However, thank you for your answer. I take it from that that there will be some difficulty.

**Ron Macdonald:** Yes. That is partly because we do not yet know the full scope of the delegation from Scottish ministers—what will be transferred. It will be significant, covering deer management, species licensing and muirburn. There is the question of not only staff but all the systems that are required to ensure that things run efficiently, from information technology through to customer care.

**John Scott:** On financing and your ability to deliver the requirements within budget, presumably it would make more sense to have the minimum amount of licensing, rather than to license everything. Taking the voluntary approach that you talk about, particularly with regard to deer, would make sense. Does what I am saying make sense?

**Ron Macdonald:** The approach has to be proportionate but still comply with the provisions that the licensing system sets out. If we are running a licensing system, we have to ensure that we discharge our duty efficiently, monitor and evaluate the system and report back on its effectiveness in relation to the population and to applicants’ use of licences. Even with effective running, a substantial amount of work remains to be done and we have yet to cost that fully. The Finance Committee has invited us to submit our estimates of the cost of all the potential duties that will fall our way and we are keen to do so. It is a work in progress.

**John Scott:** That work is in progress and you have to report the figure to the Finance Committee, so we are not trying to pin you down to anything, but what is the ballpark figure? Given that the current requirements cost £100,000, are we talking about additional tens of thousands or will you require £300,000 or £500,000? I just want to get some idea of the scale, which will allow us to discuss these matters with the minister and others.

**John Kerr:** I think at this stage we are looking at hundreds of thousands.

**John Scott:** In addition?

**John Kerr:** That is in addition, given the additional staff requirement for some of the licensing and the time required to develop some of the guidance. The bulk of it will be for the licensing that is currently done at Victoria Quay. We do not expect some of the new licensing provisions, such as on taking hares out of season and on muirburn, to swamp us. The figures on muirburn are difficult to estimate but, on the basis of figures from England, we reckon that there will probably be about 10 applications a year. However, all those applications will need to be considered, and there is a staff resource requirement for that. Some of that can probably be absorbed, but we are looking at hundreds of thousands at this stage.

**John Scott:** So you are not looking at percentage increases; you are looking at multiples of your existing budgets.

**John Kerr:** Yes.

**The Convener:** One of the things that landowners mention is the time that it takes for SNH to consider and grant a licence. By that stage, time has elapsed and we are into another year and another season. Can anything be done to speed that up?

The other thing is that, under the 1981 act, there is no appeals process if an application for a
licence is refused. What can an applicant do if a licence is refused?

Ron Macdonald: I will start off with the concern over speed. Under SNH's current customer service standards, we have 20 working days to turn around the licence application and issue the licence, provided that all the information is supplied. Over 99 per cent of licences are issued within two weeks—that is 10 working days—and most of them are issued within a couple of days. We have no concerns about our ability to turn the licence applications around. Another way of improving our customer service that we are considering is to issue multi-year licences. If, instead of having to apply annually, someone could apply for a licence for consecutive years, that would help in many ways.

In conjunction with stakeholder bodies, we have also been trying to get their members to submit applications well in advance of the need for them so that the licences can be worked up and ready for issue as and when a problem arises. For example, in the case of the predation of ravens on lambs, we can turn around the licence applications and our advice to the Government in a day. We do not have to go out and conduct large-scale surveys; we have most of the information to hand and we are quite confident that we can provide a pretty good service.

The Convener: Good. That is reassuring. What if licences are refused?

Ron Macdonald: At the moment, there is no right of appeal. We always try to get back to applicants and explain fully the reasons why we have turned down an application. Under the freedom of information regime, we make freely available to them all the information that we have used in considering their application. That is another area in which we have tried to develop guidance, providing examples of what a successful application will look like and what an unsuccessful application will look like. We are trying to improve people’s understanding of how we reach our decisions. There is currently no right of appeal, but we discuss the matter with unsuccessful applicants at their request.

Liam McArthur: The bill will make an exception to the prohibition on the release of non-native species to allow the release of red-legged partridges and pheasants. Last week, we heard evidence from RSPB Scotland and Scottish Environment LINK that some releases are now of such a scale that they give rise to potential environmental problems. You have referred to the need to consider the sustainability of the land, so I am interested in your observations on the point that RSPB Scotland made. Is there a potential issue? If so, ought there to be powers in the bill to regulate the release of those two species?

Ron Macdonald: We see no reason why pheasants and partridges should be exempted on biological grounds. We recognise that the Government may have good reason for exempting them—perhaps the importance of pheasants to the economy or whatever—but there does not seem to be a clear justification for doing so on biological grounds. It is a major departure from the mainstream policy.

We are concerned about certain localities in Scotland that have been subjected to large-scale releases, which have caused problems. We had a case on Deeside where a large-scale release of red-legged partridges caused damage to important lower plant species—bryophytes—outside the protected site, although we resolved the situation by agreement. Such problems occur, and several large-scale releases of pheasants have caused concern about their impact on biodiversity in Scotland. Therefore, I basically agree with the RSPB line that there are local issues. I disagree, however, that the problems are extensive and widespread; they tend to be localised.

Liam McArthur: Your comments suggest that, even without a backstop power, you have found workarounds in instances in which problems have arisen. You have been able to get traction in discussions that you have held with the responsible landowners and have managed to alleviate the problem.

Ron Macdonald: That is the case.

Peter Peacock: If there were no backstop power, the number and intensity of such releases could increase, even in a localised way, but we could do nothing about that. Does that seem wise?

Ron Macdonald: The situation is slightly different on protected sites. In the case to which I referred, we considered a nature conservation order—essentially, a stop order—that would cause the activity to cease. Beyond protected sites, you are right to say that currently there is little that can be done to regulate or stop the activity.

Peter Peacock: If the rate of releases intensifies, that will have a localised effect on biodiversity, regardless of whether a site is protected.

Ron Macdonald: Potentially.

John Scott: Will you expand on that answer? What is the scale of the problem? You seem more au fait with what happens on Deeside than with the situation elsewhere. Is this a big problem across Scotland? I appreciate that I can always learn, but I am a rural person and am not aware of its being a massive problem. How big is the affected area? Is it 5, 15, 500 or 5,000 hectares? I want to get a handle on the problem, so that we can respond to it proportionately.
Ron Macdonald: The scale of the problem is in single figures per year. It can be counted on the fingers of one hand.

John Scott: Are you talking about hectares?

Ron Macdonald: I am talking about the number of cases; a very small number of acres are affected. We must be proportionate. Releases are taking place on a small scale but have the capacity to create a problem at a local level. For the most part, we have the necessary tools to resolve it on protected sites.

John Scott: I understand that the immediate area of a release pen—which might be a small amount of land—could be affected. Do you have the tools in place to protect such areas?

Ron Macdonald: I think so. We must be careful not to overestimate the scale of the problem. It is relatively small at the moment.

John Scott: I should have declared an interest as a farmer, but not a pheasant rearer or someone who shoots.

Bill Wilson: You may be aware that we have received evidence from Dr Paul Walton of the RSPB on the RSPB’s attempts to deal with an invasive non-native species on one of its reserves. It approached SNH, which sent it to the Scottish Environment Protection Agency, which sent it back to SNH. In light of that evidence, do you accept that there should be a lead body to deal with invasive non-native species? If so, who should that body be? Why have you suggested that it be specified in the code of practice, rather than in the bill?

Ron Macdonald: Was it the RSPB that pointed out that the issue fell between SEPA and SNH?

Bill Wilson: Yes.

Ron Macdonald: We agree. Roles are set out in the rapid response framework that is about to be published, which identifies more clearly than documents that are currently available the lead bodies in particular circumstances. I agree that there is merit in having a lead co-ordination body in Scotland—essentially, a helpdesk that could assign responsibility for taking forward the work to the lead operations body. However, there must be a clear understanding that resources and responsibility for addressing the issue do not rest with the co-ordinating body.

11:15

Bill Wilson: If there is to be a lead co-ordination body, is your preference for it to be SEPA or SNH, given that you said that it would be just a co-ordination body and would not be required to produce the resources to do the work?

Ron Macdonald: I could say that there is a great opportunity for SNH to show leadership, provided that it is appropriately resourced, of course. Does that answer satisfy you?

Bill Wilson: Yes. You have seized the leadership decisively.

You suggested in your submission that the lead body should be specified in the code of practice rather than in the bill.

John Kerr: Yes. We put that in for two reasons: first, because if the decision on who should be the lead co-ordinating body for different sectors changed, there would be no need to change the legislation; and secondly, because it is arguable that which public body in Scotland should take on the role is a matter of Government policy.

The Convener: Is it right that SNH should have discretion to charge owner-occupiers for the cost of implementing a species control order, even if the species is present on the person’s land through no fault of their own?

John Kerr: It is right that we should have the option to pass the charge for species control to a landowner, at our discretion. In reality, we would be unlikely ever to place a cost on a landowner for work that was needed as a result of what a predecessor owner had done, whether it was the landowner’s grandfather or someone else. I think that in reality that would not happen. However, the option to pass costs to the owner, if necessary, should be kept as a backstop.

Aileen Campbell: You will also be allowed to pass the charge to the occupier, who might not necessarily be the landowner. Are you content with that?

John Kerr: There are similar provisions in the Nature Conservation (Scotland) Act 2004 in relation to land management orders.

In the vast majority of cases the costs will be met by the public purse. We would have to consider whether the landowner or an occupier under an agricultural tenancy had control of the land and could carry out the work—that is why we support the approach.

The Convener: We move on to muirburn.

John Scott: Again, I declare an interest as a farmer. I want to talk about the environmental impact of different practices for grouse moor management and sheep farming purposes. For example, there is the practice of burning in strips for grouse moor. What is the impact of burning incorrectly?

Robbie Kernahan: Muirburn is a helpful land management tool, for a variety of reasons. It is carried out for a variety of purposes and brings a host of benefits from an agricultural and a sporting
point of view. However, if it is done poorly it can have a host of knock-on negative impacts on ground-nesting birds and the soil. If it is done at the wrong temperatures and is not well managed, there can be a severe impact on biodiversity. We are supportive of the muirburn code and the regulations that are in place to try to prevent poor practice.

John Scott: Are you relaxed about the potential extension of the burning season through the granting of licences? At Langholm, we heard that bringing forward the start of the season to August or September would bring benefits in the context of controlling the heather beetle.

Robbie Kernahan: We support the granting of licences in September for specific purposes, for example in relation to the heather beetle. However, special licences should not be used as a catch-up for poor planning earlier in the season. That is a slight concern. Such licences should not be a default—in other words, people should not be saying, “If I can’t get all my burning done at the start of the season, within the muirburn season, I will simply apply as a catch-up.” There has to be a particular management purpose for granting a licence out of season.

John Scott: I hear what you say, but I am not sure whether it is practical. The vagaries of the Scottish weather are such that you can go for years without being able to burn at the beginning of the season or through the winter, especially in the west and the south-west, where I come from. I know the difficulties of trying to burn, particularly if you are close to forestry and so on. Wind direction, too, makes a huge impact on whether to burn.

I put it to you that your position is not entirely reasonable, and that late licences could and should be used as a catch-up. For example, the committee recently visited the Langholm estate, which is trying to bring a moor back into use as a grouse moor because of the benefits for the community and the local economy. Given the scale of the problem and the type of burning that is required to reinstate the moor to how it should be, catching up with muirburning would take the estate thousands of man days. Therefore, catch-up should be considered as a reasonable reason for applying for a special licence.

Ron Macdonald: Part of our reticence about simply opening the gates to September licences is predicated on the fact that we do not know what the true impact of late-season burning might be. Part of the purpose of creating the extension is to find out, using research through management, what the impact of later burning is.

On your earlier points, if SNH were the licensing authority, we would have due regard to issues such as poor climate and difficulties at the start of the season in coming to a final decision. What we are saying is that muirburn should be part of a sustainable form of management that should be well planned, in advance. If there are difficulties, we would be the first to consider those and to make allowances for them—there is not an absolute bar on late licences. However, the context for September burning is to address specific management issues. We also want to carry out further research on the impact of later burning on valuable habitats such as moorland.

John Scott: You probably recall that in the days of steam trains, there was a lot of out-of-season burning on moorland close to railway lines because of sparks from steam engines. Obviously there is historic evidence, but I wonder whether any evidence was gathered at the time on the effect on moors of those unintended fires. I appreciate that that is perhaps an odd point to make, but we are talking about evidence on the impact of out-of-season burning.

Ron Macdonald: There is no information that we know of. However, one of our concerns—in relation to steam trains but to out-of-season burns—is the severity of late burns. A much hotter fire tends to be needed to burn off an awful lot of still-green vegetation, and deep fires are extremely damaging to the peat layer on peatlands. I hope that that explains our concern about simply having a free-for-all.

John Scott: I quite agree.

Ron Macdonald: Therefore, there has to be a graduated response. Inadvertently, I may have given you too precautionary a view. All I am saying is that late burn has to be justified in the context of sustainable management overall. Our position is also predicated on our lack of knowledge about the impact of fires late in the season.

Elaine Murray: You seem to be suggesting that some sort of ecological survey should be undertaken before a licence can be applied for. What would people have to include in that survey? That could increase the cost of it. Also, if somebody is reacting to an outbreak of heather beetle or something like that and there is a requirement to burn out of season, they may not have the time to undertake a survey and apply for a licence to take the required action.

Ron Macdonald: We would not require any research to be undertaken regarding heather beetle. We would send out one of our area officers to confirm that there was an issue with heather beetle and a licence would be issued within a couple of days. The issue is more to do with managing non-priority issues such as improvements to an area for game shooting in an upland area, where there might be vulnerable
species such as lichens, or an upland dwarf shrub heath, where we would not know exactly what the impact would be. We have an open mind about whether we would require further research in those circumstances. In the circumstances that you mention, there would be no requirement for research; the licence application would be turned around as normal.

Liam McArthur: The bill contains a power to merge sites of special scientific interest, and SNH has said that it envisages half a dozen to 10 such mergers. We have received evidence from Western Isles Council and the Scottish Association for Country Sports querying how the power might be used. Are we talking about SSSIs that are next to each other and have been designated for the same reasons, which are the ones that SNH has identified, or could the measure be extended to combination of SSSIs that have been designated for slightly, or even dramatically, different reasons?

John Kerr: The power will be used mainly to merge two adjacent or nearby sites that are notified for similar reasons. There is another class of sites whereby some SSSIs are within other SSSIs, the impact of which is that for some bits of land there are multiple lists of operations requiring consent. There is a good example of that in the north of Shetland, where Hermaness is near three other SSSIs that are either adjacent to it or within it. The boundaries of those sites are all within metres of each other and it can be a complicated process to decide what notifications apply to what pieces of ground. In such situations, we would want to merge sites, if necessary.

However, we would not want to merge every site in Fife, for example. We would merge sites that have very different features only if there would be a benefit both to the land manager in terms of the management of those sites, and to SNH, in identifying what the sites are notified for and in the on-going management with the land manager.

Liam McArthur: You see the benefit as being greater clarity about what would be sanctioned in those areas and under what circumstances.

John Kerr: Yes.

Liam McArthur: Do you envisage the process being streamlined in the five to 10 instances that you have identified?

John Kerr: Yes. We would obviously discuss the merger with the land manager in the first place, to clarify what the process would be. If, through discussions on other topics to do with the management of the SSSI, it became clear that it might simplify things for him, for us or for both if the sites were merged into one, we would want to proceed with that.

Liam McArthur: Would you take recommendations from or respond to land managers, for example, who wanted to bring to your attention difficulties that they were encountering? Would you consider that sort of application?

John Kerr: Yes. The current problem is that we cannot denotify one site in order to merge it into another—we cannot denotify land that is of special interest. In removing the anomaly, we hope to simplify land management.

11:30

Bill Wilson: You are probably aware of the area of special protection at Loch Garten and the situation there. In its evidence, RSPB Scotland stated that it is happy to see ASPs go if it is given powers that are the same as those that it currently has at Loch Garten. It has also requested that the orders that are provided when ASPs are abolished give it powers that it has at present to continue to manage visitors. I get the impression that SNH is not comfortable with the proposal.

Ron Macdonald: I think that “not comfortable” is probably the right expression. As the committee knows, we have written again to the RSPB on the matter. I think that the Cairngorms National Park Authority has also written to the committee and the RSPB to try to broker a way forward. We are very keen to work with the RSPB, which does an excellent job in terms of visitor management at Loch Garten. Obviously, the site not only has iconic status but is important for the local economy and very important for nature conservation. It is in all our interests to try to work together. We already have strengthened provisions on ASPs. For example, the Nature Conservation (Scotland) Act 2004 and Wildlife and Countryside Act 1981 make provision for reckless disturbance of protected species.

The RSPB raised the issue of people straying accidentally into an ASP and ardent bird watchers who come early or late. All the issues that it raises can be addressed through the voluntary principle and the access code. We are preaching to the converted. I refer in particular to bird watchers who have the interests of the birds at heart.

Before you consider additional regulatory or restrictive processes, you should try to reach out to people. Some people might not know that an area is an ASP. We need to get people to modify their behaviour by means of a voluntary approach. We believe that we have to go through that stage before we consider greater regulatory and restrictive measures. Indeed, those measures are already available under access and nature conservation legislation. We are very keen to work with the RSPB to see whether that can be done.
Obviously, if it is not possible, consideration should be given to other powers, regulation and restriction. We are not quite there yet.

**Bill Wilson:** You talk about additional powers. I understand that we already have those powers under the ASP regulations. I also understand that some powers will be lost when the ASPs are abolished. Clearly, the RSPB wants the powers to be maintained by way of orders. Is there a case for additional powers? If the RSPB gets what it wants, would we see a continuation of the present powers, albeit that they would come under an order and not ASP regulations?

**John Kerr:** The difference is that the main power that the RSPB is looking to retain is the ability to restrict public access. It wants to be able to inform people with whom it has a problem that the land is a statutory bird reserve to which access is restricted at certain times of year. The powers that Ron Macdonald mentioned focus on impacts on birds—in other words, intentional or reckless disturbance to birds is already an offence. We are really talking about two sides of the same coin. Our view is that our focus should be on disturbance to birds and not on someone accessing land without RSPB consent. For example, it is a strict offence for someone to stray off the Speyside way, which is a long way from the Loch Garten visitor centre. There is no relationship between someone doing that and the impact that it might have on birds in the ASP.

**Bill Wilson:** That is true, but the RSPB tells us that its volunteers in the area of the birds—I do not have the impression that it is talking about people straying accidentally off the Speyside way—can say, “You are disturbing the birds.” Volunteers have in the back of their minds the legal requirements—although they are said to be rarely used—that allow them to ask people to leave the land. That reassures volunteers when they have conversations with individuals. By all accounts, individuals normally leave without volunteers being required to quote the law, but that is a back-up.

My difficulty is that, if the present situation works, why not provide an order to ensure that the same powers are available? You seem to say that you will remove the powers and not replace them with an order and that the RSPB can approach you if things start to go wrong. That approach of waiting to see whether a problem arises is not entirely positive. We have no problem now, so why not keep the status quo?

**Ron Macdonald:** The current ASPs are not publicised and the information is brought out of back pockets when dealing with people. Most visitors are likely to behave on sites despite the ASP designation, not because of it. The lack of advertisement means that most people are not given the opportunity to comply with a designation order. The system is not working in the way that it was set up to work in the early years, when no other provision existed.

The same staff can bring the Scottish outdoor access code and access legislation out of their back pockets when they tell people that if they do not discharge their access responsibly they will not comply with the Land Reform (Scotland) Act 2003. That measure exists and it replicates many provisions in the existing ASP orders.

The issue is modernising the law to make it much more in keeping with how most people in Scotland regard access to land. People are familiar with the Scottish outdoor access code and they know that free access is a basic right, provided that that access is responsible. All we are saying is that we should use that and the existing provisions. Criminal damage, such as vandalism or egg theft, can be addressed through the courts and through the police. They are dealt with already. We see no problem with the tools that we have in modern legislation. We do not need the ASP status.

**Peter Peacock:** As before, I make it clear that I am a member of the RSPB and the Scottish Ornithologists Club.

You have mentioned that SNH has a continuing concern about raptor poisoning, but raptors can be trapped in other illegal ways. We have heard evidence from the RSPB about, and others have hinted at, an unexplained absence of some species—such as golden eagles—compared with the occupied territories and bird numbers that we would expect to see. Other evidence says that that does not prove that illegal activity is the reason for the unexplained absence of golden eagles. Has SNH considered whether a bigger problem exists? We have been told that the poisonings that we hear about and read of in the papers are the tip of the iceberg. Has SNH done work on what the size of the iceberg might be?

**Ron Macdonald:** In our published framework on golden eagles, we estimate that up to 50 golden eagles are missing in the black hole in north-east Scotland, which is probably the most productive area for golden eagles in the country. That area is much more productive than the west coast, which has a high population but does not have the richness of prey that the east coast has, largely because of grouse moors—they are a productive food source for golden eagles. We have done some work that shows the scale of the golden eagle problem.

In a population of 500 hen harriers UK-wide, only five breeding pairs were successful in 2008 on all moors throughout the UK. Given the rich food supply and the ideal and optimum breeding
Peter Peacock: So, you are confirming that there is an unexplained number of absent eagles—up to 50—which confirms what the RSPB said. You are also concerned about the continuing number of finds of poisoned raptors. It would be possible for SNH to share that information with us and give us a submission or any briefing papers on it? It would be interesting to see more detail about how that figure is arrived at.

Ron Macdonald: Yes.

Peter Peacock: You also said that, because of the concerns that SNH has about continuing raptor poisoning—there may also be other forms of illegal removal of raptors—it is worth thinking in principle about a licensing system for grouse moors that might help to create some means by which the situation might be better controlled. Will you say a little bit more about that? You mentioned that licensing would have to be proportionate and not overly bureaucratic. Is there any reason why such licensing would have to be particularly bureaucratic?

John Kerr: No. I imagine that if the purpose of the licence was to regulate shooting practice so that some of the bad practices were not pursued, it would be intended to be easy to get and easy to lose. It would not be a bureaucratic process to get a licence, but it would be another piece of paperwork that people would have to complete. I would hope that no licensing authority would look for a huge amount of information to support a licensing application.

Peter Peacock: Have you done any work within SNH to think through how any such licensing scheme might look? Is it more a matter of principle than of detail at this stage?

Ron Macdonald: We have not given much thought to how it would work, such as whether the licence would be for the individual or the land. It is worthy of consideration, but we have significant concerns about the detail of how it would work and, of course, about resources, should any such licensing function come to SNH.

Peter Peacock: I take it as read that anything that SNH says about extra works comes with the caveat that there is a resource question. I do not mean that flippantly, but genuinely.

Many aspects of public life are licensed to protect the public interest. Every pub is licensed. Anyone who wants to be a taxi driver must be licensed and anyone who wants to be a street trader must get permission for it. Somebody who wants to practice as a solicitor, general practitioner, social worker or child care worker must abide by certain rules. Would it be conceivable for a local authority to consider and hear within its existing licensing committee system representations about a grouse moor’s operation? Do you anticipate hurdles with grouse moor licensing because of the attributes of such operations that are essentially different from any of the others on which I touched?

Ron Macdonald: No. SNH is well versed as a licensing authority and grouse moor licensing is doable. All I am saying is that there are significant hurdles in defining the scope and determining whether it is reasonable. Obviously, licensing has the potential to have quite an impact on people’s traditional rights, although that is not a reason not to consider a licensing regime.

Of late, we have been encouraged by the fact that the land management sector, particularly the SRPBA, is keen to develop a wildlife estates initiative, which considers grouse shooting and upland management according to sustainable land management principles. We have been supportive of that initiative, but it must have teeth. It must have some sort of code of practice and accreditation so that not only the good estates come in but those that are still wanting. There must also be demonstrable improvements in respect of the number of deaths of birds of prey.

We are keen to give that a fair wind and to support it. It is always better to have a voluntary approach than to have a regulatory approach with licences. Because the WANE bill gives quite a short time window in which to develop a licensing system and we are not sure that that can be done, we tend to support the development of the voluntary code.

11:45

Peter Peacock: You have described the voluntary code. I recently had a discussion with the SRPBA in which it explained all of that to me and gave me some documentation. Like you, I think that it is an encouraging step forward. Equally, however, there are no sanctions attached to it. It is entirely voluntary and people who are not members of that organisation—or even those who are—may not apply it. Given what you said earlier about the need to develop the criteria against which a licensing system might work, might there be some way of connecting the two things? Might the criteria that are being developed voluntarily over time become the criteria against which we would judge whether someone should or should not be licensed for the activity?

Ron Macdonald: That is right, which is probably why we are viewing the matter with interest.

Bill Wilson: You are almost certainly aware that the Marine (Scotland) Act 2010 imposes a duty to
create a coherent network of protected areas. Given that we are having some difficulty in meeting our biodiversity targets—as is the rest of Europe, as far as I can make out—and given the vagaries of climate change, would the addition of a duty to create a coherent network of protected areas in Scotland be a useful addition to the Wildlife and Natural Environment (Scotland) Bill?

Ron Macdonald: That question was raised by the Scottish Wildlife Trust. The question is really whether the regulations that underpin the habitats directive are adequately transposed for the requirements of articles 3 and 10 in relation to ecological coherence. We think that they are. Arguably, the wording of regulation 37 is wider than the provisions of the two articles. Instead of referring to improving the ecological coherence of the Natura 2000 network, it seems to cover all land.

The difficulty is that the provisions are weak. The regulations are fine, but the provisions regarding what Government must do leave it to Government to develop that. We think that that is probably better dealt with by the Scottish Government as a matter of policy, whether through planning policy or through the land use strategy. We believe that, although the policy and the provisions are currently weak, the tools exist in the articles to enable us to make some improvements that we think are justifiable. We are very much behind ecological coherence, developing corridors and linking habitats together to tackle climate change or whatever else. It is a question of land use planning rather than of any beefing up of regulation or insertion of a particular provision in the WANE bill.

The Convener: This session has been extremely helpful. I thank you all for your attendance. If, on your way home or in the next few days, you think of any supplementary information that you would like to give us, please provide it to the clerks as soon as possible.

I suspend the meeting for a brief comfort break, in which the witnesses can change over.

11:48
Meeting suspended.

11:54
On resuming—

The Convener: I welcome the second panel, which will focus more or less exclusively on the bill’s provisions on deer. I welcome Finlay Clark, from the Association of Deer Management Groups; Dr Justin Irvine, from the Macaulay Land Use Research Institute; Professor John Milne, chairman of the Deer Commission for Scotland; and John Bruce, of the British Deer Society. We will move straight to questions.

John Scott: We are talking about deer again. Thank you for your input. What do you see as the key environmental impacts of deer in Scotland? Where are there too many deer? Is the impact of deer on the natural heritage reducing? Are current deer management structures working? Will you give us the background on those subjects, please?

Professor John Milne: I will kick off. Any time I am asked about the subject of deer numbers I always get frustrated, but I am pleased that you mentioned impacts rather than numbers. The deer impacts on the environment are currently mainly addressed in relation to Natura 2000 sites and biodiversity. That has been a major plank of the agencies' work for the past 10 years. I am pleased to say that we are moving to the stage where we have quite a lot of agreement with deer management groups and estates about those sites. However, that does not mean that the problem will go away. The sites are continually monitored and some get into an unfavourable condition, so there will always be an on-going issue.

The impact of deer on forestry is of great significance. It has been over the past 10 or 15 years and I believe that it will continue to be so, particularly if we increase the area of land under forestry in Scotland. We create habitat for deer and they will use that habitat and cause damage. That continuing issue has to be addressed.

It is interesting that the number of authorisations that are sought in relation to agriculture has been in decline in the past 10 years. That is not because deer are not having an impact on agriculture; it is because farmers are not taking action in the same way that they did in the past. The impact is therefore different.

Looking to the future, we have major concerns about potential damage to areas of peat from treading and grazing by deer. Deer will also have impacts on our efforts in relation to climate change, particularly in relation to our efforts to increase the amount of woodland. Those are all negative things, but of course deer also have positive impacts, particularly their annual sport value to the Scottish economy. There is also a major impact on tourism. It is difficult to quantify, but all the surveys suggest that when people come to Scotland one of the things that they want to see is deer. Deer are our largest mammal, so they have a major cultural impact that we cannot ignore.

The Convener: Does anyone else want to comment? You do not all have to answer every question, but if you have something to add, please
do. If you just want to nod in agreement, please do that, too, because we have a lot to get through.

12:00

Dr Justin Irvine (Macaulay Land Use Research Institute): There are clear cases where deer can have impacts on our natural heritage. Those can be negative, particularly in designated areas, but they can also be positive. It depends on the particular habitat. Certain habitats need a higher level of grazing than others to keep them in good condition.

Another factor to consider when talking about deer impacts is the impact of other grazing animals. In recent decades there have been some significant changes in factors that affect deer. More sheep have been taken off the hills in recent times and the question is how deer will respond to that. There will potentially be an increase in deer numbers if there are milder winters, because that will increase survival rates. As well as those changes, there is an increase in the amount of land owned by people who have different objectives and what is a positive impact for one group of people might be negative for another group. Impact is a neutral word; it is humans that judge it to be positive or negative.

There has also been an increase in public objectives and an increase in legislation on natural heritage in the past decades. That legislation is often in conflict, or not necessarily in agreement with, the existing deer legislation. We must consider how to manage the deer population sustainably in respect of the population size as well as the other natural heritage legislation that has come in. All those factors mean that deer management has become more complex.

John Scott: The number of variables is almost certainly changing and increasing. It is a constantly moving picture and there will be no one snapshot of what is perfection or what is to be aimed for, because that will change over time.

Dr Irvine: Yes, exactly. Deer management groups—

John Scott: If you would like to talk about those groups, whether they should be voluntary and whether they are currently successful, I would be grateful for your views.

Dr Irvine: Over many years deer management groups have been very successful to some extent in maintaining the deer population, but they are now being asked to deal with a complex environment. Some submissions have said that they are not really successful in doing that, or that they are failing to do that or that they are not fit for purpose. I suggest that if they are given better tools to do that job, they will provide a very good structure in which to do it.

In our research, we found that deer management groups are open to considering multiple objectives but do not really know what the public objective or the public requirement is. There has not been a very good communication exercise in respect of what is expected of them in a complex environment. If there could be better communication of the public objectives to the deer management groups and they were provided with tools to allow them to make trade-offs or make decisions to balance those different objectives, that might be a way forward for the voluntary deer management group sector.

I do not have a strong view on whether these things should be made compulsory, but the work that we have done suggests that, rather than coming down with top-heavy regulation and something that has to have resources put into it from that point of view, some mechanisms that we have looked at could be transferable to the deer management group system, which could help them to deal with a complex situation.

John Scott: Would it be fair comment that, in your view, the public benefits of sustainably managing deer are inadequately defined?

Dr Irvine: Public benefits may well be reasonably defined in some areas, but what they are and how landowners and land managers should go about monitoring them, trading them off, assessing their relative importance and establishing how they fit in with private objectives is not necessarily communicated.

Finlay Clark (Association of Deer Management Groups): I will say a few words about the deer management group system. I think that SNH said earlier in the meeting that it was content that the voluntary approach to deer management had, by and large, worked. Consider the achievements of the deer management group system over the past decade or two. The figures indicate that 93 per cent of designated sites are now in a favourable or unchangeable/improving condition, or are under approved management.

We must consider whether, statistically, 100 per cent could ever have been achieved, given that many designated sites have many qualifying features, some of which require heavier grazing than other features. For example, blanket bog requires a low number of deer per square kilometre, whereas species-rich grassland needs a higher level of grazing. It is therefore very difficult for a designated site to qualify on all the features, so it may be that 100 per cent was never achievable. I think that achieving 93 per cent through the voluntary mechanism is a successful achievement.
The way in which the venison industry has developed during the past decade is a real success story about the delivery of a good-quality food product to the people of Scotland.

Section 8 of the Deer (Scotland) Act 1996 has never been used, and although there is a view that that is because the provisions were difficult to implement, the other view must be that the voluntary mechanism through section 7 agreements or communication and dialogue has ensured that any designated sites that were in an unfavourable condition have now been dealt with and are now under some form of approved management. The voluntary approach has therefore been successful.

It has also been less demanding on the public purse than regulated or compulsory deer management might be.

Professor Milne: I fundamentally disagree with that analysis. All the evidence that I have seen, and my experience of being chairman of the Deer Commission for Scotland for five years, and vice-chairman for six before that, has shown that the deer management group system does not work.

As Justin Irvine explained, the reasons for that are many. The ultimate reason is that nothing in law says that individuals have to take part in a group. If they do take part, they do not have to follow anything that the group agrees. The group itself has no teeth. Many chairmen have approached me and told me that they cannot get the group to work because one landowner will not do one thing and another will not do something else.

The idea is sound, which is why we all support it. We want decisions to be made by local people using their expertise, and that is the policy of all the parties that are sitting around this table. We want to make it work, but it does not work at the moment, and the parliamentary answer clearly suggests that. Only half the groups have deer management plans, and only 10 per cent of them use the plans to set culls and so on.

The important things, such as local collaborative deer management, have not worked in the past. In fact, I perceive that the situation has got worse. Before I became vice-chairman of the Deer Commission for Scotland, I was on the executive committee of the Association of Deer Management Groups. At that time the system worked much better than it does now. That is partly because of the complexity of land management issues that have arisen in relation to deer in the past 10 years. Equally, there is a lack of capacity within the sector. In the past, lots of people were prepared to give lots of their time voluntarily for deer management. People’s time is much more valuable now, so we do not have the same capacity and the system creaks and does not work.

The evidence that the DCS submitted was very much of that nature. We wanted to make the scheme work. Finlay Clark quoted the figure of 93 per cent of sites being in favourable condition, or moving towards favourable condition. That is the result of the work done during the past 10 years by the agencies, particularly DCS, on developing plans, putting them in place and monitoring them; it is not the result of what the deer management groups have done. Sometimes they have come along and helped in a positive manner, but they have often been negative, and we have had to do a lot of work to get a section 7 agreement in place. So the perception that the deer management group system is working is completely wrong.

That does not mean that it is not the right system to take forward. The alternatives are just not attractive. Moving towards a system of compulsory deer management planning or statutory deer management groups is not the way forward. It would mean extra bureaucracy and I do not think that any of the interested parties want it. We want to stiffen the voluntary approach and make it work better.

John Scott: Is that not partly what Dr Irvine said about the need to have more clearly defined objectives? Are the definitions too loose at the moment?

Professor Milne: That is a misperception. Two years ago, the Government published “Scotland’s Wild Deer: A National Approach”, which describes clearly what the public objectives for sustainable deer management should be. It is not reasonable to argue that the current approach is too loose.

John Scott: You will appreciate the committee’s position—we are taking evidence and hearing diverging views. What is the way forward?

Finlay Clark: I return to some of the statistics that Professor Milne cited. He said that less than 10 per cent of deer management groups discuss culls or set cull targets and that only 50 per cent of deer management groups have deer management plans. Those statistics date back to 2005. The 2010 figures indicate that 96 per cent of deer management groups discuss, set and review cull targets, and that 76 per cent of groups have deer management plans in place. Seventy-seven per cent of deer management groups also undertake habitat monitoring on a regular basis and link that to deer culls and target culls.

Professor Milne: The figures that Finlay Clark cites come from the supplementary paper that has been submitted. I do not think that the paper is of much value. The questions that were asked do not refer to deer management groups and include estates. Of course estates have deer management
plans and review their culls; that does not mean that deer management groups do so. The figures misrepresent completely the reality of the situation.

**John Scott:** I do not want to interrupt a discussion between friends, but the other witnesses may have a dispassionate view on the issue. Would they care to comment?

**The Convener:** Obviously not. Does Aileen Campbell have a question?

**Aileen Campbell:** Professor Milne has answered it. I was going to ask how the answers that have been given to parliamentary questions can be reconciled with the figures that we have received from the Association of Deer Management Groups.

**Bill Wilson:** Trial by combat often works, I am told. Professor Milne said that he did not want compulsory management plans, but he also said that there is a problem with voluntary management plans. Would it be useful to have the option of compulsory planning, if voluntary groups do not plan voluntarily?

**Professor Milne:** One problem with compulsory planning is that first you must identify the group that will do it. At the moment, there is no statutory basis for deer management groups, which are voluntary and often have no constitutions. It is difficult to establish to whom the order to develop plans would be addressed. That approach would not work. Much more important than developing a plan is its implementation. The planning process is continuous and cyclical, which requires properly constituted deer management groups. That is why compulsory deer management planning is not the solution.

**Bill Wilson:** What is the solution, if voluntary groups will not plan voluntarily?

**Professor Milne:** The solution that the Deer Commission for Scotland recommended, which ran into difficulties with human rights legislation, was to place a duty on land managers who have significant numbers of deer on their land to collaborate with others to produce sustainable deer management. A code would be developed to guide them on how to deliver that. If they failed to do it under the code, there would be fall-back powers to allow it to happen.

We were trying to reduce the amount of bureaucracy on SNH and to increase local decision making. However, local decision making cannot happen if you do not get all the people who are involved around the table to do it. One problem with the voluntary approach is that one large landowner may decide to adopt a particular policy, irrespective of what his neighbours want to do on deer management. There are quite a few examples of that. In such situations, deer management groups cannot work properly. We need to retain the voluntary system, which allows local decisions to be made about local issues, but to make people attend and work as part of the groups. That is why we are suggesting the duty.

12:15

**Bill Wilson:** Perhaps I have misunderstood you, but you almost seem to imply that there is some doubt as to who should or should not be members of any given deer management group. If there is to be a duty that requires members of groups to collaborate, the groups themselves will have to be defined. It would have to be specified that certain estates or areas are part of certain groups.

**Professor Milne:** The idea behind the deer management group system was to take sub-populations of deer bounded by roads, rivers, mountain ranges or whatever and to set up the 50-odd groups on that basis, or on some other good logistical basis.

There is a need to change some of the boundaries now, as time has moved on and the different land use management options that are in place have changed our landscapes, but I see no difficulty in identifying what group those sub-populations should belong to. The Association of Deer Management Groups, which takes an overview of all the groups, is the sort of body that could very appropriately do that.

**The Convener:** Did you wish to come in at this point, Mr Bruce?

**John Bruce (British Deer Society):** Yes, as an observer of the debate.

In general, priority site recording is public knowledge. Priority sites have, in the main, achieved the objectives that were set for them using a voluntary method. Where there is a specific problem—one that is irreconcilable among the community in the area—there is a power to create a panel under the 1996 act. That panel will have appointees—anybody in the community can be appointed to be represented on the panel to resolve the issues that way. There is a way to tackle specific, targeted, time-set, objective-set targets to achieve what is required.

I leave that information with you.

**John Scott:** So there is no need to reinvent the wheel.

**John Bruce:** I did not say that—I just gave you the information.

**John Scott:** Would it be reasonable for me and the committee to conclude from what you have just said that there is no need to reinvent the wheel, as mechanisms already exist for
establishing a reconciled position in cases where there are irreconcilable points of view?

**Finlay Clark:** The Association of Deer Management Groups supports the voluntary approach, with some measure of compulsion in the background or a backstop measure if that is required. That is what we have at the moment, and that is what we think is appropriate for the future.

**John Scott:** Brilliant—thank you.

Will you explore whether there are differences or conflicts between public and private objectives for deer management? There might not be.

**Finlay Clark:** There can be, in some instances. The issues are not limited to public versus private. Often, private owners within the same deer management group have different objectives. Largely, those relate to a specific owner requiring deer populations of 10 deer per square kilometre, say, to ensure economic and employment stability within the organisation or estate, whereas a neighbouring estate might be seeking to regenerate native woodland, with a requirement to have one or fewer deer per square kilometre. There is an obvious conflict there, in that deer range over a wide area, and it is difficult to deliver both those objectives without very careful management.

Fencing is a legitimate management tool and is used in some instances, but where there is a desire not to use fencing, competing land use objectives can become conflicting land use objectives. That is a difficulty, and that is one of the major challenges facing the deer management groups and the deer industry in the upland ranges.

**John Scott:** In the example that you have just given, how would you seek to reconcile such a position?

**Finlay Clark:** Some situations are reconciled by way of physical barriers—fencing—and some are reconciled by negotiation and discussion. Some are irreconcilable at the moment and those cases are work in progress. One of the difficulties is that the Deer (Scotland) Act 1996 offers no form of dispute resolution, so where two parties are in dispute regarding what an appropriate population of deer is, the 1996 act does not deal with that or allow a resolution to take place. We see such resolution as being important for the future.

**John Scott:** In a situation with two competing interests, where a fence might not be a reasonable option because the landowner wanted to reintroduce ptarmigan, for example—

**Finlay Clark:** It would be black game, probably.

**John Scott:** Right, black game. That would mean that you could not have a fence, because SNH would say that that was not possible. Is there no dispute resolution under those circumstances? Can people not go to court if they want a decision, or is that not the position?

**Finlay Clark:** That is not the position at the moment.

**John Scott:** Should it be?

**Professor Milne:** Land managers do have different objectives and they can compete in relation to deer, as Finlay Clark described well. The Deer Commission’s argument was that we want local solutions to those conflicts, not the bureaucracy of SNH coming in and getting involved. The deer management group system is the right way forward, but there is no need currently for all the land managers associated with deer in a particular area to belong to a group. All we were trying to do in what we were proposing was to make it a duty on land managers to take part in a group.

There are various types of dispute resolution. At the moment, the secretary or chairman of a particular group will try to broker some sort of solution. It is also possible to bring in facilitators who can help with the problem. There are different mechanisms. The resolution should be achieved in the context of the deer population, which means through the deer management group.

**John Scott:** If there are three legitimately and reasonably held yet irreconcilable positions regarding the same area of land, the problem might be defined, but there might not be a solution. That is not a way forward.

**Professor Milne:** I believe that there is always a way forward. We have suggested a need for the duty because it would force people into a situation where they have to come up with solutions. At the moment they do not have to; they can just walk away.

**John Scott:** The fallback position is the panel that Mr Bruce suggested, which could impose a solution. Is that the way to proceed?

**Professor Milne:** The panels have been used in relation to road traffic accidents in particular. Groups involving landowners, local authorities and Transport Scotland get together and come up with solutions. They can only advise SNH on what should then be done. If SNH does not have the tools to deliver it, nothing will happen.

In our advice to the minister we suggested that sections 7 and 8 of the 1996 act, which allow for a panel to be convened, should be given some teeth so that the panel can help to impose a solution. At the moment the panel is basically a talking shop and it is difficult to move from the talking shop to getting delivery. That is what we proposed, but that ran foul of the ECHR in terms of actually
Putting a duty on individuals to take part in the panels.

**John Bruce:** Think of the deer. They are the unwitting target—literally—of this effort. Our organisation is specifically concerned for the welfare of specific deer, and we are encouraged not to talk about the welfare of the population, because there is no such thing as the welfare of a population. A population exists or does not exist.

When there are divergent interests, the vacuum effect of severely reducing the population density in one area, whether at times of hardship or at times of normal grazing patterns, is incredible. The deer will migrate towards the lower density, the consequences of which we can see at the moment. Hunting parties are out shooting deer because they are allowed to, because people want to maintain a low density. Females are being shot this week in the north-west of Scotland prior to the season opening to most—but authority has been given for that, because those concerned have a legitimate interest in controlling the deer population to allow trees to regenerate. That means that any deer that inadvertently crosses what is just a line is subject to be shot. It made a mistake. It does not know.

Is it right that we allow this compost to continue? Should we not take the intelligent view that one landowner wants to do one thing and the other wants to do something else and separate them, as we would separate two bairns who are fighting over a ball? We see no other resolution to the problem. The argument could go on forever if we have committees, panels or groups discussing it. Nothing will happen, because the fallback position is, “I am entitled to do what I want on my land.”

**John Scott:** I do not have a problem with what you are saying. My question was about the situation in which there are three irreconcilable interests and no fence is allowed to be put up to separate the landowners because of SNH considerations, which is often the case.

**John Bruce:** There is a proposal in the bill to broaden the powers of SNH to allow it to encourage the use of separating, divisional constructions. The powers were previously limited to allowing shooting. However, we do not know whether SNH will allow the construction of a fence to separate divergent populations of deer—never mind divergent populations of humans.

**Elaine Murray:** I am interested in fencing: it might work well to separate populations of deer, or people who have different ideas about the role of deer on their land, but RSPB Scotland argued strongly that deer fencing is dangerous to capercaillie, which fly into it. How do you deal with that? There is a public interest, as well as a conservation interest, in encouraging the population of that species.

**John Bruce:** It could be organised site by site. I am all too aware of the disappearance of capercaillie. I have been involved with them for 30 years and I am very disappointed to see the population crash. I am not convinced that fencing has been the main cause of that crash. There might be another species in areas that capercaillie do not inhabit. Each case could be analysed and evaluated as being relevant or not relevant to the individual site proposal.

**Professor Milne:** I was going to make the same point. Capercaillie and black grouse are important in some areas but not in others. Therefore, fencing would be an option in some, but not all, areas.

**Dr Irvine:** There probably are situations in which the different interests are irreconcilable, but there is also great scope for reconciling a lot of differences by taking a different approach. I do not mean to denigrate deer management group meetings, but people often do not go to them with conflict resolution in mind. In our experience, when we have utilised the information that has been provided to us by members of the deer management groups to address some of the issues that they have faced, that has led either to our confirming that there is a problem or to our finding a counterintuitive answer when there might not be a problem. I am thinking of, for example, the vacuum effect that John Bruce mentioned. The data from counts and culls can demonstrate that there might well be some movement, and the two landowners can enter into dialogue about how they will deal with it. Some deer management groups have managed to deal with such issues not because of what we have done, but because they have utilised some of the available information.

There are mechanisms that we can put in place. They cannot, perhaps, be legislated for, but they can provide the tools to enable deer management groups to address some of the conflicts that they face. A lot of it is based on having good information and knowledge of the system. That is where we are lacking; we do not have good count data and, although cull returns have to be put in, it is quite hard to get hold of them. The information on habitats—on sheep distribution and so on—is quite hard to get hold of and pull together, yet a lot of that information is held locally. If we can bring that knowledge together and use it in a much more constructive way, that will enable deer management groups to resolve conflicts between neighbours.

John Milne mentioned “Scotland’s Wild Deer: A National Approach”. It articulates the objectives well, but we have spoken to people who are surprised that the Natura 2000 legislation—the habitats directive—places an obligation on the
likes of SNH to deliver national heritage benefits in the wider countryside. People do not realise that it is SNH’s duty to do something about national heritage in the wider countryside. Although the national approach is a major step forward and the implementation of it will go a long way towards that, it is the provision of information at a local level and the use of local knowledge that have the potential to resolve some of the issues.

12:30

Finlay Clark: The backstop of any dispute resolution has to be sustainable deer management, whether that is economically sustainable or sustainable in terms of employment or the environment—each will carry different weights in different areas. That is at the heart of the Government’s national deer strategy and it is in the foreword by Andrew Thin to “Managing Scotland’s deer: Our new role”, which was produced in relation to SNH and the DCS merging. He cites sustainable economic growth as the key to the future of deer management.

Aileen Campbell: I return to Dr Irvine’s point that some deer management groups might not have sufficient capacity to exercise conflict resolution. If that has been a clear problem, why has it not been rectified before now? With the deer management groups that are working, is there any kind of best practice sharing or at least information sharing to try to raise other groups up to the standard that we would expect?

Dr Irvine: The DCS and SNH have conducted sustainable deer management case studies to consider what sustainable deer management means in four areas. From that, they have picked out a lot of good practice and what the criteria and issues are for people. On conflict resolution in the deer management groups, there might be the odd example of that, but as far as I am aware it does not go on. In a way, that is the problem that I have: how can we expect an individual member such as a landowner to do multicriteria decision modelling or work on participatory geographic information systems?

Aileen Campbell: Lots of environmental agencies are out there doing such things in their daily work. I wonder why there is no direction or help for the groups. It does not necessarily need to be something that is written into legislation or codes of practice—I am just talking about straightforward assistance. Maybe I have got it wrong.

Professor Milne: I think that you are slightly wrong, because the DCS has always had a role of advising deer managers and has spent a lot of its time doing that. DCS staff attend each deer management group meeting and give advice when asked to do so. They often input into decision making on deer management groups. Why should we expect Government to have to continue to do that?

Aileen Campbell: I do not suggest that we should expect that all the time. If a group is helped once, maybe it will have the tools and capacity that are needed.

Professor Milne: That is not necessarily the case. As I said, one constraint is the amount of time members of deer management groups spend on deer management group work. You spoke about good examples of how deer management groups work. One of the best examples that I know is where there is one interest, which is sport shooting. That deer management group works excellently and uses best practice, but it is easy for it to do that because it has only one objective. When there are a range of objectives in one deer management group, it gets more difficult, and that has become more and more common. Agencies provide support and SNH provides a little bit of financial resource, but if we want local solutions with local people providing them, there is a need to develop a different approach to providing information and advice—and a need for extra capacity. If we are trying to look forward, it is not a good idea for the state to continue to provide capacity.

The Convener: In the evidence that we took when we were out and about, we found that deer management groups can work well.

Have Peter Peacock and Liam McArthur’s questions more or less been answered?

Peter Peacock: I think so.

The Convener: Is there anything else that you want to ask about, Peter?

Peter Peacock: I want to ask about the contrast between what the Deer Commission argued for—the sustainability duty—and what the Government is arguing for. I would be interested in your observations on the fact that the Government has ruled out a sustainability duty for, on the face of it, European convention on human rights reasons. What do you make of the alternative approach that the Government is advocating, given where you have come from?

Professor Milne: I regret that it has gone down that route. Under the current legislation, it is implicit—indeed, it is written down in section 8 of the Deer (Scotland) Act 1996—that landowners have almost a duty to manage deer sustainably. I think that the Government lawyers or whoever advised the bill team perhaps did not look closely enough at what is still there. We are not proposing a huge change. In my written submission, I suggested that the committee might want to revisit
that and to get an alternative view, if only to confirm the position. I believe that the duty approach would be a positive way forward for everyone—it would fit in with Government policy and the policies of the other parties on how we want to develop the way in which we manage our rural resources.

Peter Peacock: In my mind, that gives rise to the question who decides what is sustainable.

The Convener: We will let some other people in.

John Bruce: You may be surprised that we broadened the argument and asked why deer should be selected to be the subject of special duties and special rights. Water voles are of national importance. Should every landowner be responsible for the condition of their water voles or of any other species on their land? Even though we might like to create a pre-emption by using deer, we think that, generally, it would be unwise to.

Peter Peacock: I guess that there is a difference between a water vole and a deer in a number of respects. As Professor Milne has indicated, there is a kind of implied duty under the present deer law that deer managers must act in the wider public interest on such matters. Given that deer have an impact on the wider public interest in a variety ways, why should not there be firmer regulation of deer management?

John Bruce: Other species do, too.

Peter Peacock: But I do not think that you could argue that water voles have the same impact as deer.

John Bruce: Impact or rights? Every protected species has rights.

Peter Peacock: But the bottom line here, which is where we have difficulty—I certainly do—is what the public interest is in all of this. We have clear biodiversity duties on which deer could impact if we had a completely unregulated system, and deer have a significant impact on vehicle accidents, so there is a clear public interest in managing deer.

The Deer Commission came up with a proposition—which, on the face of it, seems reasonable—that people should manage their deer sustainably from the point of view of biodiversity and all the other issues that I touched on, but you seem to be saying that that is not really relevant and that people should just do what they like with deer on their land. Is that what you are saying?

John Bruce: We would rather they looked after them conscientiously and responsibly, but how do you imply a sustainability duty?

Peter Peacock: That is what I am asking.

John Bruce: I do not think that you can.

Peter Peacock: You think that that is impossible?

John Bruce: It is possible to encourage and to direct. When there is a defined public interest, the powers are available in the various acts to implement action, but I do not see how it can be said that a general duty is necessary for deer but not for other species.

The Convener: We need to move on. One question to ask is whether SNH would have the resources to monitor and enforce compliance.

Professor Milne: I do not work for SNH, but I know from my experience with DCS that section 7 of the 1996 act involved a large amount of work for DCS staff. If it is amended in the way that is proposed, it would still involve a large amount of work. In the past five years, in relation to Natura sites, about 80 per cent of the staff resource of DCS was involved in developing plans, getting them agreed, monitoring them and so on. That is a huge amount of resource. That resource has transferred to SNH, but a range of other responsibilities in relation to the public interest are now being placed on SNH. My concern is that that will increase the amount of work that SNH has to do at a time when resources will be relatively scarce.

Looking to the future—after all, legislation should last 10 years or whatever—we ought to consider whether, for the next 10 years, we want to put more and more from the public purse into managing a problem that can be dealt with in another way.

The Convener: Mr Clark, do you have a view on that?

Finlay Clark: Yes. However, I just want to go back a step and say that I do not know of one landowner or deer manager—or anyone else who is involved in the management of deer—who does not believe that they have an absolute duty to deliver good, proper and sustainable deer management. I do not know anybody who disregards that absolute duty.

The cost to the public purse of delivering sustainable deer management has been mentioned. Dealing with the private sector that owns and manages land is a large portion of my job. I know from personal experience what it costs. Significant sums of money are being put into the Scottish countryside and economy. It is delivering public benefit. If that cost fell to the public purse, I suspect that in these chastened times the public purse would not be capable of picking it up.
Dr Irvine: I am interested in the idea of regulations versus a voluntary code for deer management. If you apply more and more regulations and compulsion, they need to be monitored and policed. The code of practice for deer management is an opportunity. If it were implemented in the right way, it could save quite a lot of resources, because it would give clear guidance on how to deal with sustainable deer management in the light of all the complexity that I described earlier. It would perhaps mean that there was less need for SNH to play a policing or regulatory role. It would not remove it completely, but it would mean that instead of SNH having to enforce a set of regulations, deer management could demonstrate that they were following a code of practice, so there would not need to be such regulatory oversight. Although it could involve a lot of work to start with, it would ultimately save resources and it would also be less adversarial.

The code needs to be flexible, because it will need to adapt to future changes. Carbon is probably one of the most important things that we have to deal with at the moment. Finlay Clark said that deer managers want to manage sustainably, but to some extent, perhaps, how they can manage in relation to carbon is not on their radar. That is through no fault of their own. How do they know what the carbon stocks on the land are and how their management impacts on them? There needs to be a mechanism by which such interaction can be communicated. We as researchers do not know the answers yet. When that new information comes along, we can feed it into the code of practice.

The Convener: That leads neatly on to Liam McArthur’s question about damage and serious damage.

Liam McArthur: I do not know whether you were present for the first panel, when there was a discussion with Robbie Kernahan about the impact of the removal of the word “serious” from sections 8 and 9 of the Deer (Scotland) Act 1996 in relation to the damage that is caused by deer, which would trigger some of the enforcement powers that SNH would have. Professor Milne, you raised concerns about the back-up powers under section 8. I think that you even suggested that powers under sections 8 and 9 have always been regarded as impractical and have never been used. I do not know whether that reiterates some of the concerns that Mr Kernahan raised. What are your reflections on whether the bill will deliver a more manageable regime?

12:45

Professor Milne: Defining “damage”—and particularly “serious damage”—has been one of the great problems as long as I have been involved with deer legislation. Our concern has always been that because some parts of the act, particularly section 8, refer to “serious damage”, if you placed a section 8 control scheme on somebody, they appealed to the Court of Session and you got involved in a public inquiry or whatever, it would be difficult to prove easily that serious damage was occurring, because people could easily claim that it was just damage, not serious damage. You would get lots of experts in and you would be in a complete mess. From the training that we did on public inquiries and so on, it was clear to me that we do not want to go down that route if at all possible.

There are two solutions: one is to remove the word “serious” and focus on “damage”, which is much easier to describe; the second is to change section 8 as it is currently drafted—although that is not proposed in the current bill—and instead use the powers in the Nature Conservation (Scotland) Act 2004 as the way forward. If you were to use those solutions, you would solve some of the problems.

Liam McArthur: I appreciate the point you made about the difficulties with the evidential base for “serious damage”; it echoes what Robbie Kernahan said. In moving to simply “damage”, do you not think that there would be a risk that intervention would be brought about at too early a stage and on the basis of something that was not of such significant public interest as to merit the resources that were being deployed to address it?

Professor Milne: My personal view is that there would not. SNH has not used the current approach under the Nature Conservation (Scotland) Act 2004; it is a final backstop. If things work at all sensibly and you have a credible backstop, that intervention never needs to be used.

Elaine Murray: The bill would allow the deer sector to develop its own training and competence programme. Only if that did not happen would there be a possibility of introducing, no earlier than 2014, a mandatory scheme that would include a register, to be kept by SNH, of people who had passed the competence test. Professor Milne has argued that we need the register irrespective of whether the mandatory scheme is introduced. Will you explain why you think there should be a competence test for deer stalking when we do not have such a test for the shooting of other animals, such as foxes or rabbits? The committee introduced a similar provision in the Marine (Scotland) Bill; we required competence in shooting seals because there were particular issues to do with shooting animals at sea and in water. What are the particular circumstances that require a competence test for shooting deer?
**Professor Milne:** We took that approach to get the private sector to deliver the cull of deer. Approximately 135,000 deer are culled each year. We need that sort of cull if we are to manage our deer resource sustainably. In fact, we probably need to cull more. It is important that the cull continues year by year. Given all the airgun issues that we have experienced, the general public is concerned about shooting, particularly with high-calibre rifles. They are also more concerned about welfare than they have been. Combine that with the fact that you are dealing with our largest wild mammal with high-calibre rifles. The DCS view is that we very much want the public to be satisfied that the culling of deer is being done in an appropriate manner. If we want to do that, the best way to demonstrate it to the general public is to have a competence test.

**Elaine Murray:** Do we not require the private sector to cull foxes and rabbits as well?

**Professor Milne:** Yes, but not at the level of 135,000. Furthermore, foxes and rabbits are not the largest and most iconic species of mammal that we have in Britain. There are differences.

**Elaine Murray:** Why do you argue that a register should be established irrespective of whether a mandatory scheme is introduced?

**Professor Milne:** I am very supportive of the deer sector’s current approach to getting itself up to speed, but I do not think that everyone will have reached the required competence level by 2014. In the future, we hope that new people will wish to shoot deer, and evidence that they have achieved the required level will be needed. Those are reasons for having a register.

Another reason for having a register is that it is a useful way of having good and accurate information on the number of deer that are culled each year in Scotland. The measures that are in the bill would provide us with information that is not very useful. We can use the register to obtain better information.

**The Convener:** Is Mr Clark’s view different?

**Finlay Clark:** Slightly. The ADMG has consistently said that anybody who shoots deer—in the open range or in woodlands—must be competent to do so. There is no argument against the idea that people must be competent. We support the proposal that the industry should regulate competence itself and that it should do so by 1 April 2014. That target is deliverable. Training systems and practices that are in place can be adapted to comply with the national occupational standard.

**Elaine Murray:** What is the level of that? Is it level 2?

**Finlay Clark:** Discussion is taking place on how areas of competence and practical delivery can be added to our level 1 to satisfy the NOS.

A statutory requirement to make cull returns is already in place. Through game dealers, statutory mechanisms capture that information. That is all in place. The DCS previously managed that system and I suspect that it will fall to SNH in the future.

I do not believe that placing the duty of care to make a cull return on an individual who is regarded as competent and who might have shot the deer would be better. In fact, it would be much worse because that would mean relying on many more individuals than at present to make the returns. Many such individuals might not be in Scotland for long—they might be here for only two or three days, shoot half a dozen deer and then disappear back to Europe or the US. How their information would be captured is beyond me.

At the moment, we know where the people who have the rights to shoot deer are and we know where the landowners are. They are much more easily targeted than is the bigger audience that has been suggested.

**John Bruce:** We have all had to step into an area with which we are not wholly familiar—the vocational education system. Having put my head above the parapet, I have been pushed thoroughly into the middle. Learning about the national occupational standards and vocational training has augmented what I learned in the process of being trained, when I was just the recipient—the candidate.

The national occupational standards system has evolved and involved people in the sector for many years. Educationists and practitioners have commented on and given advice about the system, so it is well exercised.

Introducing, exploring and communicating the NOS system’s benefits among all stakeholders will be an important step that we must take and which we are taking. Level 2, which is the lowest standard in game and wildlife management—no level 1 standard is available—is higher than the level that many people thought they would have to achieve. However, we will go through that carefully with people.

The great by-product of asking people to put themselves forward for assessment is that some must do a little reading and training. We hope that they develop their competences in the process, as well as satisfying the test. One hopes that the pick-up and the behaviour will bring about an improvement.

Our society has done such work for 40-odd years. We introduced the first woodland training schemes, hill training schemes and what have
you. We have been deeply immersed in that for years. Some say that we are too deeply immersed, but I have to say that we contribute our charitable moneys to help meet the cost of running training schemes. We see that as a duty of the charity.

We hope that the sector will willingly pick up on the need for competence. Otherwise, it will become mandatory, which will bring in resentment and anti-thinking. We will need more young stalkers because we will have a growing population of deer occupying a greater area. We need more man hours and lady hours on the ground. We need willing people, and we think that they are best found if we have a voluntary process, so that is what we hope for.

Elaine Murray: Are the hunter training courses in Scandinavia compulsory?

John Bruce: Yes. I cannot quote the numbers, although I think I have them in my briefcase.

Dr Irvine: There are 400,000 hunters in Norway. They all have to take a test that involves identifying different age classes of the species, a bit about the ecology, and a shooting test.

Elaine Murray: How does that compare with the proposed competency test in Scotland? Is it at a similar level?

Dr Irvine: I do not know.

John Bruce: I can comment on that. It is a little simpler than what we propose. There seems to be a general standard throughout Europe that involves the knowledge and exhibition of basic skills. As well as taking the lead in vocational training, we are volunteering to take the lead in competency assessment to a minimum standard that is higher than the standard in other countries. Some say that it will be unnecessarily high, but it is difficult to say where we should draw the line and what should be included.

The Convener: Dr Irvine, do you have anything to say about competency or, indeed, the monitoring of deer carcases?

Dr Irvine: I agree with John Bruce that competency is a means to provide accreditation to the industry. It can demonstrate to the public at large that things are being done competently, so it is a good thing. Why should it be done for deer more than for other species? Possibly because there is a greater public interest in that.

If people are to be competent, it will be necessary to monitor the system and provide information to show that competency is being maintained. That could be done for welfare purposes, which is a difficult one, because how can we demonstrate that somebody shot an animal to the highest welfare standards, or that they did not do that? Bullet track wounds are not a good means to test that.

Competency in management is also important, because if we can get some information back about what people hunt—that is, more than just information about how many deer they have hunted—we can monitor populations over time to see whether they are declining in body size and whether they vary between regions. That is important information in considering the sustainability of the national herd.

Carcase monitoring is important in relation to food safety. If carcases were tagged, we could follow them to the game dealer and any problems with deer health could be picked up. We could then identify local or regional trends in the condition, health and performance of the deer population.

If we go with competency, we could say to people, “You need to return some information to us if we give you a licence to shoot deer.” That could provide a lot of useful information that would help us to monitor the sustainability, performance and health of the local, regional and national herds.

John Scott: MLURI gave evidence that close seasons are determined locally in other countries, yet there is resistance to that idea in Scotland. What makes Scotland so different that close seasons cannot be determined locally?

John Bruce: In terms of deer ecology, there is no difference in the breeding behaviour of species in the north, the south-east or the west, so the period of partition is much the same. There is no reason on deer ecology grounds to change it. In terms of deer population dynamics, you might need longer because of bad weather—or good weather—to control the deer to a certain density in a different region. Generally, the sector has provided all that it has been asked for, given the parameters that it has.

What is perhaps more important about the use of the term “close seasons” is that, under the current interpretation, it applies only to a minority of land. Deer on enclosed land are manageable by whoever occupies that group, and close seasons do not apply. The only place that close seasons apply is on the open moorland. You should be aware of that.

13:00

John Scott: I dare say. Dr Irvine, why did you suggest that it might be a good idea to determine close seasons locally? You might also want to talk about close seasons for male deer as opposed to female deer. I would like to hear your views on that.
Dr Irvine: Just to take a small step back, if people demonstrated competence, we would not necessarily need to have any seasons at all. However, it is probably worth retaining a female close season when calves could be orphaned. That is pragmatic and makes sense.

Close seasons for female deer do not vary much across Scotland in terms of the calving dates. They vary a little bit between woodland and open hill areas, but broadly speaking there could be a close season that fits.

There could be a problem with running out of time if we wanted to achieve a certain size of cull, so it would be worth having the option to extend the hind season so that a cull could be achieved in some situations. It could be useful to have that flexibility, but authorisation can be given for that under the current system.

The biology of male deer means that there is no reason why they cannot be shot all year round. They do not have dependant young and there are no other welfare reasons. There are potential welfare problems with how they might be culled. If a lot of pressure is put on them after the rut and they are displaced from where they want to recover, that could be a problem, but if people are competent there would not necessarily need to be any restrictions because of that. I do not see any biological reason for a male deer close season, but there might be good reasons for leaving them alone at certain times, and they could be set locally to suit local management needs, depending on whether it is a sporting or conservation estate. That would have to be done in collaboration with the estate’s neighbours because we do not want one person shooting another person’s sport stags out of season.

Professor Milne: I agree with Justin Irvine’s analysis. The issue around shooting stags out of season can be resolved if there is a good working deer management group system. Decisions about the number of male deer, for example, that could be culled would be agreed and all that could be managed by a good working deer management group.

Finlay Clark: Back in history, the Deer (Scotland) Act 1959 was introduced largely to afford protection to deer by using close seasons. Deer were a dwindling resource and there was recognition that, unless some protection was afforded to deer species by way of a close season, that resource could not be managed properly.

Dr Irvine and Professor Milne have talked about welfare. I disagree with them on the basis that there might be no welfare issue with an individual male animal being shot out of season while its condition is depleted, but significant disturbance could be caused to the other animals that are accompanying it. Both of my colleagues have acknowledged that stags that are wintering together in large numbers on land on which they might not summer can be problematic for groups. For that reason, the proposals to retain the current close seasons are pragmatic and take into account the welfare and protection of the resource.

John Scott: So everyone is happy with the close seasons as they stand, by and large. That is good. That is all that I have to ask.

The Convener: As there are no further questions, that concludes the session. I thank you all for your evidence. If you have any supplementary evidence to give, please provide it to the clerks as soon as possible.

That concludes the public part of today’s meeting. I thank everyone for their attendance.

13:05

Meeting continued in private until 13:30.
On resuming—

Wildlife and Natural Environment (Scotland) Bill: Stage 1

The Convener: Item 6 is further consideration of the Wildlife and Natural Environment (Scotland) Bill. I welcome Dr Hal Thompson, who I understand has just recently retired from the school of veterinary medicine at the University of Glasgow and who is representing the British Veterinary Association today; Professor Colin Reid, professor of environmental law at the University of Dundee; and Patrick Stirling-Aird from the Scottish Raptor Study Groups.

To make best use of the time available, we will not ask for any opening statements but will move directly to questions. We have all seen your written submissions, which were very helpful.

Liam McArthur: We have heard previously that there appears to be a lack of narrative in relation to the bill. It is probably acknowledged that in many senses it will tidy up existing legislation. Professor Reid, in your evidence you talk about the lack of a “unifying vision” and you express disappointment not so much with what the bill does but with what it does not do. Will you elaborate on what you see as a potential unifying vision, if it is not too late to achieve that?

Professor Colin Reid (University of Dundee): There are probably two dimensions to that. One is the purely technical point that the state of the statute book in this area is atrocious; it is simply not fit for use. If anybody has tried to plough their way through the amendments that have been made, they will know that it is simply atrocious. Preparing a clean, consolidated text of part I of the Wildlife and Countryside Act 1981 would allow people to see and understand what the law states. Ideally, you would then consolidate the Conservation (Natural Habitats &c) Regulations 1994, which were amended four times in one year. There has been a recent consolidation south of the border, but we are still waiting for it in Scotland.

Once you had done that, you could then try to integrate the 1981 act and the elements of the 1994 regulations that protect wildlife here under domestic and European law. That was done successfully in the Nature Conservation (Scotland) Act 2004 for habitat protection, where sites of special scientific interest and sites designated under European law were largely brought together. You could do the same for the species protection measures. Then you could do the tidying up and harmonisation that you have heard about in relation to powers of entry, single witness offences and so on. That is the more technical side of it.

The other dimension is the much harder issue of working out what we are trying to achieve in the countryside. That is essentially a political matter. Is there a vision? The bill that has emerged is much better than the initial consultation paper, which seemed to show that each individual chunk was being driven by quite different purposes. For example, at one time, particular elements of the deer legislation seemed to be about deer welfare; at other times, they seemed to concentrate on the control of hunting effort. The purposes were not clear.

If you tidy up the technical side, you then have a strong basis on which we can start debating what we really want to achieve.

Liam McArthur: From your experience of discussions with other stakeholders and possibly even Government officials, do you think that there was ever an intention to undertake the sort of tidying-up of the rather cluttered and messy landscape that you have described?

Professor Reid: When the 2004 act was being debated, there were some big suggestions that the Government thought that it would be a good idea to get round to consolidating it all sometime, but that has not materialised yet.

Elaine Murray: You make the interesting point in your submission that the bill will introduce a section 14ZC into the 1981 act, which indicates the amount of updating that has gone on over a period of time. Obviously, consolidation would be a fairly onerous piece of work. Can you suggest who might best be able to advise the Government if it was looking at bringing together all the legislation?

Professor Reid: I find myself slightly mystified as to why nowadays consolidation is always seen as being quite so difficult, given that there are commercially run electronic databases that give you at least a very good starting point for producing a more or less clean text of an act as amended. That leaves all the difficult issues of the knock-on effects, the investigation of all the side issues and so on. My experience is that that is largely a matter of resource. Consolidation is not sexy; it does not win you votes. It pleases a few lawyers and lots of students. There are large chunks of statutory material that I feel that I simply cannot teach students by using the primary sources, because they are in such a mess. Consolidation takes time and effort. The gains are not felt by lawyers, because many of the people who are working with the legislation day to day have their own electronic updates. Previously, they literally cut and pasted versions to work with.
However, having clearer legislation is so important to ensuring public access and understanding. It helps you to explain what the law is, which helps you ensure that it is understood and enforced.

Elaine Murray: Your submission also refers to the reliance on codes of guidance, general licence directions and so on. That approach is not confined to the bill; it has been a characteristic of most of the legislation that we have put through the Parliament. Do you think that the balance is right? Should more appear on the face of bills?

Professor Reid: There are two issues. One is that as far as possible you should have stuff on the face of the legislation itself if people are to be guided by it. However, I fully accept that, particularly in dealing with the natural environment, where there are so many different circumstances and contexts, it is impossible to have clear, simple, sensible rules for everything.

The second issue is how the further details are to be provided for and scrutinised. There is an issue with codes of practice. The more important they become to how people understand the law and how they apply it, the more you have to consider whether they are being scrutinised properly. There is a huge difference between what is in the law, on which legal rights and prosecutions are based, and simple guidance. However, when that boundary gets blurred because the law is expressed so vaguely that, in practice, the guidance becomes more important, you need to think about how that guidance is presented, whether there is accountability for it and whether it can be accessed appropriately.

Elaine Murray: Is there anything that you think ought to be on the face of the bill but is not?

Professor Reid: I worry about the breadth of the provisions on non-native species. There will inevitably be difficult, marginal decisions to take because of scientific uncertainty around a range of circumstances. However, I think that it would be possible to put in some guidance to provide a bit more information that at least helps to frame the discretion and considerations that will be applied at a later stage and which addresses the extent to which the Parliament should have an opportunity to scrutinise some of these measures. That would not necessarily happen every time a change was made, but there should be a more formal requirement to conduct a review every now and again or the first time that codes are produced to ensure that they are given the attention that they deserve.

12.15

The Convener: Let us focus on what you have said about invasive non-native species. What problems might arise from the use of terms such as “native”, “native range” and “in the wild”? Could guidance provide a clear explanation of how they are to be construed?

Professor Reid: That is a difficult issue. There is huge scientific argument about what is meant by “native”, “indigenous” and so on. There are also problems with time periods concerning native species that are naturally reintroducing themselves or are being reintroduced by deliberate or unlawful human activity. The phrase “in the wild” tends to make people think about animals, but it is plants that particularly worry me. What on earth is “in the wild” for a plant? If a roads authority plants crocuses at a roadside, it is introducing a non-native species into the wild. Will you prosecute every roads authority that does that, or will there be an option for ministers to make orders excluding from prosecution planting by particular people within a certain distance of the roadside? You have received evidence from the falconry people, whose whole activity often involves the release of non-native species into the wild. It might be possible to have a ministerial order to deal with that specifically; however, you would end up with many exemptions and a complicated law

Although the basis of the precautionary approach—you just do not do it—is good, it is difficult to strike the right balance. It might be useful to include some guidance in the bill, so that the Scottish ministers do not have carte blanche in deciding future control of what happens.

Bill Wilson: I presume that part of the definition is whether the species is within its natural range. Most falconry would involve the bird being within its natural range in Scotland; therefore, it would not be the introduction of a non-native species. I also presume that, if the plants that an authority planted by the roadside were native species within their own range, they would not fall foul of the legislation.

Professor Reid: They would not. However, I believe that some falconers use more exotic species, and lots of plants that we plant are not native. An awful lot of garden flowers are not native. The lodgepole pine and Sitka spruce are huge forest trees. Is a forestry plantation “in the wild” or not? If you dumped somebody there on a wet Saturday evening, I think that they would say that they were in the wild, but would the area be in the wild for the purposes of the bill?

Bill Wilson: You have probably read the submissions that we have received on single witness evidence. Your own proposal is to harmonise the law. It has been suggested to us that such evidence is never actually used. Do you know whether it is used?
**Professor Reid:** I have no practical experience of that at all. I just wonder why it is included in the bill. If it is in the bill but not in other legislation, why is that?

**Bill Wilson:** So, when you talk about harmonising it, do you mean getting rid of it entirely, or—

**Professor Reid:** A consistent approach could be that we need it for this and lots of other things because it is useful and helpful, or that it is not worth while and we should scrap it altogether. The inconsistency here and in other elements of the bill and other legislation makes life harder for everyone.

**Bill Wilson:** You say that you are not aware of single witness evidence being used, but do you envisage its ever being used?

**Professor Reid:** I never qualified as a practising lawyer; I am a pure ivory-tower academic. I am afraid that I do not know. I am unqualified to do anything, so I cannot answer that, I am afraid.

**The Convener:** Mr Stirling-Aird, do you have a view on single witness evidence?

**Patrick Stirling-Aird (Scottish Raptor Study Groups):** There is an illogical position at the moment, as such evidence will apply in egg-collecting cases but not in the case of someone who is seen shooting a golden eagle. The view of the Scottish Raptor Study Groups is that single witness evidence ought to be either taken away or expanded to cover more situations in which crimes happen in remote places and evidence is extremely difficult to get.

Colin Reid mentioned falconry. Although native species are used, many falconry birds are now hybrids and there is real worry that, if those hybrids escape, they will mate with native species and dilute their genetic purity, if I can put it like that.

**Bill Wilson:** I will give you a scenario that was put to us by RSPB Scotland. If a hill walker finds a poisoned golden eagle on a hillside, that can be evidence; however, if an RSPB officer goes on to an estate and looks for said golden eagle, that cannot be evidence. It has been suggested that the law might be changed to allow people to enter what are rather large estates to look for poisoned golden eagles, but Sheriff Drummond said that that would create great problems. To be fair to Sheriff Drummond, I am paraphrasing, but he seemed to suggest that there was a parallel between large estates and back gardens in terms of the rights of the police and other individuals to enter to collect evidence. Can you provide any comment on that?

**Professor Reid:** The SSPCA currently has to people such as RSPB Scotland employees getting looking for evidence. There was one court case involving peregrine falcons down in Peeblesshire, in which that type of evidence—I think that it was video evidence—was thrown out as being inadmissible. However, I believe that there have been other sheriff court cases in which such evidence has been admissible.

There is a need for more evidence gathering, if I can put it as broadly as that, to deal with some of these crimes. Wildlife crime has rightly been described as a crime without witnesses.

**John Scott:** As I understand it, Sheriff Drummond’s point was that to extend the powers of search and entry that only an impartial group—the police—currently has to people such as SSPCA officers would be to give those powers to people with a declared vested interest. What are your views on that?

**Patrick Stirling-Aird:** If asked, the SSPCA might say that it does not have a vested interest and that it is objective—that would be the obvious answer. Logically, it would make sense for the police to do all of that work if they could; the trouble is that they are underresourced for wildlife crime. It is up to the individual chief constable to decide how much attention he pays to wildlife crime. It is up to the individual chief constable to decide how much attention he pays to wildlife crime and, in Glasgow, he may feel that there are too many murders and drug problems to devote much resource to it. I may be straying from the main point here, but I believe that wildlife crime is also not a recordable crime. If it was technically a recordable crime, there would be more incentive for the police—in fact, more pressure on them—to deal with it.
I have not been in this position myself, but if somebody finds a dead bird or an illegal trap it is often very difficult for them to get a police officer to come out. That is why there is a need to broaden the investigatory powers in some way.

Bill Wilson: I do not want to get tied down to just the SSPCA. The implication was that if an individual from any organisation was told that a dead bird that had been poisoned was on a site and they went and looked for it, that might not be admissible evidence. John Scott makes a good point, which I am curious about. If such evidence was admissible—if people could go on to the land to look for the bird without a search warrant—would that have major implications in relation to entering homes, or can we legally differentiate clearly between 80,000 acres and a house and its immediate environs?

Patrick Stirling-Aird: I think that there is a big distinction. The police need search warrants to enter houses and perhaps other buildings—I am not sure. There is a vast difference between entry on to 80,000 acres in the middle of the Cairngorms and, for example, intruding on the privacy of a gamekeeper in his house and garden. I could see a human rights issue perhaps coming up. If it does, I think that it should be less of a concern in relation to the 80,000 acres than it is in relation to someone’s house and garden.

Bill Wilson: Perhaps Professor Reid, as a legal expert, has a view.

Professor Reid: I am a legal expert on some things but certainly not on the laws of evidence. I have some concerns about diverting from the standard rules, because somebody’s property is somebody’s property. Where do you start drawing the boundaries? The law has enough trouble with things such as premises. For example, in another context, issues have been raised about polytunnels. If you want to be able to walk around a field that is covered in polytunnels, are you actually going into buildings?

I do not think that the matter should be dealt with on the hoof. There is a bigger issue with powers of entry and inspection, which should be looked at a bit more thoroughly. There are appropriate parallels with the powers of wildlife inspectors and other people. There are even the utility companies’ wide powers of entry for various purposes. The list goes on. The focus should not be too narrow.

Bill Wilson: But if—

The Convener: Dr Thompson has been waiting to come in for ages.

Dr Hal Thompson (British Veterinary Association): In my time at the University of Glasgow, I was a pathologist, so I have probably a great deal of experience of wildlife crime and of the victims of wildlife crime being brought to my post mortem room. As has been suggested, there is a problem with evidence.

I had an open-door policy. If somebody brought me something that was dead, I would post mortem it. I did not work for a particular interest; I would post mortem what happened to arrive. The majority of wildlife crime was brought to me by the SSPCA rather than by police forces. One reason for that is public perception. The public has a right of access. Say a member of the public wandering across a piece of ground comes across a badger that is snared by the body. If they are offended by the presence of the dead badger, sometimes the first people they approach are the SSPCA, which they regard as being responsible for animal welfare. They may not necessarily go to the police force because they think that, if they do, there might be complications. That is the public’s perception of welfare. The problem is that, if the SSPCA collects the badger’s body, that evidence may not be admissible, because the SSPCA does not have the same rights as police officers have in such circumstances. That issue should be examined.

I support the SSPCA’s proposal. I do not think that it is asking for the right to search premises, which is entirely different. I think that the SSPCA would wish to have the presence of police officers with its officers, because in those circumstances it would operate as a joint agency. The SSPCA is not asking to be allowed to burst into premises or anything like that. The issue is about the practicalities of finding dead bodies and dealing with evidence.

12:30

Bill Wilson: Can you clarify one thing for me? If someone calls the police and says that they have found a badger or a poisoned bird, do the police need to get a warrant to enter the land to collect the carcase or can they just collect it?

Dr Thompson: I do not think that the police need a warrant.

Bill Wilson: They can just go on to the land.

Dr Thompson: I think that they can do so by right but, theoretically, SSPCA officers would require a warrant. The practicalities are that the public will phone them up and they will go and assess the situation. If they find an animal that is close to death or one that they have to put down because it has been badly damaged by a snare, it will be problematic whether that evidence is admissible.

Bill Wilson: Yes, that is my understanding.
Peter Peacock: There is an issue that I want to clarify before I come on to my main point, because I think that there is a danger that John Scott said something that I do not think was correct. My understanding of the situation is that if an SSPCA officer arrives at the scene of an incident—let us say that a bird has been caught in a pole trap and is still alive when the officer arrives—they can deal with the matter almost in the same way as the police could deal with it. They have the right to caution people, to take statements and to seek evidence. I think that it is also the case that they are authorised by ministers to enter premises when there is an animal welfare issue.

It is my understanding that if they arrived three minutes later and the bird was dead, they would not have any of those powers. That is the issue. The SSPCA says that it attends most incidents for the reason that Dr Thompson has given. If it is an animal welfare case and the animal is still alive, its officers can deal with it, but if the animal is dead, they cannot. We need to clarify the position—perhaps we can come back to that. I just wanted to put it on record that we need to sort that out.

I want to widen the debate. You will have heard the arguments about people’s concern that bird poisoning or the trapping and subsequent disposal of birds, which has caused great public outrage, is still continuing. The trend in the recent past seems to be that the number of such incidents is increasing rather than declining. People are fed up about that and want something to be done.

An issue that emerged at a previous meeting was that of vicarious liability. Sheriff Drummond rightly told us to be careful how we used the term “vicarious liability”, as it has a specific meaning in law, and I am sure that he is right about that. Nonetheless, there is a sense that we must be able to put a greater responsibility on the owners or managers of estates to ensure that, ultimately, someone is accountable for what happens on those estates. That is the context in which the concept of vicarious liability has come up. I would be interested in the views of Professor Reid and Patrick Stirling-Aird on that, particularly in the light of Sheriff Drummond’s evidence to us—if you have had a chance to look at it—and his subsequent supplementary submission.

Patrick Stirling-Aird: My feeling is that something, whether it is an additional form of licensing or vicarious liability, is needed, partly to deal with a moral question. I will try to explain what I mean by that. I know that reference has been made to a scorched earth policy with grouse management. In a situation in which an owner or manager feels the need to carry on breaking the criminal law, year after year, they will argue against personal responsibility. They will argue that the law does not need to be strengthened while continuing to let their employee carry the can. If the employee is caught, he will be prosecuted and convicted, but they will be in the clear.

There are different shades. There are those employers—incidentally, I am a member of the Scottish Rural Property and Business Association, so I think that I can see that side of it—who do their best to make their employees stick within the law, there are people on the middle ground and there are those at the extreme grouse moor management end of things, for example, who may put in written contracts, “You will obey the law,” but who do not mean it and who put pressure on the employee to break the law. I think that there is a strong moral fallback on an employer in that position.

John Scott: How could we prove that someone did not mean what they put in a contract?

Patrick Stirling-Aird: Some will mean it and some will not. There is not court-of-law proof; there is anecdotal information. It cannot be relied on totally, but we can draw something from it. I am not saying that it meets the standard of evidence—of course it does not—but I have heard stories about interviews with gamekeepers in which that sort of point has come up.

Peter Peacock: Sheriff Drummond, in his supplementary evidence, drew close parallels with the world of drugs supply. In relation to drugs, the law explicitly provides for what you have just described, but it does not do so in relation to bird poisoning. Just as you cannot produce absolute evidence, very few people could produce absolute evidence that somebody is behind a drugs cartel, but we have created a law to get those people nonetheless. I ask Professor Reid to comment on that point and on my earlier questions.

Professor Reid: Vicarious liability has been a long and complicated saga in the law, particularly in relation to corporate liability and the extent to which a company is liable. There is a useful discussion of many of the issues in the English Law Commission’s paper “Criminal Liability in Regulatory Contexts”, which is mainly about corporate liability. It might be a trust that owns an estate with an individual managing it. Among other things, the Law Commission points out that we can create specific offences to deal with the particular mischief that we are aiming at. It gives the example of the new Bribery Act 2010, under which a company commits an offence if somebody who is connected to it commits an act of bribery on its behalf. The company has a defence if it had adequate procedures in place to prevent the offence. In the context that we are discussing, that would require more than just having something in the contract; it would require being able to show
that the instructions that gamekeepers were given were appropriate.

If you try to apply a general concept such as vicarious liability in one area, the question is: why pick that area rather than others? It is better to have a particular offence. You would need to identify what you are trying to capture and what you can actually prove in the circumstances that are likely to arise and then try to target it that way.

**Peter Peacock:** From what you say, you believe that it is possible to have a specific offence in relation to the issues that we are describing and to construct the law in such a way that we increase the chances of prosecuting the right people, if that is the ultimate desired outcome.

**Professor Reid:** You could do that, but you would have to be clear about exactly what you were trying to get at and be aware of the need to be fair all round. You do not want to have neighbours feuding and lobbing dead birds over the fence on to each other’s land and things like that. I hope that that does not happen, but we need to think about how the system could be abused.

**John Scott:** Anecdotal evidence suggests that it does happen.

**Patrick Stirling-Aird:** Well, you hear such stories.

I want to add a further point that has occurred to me on vicarious liability. An element of fairness and fair play should obviously come into the matter. I wonder whether it would be a more acceptable provision if there had to be a history of continuing criminal activity, as some places have. Some estates have been named publicly, although I will not name them now. In two or possibly three estates, there has been a run of several years in which poisoned birds, illegal traps of one form or another or shot birds have been found. If an estate has had eight, nine or 10 years of that, as in one case, would a vicarious liability provision be fairer than it would be in other cases?

**Professor Reid:** If we take the example of the Bribery Act 2010, under which a company is liable unless it shows that it has adequate procedures, if there had been eight years of the same thing happening, it is fairly obvious that any defence that was mounted that adequate procedures were in place would fail. That thinking might be a way forward.

**Peter Peacock:** I want to move us on slightly. I recognise that there are highly complex legal questions on the concept of vicarious liability that might ultimately make it difficult for it to stick.

In today’s evidence from the raptor study groups, and in evidence from SNH and others, we have heard about the alternative notion of licensing estates to carry out grouse shooting, for example. There seems to be an association between grouse moors and potentially illegal activity, although it is not everywhere.

The notion is that if we could find a way of licensing an estate, and there were breaches of the terms of that licence, which would have to be specified, and if there was evidence over time—as there has to be with pub licences if there is constant rowdiness or the police believe that drugs are being supplied from the pub—when the committee next considered the licence, it could decide whether to remove the licence to practise or to place constraints on it. Licensing might not be an alternative, but could it be a way of dealing with the problem?

**Patrick Stirling-Aird:** Licensing could be an alternative or an add-on, but there would be a lot of sensitivity about that and, in a way, it brings me back to the moral point: it might help to tackle what I see as the moral falling down of some owners and managers of land. I presume that removal of the licence would come in only when there was a conviction, not on suspicion, which would be quite right. I understand that in the European Union, for example, Germany, the Netherlands and Spain have procedures that one could follow. There is a lot to be said for the idea.

Incidentally, it is not just upland grouse moor estates that would come into the picture. For some species, particularly the goshawk, there is a good deal of evidence of lowland bad practice. It is a neglected species, in a sense. We hear about golden eagles, peregrines and hen harriers, but we do not hear so much about goshawks. Licensing would have implications for lowland estates as well as upland ones.

**Peter Peacock:** Have you thought about licensing as a mechanism, Professor Reid?

**Professor Reid:** I have thought about it as a technically possible solution, but I am not convinced because the costs and the burden would likely be disproportionate, especially when we try to define what is being licensed, how often it has to be reviewed, how transfers of licences will be dealt with when estates change hands, whether there should be an appeal procedure, how renewals will be done, whether there will be fees to pay and so on. I am not convinced that the mechanism would be in proportion to the size of the problem, serious though it is.

**Patrick Stirling-Aird:** I disagree with that, although I am coming from the specialist perspective of raptor monitoring and conservation.

We have had years and years of the voluntary approach. Leslie Brown wrote a book in the “New Naturalist” series that was published in 1976, and it dealt with the situation up to 1972. He was
convinced that the soft sell had failed and that what was needed was a good hard bang on the ear. That is equally true now.

It might be in the interests of estates as a whole for such a licensing scheme to happen. I know that they argue against it, but for those in the conservation community who have information about the issues, shooting management has had bad press. The bad apples spoil it for others.

In the long run, if we had a more stringent enforcement system using one of the proposed methods, the public perception of sporting and shooting would improve. It would benefit the estate-owning and sporting community rather than work against it, and it would help to finally get rid of what are still quite widespread bad practices.

**John Scott:** Dr Thompson, do you have a view on licensing?

**Dr Thompson:** I have a very general and personal view. We are several steps away from holding estates responsible for their employees. I think that estates would put up quite a striking defence, particularly having seen the defence of certain individuals by powerful advocates for what might otherwise be regarded as fairly minor offences.

You should concentrate on and enforce the current legislation, and things will follow from that. I would not recommend diverting your efforts away and going along a more vicarious route. I would concentrate on what I think is reasonable and effective legislation, and then enforce it.

12:45

**Patrick Stirling-Aird:** One of the problems is that although the existing legislation is good it is not enforced. With spending cutbacks, what will police forces do? They will perhaps spend less on enforcement than they do at the moment.

**Dr Thompson:** There are agencies that can investigate and enforce, and they should be encouraged to do so. Some areas are difficult places to go, but if convictions are brought things will eventually come to the surface.

**The Convener:** Thank you for that. We must now move on.

**Aileen Campbell:** We have heard a range of opinions from witnesses regarding snaring. We heard from the Scottish Gamekeepers Association that, when an animal is caught, "its instinct is to lie like a dog or hide," — [Official Report, Rural Affairs and Environment Committee, 7 September 2010; c 2975.]

especially at night. The SSPCA witnesses told us something different—that they have seen a lot of injuries caused by snares. We heard from the Veterinary Association for Wildlife Management, which emphasised the fact that a snare is used as "a restraining device," and told us that the way to ensure that that happens effectively is good design. Do the witnesses—Dr Thompson in particular—think that it is possible to make a judgment about how humane snaring is compared with other methods of predator control?

**Dr Thompson:** Any form of control of vermin is not pleasant. Being trapped by a snare is not pleasant. The natural instinct of an animal that is trapped by a snare is to attempt to get away. In some cases, they will do the most remarkable things. I have seen otters spin on a snare; they will turn a legal snare into something that is illegal. I have fairly big hands, and I could not unwind it. The force that is required to turn a wire snare several times is unimaginable.

You have to accept that snaring is an unpleasant activity. However, if someone’s birds or lambs are being eaten by foxes, for instance, or if their fields are being destroyed by rabbits, they need a reasonably effective means of disposal. What is in the bill is excellent. If the bill is adopted and its provisions put in place, that will provide for very effective use of snares. In other words, you would be telling people that snares must be checked within 24 hours, that they must have labels and so on. All those things are very sensible and reasonable controls, and they present a balance between the people who require snares and the people who are interested in the protection of animals and animal welfare. I do not have any problems with what the bill contains in that regard. It is a commendable piece of proposed legislation.

**Patrick Stirling-Aird:** I would not argue with that. However, the question of snaring is not within the ambit of Scottish raptor study groups. I have some views on the subject, and every individual member will have his or her views on whether or not snaring is justifiable.

There is one aspect that is definitely of concern to us, however, and we responded to the Scottish Government consultation on it a year or two ago: the snaring of mountain hares. They are an important prey species for raptors, particularly golden eagles. In some places there has been a policy of attempting to eradicate mountain hares in order to stop the louping ill disease and to benefit red grouse. A fairly recently published paper says that that is a waste of time. Leaving aside whether it is or is not, however, and acknowledging that it is legally a grey area, I think that steps should be taken, one way or another, to stop the widespread culling of mountain hares by snaring.

**Aileen Campbell:** Dr Thompson, from your career experience, could you give the committee a
bit of a steer regarding the effects on an animal that has been caught in a snare for 24 hours?

**Dr Thompson:** The animal will be damaged, but it depends on the type of animal. If someone catches a fox in a snare, they have caught the intended victim, and their job is then to dispose of the fox humanely, which is normally by shooting it. The problem comes when species that are not intended to be caught are caught, for example badgers or otters. The bill says that, because a snare is free-running, the badger or otter should be released. That is not as easy as you might imagine: the animal will be angry and they have large teeth, and a person without gloves who attempts to release them single-handed has practical difficulties in doing so.

In some cases, if an animal is in a snare for 24 hours the skin will probably break after it is released. I have sometimes wondered whether to release a badger in a snare or shoot it. Would it be more humane to shoot a badger that I have found in a snare? If I heard that someone had chosen to shoot a live badger caught in a snare, I would not necessarily criticise them. I have examined the skin from badgers under those circumstances, and I have found underlying pathology. In other words, I can imagine that after the animal is released the skin would break a week later, because of the pressure that is created.

Snares are a necessary evil—I speak as a veterinary surgeon. If you were to take a vote of all veterinary surgeons, I suspect that the majority would be opposed to snaring, but a different view would probably be taken among rural veterinary surgeons. It would be much the same as asking veterinary surgeons whether it is a good thing to eliminate badgers. The vote would probably be that it is not, but veterinary surgeons in the southwest of England who deal with tuberculosis would take a different view.

The use of the snare is something that we expect, sadly, but I return to the point that I have already made: I could not fault the proposed legislation—I think it is excellent. It has to be enforced, however.

**Aileen Campbell:** Thank you. It is right to express the balance that is required to ensure effective management.

**Peter Peacock:** Something occurred to me when you were speaking earlier. Do vets come across illegal or other snaring incidents often? Are they often called out for that?

**Dr Thompson:** There is a wide range of circumstances in which damaged or injured animals come to vets. On the point that Bill Wilson raised, if someone who is out climbing a hill or wandering through a wood comes across an injured animal, what is their first port of call? Who do they take it to? In some cases, they will take it to a vet, who ends up looking at the injured animal. It is a matter of perception. If that vet thinks that there has been an offence, whom do they contact?

**Peter Peacock:** That was going to be my next question.

**Dr Thompson:** The point of contact would be the SSPCA, because vets regard it as a welfare organisation. The vet would not necessarily think that there had been a crime, although I applaud the wildlife officers who work under the partnership for action against wildlife crime for their efforts.

**Peter Peacock:** Let us go a stage further. When someone dumps on you the body of a poisoned bird or an animal that has been damaged in a snare, are you under a duty to report that to the police or to anyone else? Are vets under a duty to take such action?

**Dr Thompson:** Vets have two duties. If they found something that they thought was wrong, they would report it on moral grounds. If they thought that a crime was involved, they would have to take action.

**Peter Peacock:** Is that part of the professional ethic or code of a vet?

**Dr Thompson:** Yes. In the past year, I have seen about 20 dead buzzards of various sorts. You start by looking at them as dead animals with no history, as no one brings them in. The majority will have died from emaciation, simply through lack of food. Life is tough out there, even for a buzzard. However, you will find some with carbofuran, which consists of little blue pellets. I refer such cases to the person who brought the bird to me—sometimes that is a wildlife officer or someone from the SSPCA—so that they can take the matter on from there.

**John Scott:** We have received a submission from Grigor and Young about snaring. It refers to section 13 of the bill, which will insert in the Wildlife and Countryside Act 1981 a new section providing that

> “The identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position.”

The submission suggests that the problem with the provision is that snares can be tampered with by others or moved by wild or domestic animals. Unless the person who set the snare had photographic proof that they had set it in a particular way, it would be difficult or impossible for them to prove that they had not set it incorrectly. Have you considered that?

**Professor Reid:** I have not considered it in detail. I know that vaguely similar provisions in
road traffic legislation—the presumption that the licensed keeper of a motor car is the person who parks it or who was driving—have given rise to human rights arguments, but I cannot remember the outcome of those cases. The provision is not unique, but it is of a sort that can cause difficulties. Given that so much can happen to a snare in the wild, I can see why there are concerns about the provision.

John Scott: The problem that the committee faces is that, although all of us are opposed unequivocally to wildlife crime, we are struggling to find the best way of delivering the proper proof that is necessary for a case to stand up in a court of law.

Professor Reid: The provision is a way of avoiding that. We must consider whether penalising the person who is authorised to set the snares is going too far or whether it is an appropriate way of ensuring that they devote proper care and attention to what they are doing.

The Convener: We will move on to species licensing. There seems to be an anomaly between protection of species under the natural habitats regulations and under the Wildlife and Countryside Act 1981. Do you agree with SNH that the tests of public interest that both pieces of legislation require are the same?

13:00

Professor Reid: A separate test applies to birds. In relation to animals, the 1981 act has a list of specific purposes for which licences can be granted with regard to species that are protected under domestic legislation. Under European regulations, however, as well as some specific items there is a more general provision about a licence being granted for social, economic or environmental purposes. It seems to be a bit odd that there is broader provision for the European species, which were supposed to be the more protected ones, than for the domestically protected species and that we had to fit within narrow gaps. Given that the provision in the bill talks about there being

“a significant social, economic or environmental benefit”

and

“that there is no other satisfactory solution”,

I think that it is just to make life easier rather than to force things into narrow categories or discourage people from seeking a licence because they think that they might have trouble fitting into its requirements even though it might be justified. I do not see any particular problems with that broader provision.

The Convener: If someone is refused a licence, should there be an appeal mechanism and, if so, to whom?

Professor Reid: Appeals are a big issue, given all that is happening in relation to the civil courts review and tribunal systems. With the licensing powers being transferred to the ministers, if the ministers were to refuse to issue a licence, any appeal would have to be to an outside court, tribunal or some such body—perhaps to the Scottish Lands Tribunal or Scottish Land Court, which has the SSSI powers. If SNH has such licensing powers, there could be an appeal to ministers.

Is an appeal mechanism necessary? If the expectation is that one will not get a licence, and so being allowed one is a bonus, it is arguable that there is less need for an appeal mechanism. If, however, your view is that the prohibition is deliberately broad and people expect that they will be allowed licences, an appeal provision is more appropriate. From a Human Rights Act 1998 point of view, would the decision to refuse a licence determine somebody’s civil rights and liberties? I suspect that it would not, on the basis that if the general prohibition is acceptable, that is the starting point and any licence is an exception from it rather than an interference with rights. I could set an essay on the subject for my students and I would expect them to argue both ways, but on balance, I would say that an appeal provision is not necessary. Thank you for the suggestion for my course.

The Convener: Let us move on swiftly to raptors. Peter Peacock has some questions.

Peter Peacock: There appears to be evidence of an unexplained number of missing raptors in certain territories—there are up to 50 fewer golden eagles than might be expected annually in certain territories. Equally, the spread of red kite on the Black Isle seems to have come to a stop when one would expect numbers to be higher. There are other bits of similar evidence. What evidence is there for that situation from the raptors groups or others?

Patrick Stirling-Aird: There is a great deal of circumstantial evidence, although I think that it is also scientific. If, in a suitable habitat, you have the absence of a species that is adapted to that habitat and should be there and you know that it is in adjoining areas not too far away, that is an indicator of persecution. The corpses and instances that are discovered are the tip of the iceberg. The figure of more than 50 golden eagles killed annually in Scotland is an accurate estimate that comes from several different directions, including statistical analysis.
I touched on peregrines a moment ago. Just two days ago, I got hold of information from south-east Scotland, and as in quite a number of previous years there is a presence or absence issue there as well. A minority of the peregrine territories in that area are on grouse moors, but about half of them are unoccupied. It goes back to the extent to which the evidence is circumstantial or anecdotal, and in cases in which there is hard evidence, it goes back to persistent killing. The difficulty is that there is lots of circumstantial evidence—I gather that the national wildlife crime unit would like to know about such evidence so that it can build up a picture—but there is little evidence in the form of corpses.

If you do not mind my speaking for a minute or two longer, I will give an example that I heard not too long ago. Because more attention is being paid to poisoning, the people who carry it out are being more careful. I have heard of a technique that involves putting out clean and unpoisoned carcases for a time—perhaps two weeks or so. Because of the risk of being caught, the person, at the end of the two weeks, will put out poisoned carcases late in the day and go round fairly early the next morning to remove the evidence. The poison may have killed some foxes overnight, but it might also kill ravens, buzzards or golden eagles in the morning. You can see what I am getting at, which is the difficulty of uncovering evidence in that sort of scenario.

**Peter Peacock:** There is a scientific, statistical way of arriving at certain broad conclusions about the absence of species where we would expect to find them, but your members are out and about in the field all the time. Are they coming across traps or birds on their travels, or coming across carcases that perhaps end up on Dr Thompson’s slab in the lab?

**Patrick Stirling-Aird:** In a few cases, but I believe that most carcases are discovered by walkers in the countryside rather than by amateur conservationists, if I can put it like that. Again, it boils down to the circumstantial side. There is another factor. We find that, if there is a change of gamekeeper, things can get better or they can get worse. Now that is strong circumstantial evidence. To put the matter in perspective, in many places where there is raptor persecution, it has always been bad. In recent years, some estates have got better and others have got worse. That takes us back to the scorched earth scenario. However, the direct, physical evidence is so difficult to recover.

**Peter Peacock:** Just moving on a bit further, but in a slightly different way, the argument is made that, if licences to take buzzards were readily available—part of the argument is around the release of hand-reared pheasant and red-legged partridge—the incidence of poisoning would decline. What is your general view of licensing people to take buzzards?

**Patrick Stirling-Aird:** The argument that things would decline if there were licences is rather like somebody saying, “If you allow us to do a bit of shoplifting, we won’t do any more housebreaking.” That is my answer.

At present, the licensing issue is particularly focused on buzzards in relation to reared and released pheasants. Buzzards are to some extent predators of pheasants, obviously, but they are being hyped up as a great problem. We only have to drive along some country roads to see what the problem is for pheasants—we see them squashed on the road. I do not think that we have evidence that buzzards cause serious damage, so I do not think that licensing the control of buzzards is justified. There would be all sorts of practical problems.

Game bird management of that sort has some benefits, for example through the planting of game crops, but a grey area about which knowledge is lacking is the impact of large numbers of non-native game birds on natural wildlife. I understand that no studies have been undertaken on the competitive effect of pheasants and red-legged partridges vis-à-vis native wildlife. I could go on, but I do not want to. When I put together quite a lot of threads, I see no justification for the licensing that you mention.

Ravens are a slightly different kettle of fish, because a farming issue is involved. One might be able to attribute to ravens more solid evidence of damage, although that might be hyped up, too. For game bird management, I see no justification for licensed control of otherwise protected species.

**Peter Peacock:** It helps to have your position. Part of the argument rests on classing pheasant and red-legged partridge as livestock. I am interested in whether Professor Reid has a view on that.

**Professor Reid:** Not in detail, I am afraid.

**Peter Peacock:** That answer is splendid—thank you very much.

**John Scott:** In the same way as Mr Peacock just led Mr Stirling-Aird through his evidence, I will ask Dr Thompson and Professor Reid—or Mr Stirling-Aird—for a view. Mr Stirling-Aird said that the 50 missing golden eagles were an indicator of persecution and that golden eagles were killed annually. I suggest that they have died annually but that the figures do not necessarily indicate persecution. As Dr Thompson said, many buzzards that are delivered to him have died of natural causes—of hunger. Food is limited—otherwise, the animals would not take the baits that it is alleged that they are being given. They
Patrick Stirling-Aird: Yes.

Dr Thompson: The agents that are used to poison animals need to be considered. The ideal poison operates such that the animal consumes it and goes 10 miles away to die or it causes the animal’s body to explode after consumption, so that nobody realises that the poison is there. The poison that is commonly used is carbofuran, which tends to kill straight away. The animal dies where it ate the carbofuran. Just as the bill says that snares should be checked every 24 hours, I suspect that the problem is that people in some areas check for and remove poisoned animals, so the evidence is removed. When carbofuran is found, it must have been locally administered.

I take John Scott’s point that some animals die of natural causes. Finding that out is the job of pathologists, who look at dead bodies that are brought in.

John Scott: Of the 20 or so buzzards that you are given annually, how many have died of natural causes?

Dr Thompson: I would say that probably 15 would have died of natural causes.

John Scott: Is it unreasonable to extrapolate that, of the 50 golden eagles that are missing, perhaps three quarters—37.5—might have died of natural causes, given weakness and our harsh winters?

Dr Thompson: Among the five buzzards out of the 20, three would have been shot and two would have been poisoned.

Bill Wilson: A mortality rate of 25 per cent is quite high.

Dr Thompson: It is quite high—it is significant. If that were the level among birds such as the eagle, which lives for a long time, that would be a concern.

Patrick Stirling-Aird: I must answer John Scott’s point.

John Scott: I am interested in teasing out everybody’s views.

Patrick Stirling-Aird: There will obviously be some mortality—some young golden eagles will die because they are incompetent birds. There may be a lower mortality if there is man-made killing, as natural mortality may be a bit lower in compensation. However, we know that some golden eagles have been poisoned. A key question is why, in productive habitats in the eastern Highlands, the number of occupied golden eagle ranges has been going down when the conditions are ideal. If the number is going down, it is because birds have been killed.

Bill Wilson: John Scott said that there must be a lack of food if the raptores take the poisoned bait. I assume that I would be correct in thinking that, as predators, raptores are also scavengers and therefore likely to take a dead bit of bait, whether or not an ample supply of live bunnies is wandering the fields.

Patrick Stirling-Aird: Yes. That was the benefit of wolves in the countryside. I do not mean to be facetious but, for example, it was said that, when a wolf killed, 50 per cent of the carcase would not be eaten by the wolf—scavengers would be there. Golden eagles and others have likely adapted to depend on carrion, so as partial carrion feeders they, buzzards and red kites will be particularly vulnerable.

The Convener: I have a couple of quick final questions on the welfare issues that arise from shooting deer. Does the BVA believe that any welfare issues arise out of the practice of shooting deer? Secondly, why should somebody have to be competent to shoot deer rather than any other animal?

Dr Thompson: The deer is a large animal. People shoot it over a distance and with a very dangerous weapon. I would therefore expect the people who do that to be well trained. There is only a certain number of positions from which someone can get an effective kill. It is not something that I could necessarily do. I have killed lots of animals at close range, with captive bolts, a variety of pistols and so forth, but I would not like to walk out and be told to shoot a deer. The provision on training is reasonable.

I had the unfortunate experience of having to examine a cow that was shot on the Perth to Stirling railway line. The police had come out to do the job—they put four bullets in its head and managed to miss its brain because they were shooting it in the wrong place. A deer shot in the heart would have been killed straight away. That is a good example of the importance of training people to shoot things properly.

Aileen Campbell: I have a question of clarification on the issue of competence. Professor Reid, you said that a register should require greater parliamentary scrutiny than the negative resolution procedure. What procedure would you want it to go through?

Professor Reid: It is a big policy decision to move from the current situation to one in which everybody who hunts deer must have proof of competence, with all the issues of standards,
appeals, duration of licence and so on. The first time that the register is introduced, it should perhaps go through under affirmative resolution procedure rather than our running the risk of it going through on the nod when lots of other matters are coming before this committee and the Subordinate Legislation Committee. I do not think that affirmative resolution procedure would be justified every time that the register was adjusted, but it seems to be a big policy decision that the heart of the bill does not actually answer. Making the step should require more scrutiny than just a negative resolution process.

The Convener: Thank you. I think that we have exhausted our questions. I thank the witnesses for their attendance. If they have any further information that has arisen from what has been said today, we would be grateful if they could provide it to the clerks as soon as possible.

That concludes the public part of the meeting; I thank everyone for their attendance.
Wildlife and Natural Environment (Scotland) Bill: Stage 1

10:03

The Convener: Item 3 is evidence on the Wildlife and Natural Environment (Scotland) Bill. I welcome the panel from which we will hear today: Roseanna Cunningham MSP, Minister for Environment; Kathryn Fergusson, bill manager, wildlife management team, natural resources division; Hugh Dignon, head of wildlife management team, natural resources division; and Andrew Crawley, solicitor, food and environment division. They are all from the Scottish Government.

I believe that the minister wishes to make a short opening statement.

The Minister for Environment (Roseanna Cunningham): I will say a few words about the bill as a whole, because there are so many different parts to it that it is easy to forget that it is a single piece of legislation.

The bill is about management of the countryside and contains three recurring themes that relate to how that management will work: modernisation, animal welfare and balance. I will say a little about each theme in turn.

The modernising aspects of the bill are clear. It aims to update what is sometimes archaic legislation on matters such as game birds; to modernise and make fit for purpose legislation on issues such as snaring and muirburn; and to reflect changes in organisational structures such as the merger of the Deer Commission for Scotland with Scottish Natural Heritage.

Animal welfare concerns also run through the bill. For example, we are making significant proposals on deer welfare, with provisions to bring about a competence system for deer shooters. The snaring provisions recognise that snaring remains a necessary tool for land managers but seek to ensure that it is carried out to the best standards of animal welfare. The muirburn provisions also have a welfare element in that they seek to protect ground-nesting birds that are starting to build nests earlier in the year, due to the effects of climate change.

The last of the three themes is balance. Members all know fine well that the Scottish countryside is so much more than the views and the scenery. It is a place where people live and work, often making a difficult living in remote places. It is also a place of recreation for many people, including walkers, bird watchers and hunters—forms of recreation that often represent economic activity as well. That wide range of activities inevitably results in a similarly wide range of objectives and consequent demands on the legislation. We have tried to steer a careful course between those competing demands to strike a balance in the provisions of the bill. Sometimes, that balance is achieved within a particular topic, but often that is not possible and we have to try to strike a balance considering the bill as a whole.

There are clearly some issues, such as invasive non-native species, in relation to which the conservation lobby feels more satisfied than the land management organisations, and other issues, such as deer management, where the position is reversed.

I have followed with great interest the evidence that has been given to the committee and have been struck by the wealth of experience and knowledge of the witnesses as well as by the wide range of views on many of the subjects. One of the issues that was discussed at considerable length was wildlife crime. I was interested to hear the various views on that as it is a subject that the Government takes extremely seriously. We had not included anything new on wildlife crime in the bill as we took the view that the legislative framework was sufficient as it stood and that the focus, particularly as regards the poisoning of birds of prey, should be on working to improve the effectiveness of enforcement.

Since that decision, we have been through what is likely to be a very bad year for bird poisonings, which has featured some high-profile cases at well-known estates in the Highlands. I have also heard some of the powerful arguments that have been presented to the committee. I recognise that those circumstances are likely to produce amendments on the subject and so have decided that the right thing to do is to lodge a Government amendment, introducing a new vicarious liability offence. I have asked for that and I will be happy to say more about it when we come to the relevant part of the evidence session.

We will also have a small number of Government amendments in other areas. They are mostly of a technical nature or are designed to clarify or improve the provisions in the bill as originally introduced. Again, I will be happy to refer to those as we go through the bill.

Lastly, I would like to thank the wide range of stakeholders who have contributed so much to the development of the bill, from the consultation stages, through informal discussions with officials to the evidence-taking sessions in committee. Without that expert input, the bill would not represent the relevant and balanced approach to management of the countryside that I believe it does. Of course, I also thank committee members for the work that they have done so far.
The Convener: Thank you, minister.

Liam McArthur (Orkney) (LD): I welcome what the minister has said in relation to wildlife crime. I know that my colleagues will want to explore the detail of her proposal, but I should say that it is good that the minister has recognised an issue that has occupied quite a bit of our attention during this process.

Minister, you set out three key themes, but one of the observations that has been made about the bill is that there seems to be a lack of narrative behind it. There have also been concerns about the complex and somewhat fragmented nature of law in the area of wildlife and the environment.

Do you believe that there is a clear and coherent framework of wildlife and environmental law in Scotland? If so, how does the bill support that and move it on?

Roseanna Cunningham: I believe that there is, and an enormous amount of work has been done in the past couple of years in the area of wildlife crime. We must not forget that a huge amount of what goes on in this area is not necessarily prima facie legislation. In the past year or two, the Crown Office and Procurator Fiscal Service has been doing extremely good and helpful work that will, I believe, result in improvements.

The bill is primarily about regulation and management. It is as well to remember that not every piece of legislation must take a high-flown approach. The bill is about the practicalities of what happens in the countryside and of various aspects of management in the countryside. I accept that it is one of those bills that apparently cover a wide range of subjects, but the only other approach would be to have separate legislation on each subject, which would not be practical. We need to find the right balance, by keeping a theme throughout the argument, but bring measures together in a single piece of legislation rather than treat them separately. It is important to remember that much of the work that takes place will not necessarily be printed on the face of any legislation.

Liam McArthur: You mentioned the expertise that the witnesses we have had before us have demonstrated. That was particularly true of Sheriff Drummond and Professor Reid. Sheriff Drummond had criticisms, which were echoed by Professor Reid, about the fragmented nature of the law. He said that the legislation is difficult to find and that it is difficult to see the direction in which it is going. The observation was made that there is a need for a general consolidation of the law. Has that been considered? Do you envisage that future Governments will have to wrestle with that?

Roseanna Cunningham: In the area of law that we are discussing, and in others, there is probably a good argument for consolidation. However, consolidation bills are not easy at all—they are not easy to draft and there are huge implications for any civil service in dealing with them. I have a great deal of sympathy for the people, particularly the lawyers—as you might imagine given my background—who must deal with the fragmented nature of what are in effect criminal justice provisions. They are scattered throughout legislation. However, it is difficult to see how else we could manage that. I am not sure what the alternative is. Many pieces of legislation include sections that deal with criminal offences. The only alternative to putting them into different pieces of legislation is to decide that, every 10, 15 or 20 years, we will scoot around gathering in all the provisions and put them into consolidated legislation on criminal justice, or whatever the subject is. However, doing that is not as easy as saying that it needs to be done.

That is not to say that, in some areas, we do not need to consider consolidation fairly strongly. Wildlife crime is probably one area in which we are at the stage of perhaps considering a consolidated piece of legislation to bring all the provisions together for the criminal justice people. I repeat that that is not as easy as it sounds and would take a considerable amount of careful thought and effort. Consolidation bills, by their nature, are bills that are amendable, and people try to bring in all sorts of other measures. The issue is difficult. Wildlife crime is not the only area of legislation that I have come across, even in the two years in which I have been a minister, in which I can see that a consolidation bill might be the right way to go in theory but in practice might be harder to achieve than we imagine.

Liam McArthur: I will move on before we get back into the Crofting Reform (Scotland) Bill.

Roseanna Cunningham: I could not possibly comment.

10:15

Liam McArthur: To be fair to Sheriff Drummond, I do not think that he underestimated the complexity of achieving that. Indeed, your announcement on vicarious liability only serves to reinforce his observations.

On parliamentary accountability, the Subordinate Legislation Committee has expressed concern at the lack of a requirement for parliamentary approval of the code on sustainable deer management and the decision not to make regulations on competence in the code for invasive non-native species subject to affirmative procedure. Would you care to comment on what are, I suppose, criticisms from that committee?
Roseanna Cunningham: I understand exactly where the committee is coming from and have every sympathy with its view. However, in these circumstances, the code is not some kind of theoretical guidance; instead, it provides day-to-day practical guidance, which means that we need to be able to change it quickly if some aspect of it is simply not working. If we are to be able to update it quickly to keep it relevant to the reality on the ground, we need to ensure that the procedure that we choose does not get in the way.

That said, I am keeping an open mind and await with interest any views that the committee might have and its decision on the matter. I understand the driving force behind the other argument, but I am concerned about producing codes of conduct that are locked up in a system and cannot be changed as quickly as we might otherwise wish. In that regard, I ask the committee to keep in mind that these are meant to be practical management codes not codes of a bigger, more visionary nature. We have to strike the right balance and ensure that we have something that in practical terms can be changed as and when necessary.

Elaine Murray (Dumfries) (Lab): I appreciate that the bill is largely about practicalities but, as has been pointed out to the committee, the bill gives us the opportunity to do on land what we did in the Marine (Scotland) Bill—which we amended with a requirement for an ecologically coherent marine system—and have coherence among habitats, presumably with a programme of restoration and protection, with all the beneficial effects that such a move would have for climate change, prevention of disease and habitat loss. Moreover, it would mean that, instead of being in small pools of protected area, species would be able to expand further into the countryside. Have you considered that suggestion? I realise that it is more of a high-level strategic matter, but would you favour such an approach?

Roseanna Cunningham: As you might imagine, we have had conversations on that issue and have listened to and heard some of the views that have been expressed. As I said in my opening remarks, people need to remember that the bill is largely about practicalities but, as has been pointed out to the committee, the bill gives us the opportunity to do on land what we did in the Marine (Scotland) Bill—which we amended with a requirement for an ecologically coherent marine system—and have coherence among habitats, presumably with a programme of restoration and protection, with all the beneficial effects that such a move would have for climate change, prevention of disease and habitat loss. Moreover, it would mean that, instead of being in small pools of protected area, species would be able to expand further into the countryside. Have you considered that suggestion? I realise that it is more of a high-level strategic matter, but would you favour such an approach?

Roseanna Cunningham: I can certainly ask for a much more detailed response to the question, but my immediate response is that we are constantly having conversations on such matters. I have separately chaired the Scottish biodiversity committee. As you might imagine, those are precisely the kinds of discussions that take place constantly in it.

We are aware of the dynamic tension in the situation, particularly with respect to non-native species. Climate change will bring non-native species here, and in some cases there will be little that we can do about that. The climate will have changed and so there will be changed habitats. In those circumstances, there are big issues to do with the pressures on our native species. We constantly review such matters and try to be vigilant about them.

Equally, a big message that we have to get out to the general population is that, when we make designations, for example, we are not just trying to be horrible to local communities; rather, there is a bigger purpose, and there is a bigger picture behind those designations.

We face a number of challenges in this area, but I promise members that we are grappling with them. If members wish, I can ensure that lengthier background information is provided in writing on how the thinking works through the various aspects of government.

The Convener: Okay. We shall move on to the investigation of wildlife crime and enforcement.
Peter Peacock (Highlands and Islands) (Lab):

I want to cover a few matters before I come on to the issue of vicarious liability, in a wee while.

We have heard that, even with the existing statute and provisions, which can be quite powerful, there is often great difficulty in getting the police to give sufficient attention to investigating wildlife crimes that are brought to their attention. There is an inevitable conflict of priorities for them. What is your judgment on that?

Are the police investigating wildlife crimes sufficiently? I am aware that constabularies’ practices vary quite markedly. The worry has also been put to us that the pressures on the police will become even greater in the current economic and public expenditure climate. What is your view on that?

Roseanna Cunningham: That is a challenge. The number of police forces in Scotland means that there are better responses in some of them than there are in others. I should say on the record that a number of policemen, including at very senior levels, are extraordinarily committed to the investigation of such crimes, and I record my thanks and gratitude for their work in proselytising in their forces and professional bodies. However, I will not pretend that the situation is perfect, because it is not, although it has been helped by the changes made by the Crown Office and Procurator Fiscal Service. I suppose that, in those circumstances, the police will become more confident that they will not waste time doing investigations that will not result in the criminal cases that should ideally result. That may help.

Through the partnership for action against wildlife crime, I encourage, in so far as it is possible for me to do so, all police forces to take the matter seriously. A number of cases have started off as wildlife crime cases and have ended up exposing many other criminal offences. We know that some wildlife crime is driven by groups and individuals who are connected to other forms of crime, so it is important that the police understand that a crime is a crime, and that investigating one crime will frequently assist them with a wider range of crimes. I will not pretend, however, that there are challenges in some parts of Scotland.

Peter Peacock: That is helpful. I share your view that there has been a significant improvement in recent years, but there is frustration that a sufficient amount is not being done. I suspect that there will be greater pressure in times to come, which brings me to my next point.

The Scottish Society for the Prevention of Cruelty to Animals currently has powers in relation to the care and welfare of animals, but not in relation to wildlife crime. The SSPCA and others have told us that its resource of about 60 people who go out to attend incidents can deal with those under criminal law only in relation to the welfare of animals. If they find a bird in a trap that is still alive, they can deal with it and deploy their powers, but if they find the same bird in the same trap and it is dead, they cannot.

Extending the powers in the way that we have done for welfare issues would contribute to wildlife crime detection in a regulated and controlled way.

Roseanna Cunningham: I am very open to that idea. It was not raised early enough to be considered as part of the bill process; it came up quite late on. I am not sure that we can progress such a change through this particular piece of legislation at this point; it would need considerable consultation and care, as there are all sorts of issues around it. However, I certainly think that we should consider it very carefully. It would be a significant step, which is why it must be taken very seriously, but I am not sure that it would be appropriate to address it at this stage. It could well be done in future, and could well have the result that you suggest. I am open to the idea, as is the Government.

Peter Peacock: Is the impediment to doing anything about it in this bill simply the need to give people the chance to observe it in a proper manner? Is it a procedural rather than a technical issue?

Roseanna Cunningham: It is a bigger issue of practice. If we were to embark on making such a change, we would need to be content that we understood all the consequences. We would need to be certain that there was widespread stakeholder support, and we would need to consult—as you might imagine—the police and Crown Office officials at the very least. There would need to be a process to bring the change on board.

We were talking earlier about bringing together provisions on wildlife crime. I am now simply ruminating on the matter, but it might be possible to make that change the headline part of our consolidation bill, which would give that bill more to do than simply consolidate things.

I would worry about making such a change in a five-line amendment at stage 2 or stage 3 of a piece of legislation on which we have consulted so heavily with no consultation on the change itself. It is a significant step rather than just a small thing.

The matter could be addressed in a separate criminal justice bill; the current bill is not the only form of legislation that could be used. There would be other potential avenues. If any Government was a little wary about a consolidation bill, there would still be opportunities for the change to be made.
Peter Peacock: In order to encourage anyone who might wish to lodge an amendment such as you have just described not to do so, would it be possible for the Government to give a commitment to actively progress the matter rather than leaving it hanging?

10:30

Roseanna Cunningham: I am perfectly happy to set about looking at that. I understand that there is perhaps a desire to have the debate in a slightly wider forum. As I said, I am open to that, because the proposal might be one of the fixes that we have going forward, particularly in the next three or four years.

Peter Peacock: That is helpful.

I move on to the state of the law itself. I want to come to vicarious liability in a moment, but before I do, Sheriff Drummond set out in close detail some of his thoughts about how the law on the crime of wildlife crime—that is not the right way to express it, but you get my drift—could be tightened up. At present, we depend on detecting the use of poisons to catch people for something that he argues should be a crime in its own right. He began to draw parallels between the structure of the law in relation to convictions that are sought for drug dealing and those who are behind it, and the application of that approach in the law on wildlife crime. Have you thought about the points that he has raised? Do you have any plans to take that approach?

Roseanna Cunningham: Sheriff Drummond works actively with us through the PAWS set-up, so we have discussions regularly, and they have shown that the proposal is not quite as straightforward or easy as might be imagined. We need to remember that.

We have looked at a variety of matters that were raised in evidence on the bill not just by Sheriff Drummond but by others, and our view is that taking some of them forward at this stage might create more problems than they would solve, particularly in the context of where we are with the bill. That is why we have decided to go down the road of vicarious liability. However, that does not rule out other changes in the future.

We have grappled hugely with the poisons issue. One difficulty is that, although there has been an assumption that the illegal poisons have been sitting in sheds or lock-ups for a long time, we now have a lot of evidence that they are being illegally traded from other countries. That is a slightly different thing to deal with, and we would not catch it if we went down the road of having poison amnesties or whatever.

We have looked at the other suggestions. Sheriff Drummond will undoubtedly keep up his pressure on us, but there are a lot of different voices in the area and we have to be careful that, if we go down certain roads, we do it with a lot of thought and consideration for the consequences. As I said, having looked at all the alternatives that have been canvassed with the committee, I took the view that the vicarious liability approach is a more robust way forward, and we have worked hard to get it to the stage that it is at now.

Peter Peacock: Can we move on to that, then? I very much welcome what you have said about it, and subject to seeing the detail I am sure that it will have my support and the support of my colleagues in the Parliament. However, I am equally conscious that Sheriff Drummond and others have expressed caution about the ability to make it stick, so to speak, because it is a complex area of law. It would be interesting to hear more of your thoughts about that complexity and the potential robustness of any provision that you are able to bring forward.

One thing that is absolutely certain is that the first case that comes to court—I hope that it will never come to that, but I assume that it might do so if we make the provision in law—will be robustly defended by some of the best and best-paid lawyers in the land, so we have to be pretty certain that the provision will work and be a strong instrument of policy. I am interested to hear your further thoughts on that.

Roseanna Cunningham: I am conscious of that, and it is why I flagged up some time ago that I wanted to see what the provision would look like and why we engaged the Crown Office proactively from the beginning in considering the matter. What we have drafted has precedent in legislation in Scotland in the Criminal Justice and Licensing (Scotland) Act 2010, so we are mirroring something that already exists. That helps with some of the issues that you are talking about.

We have what is effectively the first draft of an amendment. We are about 80 per cent of the way along the road with it, although we are considering a couple of issues in further detail. I am concerned that we do not allow loopholes to appear by including the draft provisions. As you know from a different piece of legislation, a canny lawyer can find loopholes in the most unlikely places, and fixing such loopholes can take a lot longer than it might have done to include them in the first place. We want to cover any such loopholes, and we do not want to have a loophole that allows people who are responsible to escape liability. We are working hard to ensure that that cannot happen. On the other hand, and to be fair, we must ensure that there is no scope for an employer to be liable
as a result of mischief. We need to be clear that there are two sides to the loophole question.

We are about 80 per cent of the way there, and so I am not in a position to circulate the draft amendment at the moment. The issue is active, and discussions are constantly taking place. As you might imagine, the lawyers are involved, and I have involved the Crown Office right from the start of the process to ensure that we arrive at something that is as robust as possible.

Peter Peacock: Given your comments about the change that would be effected if you allowed SSPCA inspectors to have a wider role, and given how fundamental that is, do you anticipate having to consult on that, or do you think that the evidence that has been drawn out in evidence to the committee is sufficient?

Roseanna Cunningham: A lot has been drawn out through evidence to the committee. We still need to get stakeholder input on some issues, particularly on the matter of due diligence. We know that we must continue to speak to stakeholders. Because I began the work in this area some time ago, we feel that we are quite a long way forward with it. The issue has been floating around for some considerable time. It is not that we have pulled something out of a hat; we were already looking into the matter.

I have spoken about the two sides of the loophole question, and we need to be able to sort that out. We have been speaking with stakeholders over recent months, and we know that people are aware that vicarious liability provisions might be introduced. It is important to continue to keep people on board in the discussion about the bill. However, we do not think that it is necessary to hold formal consultation on the matter.

Peter Peacock: I wish you well with tightening up the provision that is being drafted. I still have some concern about putting all our eggs in the one policy basket, because the first case that tests it might be struck down—it is entirely possible that such a case might not stand up, even with the best will in the world and even if the Parliament was fully behind the legislation. In that case, we would have no provision of the character that we have been discussing to support the policy of driving down and eliminating the poisonings that people have been concerned about.

Another concept has been raised in that regard: that of licensing estates for the activities that are pursued on them. The argument is that, if a licence were granted for grouse shooting on a moor, for instance, the licence could be removed in the event that it was proved that things had gone wrong on that grouse moor. That is a big issue in the context of the debate, but there seems to be some merit in having provisions—even in reserve—to cover the eventuality that your primary point, minister, ultimately does not stand up. Ministers could move on to further provisions. Have you given thought to that idea?

Roseanna Cunningham: Yes, and obviously we have had discussions about it. I am a little puzzled about the idea that we put in legislation something to have in reserve. In effect, we would be putting into legislation a provision that gave ministers the power to do something thereafter, which, from my understanding of the past year or two, is something that people have not wanted to do. Peter Peacock might want to have that discussion with his colleagues—

Peter Peacock: I have never been of the view that we should allow policies to get in the way of sensible decisions.

Roseanna Cunningham: That is interesting, and we could have a conversation about the idea, but I am making the general point.

I will move on to the specifics—the homing in on vicarious liability, from your perspective, to the exclusion of other possibilities, such as licensing. We are doing what I think is proper at the outset: we are targeting the limited number of people who are involved in wildlife crime. The licensing process that you are talking about would affect everybody. There is a discussion to be had about using a sledgehammer to crack a nut. We would be introducing a process that would draw every single person in the industry into the net to deal with the small number of recalcitrant individuals who continue to carry out dreadful acts. I am wary of that. It would be a major step to take, and we should not take it unless the measures in the bill fail—which brings us back to the idea of ministerial powers.

The proposal would also be a complete change from an unconditional right to take or kill game—which is what we have at the moment—to something that is conditional on a Government licence. That would totally change the balance, and if we were going to do that, we would need to think carefully about what that said about our freedoms. Enjoyment of property claims could follow, so I am not sure that going down that route would take away from some of the big rows that there might be in court cases. There could still be challenges, although we might be able to find ways around them.

Peter Peacock: I hear what you are saying and your argument that you do not want a massive bureaucracy. I readily understand that and I do not want to argue for that bureaucracy—I want to argue for a provision that allows us to keep bearing down on the dreadful crime that continues to occur. I am not suggesting that everything can
be sorted in the next three months, but it might be worth having something—I am not entirely sure what yet—that could be triggered come the day that it was needed without our having to go back to primary legislation. I might come back to that point at a later stage.

I am conscious, too, that the Scottish Rural Property and Business Association and others are working on, and have written to us about, a code. I have discussed it with the SRPBA, and it is an excellent idea. It will go a long way to developing practices that are more appropriate, but the problem is that, in the end, it is voluntary. Given that the SRPBA will encourage every estate to go for the quality assurance system—if that is the right way of describing it—we are not far away from a licensing system, and I wonder—

Roseanna Cunningham: It will be voluntary.

Peter Peacock: Indeed, I accept that, but I wonder whether, at some point, you might use the same criteria to authorise licensing. I urge you not to close the door on that idea.

Roseanna Cunningham: This is a reasonable debate to have, but given that the SRPBA and the Scottish Estates Business Group are pursuing the initiative, I would want to give it an opportunity to work in practice before we moved to the system that you are talking about.

In fairness, I acknowledge that the vast majority of estates are well and properly managed, and they are not likely to fear anything from any offence that we are talking about. However, the licensing process would affect every one of them. Somewhere along the line, there would be a cost, which would have to be recovered in some way, shape or form. The cost would either be devolved to the businesses or be subsumed into the licensing authority’s costs, which I doubt would happen in the current climate.

I could make many other arguments on the issue, which is why the committee needs to have a proper separate conversation about it. If Mr Peacock wants to lodge an amendment that reserves the right for ministers to come back with brand new things, we can have a productive discussion about that.

10:45

Peter Peacock: I will think about that.

I have one final point. Bird poisoning horrifies people. It is remarkable that any incident in which, for example, a dead eagle is found ends up on the front pages of just about every newspaper. The issue resonates with people in a remarkable way. Would there be merit in requiring ministers to report regularly to Parliament on that, so that Parliament was afforded the opportunity to debate the issues regularly?

Roseanna Cunningham: I am happy to do that, and I see no reason not to do it, as long as the reporting is not so formalised that it becomes an exercise in cost and resources. If the member is making a plea for an early debate on wildlife crime separate from the debates on the bill, I am happy to consider that, too.

Peter Peacock: I was thinking of a device in the bill that would mean that ministers would have to report regularly.

Roseanna Cunningham: We will consider that. We need to be careful that we do not end up with too clunky a system, but I do not have a problem with the idea. The information is available and a lot of it is put before Parliament in any case.

The member is correct that people are horrified by such incidents. Often, what is not taken on board is the untold damage that is done to Scotland’s reputation and, potentially, to the benefits that we are increasingly getting from wildlife tourism. People need to think about that. The destruction of such beautiful birds is intrinsically appalling, but there is an indirect cost that people often forget about. We need to remember that, too.

John Scott (Ayr) (Con): I declare an interest as a farmer and a landowner.

I share the abhorrence that others have expressed of poisoning and wildlife crime. I regret the fact that the minister feels driven to lodge an amendment on vicarious liability, although, from listening to her discussions with Peter Peacock, I understand why she feels that way. I regret that she has not chosen to explore the route that Sheriff Drummond offered to her and the committee, which would involve taking a similar approach to that taken to drugs and to people who are caught in possession. The position that the minister has arrived at on vicarious liability is not that the existing law is insufficient, but that it is not being properly enforced, because of the police’s lack of ability to establish crimes.

The minister spoke—meaningfully, I thought—about the Crown Office and Procurator Fiscal Service. I was not quite sure what she was implying when she said that it was spoken to about taking a different attitude to interpreting the law. The existing law is not necessarily being implemented adequately, but the minister intends to introduce another piece of legislation, on vicarious liability. The question about that is the same as the question about the current law—it is mainly about the burden of proof and how it is established that a crime has been committed. How will that be established?
Roseanna Cunningham: It is not a question of the Crown Office and Procurator Fiscal Service having been “spoken to”. During the past year, the COPFS has put in place a much more rigorous approach to wildlife crime and has designated individuals in the service who are specialists in the matter. We hope that that approach will help to move us forward. It will take a little while to feed through, but it represents more than just a conversation. The COPFS has been proactive.

John Scott: You said that the Crown Office is being “more rigorous”. Is it fair to say that the Crown Office was not hitherto being rigorous in its approach to wildlife crime? If the existing legislation had been rigorously and properly implemented in the past, would not most people regard it as adequate and would not there be no need to introduce vicarious liability?

Roseanna Cunningham: I am not sure that that is the case. There are a number of problems in respect of pursuing wildlife crime cases, which are not unknown in the pursuit of other criminal cases. We have to be able to establish a proper evidential chain. We talked about possession. The difficulty is how we prove in whose possession are poisons that are found in a lock-up.

In a sense, vicarious liability is a mechanism by which we make that more straightforward. It is not lessening the burden of proof—we are still looking for the same standard of proof—but it points the arrow a little more clearly at the people who ultimately benefit from the crime, as opposed to people who are caught between a rock and a hard place, by virtue of their employment or another reason. We are widening the net a little, in the hope that doing so will enable us to take a better and more targeted approach to pursuing cases.

For the reasons that you outlined, I did not want a much wider response at this point. We know that we have effected some change. There are still issues in relation to the police, so we are still trying to do the institutional things that require to be done if we are to ensure that we can pursue wildlife crime cases. In reality, we are taking a small step. Wildlife crime would not be the only area of criminal law in which vicarious liability applied. The concept is understood. However, I want to give the approach time to bed in before we consider going any further, for the reasons that you gave.

We could not have done nothing. When I came into this job, my predecessor had done an enormous amount of good work to bring together stakeholders who would not normally want to sit around the table and discuss things. We had got the discussion going. However, I made it very clear during the past year that I was looking for a significant improvement in the wildlife crime figures, and that if such improvement was not evident it was inevitable that there would be a debate about vicarious liability during the passage of the bill. There came a point at which I felt that if such a debate was inevitable, it would be better to have it with proper input and drafting support and to have a properly targeted approach, rather than have the kind of debate that we would have had if we had simply left the matter to a third-party amendment—

John Scott: I agree.

Roseanna Cunningham: Frankly, I was in a position in which doing nothing was not an option. The question, then, was how to approach the matter. Some people will feel that I could have gone a lot further, while some will not be happy that I have gone even this far, and that simply indicates the kind of compromise that we are having to make in this area. I hope that most people understand that.

John Scott: I absolutely understand why you felt that you had to do something, but I think that we all agree that it is a matter of regret that the existing law has not been adequately implemented. That failure is down to lack of proof, but the amendment that you say you intend to lodge will introduce another legal element that, with the lack of resources, might also fail because of the same issue.

Roseanna Cunningham: The thing is, Mr Scott, that one could say the same thing about any crime or any law that we introduce. Either the prosecution proves the case or it does not. That is the test. It is not a case of whether a particular individual did or did not do something; it is a case of whether the prosecution can prove it, and the same applies to statutory and common-law offences. The sentiments that you have expressed could be used to argue against any new criminal offence, and I am not sure that this conversation takes us any further forward, except in allowing me to point out that the bill gives the Crown the option of looking at another offence, which might help in a number of cases. I do not want to sit here and give the impression that I think that the measure is a fix for every incident. Oh that we had been so lucky to find such a golden bullet, but we were not.

John Scott: I just want to put on record that I hope that the voluntary licensing proposals that the SRPBA and others have come up with work.

Roseanna Cunningham: So do I.

John Scott: Undoubtedly, we all share the view that these crimes are abhorrent and that it is a great disaster that they continue to be committed. However, we need to keep a sense of proportion about them.

Roseanna Cunningham: I am so enthusiastic about the estates initiative that I am helping to
launch it. I want to reassure you that I am doing my best to encourage the voluntary activity that is going on. It is greatly to be commended.

Bill Wilson: It has been put to us that if a hillwalker stravaiging across the mountainside found evidence of poisoning, it could qualify as evidence in court. However, that might not be the case if he informed another organisation that sent someone out to try to collect the evidence. Have you considered that issue?

Roseanna Cunningham: I have not looked at that specific issue. I have to say, though, that the argument is a little similar to that used by Mr Scott in that it could be used about almost any criminal offence. The question of admissibility of evidence is a fundamental part of Scots law: in any criminal offence, every piece of evidence is tested for admissibility and might or might not be admissible in court. I understand that the argument emanates from the Royal Society for the Protection of Birds. We have discussed this issue in relation to the SSPCA, but the fact is that extending powers to the RSPB would be a huge step that would require the most careful consideration and thought and is certainly not a matter that should be encompassed in the bill.

Bill Wilson: I suspected that you would say as much, minister, but I wonder whether, if you decided to consult more widely on issues in relation to the SSPCA, you would also consider looking at this issue.

Roseanna Cunningham: At the moment, I am not inclined to do so. The SSPCA already plays such a role and is trained and involved in evidence gathering, albeit in a narrower way than one might consider appropriate. To extend that to another organisation that does not come from that background potentially would be an even bigger step than simply expanding the powers of the SSPCA, and it would need far more fundamental consideration than we can provide in the context of the bill. That would involve a fundamental conversation about the nature of criminal justice and how it is provided in Scotland, as it could be argued that it would have implications not just for the handling of wildlife crime, but for many other different areas.

11:00

Bill Wilson: To be honest, if a decision were made to extend the relevant power to the SSPCA, it would probably quieten a lot of the concern. I am sure that you are aware that when evidence is found in remote areas, with the best will in the world, the police cannot get there to pick it up within a reasonable timescale.

Roseanna Cunningham: Absolutely. With the best will in the world, that applies to any police activity in any criminal investigation. We are always dealing with such issues. If we had such a conversation, it would involve consideration of criminal justice, the philosophy around it and how we make the criminal justice system in Scotland work. If we are to make decisions about such matters, it is extremely important that we do so only after the most careful consideration. I would want to give as much thought as I could to the issue before we considered that suggestion.

Expanding the powers of the SSPCA is a more obvious and logical next step than extending powers to the RSPB. I do not know how that organisation thinks that it would manage the process, because if, by definition, any member of the RSPB were involved, the implications would be huge.

Bill Wilson: I am not entirely sure that the RSPB was suggesting that it should be able to gather evidence. I think that it was highlighting the anomaly whereby if someone found evidence by accident out on a hillside rather than in a back garden or someone’s immediate dwelling place, it could serve as evidence, but if an individual was told that that evidence was there and they went to find it and photograph it or whatever, it might not be admissible as evidence.

Roseanna Cunningham: It might not. In such circumstances, a court might decide that the chain was not robust enough. The issue is to do with admissibility of evidence, and that is a criminal justice matter, which should be considered in the context of a criminal justice conversation rather than a conversation about the bill. You raise bigger issues. Those concerns would apply to any piece of evidence in any case.

The Convener: Bill Wilson might progress his point by going on to talk about single witness evidence.

Roseanna Cunningham: I just make the small point that Sheriff Drummond’s evidence has been widely cited in respect of other aspects of this morning’s discussions. He, too, flagged up what he considered to be the serious implications of the proposal.

Bill Wilson: I will take up the convener’s invitation to move on to single witness evidence.

We have had evidence from Sheriff Drummond to suggest that single witness evidence is never used, so its use should not be permissible. There is also the question why single witness evidence cannot be used in cases of wildlife crime, given that it can be used in cases of poaching or egg crimes. There seems to be an anomaly whereby single witness evidence can be used for some crimes, on the basis that those crimes are carried out in remote areas, but not for other crimes, to
which the same logic applies. Would you care to respond to that?

**Roseanna Cunningham:** That is an interesting case in point: the minute some change is introduced, logic leads to a desire to expand the parameters of the process that has been started. I believe that that is called mission creep. If we were to allow single witness evidence in cases of wildlife crime, it could equally well be asked why we should not allow it to be used in dealing with other crimes as well. Again, that takes us back to a bigger issue about the criminal justice process.

I have noted with interest the various debates and the variety, shall we say, of stakeholder input, which has ranged from those who think that we may as well do away with the provision to allow single witness evidence altogether, as it is used on only a few occasions, to those who think that the provision should be extended. There was no overwhelming weight on either side of the debate, and no compelling argument was presented in respect of either of the choices. In those circumstances, I am content simply to stick with the status quo.

**Liam McArthur:** You mentioned the problems that arose for the police in relation to gathering evidence. Those are well understood, and we know that the problem arises from the fact that wildlife crime tends to take place in areas that are difficult to get at. Amid the welter of priorities that we place on the police, you are right to point out that some forces have a more impressive record of performance than others, with Grampian Police and Lothian and Borders Police apparently performing best in that regard.

Could it be argued that, if wildlife crime were a recordable crime, the attitude of Grampian Police and Lothian and Borders Police would be more likely to be reflected in the attitude of the other forces? Do you agree that, with regard to the suggestion that we move to having a single police force, the best way of ensuring that we get a levelling up instead of a levelling down in relation to the priority that is attached to wildlife crime would be to ensure that wildlife crime is a recordable crime, against which police performance can be measured?

**Roseanna Cunningham:** We have been having that conversation through the PAWS network for quite a while. The Association of Chief Police Officers in Scotland has told us that wildlife crime is now recorded. I cannot tell you off the top of my head when that started, but I can find out and get back to you. I agree that, as a result, we should start to see a better response in future.

However, I know that there has been considerable discussion around what would be defined as wildlife crime, as a variety of offences could be argued to be included in the definition of wildlife crime. We must remember that there still remains a difficulty around that issue of interpretation and what crimes will be recorded under that category.

**Liam McArthur:** It is better to be in a situation in which we are discussing what particular crimes are to be recorded under the heading of wildlife crime than to be in a situation in which wildlife crime is not at all a priority.

**Roseanna Cunningham:** Yes, but you need to remember that it is precisely those variations in interpretation that will lead to the statistics being a little soft. You would not necessarily know that you were comparing like with like if various forces took a slightly differing view of what should be recorded under the heading of wildlife crime. Of course, with regard to the bigger debate in respect of the future of policing in Scotland, that might become less of an issue.

**Elaine Murray:** On species licensing, one of the excuses for the fact that certain wildlife crimes are committed that has been given to us by the Scottish Gamekeepers Association—it has been given to me privately, as well—is that it is difficult to obtain licences to control predatory birds such as buzzards and ravens, and that there are too many of those birds in some locations. We have heard that the process of obtaining a licence might be easier if pheasants in a release pen were considered to be livestock rather than game birds.

What is your view of the argument that there are too many predatory birds? Do you agree with those who say that, if people release large numbers of prey into an area, large numbers of predators are bound to congregate in that area? Do you think that there is a case for making it easier to obtain licences to remove buzzards and ravens?

**Roseanna Cunningham:** As everybody knows, that issue has been given serious consideration during the past year or so. Ultimately, I took the view that the balance of public interest was not at present in favour of issuing licences for the control of birds of prey to protect non-native reared game birds.

It would be interesting to hear the committee’s views on the issue, because there is considerable debate among certain stakeholders. Raven licences are issued at present, so in some respects that control is already happening. The concern tends mostly to be about one specific species, which is the buzzard.

As far as I know, there is no sense that the buzzard population could currently be regarded as being out of control, but these things always involve a balance. At some point in the future our skies may be so thronged with raptors of one type
or another that we have to consider such an approach, but we are not there yet, and I suspect that we are a long way from it.

At present I do not feel that such a measure is necessary, but we are working with estates to ensure that they carry out practices to minimise the likely predation by raptors—buzzards, really. That is the point of places such as Langholm.

I currently have no intention of taking such an approach; Parliament may take a different view, but we are yet to have that debate.

Elaine Murray: The proposals to delegate species licensing provisions to SNH and local authorities have not been met with delight from some local authorities, which, it seems, do not want to take on that responsibility. Can you comment on the concerns that local authorities have raised?

Roseanna Cunningham: Do you want me to talk about local authorities rather than SNH?

Elaine Murray: The same concerns do not seem to apply to SNH.

Roseanna Cunningham: Yes. The proposals aim to introduce some flexibility to the system. Local authorities must currently consider the same factors as the licensing teams in the Government, so they are already looking at the matter. No specific concerns have been flagged up to me, although no doubt I will be passed a post-it note from my officials if that is not true.

The provision falls into the category of the things that Peter Peacock was talking about: we are legislating for it, but we have no immediate plans to do it. We could not delegate those powers without proper discussion with local authorities, so we will not wake up on the day that the bill receives royal assent or is implemented to find that local authorities suddenly have that responsibility. We have yet to discuss issues of capacity, but our view is that local authorities already have to consider a number of those matters.

The provisions relate to specifics rather than constituting the same powers that SNH would have; they do not mirror the SNH powers in totality. We are not saying that everything that SNH does in that regard could also be done by local authorities.

Elaine Murray: Is there any concern around the fact that local authorities might issue licences to themselves in some cases? They may need licences to control gulls, for example.

Roseanna Cunningham: We would need to have a serious conversation about that issue. Local authorities do that in a number of areas anyway, as they have to provide their own planning consents and other such things. They have the mechanisms to deal with such situations, so it is not our foremost concern.

11:15

John Scott: The minister said that she would welcome the committee's views on buzzards. I am concerned about buzzard numbers, which, as we will all agree, are certainly on the increase. I am far from certain about what the right level should be but in my own area, which is quite attractive to wildlife, I am concerned about the loss of skylarks, meadow pipits, chaffinches and blackbirds. That is not happening as a result of predation by cats, because where I live is fairly remote; on a good summer's day, I can see out of my kitchen window five or six pairs of buzzards circling in the valley. They do not live on fresh air. I have to say that, in this regard, I am concerned less about partridge or pheasant rearing than about the bigger wildlife issue. Is there any known work, or are you thinking of instigating any work, on what a sustainable number of buzzards might be?

Roseanna Cunningham: First of all, SNH operates its own arrangements to protect wild birds and constantly considers the issue in deciding whether or not to grant licences.

I also caution against the assumption that buzzards are the problem.

John Scott: I quite agree.

Roseanna Cunningham: For example, I am currently dealing—or should I say not dealing—with a sparrowhawk, which is capable of leaving bloody remains all over my garden. This is not a species-specific concern.

The issue is quite difficult, because, after all, nature preys on nature. We cannot somehow take that out of the equation.

John Scott: It is about balance.

Roseanna Cunningham: Indeed, and the judgment then is whether the balance is still right. As I have said, it might not be in future, but I do not think that we have reached that point yet. I am well aware that, for some people, no raptor is a good raptor, but that is how we ended up with some of these animals being hunted to extinction in Scotland. If we accept that that was not the right course of action, we also have to accept that these animals will do what nature has designed them to do. It is simply a question of ensuring that nothing is out of kilter. Do small birds get eaten by big birds? Yes, and I cannot see what we can do about that.

The Convener: In any case, the issue is not under consideration.
I suggest that we discuss the provisions on deer and then have a break.

**John Scott:** Notwithstanding European convention on human rights issues that mean that the Deer Commission’s proposed duty on sustainable deer management might not be workable, do you accept that there is an issue with this part of the bill, minister? What is your response to concerns that have been expressed by former members of the Deer Commission that the bill does not go far enough in delivering sustainable deer management? Surely if a landowner does not comply with the code of practice the whole situation will become extremely difficult.

**Roseanna Cunningham:** This is another area in which we are trying to balance rights and responsibilities. Although the original consultation proposed, among other things, the creation of a statutory duty on landowners and a new power to be employed where voluntary deer management fails, we ran into all sorts of legal difficulties with those provisions. As you know, the bill now provides for a code of practice for deer managers that, as I pointed out earlier, gives very practical guidance; introduces a duty on SNH to take into account compliance in considering enforcement matters; and refines SNH’s intervention powers to make them more effective and timely, and applicable in a wider range of circumstances.

I know that there is considerable debate about what is seen as the continued voluntary nature of that approach, but we want to achieve an outcome, and if we can do that, it almost does not matter how it is done. We have to take an outcomes-based approach. Deer management is one of the areas in which I continue to want to achieve outcomes in as voluntary a manner as possible, working with rather than against those who run deer on their land in the hope that we are not required at a future point to become more draconian.

Basically, that is where we are. There are some considerable legal difficulties, and we hope that what is in the bill will act as a backstop. If it does not work out, we will obviously have to look at other approaches.

**John Scott:** I welcome the considered approach that you are taking to the matter and your belief that the voluntary route is the best way of pursuing it. I only regret, perhaps, that you are not extending that to other areas where you see a problem, but I am happy with your answer. Thank you.

**Peter Peacock:** Will you say a little about the legal difficulties that you ran into, minister? I take it that you are referring to the ECHR.

**Roseanna Cunningham:** Some of the difficulties were around the ECHR, because it completely changes the balance in relation to a person’s enjoyment of their land and their right to do things. Also, the drafting of the original proposal was not precise enough for the lawyers. That takes us back to some of the other discussions that we have had. If we put things in that are too vague, we potentially open ourselves up to all sorts of unintended consequences. There was concern about the way in which things were drafted. I think I am right to say that you had an evidence session with our legal officials in respect of some of the provisions and the detail. When we put something in legislation, we have to be absolutely sure that it will not cause even more trouble than we have at the moment. That is why we took the time that we took over vicarious liability.

The other reason why there were some legal difficulties is that the bill contains a number of criminal offences. If we put in vague and imprecise wording that might have an impact on potential criminal offences, we run a big risk. On consideration, it was decided that what we had consulted on was not going to be as fit for purpose as we had hoped.

**Peter Peacock:** I accept that the legal advice that you had is that the proposal would impede people’s personal enjoyment of their private assets, but it is when that personal enjoyment of private assets strays into conflict with what is in the public interest that the question arises.

We did not take evidence from Jamie Williamson formally, but we paid a visit to the Alvie estate, where he explained his position to us very strongly. He demonstrated his clear commitment to his deer management group and the effort that he puts into that, but equally he made it clear that some people just do not participate. Come the moment when that non-participation impinges on the public interest through, for example, the keeping of deer at a level that does not allow natural regeneration given the particular way in which someone manages their estate, putting up fencing or whatever, how do we protect the public interest if the matter still depends on a voluntary approach?

**Roseanna Cunningham:** That is a relevant question—up to a point, m’lud. People cannot be forced to work collaboratively in any part of our system if they do not want to. The same applies to mediation systems or to any other system to which we desire folk to respond in a positive way—it does not always happen. That is why I said that we are concerned about outcomes. For example, if an estate is doing the job that it is supposed to do and is delivering outcomes, but is not really interested in working with its neighbours, we would
not want to penalise it because it was not delivering the outcomes in what was thought to be the right way. The issue is getting the right outcomes.

We want to see the principle of collaborative working being used. We want people to come together where possible, although we recognise that that might not happen in some places. We will still consider whether what is being done in those places is effective. If neighbours are unable to reach an agreement or somebody is not doing something, SNH can intervene and use its powers. We are doing a lot of things to sharpen up SNH's ability to do that, but we have to be careful not to propose something that is not enforceable. Trying to make people work together in a mandated way would be almost unenforceable, because it would simply not work. There would then be a risk of having criminal offences for something that is not going to be manageable at all.

The issue is the achievement of effective outcomes, and our argument and proposal is that that is best done in a collaborative manner. However, there may be odd circumstances in which estates prefer to work individually, for who knows what reasons. As long as they do the right thing and achieve the right outcomes, we cannot really penalise them for that.

Peter Peacock: I understand the reasoning.

I have a point that is slightly tangential to that. Will participation in deer management groups be part of the code that the SRPBA is developing to encourage people to get accreditation? Perhaps you cannot answer that question.

Roseanna Cunningham: I understand the question, but I do not know the answer to it offhand or whether that is part of the estates initiative. However, I would be surprised if there was not something about that. We can find out for you. Like you, I have had conversations on the matter, but I do not have with me the detailed documentation on it. We will talk to the SRPBA about it.

Elaine Murray: The bill requires people who shoot deer to be able to demonstrate a certain level of competence. Under the Marine (Scotland) Act 2010, a degree of competence is required of people who shoot seals. However, the same requirement is not extended in relation to animals such as foxes, which are also shot using high-calibre rifles. Why has that provision been introduced for deer, but not for other species?

Roseanna Cunningham: Of course, that is voluntary now as well. Part of the answer is to do with the public interest. We are balancing many different interests, and we deem that there is greater public interest in deer welfare. I suppose that does not rule out trying to make the argument for other animals to be covered at some point in the future, but the issue has not come up in the same way for other animals.

Elaine Murray: From an animal welfare point of view, some animals are popular and others are not, but that is not necessarily an argument for why certain standards are required.

11:30

Roseanna Cunningham: I personally would hope that anybody who picked up a gun to use it for such a purpose was competent. I find it interesting that it is possible to get firearms licences without necessarily demonstrating competence in the actual practice of shooting. That is where we are, however, and it is not a matter for us. There is perhaps a wider argument to be had on that, but I do not know that we can really do much about it at this stage. As regards deer, we try to ensure, as far as possible, that people understand that they need to be good at their job.

There is also a big issue around deer carcasses, preparation and so on, which does not apply in relation to small animals—the discussion is wider than the discussion that you might have about small animals.

The Convener: The proposal from the Government and the Deer Commission for Scotland on closed seasons for deer was deemed to be controversial, and you have not developed it in the bill. However, the bill team indicated to us that the Government had not really closed the door completely on the issue. Might the Government return to it?

Roseanna Cunningham: Bearing in mind the stage that we are at in the parliamentary session, it is unlikely that we will return to the issue before May next year. It is of course open to any Government to return to an issue at any point, if it is considered that there is a continuing concern.

The Convener: But you have definitely ruled out developing that proposal under the Wildlife and Natural Environment (Scotland) Bill.

Roseanna Cunningham: Yes.

The Convener: Following a comfort break, we will go on to discuss snaring.

11:31

Meeting suspended.

11:39

On resuming—

The Convener: Elaine Murray has some questions on snaring.
Elaine Murray: I will kick off by asking about the decision not to ban snaring outright.

A number of animal welfare organisations, such as the SSPCA and OneKind, as Advocates for Animals is now known, believe that snaring cannot be justified, because of the levels of fear, cold, hunger and muscular exertion that can be experienced by an animal that is trapped in a snare for 24 hours. They believe that the technique should be banned altogether on animal welfare grounds. I know that you have taken the decision that snaring is justified in some cases, but how do you answer their arguments? For example, RSPB Scotland does not use snares on any of its land and is also trying to increase the numbers of capercaillie on its land, so it might argue that snares are not necessary to protect ground-nesting birds.

Roseanna Cunningham: I hear all the different arguments. I know that some estates do not use snares, but one could also argue that the RSPB is not managing its estates for the same purpose as others.

We have taken a view that, on balance, there is and will continue to be an economic interest that needs to be considered in the management of estates and any other land. In view of that, the Government’s attitude has been that the case for a complete ban has not been made, because the consequences of a complete ban have not been thought through. There is a danger that we have a stereotypical view of whom the ban would affect. The fact is that it could affect the hill farmer as much as it would estate management. We have to be careful when we proceed down a particular road that we do not do something that has a worse impact.

I freely concede, as I have on many occasions, that nobody particularly likes to think about this method of animal management, but the truth is that we kill animals all the time. I suppose that the only people who can take the moral high ground are vegetarians—there may be some here today, but my guess is that there are not many. In view of that, we start with the premise that we are not managing its estates for the same purpose as others.

The animals in question would still have to die. In my view—again, this is personal and not something that I have discussed with officials, which will make them twitchy—shooting the potential catch species for snares would be just as likely to end up in animal welfare issues, with animals being wounded instead of killed and going off to die elsewhere. A ban on snares would not eradicate some of the difficult questions. Once we become accustomed to the way in which the countryside is managed, it is harder to take the purist hard line on an issue such as snaring.

I appreciate that there are strong views on all sides. The Government has not come to its view in a completely paradoxical manner: there was an extensive review in 2008, with a lot of discussion, and a considered position was taken.

Elaine Murray: Was the consultation actually on an outright ban?

Roseanna Cunningham: Yes. I well appreciate that the issue will never go away, because there are particular groups for whom a ban on snaring will be a campaigning position that is always brought back, but our view is that we would serve neither the economic interests of the countryside nor animal welfare issues by proceeding with a complete ban on snaring. Instead, we have chosen to go down the route of professionalising the whole of snaring and ensuring that mechanisms are in place that allow people who set snares to use them effectively. I have seen some of the work that is done with people who are involved in land management. We have to go down that route rather than impose an outright ban.

11:45

Bill Wilson: I am not a vegetarian, so I accept that we kill animals and I have no problem with that. For instance, I was supportive of the community areas management programme for indigenous resources—CAMPFIRE—agreements in Zimbabwe before Zimbabwe collapsed, so I accept that side of the argument. However, there is an ethical question about how we kill animals. The code of practice is a great step forward—I do not dispute that—but I have two issues. One is that we need some monitoring to ensure that it works, so I would like an amendment to say that, three years down the line, the Government will have an independent study to confirm whether the code of practice functions. Secondly, I would like the bill to provide the ability to ban snaring under a Scottish statutory instrument if, after that independent study into the effectiveness of the code of practice, we found that it did not function.

Roseanna Cunningham: That takes us back to the issue of ministerial powers, on which a bigger discussion is going on in Parliament. A decision to ban snaring should not be done via a Scottish statutory instrument, because the potential implications for changes in land management are huge and we cannot do that at the stroke of a ministerial pen without very careful thought. In my view, we are taking the right route, which is to continue to press for professionalisation of people who do snaring.
We should not underestimate the ability of peer pressure to have a huge impact. I have had conversations with individuals who have asked me what they should do if they know that one of the guys up on the hill is doing something wrong. That is where the question of peer pressure comes in. That is how we want to approach the matter. Who knows whether misuse of snares will ever be eradicated? One hopes that it will, but I do not know that that can ever be the case. However, an outright ban on snaring would not stop snaring. We are trying to ensure that those who do it do it properly.

**Bill Wilson:** What about my first point, which was about whether the Government will have a study, two or three years down the line, on how effective the code of practice is?

**Roseanna Cunningham:** We have a code of practice in operation and there are various courses. A study two or three years down the line would be a bit soon, because we are in the process of ensuring that the courses are available and as widely taken up as possible. There is a proactive approach from people in the industry.

It is open to any Government to review the situation and take a view on it. As I said, the argument about snaring will not go away and will continue to be brought back. At any point, any Government might have to reconsider its position. I am not of the view that we require a formal review in a set period of time, because the matter is unlikely not to be in a state of constant review in the intervening period.

**John Scott:** I welcome the minister's pragmatic approach on the issue, although I share some of Bill Wilson’s concerns that non-target species can still be caught in snares, which is to be regretted.

Is more work being done to develop a code of practice on, for example, the breaking strains of snare wire, so that if foxes are being targeted but a badger, which is much stronger and bigger than a fox, is caught, it will be able to break free?

**Roseanna Cunningham:** All such matters are being addressed. Another issue is the appropriate use of snares; setting snares in the correct way is important. The training is all about ensuring that snares are set for the target species and affect non-target species as little as possible. The Game and Wildlife Conservation Trust is researching those issues at the moment. We need to remember that the technology that is associated with the practice is important and continues to change. Members of the committee who visited Langholm will have seen and discussed some of that and will know that technological improvements can change things.

I understand the concerns that exist about non-target species. That is why we have continued to make improvements. We know that there continue to be concerns relating to dog walkers, in particular. We are seeking to ensure that best-practice guidance encompasses some of those issues. There is also an argument to be made about signage. We need to ensure that people are alerted to the fact that they are approaching an area in which there might be snares and that it is advisable for them to put their dog on a lead for that bit of the walk. We must think carefully about all of those issues.

**John Scott:** The publication of the Department for Environment, Food and Rural Affairs research that is being carried out has been delayed. Our information is that it will be published before Christmas. Have you received an early indication of where it may or may not be going? Ministers talk to ministers.

**Roseanna Cunningham:** We have not talked about that matter, unfortunately.

**Elaine Murray:** The original proposal was that records should be kept of where snares have been set, but that has been dropped. When taking evidence, we visited an estate with one gamekeeper. If he goes on holiday or has time off, he can inform people of where snares have been set, but if he is taken ill unexpectedly and is rushed to hospital, the snares will be left out. There is no requirement for a record to be kept, which would allow other people to check them within the required 24 hours.

**Roseanna Cunningham:** The requirement to check snares remains in place. Any land management system will have to ensure that that requirement can be met. The fact that someone is off ill is not an excuse or justification for not continuing to ensure that snares are checked.

**Elaine Murray:** So, systems will have to be in place.

**Roseanna Cunningham:** We will address the issue through best practice guidance, rather than in the bill. As we have already discussed, we must be careful not to be too prescriptive, but record keeping will be covered in best practice guidance. I will expect land managers to ensure that their systems are such that they are able to comply with the legislation.

**Elaine Murray:** Will the guidance and training on snaring include training on animal welfare?

**Roseanna Cunningham:** Yes. Animal welfare issues were overtly discussed at the course that I attended. Those who attend the courses are left in no doubt that they must give constant consideration to such issues.

Animal welfare issues arise in almost any area of management and regardless of the pest control measures that are in place—which, after all, are
what we are talking about here—such issues will continue to come up. The public’s interest in animal welfare will vary according to the animal in question: I have to say that I have not heard a great deal of concern about the welfare of rats when pest control officers are dealing with rat infestations. That said, those issues have to be at the forefront of people’s minds, although I suppose that applies to anyone involved in any kind of pest control. I also point out that the SSPCA is on board and has agreed that the approach is appropriate to meet the legal requirements.

Elaine Murray: Of course, there is nothing like a Jack Russell terrier to control rats.

Roseanna Cunningham: Is the Jack Russell greatly concerned about the rat’s welfare? They are not, from what I have seen of Jack Russell terriers. Of course, the matter will be dealt with very speedily.

Elaine Murray: When is the training of all snare operators expected to be completed?

Roseanna Cunningham: I do not know whether we have an estimate for that. The training is taking place right now; 500 people have already had it and we think that there are about another 2,500 to go. It is going to take a couple of years to get everyone through it, but we are already doing it and are going as fast as we can.

Liam McArthur: You have said that the process will improve snaring records, which I welcome, given the divergent views on the extent of snaring. I wonder whether in relation to the chief constable’s powers to grant applications for identification numbers there is a case for looking at how access to snares might be more closely monitored or limited. In the early stages of our consideration of the bill, we heard allegations that, on some estates, there are thousands of snares. However, when we took evidence on those estates, we found that the extent of snaring appears to be more limited by dint of the fact that, if there are any more than a certain number, there is no way that they can all be checked in 24 hours. Nevertheless, given that snares are often ordered in large numbers, it is easy to see how the situation might be misrepresented. Have you thought about that? Is the proposal workable?

Roseanna Cunningham: The 24-hour requirement limits the number of snares that can be set and used in practice. The fact is that, whatever land management system is in place, people cannot set more snares than can reasonably be checked over the course of 24 hours.

However, real difficulties would arise if we tried to be more prescriptive about the number of snares in use, which, after all, will vary hugely depending on the time of the year, the terrain and all sorts of other factors. It would be very hard to lay down a way of prescribing snare numbers that would fit every circumstance. Instead of trying to come up with a theoretical figure that more likely than not would be inappropriate for any specific landholding, we are of the view that the 24-hour minimum requirement provides a better check on numbers.

We should also remember that the number of snares ordered does not necessarily equate to the number that are set. From what I have seen, what tends to happen is that if there is a particular problem in a particular area, snares will be set in that location. Estates simply cannot manage a system in which snares are all over the place at any one time. That is just not practicable. For a start, they do not have the manpower. Going out and setting snares is hard enough, never mind the manpower that is involved in checking them and all the rest of it. Those are all limiting factors, but for the Government to try to set a number would be taking things to an extreme that I do not think they can be taken to.

12:00

Peter Peacock: On the same topic, even if people accept that there could be a continuation of snaring, they are concerned about how we will know that the snares are being checked every 24 hours. That does not seem to be impossible with modern technology, including digital cameras, which we all have in our mobile phones these days, and pictures that can be dated to allow for photographic evidence of every time a snare is visited. A photograph could show the identification number of a snare, with a date stamp from the digital camera. Is that something that you have considered or would consider?

Roseanna Cunningham: That is subsumed within the general issue of record keeping and how one does things in the best way possible so as to strike a balance between one set of interests and another. I am not quite sure about how the technology would work as far as photographs are concerned—there would have to be somewhere to upload the photographs to.

Peter Peacock: A record would have to be kept of the photograph. It would be digitally stored, and it could be checked.

Roseanna Cunningham: It is an interesting point. Every single one of us is probably walking around with a camera in our mobile phone now. We will take the point on board and we can feed back to those who are involved. From one perspective, one could argue that it would not be difficult to do that. If ever anybody challenged the matter, there would be a record. We have not
considered that point specifically, but we will take it on board and have a think about it.

The Convener: These are probably famous last words, but we have now covered most of the more contentious issues. We have 10 more questions, and I want to finish this evidence session at about half past 12. I ask everybody to be as concise as possible with their questions and answers. I would appreciate that.

We come now to the subject of invasive non-native species, on which Bill Wilson has questions.

Bill Wilson: I am shocked that you should imply that I am not concise, convener. My goodness.

I read the draft code last night, and I thought that it was quite impressive. For the record, perhaps you could say how you are proposing to produce clear and unambiguous definitions of terms such as “into the wild” and “native range”.

Roseanna Cunningham: Okay; we are getting straight to the point about defining wild land. The phrase that we are using is already embedded in legislation. It is difficult to define. We are clearly saying that some things are not wild land, and some cases might be controversial. I was interested to discover that road verges, for example, are not classified as wild land, which I presume is because they are considered to be part of the road. They act as wild land, but they are not considered as such. It is easier to say what is not wild land than to say what is wild land. Attempting to define something in this regard might well create more problems through the definition than would exist if things were left as they are.

In the course of the consultation we spelled out some of the code, and the code will try to add to some of the exclusions, in effect, which will ensure that people are clear about what is not wild land. As for whether we will draw up a definition of wild land, I would say no. We are taking the customary legislative phrase that is used throughout the relevant legislation and will leave it untouched, for the reasons that I have suggested.

The code is important, and we will consult on it separately. Some of those issues might come up in the context of the code.

Bill Wilson: I understand you to be saying that, although road verges might not be wild land, if someone plants on the road verge that leads into a native forest, for instance a Caledonian pine forest, that could cause an invasion into wild land.

Roseanna Cunningham: You are taking my comment a bit further than I had intended. My point was that we are defining by exclusions, one of which is road verges. I found that surprising—my automatic assumption was that road verges would be considered to be just as much wild land as anywhere else. That is where we get into issues of defining what something is and is not. The consideration is that road verges should not be classified as wild land.

Bill Wilson: I understood that, but there might be some concern over people thinking that they may do anything that they want on the road verge. My understanding is that people cannot. If planting is carried out on the road verge and the species that has been planted there moves on to the adjacent wild land—

Roseanna Cunningham: To a certain extent, we could make that argument about any piece of land, including the window boxes in our back rooms. I guess that we have to find what looks like the right distinction between what is and is not wild land and stick to it.

Bill Wilson: I was not debating the point—the definition is quite good and I like the way it works.

Organisations such as the RSPB acknowledge the value of shooting in the context of its advantages for the environment, through maintenance of hedgerows, ponds and so on. However, concern has been expressed that releases of pheasants and red-legged partridges on sensitive land, such as sites of special scientific interest, and releases at very high density can damage biodiversity. Have you considered a form of licensing, such as a licence that is triggered if a release will be above a certain density or will happen on or adjacent to sensitive land such as an SSSI?

Roseanna Cunningham: Remember that section 14 is about invasive non-native species. Although pheasants and red-legged partridges are non-native, they are not invasive, so the argument does not apply in quite the same way. Given that, we took the view that we would not include pheasants and red-legged partridges in the bill.

On more localised impacts, measures such as nature conservation orders are available to deal with impacts on protected areas. There are examples of areas where changes have been brought about, usually not so much because orders have been sought and made but because there has been discussion and consultation with the owner, who has been told that we will head down the road of a nature conservation order if we cannot find a better way to handle the issue. For example, at Craig Leek, in Aberdeenshire, discussions with land managers resulted in a change in red-legged partridge release practice, which solved the problem without people having to go down the nature conservation order route.

Bill Wilson: Such an approach solves the problem of releases on sensitive land, but high-density releases remain of concern.
Roseanna Cunningham: The issue is the impact, not the numbers. Quite small releases might have a big impact and quite large ones might not have a big impact. Where it is considered that there is a negative impact, discussions will take place. I think that I am right in saying—I might be corrected on this—that only about two cases have gone as far as an order, because cases are usually resolved in conversation. That is because people are often not aware of what is happening.

Bill Wilson: What is your view on SNH being the lead body in relation to INNS? You have probably seen the evidence that there is sometimes confusion about who is the lead body in that regard.

Roseanna Cunningham: We took the view that we did not want to put a single designated body in statute. However, we are working towards a memorandum of understanding with all the relevant bodies, specifically on their respective roles in connection with invasive non-native species. We can make that available to the committee when it is done.

The Convener: Will pheasants that are released from pens be regarded as livestock under the bill? I think that the SGA was concerned about that.

Roseanna Cunningham: Yes. They are livestock as long as they are in and around the pen and near it. The pheasants that we happen to see miles away from the pen while we are out for a walk—and the ones that show up in my garden—might not be regarded as livestock.

The Convener: Why will the requirement to have a licence to deal in venison under the Deer Scotland Act 1996 be retained, even though the bill will repeal the requirement to have a licence to deal in other game?

Roseanna Cunningham: Sorry—can you say that again?

The Convener: The bill provides that people will still require a licence to deal in venison, but it will repeal the need for people to have a licence for other game.

Roseanna Cunningham: Basically, we took the advice of the former Deer Commission for Scotland on the issue. It wanted to retain the licence for venison because of poaching. It is a question more of why a licence for venison has been retained than of why the requirement has been repealed for other game.

The Convener: Okay. Why has the catching-up period been set at 14 days, and could the catching-up provisions include black grouse, providing some flexibility?

Roseanna Cunningham: The practice of catching up is currently illegal, and our advice is that the current position is unworkable. We are therefore using the bill as an opportunity to provide two weeks for catching up. The provision is based on the fact that the existing provision is not manageable.

I am not sure where the question on black grouse is coming from. We do not have specific information on that.

John Scott: The more important issue is catching up of partridges and, in particular, pheasants. As I am sure the industry would tell you, two weeks is a very short time for catching up. The practice is weather dependent, and there are other issues. For example, the end of the shooting season, when catching up happens, is the time when people have a break and gamekeepers go on holiday. I would seek a longer period, such as three weeks or 25 days, to be introduced.

Roseanna Cunningham: We can go on having conversations on where the cut-off will be. We are starting from the position of zero so, from our perspective, the bill gives another two weeks and that ought to be sufficient.

Hugh, do you want to comment on that—when gamekeepers might start and how in practical terms they might go about giving themselves longer timescales?

Hugh Dignon (Scottish Government Rural and Environment Directorate): I guess that it would always be feasible for gamekeepers to start earlier if they anticipated that catching up would take longer than two weeks. However, two weeks was the figure that came to us in discussions with stakeholders and, as the time is currently set at zero, two weeks seemed a reasonable figure to include in the bill.

John Scott: Okay, I will move on to another question. Do you have any strong views on the need to improve the system of reporting and recording bags of game and of quarry species? Is that a useful tool in understanding the economics, which the minister referred to earlier as important?

Roseanna Cunningham: I am not opposed to the principle of the idea but, again, I think that this stage of the bill it would be difficult to introduce it as we could not have proper discussion and consultation with the people who would be most strongly affected. In the course of the bill’s development, a number of substantive ideas have been brought up at quite a late stage in the process, which makes it difficult to manage the bill. I am not opposed to the idea in principle, but we would want to take it forward separately.
John Scott: For the avoidance of doubt, I say that I am only asking a question; I am not necessarily proposing the idea, in as much as I believe that it would just be a further piece of red tape.

Roseanna Cunningham: We do not oppose it in principle. My guess is that some people might be concerned that such a system would end up becoming licensing by the back door, which takes us back to our bigger discussion on licensing. Although it looks like a separate issue, it is caught up in a bigger debate.

The Convener: We will move on to badgers. Scotland is currently declared bovine tuberculosis free but, although we hope that that will always be the case, it might not be. Do you believe that the control of badgers legislation is robust? Could we use the bill to make provision for the control of badgers if they were proved to be the cause of the spread of TB?

12:15

Roseanna Cunningham: I will resist the temptation to get too caught up in that general argument, which is not one that goes uncontested. There is huge debate around that issue.

We believe that the existing legislation contains sufficient provisions to take action by licensing in the event of a disease outbreak. That goes back to the point that was made earlier on separate issues about using some of the existing processes to take things forward. At present, our view is that no overwhelming case has been made for adding extra provisions to those that already exist and those that we have suggested.

The Convener: What is your response to the SGA’s call to amend the Protection of Badgers Act 1992 so that it would be possible to control foxes that have taken up residence in badger setts?

Roseanna Cunningham: I am aware of the issue that the SGA has raised. I am not sure how we could make practical changes to address it, but I am perfectly willing to continue to have conversations about that, if that would be appropriate.

The Convener: Okay. Thank you very much.

Let us move on to muirburn. When we were at Langholm estate, we heard calls for greater flexibility in when muirburn can be carried out. On the other side, there are concerns about the detrimental impact of muirburn per se. Do you share the concerns of Plantlife Scotland about muirburn? What can be done to ensure compliance with the muirburn code?

Roseanna Cunningham: There will always be an issue with compliance, regardless of what we are talking about. The key message that I remind the committee of is that the provisions that we have represent the best compromise that we could reach, taking on board all the arguments of both sides, including those of organisations such as Plantlife. We worked extremely closely with the moorland forum to ensure that what we came up with was the best possible outcome.

The muirburn code will cover cross-compliance in respect of single farm payments, so there will be financial mechanisms for ensuring compliance. Such mechanisms are often the most effective.

The Convener: Bill Wilson has a question about areas of special protection.

Bill Wilson: You have probably guessed what it is. As you know, the RSPB is concerned that it is to lose certain powers on the Loch Garten reserve. Its argument is that the present arrangements have worked well, so it would like the status quo to be maintained. It suggests that some byelaws could be introduced to ensure that it retains the powers that the current ASP status gives it. Do you have any comments on that?

Roseanna Cunningham: I am aware of the RSPB’s concerns and arguments in respect of Loch Garten. It is principally an access issue and, in our view, access issues should be dealt with in the appropriate way, which is through the Land Reform (Scotland) Act 2003 and in consultation and discussion with local access forums, rather than in the way that the RSPB has gone about it here.

The original ASP was set up to protect a single pair of ospreys, which was the first to be introduced as part of the process of recolonising Scotland. As we now know, that process has been a considerable success.

The RSPB needs to discuss such issues in the context of access, in the local access forum. The Cairngorms National Park Authority has invited the RSPB to the next meeting of its access forum, to discuss the issue. I think that the meeting will take place during the next couple of weeks. I very much hope that the RSPB will engage in the discussion, because the issue is more about access than it is about what the original ASP was for.

Let us also not forget that Loch Garten is—in the nicest possible way—an economic enterprise for the RSPB.

The Convener: I think that we have reached our penultimate question, which is on the financial memorandum.

Elaine Murray: The bill will place additional responsibilities on SNH without increasing the agency’s resources. It is conceivable that SNH will face cuts in future budgets. Minister, are you confident that it will have the resources that it will
require in order to undertake its additional duties? Of course, we do not expect you to reveal details of the budget in advance of its publication.

Roseanna Cunningham: The short answer is yes, but I understand the concerns that are being expressed. We are working as hard as we can throughout the Government to ensure that, whatever the outcome of the exercises that are going on across the board, we do not affect the core function of each and every agency. That is important.

I have taken the view that, if existing resources are deployed as efficiently and effectively as possible, we can continue to deliver in respect of all aspects of the bill, but there is no doubt that the issue will have to be kept under constant consideration and review—no doubt that will be a feature of everything that the Government does during the next two or three years.

John Scott: In its letter to us, the Finance Committee provided SNH’s evidence to the committee, which suggested that the agency will be inadequately resourced—and considerably so—to carry out the work. That fills me with concern. Will you reconsider the matter?

Roseanna Cunningham: There are areas in which it is fair to say that our view is not the same as that of SNH. For example, SNH estimated that species licensing will cost £24,000 per year more than it currently costs the Government, and I am not clear why that should be. We need to be clear about matters before we accept at face value every line of what SNH put forward.

The budget will be published on 18 November, so we must be careful not to make assumptions about funding for any agency. Although we can be certain that costs will be trimmed back across the board, we will not know the specifics until after 18 November.

As I said, I question why it should cost SNH more to undertake species licensing than it costs the Scottish Government to do. SNH’s figure does not seem to be easily explicable at this point without further interrogation. That is an example of what I meant when I said that our estimates of the costs and the estimates that SNH has presented to the Finance Committee are not entirely in accord. However, I understand why that might be the case, given the current circumstances.

John Scott: I will leave it at that. Thank you.

The Convener: I will give some licence to Mr Peacock, who has another question.

Peter Peacock: A sting in the tail. Minister, you are aware that our honey bee population is seriously threatened by disease, in a variety of ways. I think that ministers would like to do something about the matter but are currently unable to do anything. There are colonies on islands in Scotland that are free of disease, but the legislative framework has not yet provided a means by which we can better protect those populations.

Are you up for imaginatively using the opportunity that the bill affords to see whether we can find a solution to the problem? I would be happy to talk to you offline about some ideas.

Roseanna Cunningham: I am always available to discuss things with members, including Mr Peacock. However, bees are considered to be a farmed species, which puts them outwith the scope of the bill—

Peter Peacock: That is precisely the challenge that we might be able to address imaginatively.

Roseanna Cunningham: In that case, I look forward to hearing about specific issues and I will flag up to my colleague that there is a potential bee conversation in respect of the bill.

Bill Wilson: To bee or not to bee.

John Scott: May I be helpful by saying that there are many wild bee colonies in Scotland, which are well known to contain specific types of wild bee? That might give the minister and Peter Peacock the opportunity that they seek.

Roseanna Cunningham: The bill is not about farmed animals, so whether its scope is such that a reference to farmed animals would be allowed is a matter that would need to be taken up. However, I take on board what Mr Peacock said.

The Convener: That concludes our questions. The bill has been given a good ca-throu this morning—to use a good north-east term. There were a few areas on which we wanted a bit more information; I hope that you will be able to provide the clerks with that as soon as possible. I thank the witnesses for their attendance.

12:26

Meeting continued in private until 12:51.
Advocates for Animals is grateful for the opportunity to make a submission to the Rural Affairs and Environment Committee on the Wildlife and Natural Environment (Scotland) Bill.

**WELFARE OF WILD ANIMALS**

Scotland’s wild animals are a precious and irreplaceable resource, and the focus of a wildlife tourism industry which generates a net economic impact in Scotland of £65 million and 2,763 FTE jobs.¹

The sentience and the welfare needs of wild animals are increasingly being recognised by the public, but this understanding is not well reflected in legislation. Actions are permitted against wild animals that would be illegal if inflicted on domestic animals. Advocates for Animals would like to see the law in Scotland move to a more equitable position so that all animals of equal or comparable sentience receive equal protection.

We support the view that has been expressed elsewhere regarding the complex and confusing nature of Scotland’s wildlife laws and we hope that these can be further clarified and consolidated as soon as possible.

In view of the expert commentary that has come from other parties on the provisions covering hares and rabbits (ss. 6 - 12), deer (ss.22 – 26) and badgers (s.27), we will comment only on the measures covering snaring and invasive non-native species in this submission.

**s. 13 SNARES**

Advocates for Animals is opposed to the use of snares and believes that only a full ban on their use can be effective in reducing the suffering caused by these indiscriminate traps.

There is extensive evidence of the indiscriminate nature of snaring. In 2006, a Scottish SPCA report² on snaring showed that, of 269 animals reported as having been caught in snares - ranging from badgers and deer to pet cats and dogs - only 23 per cent were "pests" such as foxes and rabbits. The report of the Independent Working Group on Snaring (IWGS) 2005³ set the proportion of non-target captures between 21% and 69%.

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¹The Economic Impact of Wildlife Tourism in Scotland [http://www.scotland.gov.uk/Publications/2010/05/12164456/8](http://www.scotland.gov.uk/Publications/2010/05/12164456/8) An important aspect of the definition of wildlife tourism is that the primary purpose of a trip must be to view, study or enjoy wildlife.


Snares also inflict significant physical and mental suffering on animals. This was acknowledged in the IWGS report which listed the following likely adverse welfare impacts:

- the stress of restraint, which could include frustration, anxiety and rage;
- fear of predation or capture whilst held by the snare;
- friction, penetration and self-inflicted skin injuries whilst struggling against or fighting the tether;
- pain associated with dislocations and amputations especially with un-stopped snares;
- ischaemic pain (pain due to lack of blood supply) associated with ligation of body parts;
- compression or injuries in muscles, nerves and joints associated with violent movements against restraint;
- thirst, hunger and exposure when restrained for long periods;
- inflammatory pain and pain from contusions associated with injuries during restraint, and in some cases persisting following escape;
- pain and malaise associated with infections arising from injuries, in escapees;
- neuropathic pain in those escapees that experience nerve injuries; reduced ability of injured escapees to forage, move and hence survive;
- stress of capture and handling before despatch by the snare operator;
- pain and injury associated with killing by the snare operator if unconsciousness is not immediate.

### Snaring and conservation law

Under the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention), Contracting Parties are required to prohibit the use of snares in relation to a number of species including brown hare, mountain hare, red squirrel, pine marten, badger, stoat, weasel and polecat. Reservations placed by the UK on its adoption of the Convention in effect allowed the continued use in the UK of free-running snares for the capture of brown hares, stoats and weasels, but snares regularly catch many protected animals in addition to these particular species.


The Habitats Directive does not specifically mention snaring as a prohibited means, but in Europe snaring is generally held to be covered by the descriptions of indiscriminate means and non-selective traps. This was the basis for Case C-221/04, where the European Commission took action against Spain in the European Court of Justice for permitting the use of fox snares in several private hunting areas where there was a risk of capturing otters.

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4 Bern Convention, Appendix IV  
5 Bern Convention, Appendix III
The Habitats Directive is implemented in Great Britain by the Conservation (Natural Habitats & c) Regulations 1994. It is an offence to use “traps which are non-selective according to their principle or their conditions of use” to kill or take certain wild mammals (listed in Schedules 2 and 3 of the Regulations, and including wild cat, otter, mountain hare, pine marten and polecat). Again a number of these are often caught in snares and it may be asked whether permitting the widespread use of snares meets the standards of this conservation legislation.

Domestic laws in other countries
A number of Members have inquired about the legal status of snares in other countries. Our enquiries\(^6\) have established that:

- Neck snares are generally permitted in five Member States (Belgium, France, Ireland, Latvia and UK).
- Neck snares are either banned outright or not used in ten Member States (Austria, Cyprus, Czech Republic, Denmark, Estonia, Greece, Hungary, Lithuania, Luxembourg and Malta). Switzerland also has a complete ban on the use of snares.
- The use of neck snares is strictly regulated and limited in six Member States (Finland, Italy, Netherlands, Poland, Spain and Sweden).
- The position in the remaining six Member States (Bulgaria, Germany, Portugal, Romania, Slovakia and Slovenia) is not yet confirmed, although we believe that snares are banned in at least two of these states.

Snaring regulations in Scotland
The Scottish Government announced in 2008 that it would not ban snares but would make regulations in an attempt to address acknowledged bad practice and some of the most severe welfare impacts.

The Snares (Scotland) Order 2010, introduced in March 2010, provided among other things for stops to be fitted on snares, for snares to be staked in place or anchored effectively, and for snares not to be set in places where the animal might become suspended, or drowned. However, incidents documented by Advocates for Animals since the new Order came in show that snares continue to cause severe animal suffering, apparently because the Order is being ignored. We found rusty unstopped snares on a shooting estate in Scotland as recently as 31 August. In our view, as long as it is permissible to set snares in any form, a substantial minority of individuals will interpret the law to suit themselves, and only an outright ban will remove their ability to do so.

WANE Bill provisions on snaring
We would like to offer some comment on the provisions in the Bill, without of course deserting our position that snares should be banned.

s.13(2)(a) This section is quite complex compared with the 2010 Order. We have already seen breaches of the Order regarding drag snares and setting by fences,

\(^{6}\) Information gathered during 2010 from government departments and animal welfare organisations in EU Member States. There is a tradition of capturing foxes in sprung foot snares in some states: we have therefore referred to “neck snares” in this section to ensure that the terminology accurately reflects the type of trap under discussion.
and we are concerned that this complexity might encourage people to ignore the requirements.

**Inserted section 11A:** The provisions for identification of snares and compulsory training are also complicated. Any person who sets a snare must be trained in order to be allocated an identification number to be displayed on the device. A statement must be displayed on the tag to inform readers when the snare is intended to catch brown hares, rabbits or foxes. It would be helpful if the Scottish Government could clarify here what the position is regarding mountain hares.

The Bill does not specify the content of snaring training: Scottish Ministers may make provision in this regard but otherwise it appears that the onus will be on chief constables to decide what constitutes satisfactory training. It is expected that this will be based on land management industry training schemes already being delivered by industry groups. As far as we are aware there has been no independent scientific or veterinary input to these courses to address animal welfare issues.

We are concerned that the Bill will continue to allow people to set snares without a full knowledge and understanding of their adverse welfare impacts and how to identify and mitigate these, if at all possible. The training is already being delivered in the expectation that it will become the legal standard even though legislation is not yet in place and the measures and content have not been the subject of consultation.

**Inserted section 11B:** The requirement under the current Order for a person who sets a snare to “check that it is free-running” has been reduced to a requirement to “inspect” the snare “to see” whether it is free-running. According to the policy memorandum (para 55) this is to address concerns over the requirement for a physical check of the snare action. We understood that the original intention was for precisely such a physical check. A person carrying out an inspection must remove a snare if he finds that it is not free-running, but someone who fails to do so might plead in defence that he had not “found” or “seen” any such thing. In view of the widespread and well-documented failure to check snares properly, a stronger provision would have been preferable.

Recommendations from stakeholders that records of the exact locations of snares be kept, and that areas where snaring is taking place should be clearly marked with signs to protect some pets and livestock from being trapped, are not reflected in the Bill.

**NON-NATIVE SPECIES**

**s.14 - 17** Advocates for Animals is opposed to the killing of wild animals and seeks to ensure that the new powers to order control are underpinned by improved measures to protect welfare.

**Release:** Inserted section 14(1)(a)(i) prohibits the release of “any animal outwith its native range”, whether invasive or not. Inserted section 14P defines the native range as “the locality to which the animal or plant of that type is indigenous and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise)”. We support a general prohibition on the release or
keeping of non-native species where they pose a genuine risk to other animals, but we would not like to see rehabilitators prevented from returning a non-invasive animal to the wild where it had been living otherwise harmlessly, because the area is deemed outside its native range. It would be helpful to know which categories of release would be permitted under licence.

**Keeping:** The text of inserted section 14ZC WCA prohibits the keeping of any “invasive” animals as specified but is headed as a prohibition on the keeping etc of “invasive non-native” animals or plants. Either way, we would support this in principle so long as provision was made for the keeping of a rescued animal in order to protect its welfare.

**Sale:** We support the prohibition on sale etc of invasive animals and plants at inserted section 14A.

**Notification:** We support the requirement at inserted section 14B for certain persons to notify the presence of “invasive animals or plants outwith their native range”.

**Species control orders:** Inserted section 14D gives relevant bodies the power to impose species control measures for invasive non-native animals or plants. The orders would depend on the definition of the term “invasive” in inserted section 14P, as “an animal or plant of a type which if not under the control of any person, would be likely to have a significant adverse impact on biodiversity, other environmental interests or social or economic interests”.

Describing an animal as “invasive” because it would be “likely” to have a significant adverse impact on social or economic interests runs the risk of subjective judgments and the making of decisions which do not reflect the welfare of animals.

One way to mitigate this would be to provide that species control programmes should be subject to animal welfare impact assessments in the same way that many developments are now subject to environmental impact assessments. This would be a major step towards reconciling the goals of conservation and animal welfare.

We would like to see provision for animal welfare impact assessments to include, among other things:
- Discussion of the general animal welfare principles to be applied.
- Highlighting the potential direct and indirect effects on wild animal welfare of the proposed actions including the nature of the harm caused, its duration, the number of animals affected and their capacity to experience suffering.
- If killing is part of the programme, a comparative assessment of methods that may be used.
- Consideration of the timing and duration of the operation: for example, assessing the welfare impact on dependent young, if lactating females are killed.

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• Assessment of non-lethal methods such as translocation, as well as lethal control.
• A provision for ongoing monitoring or regular review of animal welfare issues.
• The involvement of an independent animal welfare monitor so that the appropriate issues are considered.

We hope that these comments are of assistance to the Committee.

Part 3 Deer
The Association of Deer Management Groups (ADMG) is a voluntary membership organisation, constituted in 1992 and consisting of Deer Management Groups (DMG’s) made up of public and privately owned land holdings covering some 80% of the wild red deer range in Scotland. Members own and manage in excess of 1M Ha of land and manage the culling annually of over 75,000 red, roe, sika and fallow deer in Scotland. ADMG makes representation to and participates on various committees including Moorland Forum, Deer Round Table, Best Practice, Joint Working Committees, Country Sports Tourism Group, Sustainable Deer Management Project and National Access Forum. ADMG also represents members in the promotion of sport and venison marketing.

ADMGs' comments relate exclusively to Part 3 of The Wildlife and Natural Environment (Scotland) Bill and all comments, generic and specific, relate solely to Part 3 of the Bill. ADMG is broadly supportive of the Bill and is of the view that the Bill as introduced is a fair reflection of industry comment and input following Scottish Government consultation published in June 2009.

ADMG would like to draw to the attention of Scottish Government the very significant progress that the deer industry has made over the past 20 years in fields such as welfare and safety (competence), collaborative deer management and planning (93% designated sites now in favourable or unfavourable/improving condition), venison marketing and supply chain development; training (Best Practice Guides), and education through both Borders and North Highland Colleges (University of Highlands and Islands) and many private initiatives.

Much of this progress has been delivered through the "voluntary" mechanism of good stewardship, a wish to see continuous improvement, development of a sustainable industry and peer pressure. We appreciate the Scottish Government's wish to see the "voluntary" principle extended, albeit there will always be a need for a compulsory back stop.

We hope the following commentary will be of assistance:

Deer Management and Deer Management Code of Practice

The Deer Management Code of Practice will be a fundamental building block in the delivery of the Scottish Government's policy paper on deer "Scottish Wild Deer – A National Approach". Section 6 of the policy document states that Environment, Economy and Employment should be acknowledged equally in promoting sustainable deer management. ADMG will play a full and positive role in the
preparation of the Deer Management Code of Practice. We would, however, draw
attention to the need for a "dispute resolution process" which can be applied where
competing land use objectives have become conflicting land use objectives. This
should relate specifically to both over and under exploitation of the deer resource.

**Control Agreements and Control Schemes**

ADMG endorse the voluntary principle but fully support the need for compulsory
intervention where the voluntary approach cannot be made to work and ultimately
fails.

Under Para 3 Section 24, 3a, ii it is suggested that after six months following the
notification of concern that SNH may put in place a control agreement. There are a
number of practical difficulties which may arise depending on the timing of such
notice being served. A notice served on 31 December would only allow six weeks of
in-season female red deer culling to be effected, which is probably inadequate in
most cases. There requires to be further thought given to the trigger period and
dates on which notices are served. ADMG are happy to work with Scottish
Government and the industry to provide a practical framework.

**Deer : Close Seasons, etc**

ADMG is fully supportive that there should be no change to the current close season
provisions. The current provisions guard against over exploitation and compromise
of welfare of deer and the retention of the current Close Seasons is seen as critical to
the delivery of Scottish Government's – Scottish Wild Deer – A National Approach.
The current provisions also allow the Minister to vary close seasons.

**Competence**

ADMG have always held the view that anyone who shoots deer, or supervises
someone shooting deer, must be competent to do so. ADMG is working with Scottish
Government along with the other industry stakeholders, including SGA (Scottish
Gamekeepers Association), BDS (British Deer Society), BASC (British Association of
Shooting and Conservation), LANTRA and such organisations as Borders and
Highland Colleges, DMQ (Deer Management Qualification) and SRPBA (Scottish
Rural Property and Business Association) to deliver industry competence by 1 April
2014. It is hoped that DSC Level 1 can be aligned with NOS (National Occupational
Standard) and industry is currently working with LANTRA to achieve this. Best
Practice should be further developed and CPD (Continuous Professional
Development) promoted.

**Occupier Rights**

ADMG fully supports the occupiers right to protect against damage by deer. ADMG
also support the introduction of a responsive authorisation system based on general
licence, but would strongly support the need to regulate tightly the use of such general licences, including proper cull returns, and where a general licence has been abused then that general licence should be immediately withdrawn.

Collection of Cull Data

ADMG supports that cull data should be collected by SNH. In the interests of collaborative deer management ADMG request that all data collected within a particular DMG (Deer Management Group) should be made available to that DMG.

ADMG would be happy to clarify any of the above commentary and look forward to giving oral evidence to the Committee on 29 September 2010.
The Association and its members are concerned that the commercially important Pacific Oyster (Crassostrea gigas) industry in Scotland could be adversely affected by the wording in Sections 14-17 of the above Bill.

We would point out that the Pacific Oyster is on general release under a General Licence granted by the Minister of Agriculture, Fisheries and Food of the Wildlife and Countryside Act 1981.

We suggest that this species is afforded the same exemption as the common pheasant and red-legged partridge (section 14(2A) as follows:

    Subsection (1) does not apply to the following animal where this animal is cultivated for the purpose of being commercially harvested
    (a) Pacific Oyster.
The British Association for Shooting and Conservation (BASC) is pleased to comment on the Wildlife and Natural Environment Bill. BASC is the UK’s largest representative organisation for sporting shooting with 130,000 members, some 10,000 of whom reside in Scotland. BASC Scotland broadly welcomes this new proposed legislation.

In summary, we support the move of gamebirds from the now outdated Game Acts into the Wildlife and Countryside Act 1981, as amended, although we would express the view that this often amended legislation needs consolidating in order to be easily understood and applied.

We support the abolishment of the Game Licence; it is now redundant and serves no useful purpose.

We, with others, are at the forefront of training snare practitioners and support the legislative proposals in this Bill.

We are also in favour of the amendments to the Deer Act that move to ensure greater deer welfare and create a new code of practice which all must have regard to.

Part 2
Wild birds, their nests and eggs
Section 2
Application of the 1981 Act to game birds

BASC Scotland supports the existing game statutes being repealed and game birds being brought within the Wildlife and Countryside Act 1981, in effect giving game birds the same status as other quarry species such as ducks and waders. This is a natural progression that brings all birds under the one piece of legislation.

Section 3
Protection of game birds etc. and prevention of poaching

We are content with the way in which shooting and release of pheasant and partridge is clearly being provided for in the amendment of the 1981 Act

We welcome the simplification of outdated poaching legislation with the creation of a single offence of a person killing or taking a bird without the legal right or permission from someone who has the legal right.
We are supportive of the provision to allow catching up for breeding purposes to take place in the first 14 days of February. However this appears to be an arbitrary duration and does not really reflect current practice. We would suggest that this be extended to 28 days.

Section 4
Areas of special protection for wild birds

We do not see any problems with the areas of special protection for wild birds being repealed.

Section 5
Sale of live or dead wild birds and their eggs etc.

BASC Scotland supports the abolishment of the Game Dealer’s Licence through this section and the abolishment of the rule that restricts the sale of game to 14 days after the end of the open season. The Game Dealer’s Licence acted contrary to the provisions of Food Hygiene Regulations 2006 and the restriction on selling game during the close season, originally introduced in 1831 did not recognise either refrigeration or freezing.

We are pleased to note that anomaly relating to the sale of Common Snipe in August has been removed.

Section 6
Protection of wild hares etc.

We are unopposed to the introduction of close seasons for hares. We would recommend that the close season be reduced; for mountain hare from 1st April to 31st July and for brown hare from 1st March till the 30th September. These dates for the close seasons more accurately reflect the potential breeding seasons of each species while taking into consideration necessary management

Mountain hares are managed for sport and in order to reduce tick hosts, and thereby protect certain vulnerable bird species. Brown hares are managed for sport and controlled to protect crops, particularly in areas where vegetables are grown, and trees. Current shooting and snaring of hares in Scotland is not known to not affect their conservation status.

While we welcome this close season protection we would not see any need for the status of hares to be further amended. In addition, we note that earlier proposals under this Bill sought to remove close seasons for deer. We are pleased that there is now recognition that close seasons have an important role to play with respect to both welfare and conservation.

Section 7 – 11
Prevention of poaching: wild hares, rabbits etc.

We welcome the simplification of outdated poaching legislation with a single offence of a person killing or taking an animal without the legal right or permission from someone who has the legal right.

Section 12
Single witness evidence in certain proceedings under the 1981 Act

We recognise that single witness evidence is unusual and applies, in this Bill, only with respect to poaching offences and egg theft. This is attributed to the nature of the offence which may take place in remote areas. It is our experience that in practice single witness evidence is never used in court without corroboration. Therefore we would recommend that, in order to bring poaching in line with other offences that take place in similar environments, that it is removed all together.

Section 13
Snares

BASC Scotland is one of three organisations providing accreditation training for snare practitioners. Demand and uptake of these courses has been great and demonstrates the willingness of those who live and work in the countryside to enhance welfare standards.

We welcome the legislative provision for accreditation courses and accept the value of tagging. However it is important that the cost associated with both registration and tagging are proportionate.

We also welcome the new offences of possessing a snare on land and setting a snare without permission or authorisation of the landowner. BASC accepts that from an enforcement perspective it is necessary to have a presumption that the identification which appears on a tag fitted on a snare is the identification number of the person who set the snare in position. We feel that the new offences of possessing and setting are sufficient to tackle any mischief arising from this presumption.

Section 14 - 17
Non-native species etc.

BASC recognises that both nationally and internationally invasive or non-native species can and do represent a serious threat to biodiversity.

BASC is satisfied that there is an appropriate exemption for both pheasant and red-legged partridge under the provisions for non native species. This exemption is required on both a practical, economic and cultural level since at least one half of the £240 million generated by shooting and stalking in Scotland each year will relate to the
shooting of both of these gamebirds. In addition, 11,000 FTEs are dependent upon this revenue generation from sporting shooting (PACEC 2006).

We have concerns relating to the phrases “native range” and “in the wild” and would recommend that they are clearly defined and described in the Code.

Where Ministers can make a notification order for invasive non-native species we are concerned that this could place an unfair burden on land managers who may not have the expertise to identify the species in question, nor the knowledge of the presence of that species.

Section 15 - 20
Species Licensing

We have no comment on these sections

Section 21
Game Licences

As the main, indirect provider of Game Licences in Scotland in the past two years BASC nevertheless fully supports the move to abolish it. (In the past two years BASC has provided 3,692 licences to people across the UK.) The Game Licence was originally used as a tool to ensure that game shooting was the preserve of the wealthy and to tackle poaching. Today it serves no social or enforcement function and the administrative burden far outweighs the menial financial benefit.

Part 3
Deer
BASC is one of the main organisations providing training for deer stalkers in Scotland. We also represent the views of both professional and recreational stalkers and provide stalking opportunities for members in Scotland.

Section 22
Deer management etc.

We welcome the inclusion of public safety and management of deer in urban and peri-urban areas to the list of factors which SNH has a duty to take account of in exercising their functions. We would highlight that deer stalking in Scotland has one of the best safety records in the world.

Section 23
Deer management code of practice

We welcome the code of practice and the provision that SNH must have regard to it when performing its functions. We welcome the involvement of stakeholders in the creation of this code.
Section 24
Control agreements and control schemes etc.

We welcome the improvements to s7 and s8 control agreements and schemes. We particularly welcome the change in focus from reduction of the number of deer to sustainable deer management.

Section 25
Deer: close seasons etc.

We support the continuation of the provisions relating to close seasons for deer. We are also supportive of the introduction of a General Licence with respect to the shooting of deer that are causing damage, and for other purposes, by occupiers etc. We recognise that this is an important step towards the enhanced protection of female deer with dependent young.

Section 26
Register of persons competent to shoot deer

As one of the main providers of training for deer stalkers in Scotland we recognise that there is already a system in place to both deliver and administer appropriate levels of training for stalkers – Deer Management Qualifications in association with Best Practice. Demand for our DMQ Level 1 courses has never been higher. To date, 3,278 individuals living in Scotland have attained their Level 1 stalking qualification. The deer industry is fully committed to ensuring adequate training at the voluntary level.

We will work, with others in the deer management sector, to ensure that this voluntary delivery of training continues and that this feeds into the proposed review of stalker training in 2014.

Venison Dealer’s Licence

BASC recognises that the removal of the Game Dealer’s Licence is welcome and questions why, at the same time, the Venison Dealer’s Licence cannot also be repealed. We see little merit in retaining this Licence under the Deer (Scotland) Act 1996.

Part 4
Other Wildlife etc.
Section 27
Protection of badgers

We welcome the tidying up of the inconsistencies between the law in the Protection of Badgers Act 1992 as adjusted by the Nature Conservation (Scotland) Act 2004.
Section 28
Muirburn

Provision to alter the muirburn season is already included in the Climate Change (Scotland) Act 2009

The muirburn season remains effectively unchanged, although the extended season now ends on 30 April rather than in May. There is now no distinction between different altitudes. We are hopeful that an immediately responsive licensing system will allow necessary burning to take place outwith the season.

We welcome the provisions that allow the seasons to be more flexible and we welcome the powers to grant licence for muirburn outside the season for “conserving or managing the natural environment, research or public safety”.

BASC welcomes the relaxing of the burden on muirburn practitioners to give notice to neighbours; the previous requirements were burdensome and unreasonable. On balance, we would prefer to rely on guidance that states that notification should take place where there is a chance that muirburn could have an impact on neighbouring land.

Part 5
Sites of Special Scientific Interest
Section 29 – 32
SSSIs

BASC is supportive of this part of the Bill.
I am writing to clarify the position of the British Veterinary Association (BVA) on the use of snares following a written submission to the Committee by the Scottish Rural Property and Business Association (SRPBA), which unfortunately misrepresents the BVA’s position.

SRPBA states “That is why snaring is necessary as a tool because in many cases it will be the most humane method of control, as professional opinion from the British Veterinary Association has previously confirmed.”

This is not the professional opinion of the BVA. The BVA Ethics and Welfare Group considered the use of snares and the call by Advocates for Animals for a total ban at its meeting in November 2007. The Group concluded that there is currently a dearth of scientific data on the issue and that it was therefore not possible to have an informed debate at that time.

Some members of the Ethics and Welfare Group felt that in some circumstances snaring is the least inhumane method but concern was raised regarding the high percentage of non-target species caught in snares.

The BVA is aware that Defra is currently undertaking a project looking at the use and humaneness of snares in England and Wales and is awaiting the results of this study before producing a formal BVA policy.

Until these results are available the BVA remains supportive of the findings of the report of the Independent Working Group on Snares.

I hope the Committee will take this position into account when assessing the written submissions of evidence on the issue of snaring and I am happy for this letter to be published alongside the written submissions. Once the BVA’s Ethics and Welfare Group has had the opportunity to consider the results of the Defra study I would appreciate the opportunity to share this position with you.
The British Deer Society is broadly in favour of the proposals contained in the draft W&NEB and has considered the implications of the memorandum associated with the draft Bill.

The section reference to the WNEB is in red.

The Draft Bill is an amendment Bill so the amendments must be read in context, we will comment upon the proposals showing the sections of the Deer (Scotland) Act 1996 which are relevant, in black.

14B, (2), a We note that deer stalkers are included in those who may be required to notify the Authorities of the presence of Muntjac or Chinese Water Deer in the wild. (Non Native Invasive species).

22, (2), 2 The additional sub sections (d) & (e) are necessary.

22, (3), (a), ii, 3, 1, (c) Any assistance in placating and managing inter deer interests is good, it is an ambitious intention when interests can be so diverse and entrenched.

22, (3), b, 3, 3 The introduction of the need to take heed of deer, and the advice given about deer is an extremely proactive proposal, we welcome this as it could be the case that deer management is not of sufficient importance to minimise the human / deer interface adequately, or as well as might be with some planning and action.

23, 1, 5A, The Code of Practice, CoP, the intentions of the CoP is honourable, but without sight of even a draft it is impossible to comment further upon this new document, which will contain serious and significant areas of contention. The onus of laying the CoP before Parliament is honourable and placatory, but the suggestion is that SNH may then re-write the CoP, will the re-draft also be laid before Parliament?

24. 7, Control Agreements, the proposals are unclear in the draft, and may therefore be interpreted in many ways. There is an inference that a section 7 agreement may be used because of actions or inactions of deer management, this suggests there will be a power to create a Control Agreement because of actions or inactions of the occupier other than deer shooting, is this not beyond the remit of SNH?

24, (2) e, 7, 7, A regular review of the Control Agreement is important.

24, (3). 8A 1, (ii), Control Schemes, six months is too short a period to reach agreement when either party may have significant plausible reasons for being unable to provide evidence for or against the proposal, given the seasonal nature of the impacts of deer. Control Agreements are to be specific and accurate, science based and deer damage specific. It may well take longer than six months to prove either side of the debate as to the cause of damage and this tight timescale may lead to imperfect evidence being used in the decision making process, deer may only be present in some seasons, it may be some other transient animal causing the damage.
24, (3), c. 8, 5, The deletion of this clause suggests that SNH will be empowered to insist on deer management methods other than shooting. We encourage the use of fences to prevent the vacuuming of deer from sites where no deer, or, where only a few deer are welcome. The management of the deer after fence construction within the fence requires consideration, as it can be argued that these deer are no longer wild because they are enclosed.

24, (3), d. 8, 7a, A regular review of the Control Scheme is important.

24, 4, 6. We are very concerned that the deletion of the expression “serious damage” removes the necessary qualification between normal deer impact when eating, and serious impact representing persistent economic loss or damage to a defined public interest. The proposed terminology is terribly vague, indeed it is open ended and the proposal removes any protection for deer which are exhibiting normal deer activity, this will lead to deer welfare abuse. The damage must be measurable, serious, persistent, permanent and valuable or deer will be shot on sight, removing the word serious is a serious diminishment of the qualification currently contained in the Act. The wording of the complementary clause in the Wildlife and Countryside Act 1981 and subsequent amendments is abundantly clear:

“Section 16 Power to grant licences;
(k) for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters,”

24, (5), 10, 1 (i), Emergency Measures.
Deletion of the word “serious” in this section, “Emergency measures” is withdrawing the necessary qualification for the need for this Section. This is a section for extreme circumstances, therefore the justification of the introduction, or creation of a section 10 measure must also be extreme. There are too many who identify any normal deer impact and seek to react with deer control measures of a fatal nature, the Government should determine when such reactions can be deemed appropriate, by removing the word serious there will be no qualification, deer welfare will be impinged upon. The wording of the complementary clause in the Wildlife and Countryside Act 1981 and subsequent amendments is abundantly clear:

“Section 16 Power to grant licences;
(k) for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters,”

26, (4). 17A Register of Competence.
The Society is in support of an uptake in developing competence, however much is not clear at this stage. The Society undertakes to assist in the provision of training, material and courses; using the broad educational experience it has available to it. The Society is engaging in the development of this project.

Omissions from the draft Bill.
The draft Bill does not address an issue which became a serious debate during and after the extreme winter snow conditions experienced this year.
There is in the Deer (Scotland) Act 1996 a section which is unclear and ambiguous which should be considered for amendment.

Exemption for certain acts

25 Action intended to prevent suffering
A person shall not be guilty of an offence against this Act or any order made under this Act in respect of any act done for the purpose of preventing suffering by—
(a) an injured or diseased deer; or
(b) by any deer calf, fawn or kid deprived, or about to be deprived, of its mother.

The current Act section 25 grants powers for the humane dispatch of diseased or injured deer, or offspring about to be orphaned. The wording and intent is unclear, we submit that there is a need for a power to despatch deer when more generic symptoms of terminal decline, when there is no likelihood of recovery.

The British Deer Society produced a paper was using advisors in animal welfare experienced in the management of animals, (of all species), in such conditions; we submit a copy for your consideration.

The reason we submit this proposal is that there are those who, for some obscure reason, chose to attempt to derive a suitable interpretation of the existing Act by suggesting that all animals in terminal decline must surely be carrying a disease, well may be they are, but what about all the other animals suffering from some non disease affliction who would benefit from despatch.

The terminology we recommend is the sort of terminology currently used across Europe and England to cover the same situations.

Wildlife & Natural Environment Bill.
Clearer exemption required for welfare culling of animals in terminal decline.

The British Deer Society is concerned that the Deer (Scotland) Act 1996 section 25(a) is unclear and seeks to bring clarification and guidance on current interpretation of this subject which grants exemption from prosecution to those who kill deer out of season to prevent suffering.

The Society has become aware of confusion in the current legislation in that it is not sufficiently specific in its description of the circumstances under which individuals may dispatch animals found in extremis such as during the recent severe winter.

We believe that the opportunity to address this situation is provided in the forthcoming Wildlife & Natural Environment Bill.

The British Deer Society are of the view that the exemption from prosecution for welfare culling in a new Act requires qualification and the current terminology is over-prescriptive in defining too tightly the conditions under which deer may be humanely destroyed. We believe that the Wildlife and Natural Environment Bill is a suitable Bill in which to reconsider the provision for welfare culling and that the existing section should be reworded to specify simply the relief of suffering, with caveats. Such alteration of the provision would then allow
humane destruction of animals which were in a state of terminal decline, for example, starving following prolonged periods of extreme weather.

To qualify and explain the situation whilst limiting the interpretation we set out the opinions as follows.

1. Deer suffer stress for many reasons including disturbance, cold, a persistent lack of food and so on, this is not sufficiently severe as to justify culling for welfare reasons. It is deer which have gone through that stage into terminal decline which justify welfare culling. They may have reached this condition for any one, or a number of, reasons including disease, poisoning, internal injury, organ failure or starvation.

2. Terminal decline will be indicated by conditions, actions and inactions including: the animal, or animals may be recumbent or unable to stand, unable or unwilling to escape or to react normally to the approach of man. Animals may be emaciated, (with muscle wasting or bones distorting the skin), and probably isolated from the main herd either alone, or possibly in small cohort groups. The animals will not be behaving normally. Only in these circumstances and provided that there are no normal deer nearby and that there is no risk of excessive disturbance to the other normal deer should the deer in consideration be culled, to minimise stress to any nearby unaffected deer.

3. Culling deer which are in terminal decline is the correct action to take when in the opinion of a competent or experienced person the deer is beyond recovery and will die imminently.

4. For the purposes of the Act: The British Deer Society proposes that terminal collapse, recumbency, immobility and unresponsiveness to human approach, be considered adequate and appropriate symptoms and sufficient justification to cull a deer and that the law should not simply restrict itself to animals considered to be suffering from a specific disease. This is the logic and terminology is used in law across Europe.

5. The British Deer Society would firmly oppose the culling of deer on the pretence of culling to relieve suffering, when the deer in question remain mobile and exhibit normal behaviour, irrespective of body condition. The British Deer Society does not advocate Out of Season culling simply because deer appear to be thin.

6. Should it be suggested that this would give rise to unintended consequences such as increased, excessive and perhaps unjustified, culling by those who do not want deer on their property, The British Deer Society points out that usually those individuals or organisations can, or have, legitimately obtained Authorisation to kill Out of Season for the protection of the Natural Heritage, or for the protection of their crops, or other reason.

The British Deer Society seeks to improve the nation’s consideration of the welfare of deer and to make the humane act of culling in these circumstances more clear, as it is the actual body condition of the deer which is important, not what caused it, and because the condition of the body is actual proof and justification of the action, not a presumption that something may occur and the only action to prevent it’s development is to kill the animal.

The British Deer Society is hopeful that the opportunity can be taken to improve the situation and should there be questions, please contact John Bruce.

John Bruce,
For and on behalf of
The British Deer Society
The draft bill is a sensible evolution of existing deer legislation which will enable Scotland’s deer managers to manage deer sustainably for future years. Changes to owner/occupier rights, the spotlight on practitioner competence and a tightening of compulsory powers to control deer are all sensible changes. As a deer manager who has worked for all sectors in the deer industry, I am passionate about resolving the conflicts that deer management creates. I think the draft bill will provide a workable legislative tool kit with which to resolve conflict. The key conflict surrounding deer management is deer damage to the natural heritage. Here, little change is required to current legislation as there is a strong evidence base that current legislation works to protect the natural heritage. The 90% of protected natural features vulnerable to grazing which are in secure management, the 6000 deer which were removed from Caenlochan, the emergency culling carried out in Glenfeshie and expanding native woodlands throughout the Cairngorms all show that current legislation is effective and produces positive outcomes for the natural heritage.

The rejection of any move to alter close seasons, which could wreck sustainable deer management, is particularly welcomed. There is a strong case for gradual evolution of deer legislation as in the draft bill, but little logical argument for whole sale change. I have worked over 20 years in deer management and in that time many conflicts have been solved. Deer damage to agriculture and crofting land was the biggest issue in the 1970s but is now dealt with by effective mechanisms. Deer damage to forestry was one of the biggest issues in the 1980s. This is also now managed by effective mechanisms. The mechanisms to solve deer damage to the natural heritage and to protect public safety are also effective but are less well accepted by the whole industry. In time that acceptance will grow and these conflicts will also reduce. This bill will help that process and I hope it soon becomes law.
The Wildlife and Natural Environment (Scotland) Bill was considered by the Comhairle’s Sustainable Development Committee on 26 August 2010 and the following paragraphs form the Comhairle’s written submission of evidence. The Comhairle’s submission will be verified by the full council on Thursday 2nd September 2010 and should there be any changes these will be notified to the Rural Affairs and Environment Committee as soon as possible.

The Bill proposes reform to a large number of areas of existing wildlife and natural environment legislation. However, the Comhairle’s evidence focuses on the issues identified as being of most relevance to the Comhairle. These are invasive non-native species, species licensing, the management of deer and Sites of Special Scientific Interest (SSSIs).

PART 2, SECTIONS 14-17: INVASIVE NON-NATIVE SPECIES
The Comhairle supports the new offences in the Bill which seek to ban the release of an animal or plant outwith its native range. This is particularly relevant given the particular problems experienced within the Outer Hebrides as a result of the introduction of hedgehogs to the islands and the release of mink to the wild. This strengthening of the current law will help prevent the introduction of other non-native species in the future.

PART 2 SPECIES LICENSING
The Comhairle supports the Bill’s provision that Scottish Ministers are the licensing authority and the ability for Scottish Ministers to delegate this authority to SNH. The Comhairle would oppose provision in the Bill for Scottish Ministers to delegate their functions in relation to licences to local authorities. The Comhairle does not have the expertise to comment on such issues and would have to seek advice from Scottish Natural Heritage. Section 18, subsection (3) of the Bill states that a local authority which is delegated a licensing function, must before granting or modifying a licence, consult Scottish Natural Heritage. It would therefore make sense for any delegations to be made to SNH and not local authorities.

PART 3 DEER
Comhairle nan Eilean Siar welcomes the proposals as outlined to ensure that land owners manage deer herds in a sustainable manner. It is important that effective deer management is in place to manage the increasing numbers and expanding range of deer. Deer are already replacing sheep on the more remote areas as well as encroaching into built up areas. It is likely that this trend will continue if extensive sheep production continues to fall. Deer can be a valuable resource to help prevent rank vegetation on hill pastures and also provide an economic benefit through active management of the sporting resource. That resource however has to be well managed especially where encroachment of deer onto crofts, young forestry plantations and even gardens can cause damage. It is of some concern that the current rights crofters and
farmers have to control marauding deer is to be replaced with a general licence that can be revoked by SNH. The general authorisation described in the proposals for legislation should require minimal administrative effort both to SNH and crofters and farmers affected.

The repeal of the Game Licence is welcomed as those licences had become almost obsolete in any case. The repeal of the Game laws giving current game species protection under the 1981 Wildlife and Countryside Act will change significantly both the protection afforded to game species and the perception of illegal taking of game. Effectively poaching is being removed from the statute book and unlawful taking of wildlife either out of season or without permission will be treated as a criminal offence under the 1981 Act.

PART 5, SECTION 29: COMBINING SITES OF SPECIAL SCIENTIFIC INTEREST (SSSIs)
Section 29 of the Bill seeks to grant powers to SNH to merge SSSIs. The Comhairle supports the Bill’s provisions that SNH may not include any land in the new combined site which was not already part of one of the component sites, and that SNH may not add a new operation requiring consent as a result of this procedure. It is also of the view that SNH must consult with interested parties such as landowners and land occupiers prior to merging sites.

However, the Comhairle seeks clarification on the circumstances in which SNH would want to merge SSSIs. It is not clear from the Scottish Government consultation on the Wildlife & Natural Environment Bill in 2009 or from the Bill introduced to Parliament what circumstances would require SNH to merge SSSIs.

Once consideration has been taken of this submission, the Comhairle would appreciate written clarification on the issue regarding the merging of SSSIs
The Crown Estate in Scotland owns and manages around 50% of the foreshore and beds of tidal rivers, together with almost all the seabed out to the 12 nautical mile limit. Our Rural Estate in Scotland is responsible for 43,000 ha (106,253ac) of land including 5,000 ha (12,355 ac) of forestry. The portfolio comprises five rural estates which include 185 agricultural tenancies and 102 residential properties. The Crown Estate has energy and (non-hydrocarbon) mineral rights out to 200 nautical miles. Stewardship is one of our core values and we take our responsibilities to employ the principles of sustainable development very seriously. The Crown Estate is not a regulator for any of the activities that take place on its Marine estate.

The Crown Estate welcomes the intention of this Wildlife and Natural Environment Bill to support sustainable economic activity in our countryside and that this legislation should be efficient, effective and proportionate. Most of the provisions in the Bill apply to the terrestrial environment and we do not anticipate that these will adversely impact on our statutory responsibilities or land management activities. However it is not clear from the Bill how its provisions might be applied in the marine environment, and as owner of large parts of the foreshore and seabed The Crown Estate seeks further clarification around the obligations applying to land owners in relation to non-native species. The Crown Estate is keen to assist the Rural Affairs & Environment Committee in ensuring that the consequences of the draft legislation are fully considered in this respect.

The Committee’s attention should be drawn to the provisions of Section 16 in the draft Bill in line with our comments on the control of Invasive and Non-Native Species (INNS) during the pre-draft consultation phase.

1. It is currently unclear how Responsible Authorities will act in relation to INNS in the marine environment.
   It is important to ensure the legislation is not drafted in such a way as to pass responsibility to The Crown Estate for managing all INNS in the marine environment, as this will inhibit our ability to generate income on behalf of UK citizens and is not technically feasible in such a vast area.
2. In both the marine environment and on land the distinction between landlord and occupier should be clarified in order to set out the situation in which the owner would become subject to a species control order.

We would be happy to discuss these points with the Committee at Stage 1.
Wildlife and Natural Environment (Scotland) Bill, consultation

I request members of the Rural Affairs & Environment Committee to take the decisive action that is long overdue to end the widespread and increasing illegal persecution of protected Scottish raptors. Leading MSPs and Scottish Ministers in the previous Labour/Lib Dem coalition and the present SNP administration have condemned this unlawful activity, calling it a national disgrace. However, it continues unabated, involving poisoning as well as shooting and other illegal activities. Indeed, it has increased, as is evident from the marked declines in numbers and distribution of several species that are designated as in the highest national and international ranks for protection.

In 1943 I began in upper Deeside to study golden eagles, which have now been monitored there for much longer than anywhere else in the world. I have also studied peregrines and other Scottish raptor species, and snowy owls in arctic Canada. This research resulted in many papers in scientific journals.

An example was in 1989 when I was author of a scientific paper that reviewed data on golden eagles from 1944 to 1981. It showed the adverse effects of eagle persecution on grouse moors, in contrast to deer forests where the birds were generally protected or ignored by resident deerstalkers. Also it showed how a decline of such persecution during the Second World War, when many grouse-moor keepers were in the armed services, led to a notable increase of resident eagle pairs on grouse moors. There followed a collapse over several years after the keepers returned.

I was a founder member of the North East Raptor Study Group, the first of its kind in Britain. Many voluntary and professional observers now study Scottish raptors. As a result, sound information on their abundance and distribution has never been better. The data unquestionably show large recent declines in the abundance and distribution of golden eagles, peregrine falcons, hen harriers, and goshawks in northeast Scotland, primarily on grouse moors. The decline of hen harriers is catastrophic. Many buzzards are shot on grouse moors and lowland shooting estates, and sea eagles and red kites have been found poisoned on such estates.

Court penalties to gamekeepers guilty of such activities have been minimal and insufficient. Although gamekeepers are the ones who appear in court, landowners remain scot free out of court. For decades, procurators fiscal, sheriffs and others involved in cases brought by the police or other bodies such as the Forestry Commission have tended to regard Scottish estate owners and their staffs with an unduly favourable eye. My wife Jenny, when a Councillor, JP and magistrate in Kincardine & Deeside District Council, was once visited by a police sergeant who was one of the first policemen specialising in wildlife crime in Scotland. He had some evidence of poison being kept at a gamekeeper's abode in Deeside and requested her to sign a search warrant, which she did. Poison was found, and a report made to
the procurator fiscal, who later decided that it should not go to court. In a more recent case at Strathdon, Stephen Brown, a Forestry Commission officer, observed unauthorised tree felling on a grouse moor, and even found the felling contractors in the midst of the felling. A report went to the procurator fiscal, who decided against it going to court. In many cases where illegal raptor persecution has been proved in court even in recent years, penalties have been derisory, involving only a minute fraction of the fines or custodial sentences that the law allows. Everyone should be equally accountable in respecting the law.

Three simple solutions would greatly reduce illegal persecution and might well end it.

1. Grants and subsidies of taxpayers’ money to estates where persecution of raptors has been proved in court should be denied. This should not be a small fraction such as 5%. For proper cross-compliance, if estates are proved to be involved in such illegal activities against the public interest, they should forfeit all grants and subsidies of taxpayer's money for agriculture and forestry, and also inheritance tax remissions allowed for access, conservation and other aspects. EU regulations allow for 100% of EU subsidies to be denied.

2. Shooting estates should be licensed. If an estate were proved in court to be involved in illegal persecution, the licence would be removed for a year or more, depending on the seriousness of the offence, and shooting would become illegal until the estate reapplied and received a new licence. There are sound reasons for a licence besides the issue of raptor persecution. Many estates for decades have constructed new unauthorised vehicle tracks on Scottish hills and moors, even in cases such as Aberdeenshire where the local authority decided years ago that such new tracks as well as major upgrading should require planning permission. Estates on Deeside and Donside have ignored this requirement for years. In most of these cases, scant attention or no attention was paid to care in construction and reinstatement, and consequently many tracks are major eyesores, and some cause damaging silt pollution of watercourses with dire impact on the breeding of trout and salmon. Furthermore, many estates that emphasise red deer rather than grouse have persistently failed to reduce deer density as repeatedly requested by the Deer Commission and NCC (later SNH) so as to reduce damage to designated habitats and wildlife. Licensing would solve all these problems.

3. The relatively poorly paid keepers are always the ones found guilty. Owners should be legally liable for the actions of their staff, just as hotel owners and bar owners are, in other words, vicarious liability and responsibility. Hence, if there is a police case involving poisoning or other unlawful persecution of protected raptors, the employer of the gamekeepers should have to appear in court as well as the charged gamekeeper(s), and should be liable to public naming and reporting, and to any penalties decided by the court.

Dr Adam Watson, Clachnaben, Crathes, Banchory, Kincardineshire AB31 5JE.

Relevant expertise. I am Adam Watson (80), BSc 1st Class Honours, PhD, DSc for publications on northern birds and mammals, DUniv (Honorary). I am a Fellow of the
Raptors
From the 1800s to the 2000s, persecution has extirpated some raptor species from much moorland. The 1939-45 war brought a respite as eagles and harriers colonised some grouse-moors, but after 1946 they were soon eliminated. There has since been poisoning, shooting, trapping, burning nests, robbing or breaking eggs, and disturbing birds so that eggs do not hatch (Fig. 200 Poisoned eagle SR 215). Some of the best-known estates in the land have been involved.

Much persecution has been due to peer-pressure from keepers, and from owners and managers (‘factors’ in Scotland) who are ultimately responsible. It is often a matter of faith that raptors are ‘vermin’, not to be tolerated. We have known a few keepers who regarded muirburn and other issues as more important and who protected raptors. They came under pressure from the orthodox majority, however, and eventually changed their ways.

Persecution eased in 1960–80 as international research emphasised habitat rather than raptors as crucial for animal abundance. Harriers and eagles bred on some moors where none nested in the 1950s. Enlightenment began to fade after 1985, however, following persistent one-sided publicity by the Game Conservancy (GC), whose Director Richard Van Oss wrote, ‘Government may have to consider whether to allow restricted control of some protected species’.iii And Lord Mansfield, ‘if we cannot control the numbers of ... hawks we are simply providing a feast for them. Society has got to make up its mind on a means of control of predators’.iv Peregrine expert Derek Ratcliffe wrote, ‘any attempt to put the clock back on this issue would be greeted with uproar’.v The Heather Trust warned against alienating other countryside and conservation bodies whose membership was ‘many times that of the field sports organisations’vi Nonetheless the Scottish Landowners’ Federationvii publicly sought licensed culling of harriers.viii After investigating the law, however, their legal adviser Duncan Thomson concluded, ‘I therefore do not believe that there is any prospect of licensed killing of raptors in the foreseeable
future’. The SLF’s Law and Parliamentary Committee approved his paper on 1 February 1996, but shortly afterwards he was not in their employ. Calls continued for harriers to be caught, for release elsewhere.

Lobbying by the GC led to the Langholm project, where a landowner in south Scotland protected hen harriers and peregrines for a study of predation. It became a watershed (Chapter 13). Harriers increased, and took so many grouse chicks and adults that the estate cancelled all shooting. Generalising from this to British moors would be invalid, because of the Langholm moor being widely regarded as atypical, but many who disliked harriers did just this.

Later, dead rats and poultry chicks were left for the Langholm harriers to feed to their young. Harriers with this supplement gave their young only 4.5 grouse chicks per harrier nest, while harriers without it gave 33.3 per nest. Even so, the number of grouse chicks lost was ten times bigger than that expected from harrier predation. Hence chick mortality was overwhelmingly due to other causes.

John Phillips tried a novel kind of supplementary feeding at Misty Law. He erected dovecots, introduced feral doves in spring, supplied food, water and nest material, and opened pop-holes so that doves could come and go. Over two years, peregrines killed many doves and anecdotal observations suggested that they took fewer grouse.

Meanwhile, persecution rose on Scottish grouse-moors, from six known poisoning incidents per year in 1981-92 to ten per year in 1993-2000. In 2004-5 Scotland-wide there were 33 confirmed incidents of raptor poisoning and 36 of other persecution of birds of prey, including shooting, illegal trapping and nest destruction. Figure 201 gives an example of recent persecution in the Cairngorms region (Fig. 201 ex Fig. 15.1). Incidents of poisoning and other illegal killing of raptors in the Cairngorms region (Keith Morton, RSPB). The new Cairngorms National Park appears to be no deterrent, for two hen golden eagles were found poisoned within it in summer 2006. The number of police wildlife-officers has risen greatly, and army forces helped with surveillance of Scottish harriers in 2004. These are costs to taxpayers.

The law now includes custodial sentences, but nobody on the staff of a shooting estate has been jailed for persecuting raptors. Some past cases with apparently firm evidence did not reach court because procurators-fiscal refused them, thus fuelling the public perception that some in the justice establishment put owners’ interests above national interests. Sheriffs have often imposed small fines or let offenders off with warnings, though an Inverness sheriff in 2005 did impose a fine of £1,500 on a grouse-keeper, who appealed against the conviction. Gamekeepers have formed associations that defend their activities and lobby politicians. In 2004 a lawyer for the Scottish Gamekeepers Association persuaded sheriffs to reject filmed evidence, because the landowner had not permitted the Royal Society for the Protection of Birds (RSPB) to be on the estate, and other cases have fallen because of delays occasioned by defence lawyers.

Raptors have aesthetic and economic value to society. Wildlife tourism is increasing rapidly, already supporting far more jobs in some parts of the Highlands than grouse-shooting, and many visitors pay to see raptors, such as sea eagles on Mull. Those
who go to the Scottish hills for recreation say that they would be willing to pay extra tax for desired changes, such as £72 each person per year for better protection of rare birds.xx

The buzzard shows what could be enjoyed by the public if persecution ended. Though formerly killed widely, it has returned in strength, especially on lowland, and many people appreciate it. Sparrowhawks and peregrines have also increased on lowland, and give pleasure to many. More enjoyment would come if eagles returned to eastern moors and woods. These examples illustrate the real, though hidden, costs to the public of raptor-killing.

Most conflicts can be resolved if both sides meet and compromise,xxi and there have been meetings on raptor-grouse conflicts.xxii When one side practises illegal acts, however, it is difficult to see whether the public would approve any compromise. Other suggestions to end persecution include legislation with mandatory jail-sentences, removal of gun-licences, game-shooting permitted by a licence that could be removed,xxiii and cross-compliance, e.g. denying state grants and exemptions of inheritance tax to owners of estates where the law on raptors has been broken. To conclude, grouse-shooting could continue without illegal persecution of raptors, but its future seems insecure if persecution continues unabated.xxiv

Dr Adam Watson
27 October 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

WRITTEN SUBMISSION FROM EAST DUNBARTONSHIRE COUNCIL

All comments are provisional until accepted by Council committee on 5 October 2010.

1.0 PURPOSE
1.1 The purpose of this report is to inform the D&I Committee of the implications of the proposed Wildlife and Natural Environment (Scotland) Bill for Local Authorities and associated costs, following public consultation.

2.0 SUMMARY
2.1 Comments were sought from the Scottish Parliament’s Rural Affairs and Environment Committee on the general principles of the draft Wildlife and Nature Environment (Scotland) Bill, which was introduced to Parliament on 9 June 2010. The Bill makes a range of provision about wildlife and the natural environment, and whose purpose was to deliver a package of measures intended to ensure that the legislation which protects wildlife and regulates the management of the natural environment was fit for purpose. This Committee Report forms the basis of the comments sent back to the SPRAE Council on September 1, 2010 subject to agreement from East Dunbartonshire Council D & I Committee.

2.2 East Dunbartonshire Council was originally formally invited by the Scottish Government to respond to questions relating to the development of the new Bill in 2009. Comments raised by Greenspace Staff on behalf of the Council were submitted on 4 September 2009 and lodged for note and agreement by Council to the Development and Infrastructure Committee on 10 November 2009. Some notes of concern were raised by Greenspace, in particular relating to Deer Management, Non-native Invasive Species, Species licensing and Snaring, which were taken into account through the formal consultative response and mainly reflected into the main Bill. No significant financial burden will be placed on the Council as a consequence of the formal adoption and implementation of the Bill.

3.0 RECOMMENDATION
3.1 It is recommended that the Committee
   a) Note the content of the document and agree that this Committee report forms the basis of East Dunbartonshire Council’s response to the second round of Consultation.

4.0 BACKGROUND
4.1 The Wildlife & Natural Environment (Scotland) Bill is diverse and complex in nature and covers a variety of different issues relating to the natural environment. In particular the Bill proposes changes in the following areas:

- **Deer** – modernisation of the Deer (Scotland) Act 1996, in particular through the creation of a statutory Code of Practice for deer management.
- **Game** – repeal of outdated licensing systems, and the modernisation of ancient poaching statute.
- **Snaring** – implementation of ministerial commitments on snaring by creating a training requirement for those who wish to set snares and the fitting of ID tags to all snares.
- **Badgers** – minor changes to badger offence provisions and flexibility to transfer the administration of badger licences to the public bodies best placed to carry out the function.
- **Invasive non-native species** – creation of a clearer ‘no release’ presumption for non-native species, and the creation of new powers to enable effective control and eradication of species problems where they arise.
- **Species licensing** – flexibility to place the administration of species licences with the public body best placed to carry out the function, and providing for circumstances in which UK protected species can be disturbed for social, economic or environmental purposes (EU protected species can already be disturbed for such purposes).
- **Areas of Special Protection** – repeal of ASPs, defunct due to more recent legislation.
- **Muirburn** – increased flexibility (e.g. out of season licencing) in how muirburn can be carried out.
- **Sites of Special Scientific Interest** – technical changes to improve the operation of SSSI legislation and the repeal of defunct Areas of Special Protection legislation.

4.2 East Dunbartonshire Council was formally invited by the Scottish Government to respond to questions relating to the development of the new Bill. Comments from Greenspace were submitted on 4 September 2009 and lodged for note by Council to the Development and Infrastructure Committee on 10 November 2009.

4.3 With respect to each section, the consultation responses were generally supportive, however noted concern or disagreed with the following issues. Below summarises Greenspace’s comments to each concern:

4.4 “(ii) Deer
We are in general agreement with the suggestions of the document and agree that sustainable methods should always be employed in deer management. By placing a statutory responsibility on the landowner to ensure adequate control, this would enforce care and duty to the species. Difficulties may arise however in urban/peri-urban areas, or in areas where there are multiple landowners, in addition to enforcement issues. We do not agree that the male close season
should be removed once such a register is set up, as this could have profound effects on the sustainability of the deer population.”

4.5 “(iv) Invasive Non-Native Species
General agreement was given in the consultation response, but further discussion is required on the spreading of non-native plants and responsibility of landowners, given limited funding available and unknown distribution and extent of the problem on council owned land. It is noted that eradication should be carried out on a catchments scale through collaborative work with competent authorities.”

4.6 “(vi) Other areas relating to legislation and wildlife and the natural environment
This section relates to issues such as snaring, offences against badgers and level of penalties, changes in practice in relation to Muirburn and SNH powers on offences committed on SSSIs. It should be noted that East Dunbartonshire Council does not condone the practice of snaring on council owned land”, therefore are unable to answer any further questions on snaring.

4.7 According to the Policy Memorandum on the Bill, the consultation responses revealed that overall the proposals met with a “significant level of agreement” with the analysis of responses noting a number of concerns/debates such as:

- Game as a commodity versus game as wildlife
- Increased regulation versus the status quo/voluntary agreements
- New legislation versus extending the scope of existing legislation
- Centralised versus devolved regulation
- Retaining the existing distribution of powers versus increased Ministerial authority
- List-based versus broad “catch all” approaches for definition of legal parameters
- Minimising the burden on rural economies versus enhancing the protection of wildlife.

4.8 Evaluating the Costs to Local Authorities of the Bill, the following summary was listed:

4.9 Repeal of the licensing system – would result in loss of marginal revenue to Local Authorities. Since East Dunbartonshire Council appear not to issue Game Licenses, this would have no impact on Council budgets.

4.10 Repeal of legislation establishing Areas of Special Protection, in addition to issues relating to Snaring, Non-native invasive species, Muirburn and SSSIs – there are either no cost implications or no new costs for Local Authorities. In the event that a control order was issued for a non-native species according to the Policy Memorandum “it is unlikely that they [the Local Authority] would be considered to be the “polluter” (i.e. the one responsible for the species
becoming established), it is not expected that they would routinely pay for control costs under compulsory measures.”

4.11 **With respect to protected species licensing functions**, the Bill would return such functions under the 1981 Act to Scottish Ministers to provide them with the flexibility to delegate these to SNH or the local authority. In practice there would be 3 options relating to the administration of such functions:

- **Option 1** – status quo (Scottish Government and SNH issue licenses)
- **Option 2** – all licenses being transferred to SNH
- **Option 3** – Applications would be dealt with by the Scottish Government and SNH, except those where planning consent is involved. In such a case, the licensing would be carried out by the local authority in conjunction with the planning planning application.

4.12 Options 1 & 2 would incur no costs to Local Authorities. Option 3 would present minimal costs to the Council, since few species licenses are applied for as part of the Planning process each year. In the response by Greenspace it was suggested that SNH should still continue to be the dominant issuer of licenses to give independence to the planning process.

4.13 **Deer** – there will be no additional cost to local authorities in areas where they do not own land, where deer control is not needed, or where they are already considering deer management as part of their wider duties.

4.14 This report has been assessed against the Policy Development Checklist and has been classified as being an operational report and not a strategic policy document. The implications for the Council are as undernoted.

4.15 **Legal Implications**
None at present, but this is dependent on the options agreed once the Bill is formally agreed.

4.16 **CR&OD Implications**
Issues may arise relating to deer management and non-native inv
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

WRITTEN SUBMISSION FROM FALKIRK COUNCIL

SECTION 5- SPECIAL LICENSING

Q58. What is your view on the proposition that licensing is best concentrated within the operational authorities rather than central government?

Licensing is best left to specialist qualified staff: accordingly the status quo should remain or at least rest with SNH. Local Authorities do not always have such expertise moreover, it is essential to maintain a consistent approach as is the case at present.

Q59. Which authority or authorities do you think should be responsible for the administration of these licences?

Given the additional responsibility placed on local authorities in the latest round of planning reform there would be little willingness to take on additional responsibilities and duties. Again this should rest with SNH for the reasons stated above.

Q60. What is your view on the proposal that species licensing that is associated with the development requiring planning consent would be best dealt with by local authorities?

The view remains the same as above.

The Council notes that in the ‘Analysis of Responses to the Consultation on the Wildlife and Natural Environment Bill’ (2010) (Page 9, Para 2) & SPICe Briefing; The Wildlife and Natural Environment (Scotland) Bill (Page 20) and in particular with reference to the above, it states that:

- “the majority were in agreement with the preferred authority being Scottish Natural Heritage although a large proportion preferred central government or the status quo. An overwhelming majority were against local authorities dealing with the issue of licences.

Accordingly, the council is disappointed to note that the Bill still proposes that:

- Sections 18 and 19 deal with species licensing where Scottish Ministers are the licensing authority. The Bill would provide that they may delegate this authority to SNH or a local authority.

- Section 18 (3) would insert a section in the 1981 Act on the delegation of the power to grant licences. This would enable Scottish Ministers to delegate licensing functions to SNH by direction or to local authorities by order.
- **Section 27** would amend provisions in the protection of Badgers Act 1992 and would make changes to licensing in relation to badgers, so that it is consistent with other species licensing, whereby **Scottish Ministers would become the licensing authority, but could delegate this function to SNH or local authorities.**

- **Section 27 (6)** inserts changes to section 10 of the 1992 Act which allows **Scottish Ministers to delegate functions to Scottish Natural Heritage by written direction, or to delegate to a local authority by order following consultation with the local authority, Scottish Natural Heritage and anyone else affected by the making of the order.**

Accordingly, given the further constraints which may fall on local authorities in the near future, we would have to reiterate our concerns in respect of Special Licensing raised in last years consultation response.
Background
Game & Wildlife Conservation Trust (GWCT) is a wildlife research charity which promotes evidence-led decisions being used in the formation of policies that influence the management of species and habitats. GWCT has serious reservations about both the general approach to, and constituent elements of, the draft Wildlife & Natural Environment (Scotland) Bill.

Good for Government but good for Scotland?
This Bill appears to be good for Government in that it seeks to remove infraction risk and conduct some moves to rationalise the different laws governing sporting management.

But the approach proposed does little to incentivise continued private investment in the contemporary environmental or socio-cultural requirements of Scotland, or address those cultural aspects of our rural life that are acknowledged in EU directives. Most GWCT research indicates that there is a direct link between investment in game management and conservation benefits, for example the protection of heather moorland\(^1\). Many of our studies also highlight that this game management investment is responsible for supporting many thousands of jobs in remote rural communities and bringing tens of millions of pounds into the Scottish economy\(^2\). Our recently commissioned report by the Fraser of Allander Institute recommends that Government encourage the confidence of future investors to ensue Scotland’s conservation and rural economic status.

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Of the few incentives to continue to invest in game and wildlife management in this Bill we recognise the value of the sections on snaring and out of season muirburn licences. However there are a too many constraints, actual and possible. To this end we make a number of recommendations for changes to Bill as drafted to give the private sector land managers who deliver so many public goods the confidence to continue to do so.

Our final comment is that as a research charity we believe policy making should be evidence led. It is disappointing that many of the proposals have not been preceded by more evidence gathering. There is still little evidence that the current laws pose real
difficulties for land managers or that the proposed amendments will improve the conservation of Scotland’s wildlife.

We therefore make the following responses to the first draft of the Bill:

**PART 2 – Wildlife under The 1981 Act**

Our members would have welcomed a simple, holistic legal framework that supported the responsible private investment in wildlife and habitat management which has produced and maintained our most iconic Scottish habitats and species. This could have been achieved by game/quarry management being encompassed by primary legislation in a Game & Wildlife Act. There would be many benefits, but notably it would allow Article 2 of the Birds and Article 2(3) of the Habitats Directives to be given greater recognition in Scottish law. This would bring a full acknowledgement of the socio-economic and cultural incentives for game and wildlife management which are envied globally.

**Sections 2-3**

**Game Bird Status**

In effect the Bill would remove ‘Game Birds’ as a defined group of birds. Although this is may appear a simple rationalisation to a quarry list within the Wildlife & Countryside Act we are concerned it illogically mixes species that are managed in totally different ways. There are clear management strategy, ecological and economic differences between the game birds (Red Grouse, Black Grouse, Ptarmigan, Pheasants, Partridges and Mallard) and other quarry birds. For these birds the following apply:

- **Aim:**
  - Increase the breeding success of the birds so the size of the population increases
  - Take a sustainable harvest that allows some costs of production to be recovered

- **Methods:**
  - Extensive enhancement of habitat (woodland, hedgerows, arable field margins, moorland)
  - Reduction in predator numbers (Principally foxes, crows, stoats)
  - Control of disease (ticks and other)

- **Outcomes:**
  - Habitat management and conservation species benefits (black grouse, wading birds, pollinators) at low cost to the Scottish public purse
  - Economic value (investment and employment) in remote rural communities
  - Support for rural culture
  - Game shot for food


We suggest that there is no evidence for the need to restrict the activities of land managers by removal of their former management rights. By merging gamebirds with other hunted species where lower intensity management is the norm (most ducks, wading birds including woodcock and others) this Bill risks reducing the incentive to
invest in two ways. First by reducing control over their management by those investing in them and secondly by making the species vulnerable to secondary legislative change which does not reflect the long-term nature of the investment.

Such loss of investment would lead to a loss of social, economic and biodiversity dividends for Scotland as highlighted by the Fraser of Allander researchers. By altering the framework for intensive management these proposals may pose an indirect but substantial risk of Scotland failing to meet its requirements under the Birds Directive for a number of BAP species affected by this sporting management.

**Recommendations**

We argue that there is a strong case for legal recognition of ‘Game Birds’ to encompass Red Grouse, Black Grouse, Ptarmigan, Pheasants, Partridges and Mallard and that two provisions should be made:

- These species are placed on the face of the Bill so future amendments can only be made through primary legislative change.
- The Bill incorporates amendments to Section 16 of the Wildlife and Countryside Act which would allow those investing in game to seek licensed options for protecting the sustainable harvest of game.

This approach would clarify the legal circumstances that surround the apparent inability of government to issue licenses to protect investment in the production of a harvestable surplus of ‘game birds’. Such protection is vital if Scotland is to enjoy the downstream nature conservation and public benefits coming from game management. Clarifying the law would reduce the concerns felt by game and wildlife managers over the increase in the population size and impacts of a number of predatory species in good conservation status.

**Catching up**

We note that the introduction of this restriction arises only because previous landowner rights are being removed and that there is no conservation or welfare evidence supporting a restriction to catching up.

- GWCT experience suggests that a 14 day limit from the end of season is only realistic where there is no risk of delay to the breeding season of the species mentioned. Severe weather may make it difficult to start catching up, as well as delaying natural breeding. We suggest provisions are made to allow weather-related extensions to this period allowing catching-up for 1 month from the start of the close season.
- We also recommend that black grouse are included in this list for catching up. The loss of this facility could prove to be a disincentive for future investment in game management for this species. Such an interest is an important as suggested by the current performance of black game populations in north-east Scotland where red grouse management is protecting and enhancing their population performance.
Section 6: Hares
The Bill proposes close seasons for mountain and brown hares. There is no evidence of a conservation need for such seasons. In Scotland brown hare populations are increasing in size and expanding range and mountain hare populations benefit from grouse moor management (reduced predation, improved food) to such an extent that there are more than 10 times the density of mountain hares on Scottish moors than in Scandinavia or central Europe\(^4\). These elevated densities allow the sustainable economic harvesting of hares and make the management of hares for disease control and crop and forestry protection essential\(^5,6\).


Recommendations
- The close seasons proposed should be reduced by 1 month such that the mountain hare season would begin on 1st April and the brown hares on 1st March after which dates 90\% of females are pregnant\(^7\).


- The Bill is amended so that an above European average population density of mountain hares can be reduced over defined areas for disease control, crop, forestry and habitat protection using suitable capture devices because it is not practicable to reduce hare population densities by shooting alone.

- We are also aware that flying falcons against rabbits during any close season could result in a hare being taken. We suggest the Bill is amended to accommodate this small risk.

Section 13: Snares
The Bill makes a number of recommendations that will enhance the use of snares in Scotland so that they can continue to be used to deliver agricultural, sporting and conservation benefits.

This form of predator control is essential to Scotland. The support from both National Park Authorities underlines the importance they place on this technique. Recent research by the GWCT\(^8\) showed that a predator control regime including snaring could support three times greater abundances of rare wading birds in a period of eight years and that without predator control the wading birds would have declined to extinction over a period of around twice this time.
We support these proposals because ‘real-world’ practice indicates non-snare trapping (i.e. cage/box traps) to be so ineffective in rural areas that no-one really tries and such traps account for <1% of the annual bag among gamekeepers. For this reason comparative research across a representative sample of operators and circumstances is not feasible. However, GWCT scientists have tried very hard to use cage traps for rural foxes since 1985, repeatedly re-visiting the subject when they received new ideas - but without catching even a single fox. When it has been necessary to live-catch foxes for radio-tagging, these have always been caught using neck snares.

Thus snares remain essential, not only because other kinds of trap are ineffective but because shooting is not always possible in dense crops, scrub woodland, bracken or areas used by stock animals.

Recommendations

- We note a Defra report recently commissioned from Fera and GWCT into the extent and humaneness of snare use in England and Wales will be published on October 1st. This study was original research, not a review. The RAE Committee may wish to reserve its judgement on snaring matters until this new study, which is of complete relevance to Scotland, can be considered.

- We also remain concerned about the practicality of the snare tag-coding system and suggest this is removed from the Bill. The proposal for tags on all snares does not appear to be likely to improve practice or welfare, remains open to abuse and will be difficult to police.

Sections 14-17: Non-Native and Invasive Species

The Bill currently identifies Pheasants and Red Legged Partridges as Non Native. Although we acknowledge the presence of these species on the face of the Bill, their presence draws attention to the inconsistencies that are inevitable with the approach that has been proposed.

Pheasants have been native to UK for many centuries as a result of being naturalised as per EU definitions. In no sense should this species be considered to be non-native. Pheasants have self-sustaining populations throughout Scotland and where best practice management is carried out stimulate improved conservation status of habitats and associated fauna.

Following this logic a large number of other non-native, non-invasive, naturalised species should also be on the face of the Bill including Brown Hares, Rabbits, Edible Dormice, Goshawks and Beech Trees.

Recommendations
- Re-create an extensive ‘Naturalised’ species list, excluding these species from INNS regulations.

PART 3 – Deer
Sections 22-26: Deer management
It is impossible to analyse the effect of the Bill's provisions on deer management without sight of the proposed Code of Practice which will provide much of the detail on what is meant by sustainable deer management and how this may be dealt with in different areas. Any definition of sustainable deer management must take proper account of the economic and social sustainability as well as environmental, given the huge importance of the deer stalking industry to communities in large swathes of Scotland.

Recommendations
- A draft of the Code must be available for consultation before the Bill is passed.
- GWCT support the proposals of our colleagues at the Association of Deer Management Groups and British Deer Society with whom we work closely.

PART 4
Section 27: Badgers
The GWCT already has concerns about the general level of protection Badgers now receive, where the original intention was more concerned to ensure that practices such as baiting should rightly be stopped. Badgers are known predators of numbers of species of conservation concern and are linked to TB transmission with implications for human health and agriculture. The population of badgers is rapidly increasing and are already in very favourable conservation status. We would also encourage resolution of a significant contemporary problem which is compounded by the Protection of Badgers Act 1992, the increasing use of fox dens by badgers. Gamekeepers checking former fox dens could be in breach of this legislation through no fault of their own if badgers had recently moved into a sett. We strongly urge the legislation is amended to accommodate this problem.

Recommendations
- We propose that the law is amended to differentiate setts that are ‘actively occupied’ by Badgers.
- Introduction of the licensed control of badgers for the explicit protection of livestock and wildlife.

Section 28: Muirburn
We note that there is no published evidence that supports the contention that stopping burning in May would reduce impacts on nesting birds and that the Muirburn Group of Scotland’s Moorland Forum agreed this position in 2007. However, very few fires are
currently set by competent land managers after this date for a variety of climatic and practical reasons. Finally we note that a reduction in the season in spring to before 30 April would be potentially damaging.

We support the proposal for licensed burning outside the current season. Such a balance would reduce pressure on managers to undertake late season burns which may be risky and damaging as there would be a greater opportunity to burn earlier in the season.
I am an Associate Solicitor with Grigor & Young, Elgin, with 12 years of experience in all aspects of Rural Land Law, Agricultural and Crofting Law. I am privileged to have, among my Clients, a number of Landowners, Tenants and Crofters. I have a very practical approach to land-based issues, and am from a Crofting Community. I have extensive experience in stock management, environmental issues, and habitat regeneration. Inevitably, this knowledge helps me solve complex and difficult disputes relating to land matters. In 12 years, I have not (yet!) had any dispute referred to the Land Court. The main reason for this, I feel, is that most differences (unless it is a question of law) can be settled by gentle mediation based on a solid practical knowledge of realities on the ground.

As a Solicitor, I wish to express my concern about the following provision contained within S13 of the WANE Bill. The Bill purports to insert a new provision into the Wildlife and Countryside Act 1981 as follows:

11D Snares: presumption arising from identification number
The identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position."

This is a legal presumption which must be rebutted by the accused. In practice, this will be a very difficult thing to do, unless the Trapper takes photographic records of the status of the snare just after he set it. The wording suggests that the named person "set the snare in position". The logic is that if a snare is found in an offensive position / incorrectly tagged, or the tag has been altered / removed there is an ex facie presumption that the person who set the snare will esto be guilty of an offence. It is common to find snares which have been disturbed by domestic animals or ferae naturae. I am also concerned that, given the access legislation, it will be very easy for a third party to maliciously tamper with a snare for a variety of reasons. We all know that Estates are vulnerable to adverse (and often terribly unfair) emotive publicity. Interference of snares is common in practice. This is an onerous presumption, in law, which must be removed. Given the various New Registers and the links therein to Firearms revocation – it will be very easy for a Land Manager / Gamekeeper to lose his livelihood with such an unfair presumption.

In the interests of natural justice, I would like to see this presumption removed and the wording clearly adjusted.
Current protection
In Britain, the brown hare is afforded limited legal protection under the Ground Game Act (1880) and the Hares Protection Act (1911) and sale is prohibited between 1 March and 31 July. Hares are also protected by the Wild Mammals (Protection) Act 1996 and under the Protection of Wild Mammals (Scotland) Act 2002.

Under the Ground Game (Amendment) Act 1906 occupiers or authorised persons may only take and kill brown hares (and other ground game) on moorland and other unenclosed land between 1 September and 31 March inclusive. Detached portions of moorlands or unenclosed lands adjoining arable lands are not included where the land in question is less than 25 acres (10 hectares). Since the brown hare is largely replaced by the mountain hare in upland/moorland areas this effectively gives the mountain hare a shooting close season, leaving the brown hare as the only game species without one.

Brown hare status
The brown hare population in Britain has fallen by 75% since the 1960s. In the mid 1990s government concern about the brown hare’s status led to a Species Action Plan (SAP) having among its objectives a doubling of the population by 2010, but surveys indicate the population has just remained stable since 1995 and now stands at around 730,000. Putting that figure into perspective, the wild rabbit population is estimated at 37 million.

The reasons for this decline are not entirely clear, but intensification of agriculture has certainly been a major factor. Hares do not hibernate or store appreciable amounts of fat in their bodies and so need a constant food supply throughout the year. This can only be provided by landscapes rich in biodiversity. Their ancestral homes of past aeons provided a diversity of grass and herb species maturing in succession throughout the year.

Hares prefer to eat wild grasses and herbs rather than cultivated ones, with grasses predominating in the winter and herbs in the summer. But 150,000 miles of hedgerow have been destroyed during the past 50 years - depriving hares of this source of food and shelter. Larger fields containing single crops also mean hares have to travel further in their effort to maintain continuous grazing. 95% of traditional hay meadows have been lost since the Second World War and the switch to silage production, sometimes with several cuts during the season, leads to many leverets being killed by the machinery.

Welfare
The inhumanity of hare shooting is well known. Hares are notoriously difficult to shoot cleanly and in Section 6.66 of the Burns Report on Hunting with Dogs, June 2000 it states:
“As far as shooting hares is concerned, we received anecdotal evidence of high wounding rates on organised shoots which would undoubtedly lead to poor welfare” Dr Douglas Wise of the University of Cambridge, who has had considerable personal experience of shooting, has estimated that some 25-30% of hares are seriously wounded by shotguns and are thereby easily retrieved. However, as many as 10% escape wounded and are not retrievable, even by well trained dogs. Frequently, these will have been hit by pellets across the back and hindquarters and many will have sustained fractures of the hind limbs. On the basis of 300,000 hares currently shot annually in Britain this translates to 30,000 wounded escaping to an uncertain fate.

It is therefore our view that hare shooting should be kept to a minimum and allowed under licence solely upon proof of serious economic damage to crops or forestry. Furthermore, licences should only be issued during the main breeding period of February to September inclusive if a cull has been carried out during the previous October to January but has not been effective. We estimate that at least 37,000 orphaned leverets die of starvation annually in Britain because there is no close season to protect nursing females. However, since Defra claim that farmers need the flexibility to cull hares throughout the year we have been willing to accommodate that in our licensing provisions, but with tightly drawn conditions.

We make no accommodation for hare shooting for so-called “sport”. Hares are an important follow-on quarry when pheasant shooting closes. We appreciate that the shooting industry contributes significantly to the Scottish economy, but that does not make it morally right - indeed we say it has no place in a modern, civilised society. It is also worth noting that the demise of the shooting industry would virtually eliminate snaring which is inherently cruel - causing appalling suffering to both target and non-target species. In our view, the Scottish Government should do more to encourage the constructive enjoyment of Scotland’s rich wildlife heritage, for example through development of eco-tourism.

Conservation
The brown hare’s decline has also been accompanied by a marked polarisation of numbers, with the population density in arable areas being about double that in pastural areas.

Although changed farming practices and patterns of land use are generally accepted as being the main reasons for the decline, research at Bristol University has show that attainment of the SAP target through habitat modification alone will be very difficult for this species. Adult survival is the most important parameter determining population growth in all habitats. Hunting is among the most likely proximate causes of adult death in hares. (1)

Brown hares now breed throughout the year, probably owing to global warming, which means individuals may be pregnant or nursing at any time. Optimising breeding rates and leveret survival is an important strategy for population recovery.

The report of the 1996 National Brown Hare Survey states that, even in arable areas, hares were not recorded in over half of the one kilometer squares surveyed and this was due to high levels of culling and/or reduced levels of protection. So in around
half the arable area it is unlikely that there will be substantial benefits to hare populations from set aside or other changes in the pattern of landscape management unless these are coupled with a change in the population pressure from culling (2). This conclusion has recently been verified by the Tracking Mammals Partnership observation that the hare population has only remained stable since 1995.

**Mountain hare status**
The Scottish population of 350,000 mountain hares is fragmented and isolated into local populations, making the species particularly vulnerable to possible future extinction. It is already the case that in some areas where mountain hares were once abundant they no longer exist. The effect of over-shooting, or even low levels of shooting in small populations, poses a serious threat of local extinctions. Shooting at Tulliemet and Glen Lyon are two of many examples where excessive shooting has wiped out local hare populations.

Mountain hare shooting is becoming more commercialised. In one case a party of Italians brought a refrigerated van over here with the intention of shooting 1,000 mountain hares to sell in Italy to pay for their shooting holiday.

Neil Macdonald, a former police officer specializing in wildlife crime, claims that estates in the eastern highlands are in fact “systematically culling” the hares. The animal is blamed for spreading a tick which carries a virus fatal to grouse chicks. Macdonald believes such culling is in breach of the EU Habitats Directive which grants “favourable conservation status” to the mountain hare. The animal is certainly in decline, according to a new report issued by the Game Conservancy.

In some areas excessive grazing by deer, sheep and cattle have depleted the heather so that less food and cover is available for the hares. However, they have also declined on moorland devoid of deer and sheep, leading to the conclusion that human interference is responsible for the decline in hares.

Mountain hares are listed in Annex V of the EC Habitats Directive (1992) as a species of community interest whose taking in the wild and exploitation may be subject to management measures. This means that certain methods of capture, for example night shooting and the use of snares are prohibited and may only take place under licence.

However, a report commissioned by Scottish Natural Heritage in 2008 stated that of 24,529 hares killed on Scottish estates in 2006 - 2007 almost 80% were shot, but more than 5,000 were snared. Licences to allow just 90 hares to be snared had been issued on one estate up to the end of March 2006 and 100 in a forestry area up to December 2006. This clearly shows that EC law has been broken in Scotland and the mountain hare needs greater protection.

**References**
(2) Hutchings M, Harris S (1996) The current status of the brown hare (*Lepus europaeus*) in Britain 65
Quotes
An icon of the British countryside, the brown hare enjoys enormous popularity. We receive many messages from people expressing the thrill of seeing a hare. Many are amazed to learn that the hare is not a protected species:-

They’re always a wonderful and life-affirming sight for me. Helen James, Berwickshire

First hare I have seen for at least 15 years! Susan Pugh, Shropshire

Absolute magic experience. Running around garden like one of our cats. Hares are in the field opposite but I have never seen one up so close. June Smith, Lincs.

It was so close for a good couple of minutes and the experience was a real thrill. I felt privileged. David White, Northumberland

I adore my hares and try to encourage them as much as possible. Tamara Baker - farmer Cambridgeshire

First hare seen since childhood Anne Cullum, Oxfordshire

Not afraid of us or the cats and likes to sunbathe in the broad beans! Joanna Pope, Dorset

The fact that they appear to have moved in to our land is thrilling. Heather Baker, Herefordshire

Fantastic Jenny Dwight, Cambs

First time I have ever seen a hare. What a fabulous experience. Susie Coleman, W. Sussex

Wonderful sight! Laura Stacey, Herts.

Fascinating and wonderful to watch. Sophia O’Sullivan, Kent

I love hares, but I have never seen one before. Juliet Matthews, Gloucestershire.

Was delighted to see this live hare on my doorstep. Adrian Till, Glamorgan.

I have found that if they have not had experience of humans they have no fear and will approach you to have a good look, they are inquisitive and if you can remain quite still you will have the pleasure of their company for a while - a magic experience. Gill Turner, Hertfordshire

He little knows what amiable creatures he persecutes, of what gratitude they are capable, how cheerful they are in their spirits, what enjoyment they have of life. William Cowper - poet 1731 - 1800
We spotted 15 mountain hares. They were beautiful and it felt such a privilege.

**Sally Furness, Derbyshire**

It was thrilling to see at least 15 of them in their Derwent Edge environment.

**David Bratt, Cheshire**
General
Highland Council is broadly supportive of the Bill and its various amendments to existing legislation, particularly those regarding Invasive Non-native Species.

However, the Council does have concerns regarding the changes to species licencing recommended in the Bill and deer management proposals. These are set out below.

Species licencing
The Bill states in Section in 18(3&4) that:
(3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.
(4) A delegation to—
(a) Scottish Natural Heritage under subsection (1)(a) is to be made by written direction;
(b) a local authority under subsection (1)(b) is to be made by order.

This could mean that a local authority could be told to determine if a particular operation on a site affecting species listed in the Wildlife and Countryside Act (1981) as amended is licensable. This would have resourcing issues, perhaps significant ones, as Highland Council has no expertise to determine such species licencing nor would it be clear how often such determinations would be ordered. Clearly this makes budgeting of resources difficult for this purpose.

Further to the above sub-section 18(5) states, A local authority which is delegated a function under subsection (1)(b) must, before granting or modifying a licence, consult Scottish Natural Heritage.

This statement creates uncertainty about who is the main determiner of a licence, as it gives no indication what SNH can do if they disagree with a local authority’s licencing determination? In a worst case scenario; if they have no powers of veto over a decision that they disagree with, but a local authority believes is correct, what is the benefit of them looking at a determination?

Further, the legislation seems to indicate that a delegation for licencing made by order to a local authority cannot be revoked, unlike one made by written direction to SNH see 18(6).

As it stated in its earlier consultation response, Highland Council considers it would seem simpler if both the Scottish Government and SNH remained the licencing...
authorities as they already have the expertise and operational structures for dealing with these operations.

**Deer management**

Highland Council is pleased to note that many of the issues raised by individuals and organisations such as the Scottish Gamekeepers Association during the Government’s earlier consultation have been taken on board.

Highland Council is keen to ensure that should self regulation be unsuccessful and the requirement for a register become mandatory under section 17a of the 1996 Act, it should not overly restrict foreign hunters stalking unaccompanied in Scotland. Unnecessary restrictions could deter overseas visitors who currently contribute significantly towards the income for many Highland estates, woodland owners and the wider economy. The Council is pleased to see the current proposals for an exemption for foreign hunters holding an equivalent qualification.

With regard to Deer Management Groups, Highland Council feels that in future, once their effectiveness is understood tighter controls may be required and could assist, for example, where larger woodland creation schemes involving compensatory culls require active collaboration between estates.

Highland Council also believes that Deer Management Groups may benefit from a wider representation including representatives from the local community and other interested groups and that this may help them tackle issues such as deer collisions/near misses on the road and damage to crops. Where there is concern over confidentiality of certain issues, an initial meeting of the core members of the DMG could be followed by an open meeting to the wider community.
The Horticultural Trades Association (HTA) represents the majority of the UK’s ornamental horticulture and gardening industry including a wide range of growers, retailers, landscapers, manufacturers and service providers. The industry has an annual turnover of £9 billion and provides 284,000 jobs in about 30,000 businesses across the UK. Many of our members are significant contributors to the economy in Scotland.

The HTA has taken an extremely active role with regard to non-native invasive species since the GB strategy was started in 2001. We have worked with Defra and various other stakeholders on a variety of committees, and have played a significant role in the production of Horticultural Code of Practice. We have also taken a lead in ensuring that our members are fully updated on current regulations with regards to non-native plants. We therefore welcome the opportunity to provide the following comments to the Scottish Parliament’s Rural Affairs and Environment Committee on the general principles of the Wildlife and Natural Environment (Scotland) Bill:

i) The Bill appears to suggest a fundamental change to the Wildlife and Countryside Act (1981) by making it an offence to plant or cause to grow “any plant in the wild outside its native range”. This in effect negates Section 9. The HTA would prefer to see a voluntary scheme through which plant retailers (i.e. HTA members) would advise the public not to plant non-native plants in the wild. This is preferred to a statutory arrangement which does not adequately address occasions where this may be an ecologically appropriate course of action and where ‘wild’ can not clearly be defined. In the absence of this the HTA would support ‘making it an offence’ in preference to retaining the contentious Schedule 9 list which effectively ‘black lists’ a range of perfectly good garden plants leading to the perception that they should be avoided even in garden situations;

ii) If indeed there is a requirement for two Codes of Practice, (Section 14C of WANE and Section 14ZB of NERC), these should be as consistent as possible. The overarching objective should be to provide clear and unambiguous advice to the public;

iii) Section 14ZC makes it an offence for any person to keep, possess or control any invasive plant specified by a Scottish Minister. The HTA is concerned about the specification of any such plants with regard to the sale or possession offences. Before taking such action, it is essential that full and wide consultation of all stakeholders is undertaken, and that any listing is taken on the basis of sound scientific assessment of the economic and environmental threat presented by that specific plant species. It follows that
the same comprehensive assessment should apply before the imposition of the proposed Species Control Order;

iv) Similarly, the HTA believes that there needs to be greater care in the accuracy of naming of plants determined as invasive non-natives. For example, the HTA accepts that Rhododendron ponticum is a particular problem in the wild. However, many growers and nurseries use R ponticum as root stock to produce a number of rhododendron hybrids for which there is no evidence that they are invasive or even present in the wild. The HTA would therefore strongly oppose the ban on sale or possession of R ponticum hybrids.

v) Finally, as a general comment, the HTA has long argued that the underlying problem with invasives is actually the absence of good land management. If a problem is identified with any specific plant, that problem could normally be addressed by correct management procedures.

We look forward to seeing how the Bill is suitably amended to take into account our concerns and stand ready to provide further information or comments if required.
Why the John Muir Trust is giving evidence

1. The John Muir Trust is a Scottish based UK charity whose aim is to conserve and protect wild places with their indigenous animals, plants and soils for the benefit of present and future generations, and to increase awareness and understanding of the value of such places. Working with people and communities to conserve, campaign and inspire, the Trust is a membership organisation that seeks to ensure that wild land is protected and that wild places are valued by and for people, the environment and wild land.

2. Wild deer are a national resource and belong to everyone. The right to shoot deer and the benefits associated with this right go with land ownership. With rights come responsibilities; in this case the responsibility to manage deer ‘sustainably’ – that is in the public as well as the private interest. In addition to income and employment associated with deer stalking, sustainable deer management includes climate change mitigation (e.g. woodland regeneration for carbon sequestration, prevention of trampling of blanket bogs and release of carbon dioxide), biodiversity (restoration of missing habitats such as, scrub and natural tree lines), flood prevention (recovery of riparian woodland) and water quality.

3. As a land owner we manage deer on all of our properties and are a member of six Deer Management Groups. From our experience, the current voluntary deer management group system is failing. Groups are more focussed on private objectives (i.e. sporting stags) than on overall population density or grazing and trampling impacts on the wider environment. Nor is much consideration given to the impact of one deer managers objectives on those of his / her neighbours (e.g. having high deer densities that cause damage to forestry, farmland or natural heritage on a neighbouring property).

What is the problem with the status quo?

4. The Trust believes that the current voluntary deer management group system is failing to deliver sustainable deer management in line with the national strategy. Recent answers to Parliamentary Questions state that less than half of Deer Management Groups even have a Deer Management Plan and only 10% set and monitor culls. There are no sanctions for failing to produce a plan, or for failing to meet cull targets. Nor are there any mechanisms for conflict resolution where neighbours within deer management groups have different objectives.

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2 Parliamentary Questions S3W-33450, S3W-33451, S3W-33452
5. Only where a **statutory basis for deer management** exists, at present under Section 7 of the Deer (Scotland) Act 1996, are land managers required to manage deer sustainably in the public interest. Currently this occurs only around designated sites in unfavourable condition due to deer grazing and trampling.

**What is in the current Bill and what should be there?**

6. The draft Bill currently introduces a Code of Practice (section 5A (9)) which SNH must merely have “a regard to … in exercising its functions under this Act”. **This code has no force in law** and it is unclear how it will deliver sustainable deer management or the public interest across deer range.

7. The Wildlife and Natural Environment Bill provides an opportunity to deliver truly sustainable deer management in Scotland for the benefit of all. We recommend that the **principal of statutory deer management planning** for all deer managers is introduced. In this way this valuable national natural resource would be treated sustainably and in the public interest.

8. The Bill should introduce a **responsibility on landowners to manage deer sustainably**, backed by a Code of Practice. A model for this exists from current Section 7 agreements which have been delivered by SNH (formerly DCS) staff (Figure 1). In these areas deer management plans have been formulated, agreed and delivered with oversight by SNH staff. Outwith these areas, SNH staff currently attend all Deer Management Group meetings but only in an advisory capacity. Backed by a legal duty, these staff would be able to deliver sustainable deer management across the country for little extra resource.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
WILDLIFE AND ENVIRONMENT (SCOTLAND) BILL
WRITTEN SUBMISSION FROM KEVIN WIGGINS

Speaking as a crofter and Assessor on Islay I welcome the areas of change to be looked, however is there any thought given to the status of wild Geese on the islands and certain areas of the mainland. I ask this given forthcoming changes to both National and Local goose management schemes and the impact changes to these schemes will have on management regimes and through these changes the actual geese numbers on the ground.

I realise this may be getting dealt with under the goose review but it is sometimes helpful to look at this from another angle.
INTRODUCTION
The Environmental Law and Rural Affairs Sub-Committees of the Law Society of Scotland (The Society) welcomes the opportunity to comment upon the general principles of the Wildlife and Natural Environment (Scotland) Bill which was introduced into the Scottish Parliament on 9 June 2010 and should like to respond to the Scottish Parliament’s Rural Affairs and Environment Committee’s call for written evidence upon the general principles of the Bill in the following terms.

GENERAL COMMENTS
The Society notes that the Bill is wide ranging, covering several areas linked by the themes of wildlife and the natural environment. Rather than updating or amending a number of different statutes relating to wildlife and the nature conservation, the Society is of the view that a consolidation of the law in this area is required. The Society has the following specific comments upon the Bill.

SPECIFIC COMMENTS

Part Two – Wildlife under the 1981 Act
Section 12 – Single witness evidence in certain proceedings under the 1981 Act
The Society notes that this section amends Section 19A of the Wildlife and Countryside Act 1981 to extend the admissibility of single witness evidence in prosecutions to cover offences in relation to the unlawful taking, killing or injuring of game birds (grouse, partridge and pheasant), wild hares and rabbits. Section 19A at present only allows single witness evidence with regard to taking or destroying birds’ eggs. The Society notes this is a consolidating measure, but questions why some wildlife offences require corroboration and others do not and would suggest that single witness evidence should either be extended to other wildlife crimes or simply removed.

Sections 14 – 17 – Non-native species
The Society notes that, with the exception of the common pheasant and red legged partridge, a new offence has been created under the 1981 Act of releasing or allowing to escape from captivity, any animal to a place outwith its native range or to plant or cause to grow any plant at a place outwith its native range.

The Society also notes that Scottish Ministers may, by order, specify types of animals and plants to which these provisions do not apply.

The Society highlights a practical issue in the introduction of this amendment to the 1981 Act in that “native range” as defined at Section 14P(2) of the 1981 Act as inserted by Section 16 of the Bill does not take into account the time period within which either
an animal or plant has been indigenous to the locality, and accordingly defining “native range” for the purposes of determining the offence would be extremely difficult.

The Society is concerned that the offences as referred to above are based upon whether the species is non-native, as opposed to whether it is in fact invasive.

The Society also notes with regard to the reference to the native range of an animal or plant at Section 14P(2) of the 1981 Act as inserted by Section 16 of the Bill that such reference is a reference to the locality to which the animal or plant of that type is indigenous and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person. This fails to take into account how one is to define the native range of any known species given the different time periods within which certain species have been present. Furthermore, the range of the species may no longer be suitable due to e.g. climate change. In order for certain species to survive, it may have been that an expansion of their range either naturally or by human intervention was necessary.

With particular reference to section 15 of the Bill which inserts a new Section 14C into the 1981 Act, the Society notes that Section 14C (7) (c) allows for non compliance with a code of practice when Scottish Ministers may issue for the purpose of providing practical guidance for this part of the Bill to be relied upon in proceedings for offences under Section 14, 14ZC, 14A or 14B as tending to establish liability. The Society is of the view that such a code can only be referred to in criminal proceedings and that non compliance of same should not be relied upon.

Sections 18 and 19 – Species Licences
The Society notes that the provisions at Sections 18 and 19 of the Bill allow for a widening of the power to grant licences in terms of Section 16 of the 1981 Act to include “for any other social, economic or environmental purpose. The Society notes that the appropriate authority for the purposes of granting licences means Scottish Ministers, or to whom they may delegate in terms of the new section 16A(1) to the 1981 Act, being either Scottish Natural Heritage or a local authority.

The Society expresses concern with regard to the extension to grant licences for any other social, economic or environmental purpose. This brings into focus the circumstances in which one species can be destroyed for the benefit of another. With particular reference to “economic purpose”, the Society questions whether it should be permissible to limit one species not merely for the benefit of another, but to allow the other species to prosper for economic purposes such as shooting. The Society notes the public policy issue to be determined to Scottish Ministers and to whom they delegate with regard to the power to grant licences for social, economic or environmental purposes against matters of conservation.

In terms of Section 18(2) of the Bill which inserts a new Section 16(3)(a) into the 1981 Act, the Society seeks clarification as to the extent to which the grant of a planning consent should be taken into account in considering whether or not the appropriate
authority grants a licence.

**Part Three – Deer**

The Society notes that in terms of Section 1 of the Public Services Reform (Scotland) Act 2010, the functions conferred upon the Deer Commission for Scotland by or under the Deer (Scotland) Act 1996 are to be transferred to Scottish Natural Heritage. The Society notes in terms of Section 23 of the Bill which inserts a new Section 5A into the 1996 Act entitled “Code of Practice on Deer Management” that Scottish Natural Heritage must draw up a code of practice for the purposes of providing practical guidance in respect of deer management.

The Society notes that such a code of practice may, in particular, recommend practice for “sustainable deer management”. This term lacks clarity given the competing economic, conservation and environmental interests.

While it is noted that the Code of Practice to be drawn up by Scottish Natural Heritage will provide practical guidance in respect of deer management, the Society notes the absence of any statutory time limits contained within the Bill within which Scottish Natural Heritage must draw up the code and thereafter submit to Scottish Ministers for approval. The Society also notes that the new Section 5A(8) as inserted by Section 23 of the Bill does not prescribe any time limits within which the code comes into operation.

**Section 26 - Register of persons competent to shoot deer etc.**

The Society notes that this section of the Bill inserts a new Section 17A into the Deer (Scotland) Act 1996 to allow Scottish Ministers by regulation to provide for a register of persons competent to shoot deer in Scotland, and also to prohibit any person from shooting deer unless so registered or supervised by a registered person.

The Scottish Ministers may also by regulation provide that being a registered person is sufficient to meet the requirements as to future and competence under the 1996 Act. While the details of these proposals will be contained in subsequent regulations, the Society at this stage questions the cost of the creation and maintenance of such a register given that Scottish Natural Heritage as successors to the Deer Commission for Scotland require anyone wishing to control deer, to register with them as a fit and competent person to take or kill deer. The Society would suggest that this existing register could simply be extended.

The Society also notes that there doesn’t appear to be any sanction provided for in respect of the offence provided for at Section 17A (3)
1. The League Against Cruel Sports campaigns to expose and end the cruelty inflicted on animals in the name of sport. As an animal welfare charity, the League has a strong concern with the welfare of wildlife as well as the prevention of unnecessary suffering.

2. The League welcomes the opportunity given by the Scottish Parliament’s Rural Affairs and Environment Committee to provide written evidence on the general principals of the Draft Wildlife and Natural Environment Bill.

3. The League believes the issue of snaring has not been adequately covered in the draft Bill and the following paper will document our arguments supporting this view.

**Introduction**

The League welcomes the introduction of the Wildlife and Natural Environment Bill and in general, is supportive of the overarching aims of such legislation. However, it is our opinion that the powers which the draft Bill presents to eliminate the use of snaring in Scotland could and should be utilised.

The Scottish Government has the opportunity, within the framework of the Bill, to make illegal the use of snares and vastly improve animal welfare. It is our belief that the proposals laid out in the Bill will not adequately meet the Government’s objective of improving the welfare of animals caught in snares.

It is our understanding that public opinion is hugely in favour of a ban on snares and we would urge the Committee to note the following evidence which documents the case for a ban on the sale, manufacture and use of all snares.

**The case for a ban on snares**

The case for a ban on snares is simple; snares are cruel; cause unnecessary suffering; are indiscriminate; and unnecessary. The basis of our argument for a ban on snares is on the grounds of animal welfare but for the sake of this paper we have also looked at the key arguments used by those in favour of the continued use of snares and of the Scottish Government in reaching its decision to impose a series of measures to regulate their use. We have addressed each of these under the following headings:

- Conservation
- Economy
- Welfare of Animals
- Enforcement
- Public Opinion
Conservation
The argument that snaring makes an important contribution to conservation and biodiversity comes almost exclusively from the shooting industry which employs extensive predator control practices to manage the land for game species at the expense of all other species seen as a threat to game birds. It is from within this same industry that the argument that snares are an important factor in protecting ground nesting birds such as lapwing and golden plover from foxes and other predators, comes from.

However, the League believes the Royal Society for the Protection of Birds (RSPB) would offer more expert and impartial advice on this issue. We would like to point out to the Committee that the RSPB manages 73 reserves in Scotland, spanning 65,000 hectares and has practical experience of managing land for both conservation and farming. As a matter of policy the RSPB does not use snares as a method of predator control on any of the land it manages.

Other examples of conservation organisations and major land owners which do not rely on snaring as a land management tool include Forestry Commission Scotland which as a policy does not use snares on the national forest estate, the Scottish Wildlife Trust which does not use snares and supports a complete ban on their use and the Woodland Trust which also as a policy does not use snares and supports a UK-wide ban on their use.

In research carried out by Scottish National Heritage, for the 2006 consultation on snaring, into the extent of snare use on SNH managed reserves, no examples were found. It is also worth noting that none of the 32 local authorities in Scotland permit the use of snaring on any council owned land.

Conversely, snares can actually have an adverse impact on biodiversity, particularly with the number of non-target species, including protected species, which are trapped. The Scottish Wildcat, a European Protected Species and one of Scotland’s most threatened endemic species, is put at further risk by the continued use of snares. Despite initiatives to prevent further decline and its inclusion in the Scottish Government’s Species Action Framework to conserve populations, such attempts are futile as long as snaring continues. Steve Piper, from the Scottish Wildcat Association has stated:

“I am in no doubt that snaring causes a significant amount of Scottish wildcat deaths in the Highlands.”

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2 Scottish Forestry Strategy 2006 | 47
3 Dr Chris Sydes, pers comm. July 2008
4 League Against Cruel Sports / Advocates for Animals local authority survey June 2008
5 http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16330/eu/wildcats
6 Steve Piper, pers comm., August 2008
Economy
Throughout the debate on snaring the most prominent argument for the retention of their use has been that of financial gain made through Scotland’s shooting industry and the wealth and employment this generates in rural areas. The League must stress that while it is our policy not to support the shooting of live targets for sport, we do not dispute that shooting is indeed a generator of income and employment.

A report in 2006 by PACEC on behalf of the British Association for Shooting and Conservation (BASC), Country Land and Business Association, the Countryside Alliance and in association with the Game Conservancy Trust estimated that shooting contributes around £240 million to the Scottish rural economy. It is our opinion that this report is not an objective overview of the contribution made by shooting to the economy, nor does it support any argument to retain snaring as a land management tool. We believe this for a number of reasons which include the fact that the data was compiled using information from questionnaires that had been sent to pro-shooting organisations. The number of responses was extremely low at just 296 and of those responses more than half were generated by members of the Countryside Alliance, BASC and the Game Conservancy Trust. The significance of the PACEC report and the objectivity of the peer review process were also queried in Westminster parliamentary questions in January 2008.

While the League is not in a position to comment on the accuracy of this report we feel it is necessary to raise these concerns. However, this aside we note that the report shows that - by numbers of providers and on a UK basis - the two largest sport shooting sectors are avian pest control (e.g. pigeon shooting) and mammalian pest control (e.g. rabbit shooting). Deer stalking is also a significant sector. In other words, there are significant parts of the shooting industry which, while counted in the overall income referred to in these submissions, would not be affected at all by the banning of snaring.

There is no data available to illustrate to what extent snaring contributes to the rural economy and no evidence to support claims that snaring is a significant factor in the profit generated by shooting. We believe that the importance placed on snaring and its contribution to the economics of shooting is exaggerated and it is our belief that a ban on snares would have little or no impact on the income generated by the shooting industry as a whole.

Welfare of animals
It is our view that no amount of financial gain can justify the extent of cruelty and suffering inflicted on animals by the use of snaring and we would urge the Committee to consider this suffering rather than just looking at the economic argument for retaining the use of snares.

While we could list hundreds of examples of suffering of both target species and non-target species, including domestic pets we will begin with the adverse welfare impacts

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7 http://www.shootingfacts.co.uk/pdf/pacec_glossy1.pdf
likely to affect snared animals as listed in a report by the Independent Working Group on Snares (IWGS)\(^8\). These include:

- The stress of restraint, which could include frustration, anxiety and rage;
- Fear of predation or capture whilst held by the snare;
- Friction, penetration and self-inflicted skin injuries whilst struggling against or fighting the tether;
- Pain associated with dislocations and amputations especially with un-stopped snares;
- Ischemic pain (due to lack of blood supply) associated with ligation of body parts;
- Compression or injuries in muscles, nerves and joints associated with violent movements against restraint;
- Thirst, hunger and exposure when restrained for long periods;
- Inflammatory pain and pain from contusions associated with injuries during restraint, and in some cases persisting following escape;
- Pain and malaise associated with infections arising from injuries, in escapees;
- Neuropathic pain in those escapees that experience nerve injuries;
- Reduced ability of injured escapees to forage, move and hence survive;
- Stress of capture and handling before despatch by the snare operator;
- Pain and injury associated with killing by the snare operator if unconsciousness is not immediate.

It is clear that the level of suffering which can be caused by a snare goes beyond any reasonable welfare standards. This is a view which is supported by the Senior Vice-Chairman of the Animal Welfare Science, Ethics and Law Veterinary Association in a report on fox control which called on the Scottish Government to properly regulate the commercial shooting industry and recommends that "the use of snares should be banned other than under licence for humanely conducted academic research"\(^9\).

In a survey carried out in 2007 by the Scottish SPCA\(^10\) vets, wildlife crime officers and Scottish SPCA Inspectors were asked for their professional opinion on whether animals they had seen snared had suffered or not. Of the responses, 90% said that they believed the animals had suffered.

Another important factor when considering the animal welfare problems associated with snaring is the indiscriminate nature of a snare. The IWGS concluded that even with good field craft and training, the overall proportion of non-target species captured in fox snares may be around 40%\(^11\). In the Scottish SPCA\(^12\) report into snaring, of the 269 animals reported, 77% were non-target species and of those 17% were companion

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9 Shooting and Fox Control 2008: Report for the League Against Cruel Sports by William J Swann BVMS MRCVS
10 Snaring in Scotland: A Scottish SPCA Survey of Suffering, November 2007
12 Snaring in Scotland: A Scottish SPCA Survey of Suffering, November 2007
animals and 12% were European Protected Species. The evidence of these reports and many more, is that snares are intrinsically indiscriminate.

**Enforcement**

The League firmly believes that regulating the use of snares is simply not a workable solution and for sake of consistent enforcement we would urge the Committee to consider a complete ban. The current status of enforcement is complex and we do not believe that the regulations as laid out in the Snares (Scotland) Order 2010 or the proposals in this Bill will reduce the problem.

Historically the regulations have been widely ignored or breached and the League has many examples where this has been the case. Most recently a report published in August this year highlighted a number of estates in Scotland where industry guidelines were being ignored\(^\text{13}\). Investigations for this report were carried out several months after the Snares (Scotland) Order 2010 came into force and in our opinion this highlights how ineffective these regulations are and how easy it is for snare users to ignore them.

The report also illustrated the level of suffering caused by snares, including a live badger which had been trapped by a legal, free running snare which had become tangled and effectively self-locking. This badger was freed by a Scottish SPCA Inspector but many others are not so lucky.

The ability for a snare to become self-locking, and therefore illegal, after it has been set is just one of the many problems which hamper effective enforcement of snaring laws.

**Public opinion**

The League has campaigned for many years for a ban on snares in Scotland and it is our belief that public support is overwhelmingly in favour of a ban. To cite just a few examples of this we refer to the public consultation of November 2006 which generated a response of 2:1 in favour of making snares illegal\(^\text{14}\). Of the 247 responses to the then Scottish Executive, 172 were in favour of an end to the use of snares in Scotland with only 4 favouring further licensing.

Since then a number of national opinion polls have been commissioned with the most recent, in March 2010, finding that 77% of people in Scotland support a ban on snares\(^\text{15}\). In a survey of vets in Scotland 75% said they were in favour of a ban and 69% said they did not believe the regulation of snaring would eliminate the animal welfare problems associated with these types of traps\(^\text{16}\).

More recently, in an analysis of responses to the consultation on this Bill when asked to comment on proposals for an accreditation scheme for snare users almost half (46.7%)

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\(^{13}\) [www.league.org.uk/bloodstillonthewire August 2010](http://www.league.org.uk/bloodstillonthewire)


\(^{15}\) Opinion poll by TNS System Three on behalf of Advocates for Animals, March 2010

\(^{16}\) Survey carried out by League Against Cruel Sports and Advocates for Animals in conjunction with Vetfile, September 2008
disagreed with this proposal while only 29% were in favour. A further 25% agreed in principal but noted a number of problems with the scheme\textsuperscript{17}. Again in this example the views of those opposed to the use of snares continue, in our opinion, to be ignored.

**Conclusion**
The League believes Scotland has an historic opportunity not only to make these cruel and outdated traps illegal but also to lead the way in the UK by implementing effective and important animal welfare legislation. The Northern Ireland Assembly is currently considering a ban on snares under its Wildlife and Natural Environment (NI) Bill with the Environment Committee at Stormont recently voting in favour of including such a ban.

The opportunity presented within this Bill is one which must not be ignored. As long as snaring is legal animals will continue to suffer horrific injuries and painful deaths.

\textsuperscript{17} http://www.scotland.gov.uk/Resource/Doc/302621/0094713.pdf
Deer (PART 3 OF THE BILL)

Collaborative Deer Management Structures.

Deer management should not be seen in isolation but as an important mechanism for the sustainable management of a range of ecosystem goods and services in Scotland. The success of the proposed legislation in practice will depend on providing managers with clear guidance (Code of Practice) together with a balance between public support (Incentives) and regulatory powers (Control measures); underpinned by sound data.

- The creation of a statutory duty on landowners to manage deer sustainably. The bill proposes a statutory code of practice for sustainable deer management rather than a responsibility (although there may already be a responsibility to manage deer in order to prevent damage to others’ interests). For this to work it needs to a) promote wide stakeholder participation; b) include consideration of public and private land-use objectives (ecosystem goods and services); c) encourage appropriate monitoring to measure objectives; d) link to regulatory powers and incentives to facilitate the code’s implementation and e) foster training and capacity among agency staff to encourage and facilitate collaboration among stakeholders and communicate public objectives to land managers.

- Local collaborative deer management. The practicalities of complying with the code require collaboration between neighbouring landowners and with the public as well as government agency staff. SNH should therefore work to support the development of a collaborative management framework that can be used for managing deer across a landscape with reference to their impact on relevant public and private land-use objectives. This framework needs to be applicable for both existing deer management group areas and for the urban and peri-urban fringe where deer management planning is less well developed and issues may be very different. The framework needs to be adaptive in that it has the capacity to adapt to future land-use priorities and to environmental change as well as accommodating new data and information as it becomes available. The Institute supports the provision for supporting deer panels that are designed to be representative of a wide stakeholder interest group.

- Extended intervention powers for SNH. The Institute supports the recommendations in the Policy Memorandum but emphasises the need for developing clear criteria for triggering regulatory interventions (such as the voluntary and compulsory measures available in Sections 7 & 8 of the Deer (Scotland) Act 1996). These criteria should be part of the above Code of Practice on Deer Management and be agreed in consultation with the deer management sector. Assessment of criteria requires evidence and this will come from monitoring. The types of information to be monitored for each criteria and the appropriate methods need to be agreed with a wide range of stakeholders in the deer management sector.

In summary, the Institute accepts that the voluntary approach to collaborative management should continue but work is needed to devise the best ways that public
resources can promote, support and facilitate a voluntary approach that considers both public and private objectives at the appropriate landscape scale. Where private landowners have responsibilities for public objectives, these need to be made clear.

**Competence requirement in deer stalking**

The institute notes the decision to give the Industry time to develop a voluntary framework to demonstrate competency but supports the development of a register of competency with associated training (including night shooting skills). However, if the aim is to ensure public confidence in deer management in relation to public safety, food safety and welfare issues, a register on its own may not achieve this. It needs to be supported by appropriate monitoring (**Data Collection**). Therefore we would recommend that competent persons were obliged to provide larder data and game dealers obliged to provide carcass quality data and that these data were analysed to monitor deer population performance and carcass quality so that trends can be identified and investigated. One mechanism to ensure traceability and help with identifying issues is carcass tagging. Resources need to be set-aside to ensure the data is collected and then analysed centrally with the results made available to the deer sector. This may help to maintain standards better then relying purely on assessment of competency.

Assessment of competency should be judged by a test against DCS best practice guidance and for existing practitioners, grandfather rights for say 3 years based on proof of previous experience. It is worth considering putting in place hunter training course similar to those used in Scandinavia (including knowledge of deer ecology, firearms handling, food safety etc). Full competency status should only come after a probationary period where the candidate is supervised for the first x number of kills and the associated carcass handling and processing.

**Close seasons**

The Institute notes that the proposals to change the close season dates has been dropped. If competency in deer management can be demonstrated through the code of practice and a register of competency than there is no need, in theory, for a close season on welfare grounds. However, the institute agrees that that a close season for females in the post-calving period is necessary but dealing the start of the close season could allow more flexibility for cull targets to be met. For males, the Institute has no evidence that their welfare would be affected by removing the close season if the code of practice for deer management was implemented and competency was monitored. These two measures would provide a mechanism to address overexploitation of males at a local level and together with appropriate data, the effect on deer population performance can be monitored. The institute would support the provision for local management to vary the close season to fit with local conditions. In other countries with a strong game management ethos the sector is allowed to set seasons in response to prevailing local and annual population status in order to protect stocks.
Occupier Exemptions and authorisations
All persons managing deer should be competent and this competence would include welfare and population level considerations. Therefore, if competence can be demonstrated there is no need to require authorisations for close season shooting or night shooting. The right to shoot deer held by owners and occupiers should remain but with this right comes the responsibility to be competent to do the task. If an owner/occupier is not competent then they would have to employ the services of a competent deer manager. The Institute would support the idea of removing the need for authorisations if there was a functional competency register. However, in the light of the competency related proposals in the bill, there is a need to maintain the current system for authorisations particularly for night shooting.
NFU Scotland readily submits written evidence to the Scottish Parliament’s Rural Affairs and Environment Committee with regard to the Wildlife and Natural Environment (Scotland) Bill.

NFU Scotland recognised the original intention that the Wildlife and Natural Environment (Scotland) Bill would support sustainable economic activity in the countryside by ensuring that the wildlife and natural environment legislation is efficient, effective and proportionate.

At the consultation stage of the original proposals for the Bill, the overarching concern of NFU Scotland was that any tightening - intended or otherwise - of legal requirements already placed on farmers could seriously compromise the pivotal role that agriculture plays in providing the full range of rural development benefits that it is exclusively placed to deliver.

Therefore, NFU Scotland welcomes the significant changes that have been made to the original proposals, as reflected by the outcome of the consultation process and captured within the Bill.

In general, NFU Scotland considers that the Bill now offers a package of measures that should protect wildlife and regulate the management of the natural environment and natural resources. In doing so, the Bill ought to maintain the high quality of Scotland’s natural environment and its biodiversity and ensure that wildlife and natural environment legislation is responsive to the needs of economic and social development in Scotland – especially its rural areas.

That said, while such intention remains entirely laudable, NFU Scotland is wary that so-called ‘tidying up’ of a range of outdated and disparate pieces of legislation may lead to unforeseen and adverse consequences for Scotland’s farming interests. Experience suggests that such an exercise can result in unanticipated consequences that may have an adverse or damaging impact on the economic, environmental and social fabric of rural Scotland.

Agricultural land management dominates land use in Scotland, covering some 5.6 million hectares. Scottish farming and farmers are, and continue to be, responsible for much environmental management - and within a policy framework built around legislation, incentive and advice. As a result, the vast majority of wildlife and natural environment interest directly connected to agricultural land management is now thriving, and agricultural production has to be complementary to natural heritage responsibilities, and is often tailored to deliver environmental enhancement.
Deer Management

It is clear that the Bill aims to modernise the legislative framework for managing deer, develop a system that delivers public benefits in environmental management as well as sustainable recreational stalking and venison industries, and ensure the highest standards of deer welfare.

The Scottish Government recognised the legal difficulties in imposing new statutory duties on land managers – not least farmers that rely on existing legislation to protect their agricultural interest from deer damage. NFU Scotland supports the Bill’s provisions establishing a statutory code of practice that will provide examples and descriptions of sustainable deer management and will be linked to the intervention powers operated by Scottish Natural Heritage (SNH) now that it has merged Deer Commission Scotland (DCS).

To instil greater public confidence in deer stalking and to protect deer welfare and public and food safety, the original proposals set out a requirement to demonstrate practical skills and knowledge in order to be deemed ‘fit and competent’ and registered to shoot deer. In consultation with Scottish Government, NFU Scotland was unequivocal in its opposition to compulsory competence measures was.

A mandatory competence requirement has not been taken forward within the Bill, and NFU Scotland welcomes that.

Instead, the Scottish Government proposes provision to be made in legislation to allow Ministers to make regulations on the establishment and operation of a register of persons competent to shoot deer in Scotland if it becomes necessary. If such regulations are not made by 1 April 2014, SNH will review the levels of competence amongst those who shoot deer in Scotland and the effect of such levels of competence on deer welfare.

Again, NFU Scotland supports this more pragmatic approach as it retains the onus of responsibility for those who may take or kill deer only to do so to the highest of animal welfare and other standards.

NFU Scotland also supports the withdrawal of the original proposals to change legislation to require Ministers to set a female close season and enable Ministers to set a male close season within the Bill.

NFU Scotland was deeply concerned by the original proposal for the removal of the automatic right of owner-occupiers of agricultural land or enclosed woodland to shoot deer in Close Seasons to protect their crops without the need to seek authorisation.

In recognition of the concerns raised by NFU Scotland (and others) on behalf of those needing to protect their crops, pasture or woodland from deer damage, the Bill does not proceed to remove exemptions for owner-occupiers without authorisation. NFU Scotland entirely supports this realistic approach.
Recognising the vital importance of responsibility in all aspects of deer management and control, NFU Scotland supports the intended introduction of a responsive authorisation system, based on a form of general licence, but with scope to remove authorisation from individuals in cases giving rise to reasonable concern for deer welfare.

**Snaring**

With regard to snaring, NFU Scotland entirely supports the Bill’s provisions to build on the steps already taken by the Scottish Government to improve animal welfare and raise standards practice through the Snares (Scotland) Order 2010 which came in to force in March.

NFU Scotland also supports new requirements to ensure that all snares are tagged, to enable the person who set the snare to be identified by police, and that those who set snares have undergone training.

When done properly, snaring is a legitimate, highly effective and practical form of pest control - particularly in the context of fox control at lambing time. The Bill’s provisions on using snaring methods which are humane, legal and carried out in accordance with best practice, and with respect for other countryside users, will be vital for many farmers and crofters with livestock across Scotland.

The continuation of snaring is also vital in biodervisity terms. Controlling fox predation of ground nesting bird species, including hen harriers, allows the upland biodiversity interests to flourish, as well as helping to safeguard vulnerable hill farms.

**Game Laws**

The Bill seeks the abolition of the Game Licensing Act 1860 and the Game Act 1831. NFU Scotland would support this. Under the 1860 Act, licences to take game do not impose limits on the number of game taken and so it does not fulfil a conservation role. Under the 1831 Act, it is an offence to buy or sell game birds during the closed season, yet food standards legislation, etc. make this law redundant.

NFU Scotland supports the retention of the offence to sell game which has been killed outside the open season or which has been poached, as the Bill also seeks to bring all game birds (pheasants, partridges, grouse and ptarmigan) within the scope of the Wildlife and Countryside Act 1981 and create closed seasons for these birds.

NFU Scotland also supports the proposed new offence of taking and killing hares during closed seasons.
Invasive Non-Native Species (INNS)

On the whole, NFU Scotland is comfortable with the provisions within the Bill relating to INNS. The Bill should tighten legislation on the prevention of release of non-native species and should ensure, where they have been released into the wild, that appropriate control and eradication measures can be taken.

What is of some concern, and may be one of the unforeseen consequences of the Bill, is how farming (and forestry) will be dealt with. The intention may be that the Bill will not change the current position in relation to agriculture. Currently, farming is not considered to be included in the definitions of INNS in the Wildlife and Countryside Act 1981.

This is also intended to be the case with definitions in the Bill. NFU Scotland understands that, in the interests of clarity and to make the Bill provisions as ‘user-friendly’ as possible, the Scottish Government will list agricultural land and commercial and amenity forestry planting as not being within the definition of ‘in the wild’ in the associated Codes of Practice.

NFU Scotland, therefore, retains a general concern that the line between ‘legislation’ that sets out the law and ‘codes of practice’ that offer guidance only will be blurred. If the provisions of the Bill result in amending the law as it stands, then clear definitions must be included in that legislation rather than in the guidance that can change at any time.

Otherwise, NFU Scotland supports the measures to ban the release of an animal or growing a plant outwith its native range, introduce a duty to report plants and animals considered a significant risk to Scotland, and allow species control orders to be made to set out measures to control or eradicate invasive non-native plants and animals.

Species Licences

The current species licensing system, where the taking, killing or disturbance of certain animals and plans can be licensed for good reason (e.g. prevention of damage to agricultural crops or spread of disease) is applied inconsistently to otherwise similar situations. NFU Scotland supports the provisions in the Bill so long as they practically and effectively improve species licensing in the interests of both farming and broader biodiversity/conservation.

Protection of Badgers

NFU Scotland has no valid reason to object to the provisions in the Bill to address anomalies in badger protection legislation. It is clear that the level of penalties which apply to offences need to be revised in line with other offences and there is also a need to specify that it is an offence where a person undertakes an activity directly or knowingly causes or permits the act to be done.
Muirburn
Under the Hill Farming Act 1946, muirburn (the burning of vegetation such as heather, gorse or grass on open semi-natural habitats such as heath and moor) is only permitted within the defined season - October 1 until April 15 (with some extensions in certain circumstances).

The Bill proposes that Ministers can vary the dates for muirburn for conservation, restoration, the enhancement and management of natural environments and for public safety. It also proposes allowing variations on geographical basis.

NFU Scotland is content with the provisions of the Bill with respect to muirburn. Extensions to muirburn in May will no longer be permitted, as many moorland birds have already begun nesting by mid-May, and most hill flocks will have started lambing!

NFU Scotland supports allowing out of season muirburn under licensed for purposes such as habitat restoration or recovery from heather beetle infestation. Equally, the more flexible notification requirement, to be introduced under the Bill should ensure that those interested in knowing when and where muirburn will occur will be informed, is a step in the right direction.

Sites of Special Scientific Interest
SSSIs cover 1,033,056 hectares (approximately 13% of Scotland) and affect some 7,500 owners and occupiers.

In general, NFU Scotland supports the proposals to allow SNH to combine SSSIs into one designated site for ease of management, streamline procedures for de-notification of sites, tighten and clarify rules on allowing activities which could damage sites, etc.

Areas of Special Protection
NFU Scotland supports the abolition of Areas of Special Protection, as they are covered by the Wildlife and Countryside Act 1981. Equally, access provision is covered by the Land Reform (Scotland) Act 2003.
The National Trust for Scotland (the Trust) welcomes the opportunity to respond to the proposals set out in Stage 1 of the Bill. We also take this opportunity to acknowledge the support the Trust receives through agencies of the Scottish Government which assist it with its work on the conservation of the nation’s cultural and natural heritage assets in its care, particularly here the grant received from Scottish Natural Heritage.

The Trust contributed to the consultation stage response to the Bill through Scottish Environment (SE) LINK. The Trust has also contributed to and supports the further evidence submission made by SE LINK.

We very much welcome the steps taken to prevent the release of non-native species and we see this as a major advance in countering a serious threat to Scotland’s wildlife. However, especially in the circumstances of Trust ownership, we believe that there are still problems with defining what is meant by “release into the wild” in the case of plants. Should there be opportunities to inform the process to address these issues, for example through the preparation of the Code of Practice, the Trust offers its further assistance.

Part 2 Sections 14 to 17 Invasive and Non-Native Species

The Trust manages a great variety of types of property ranging from formal gardens through designed landscapes, parkland and policy woodlands to semi-natural woodland and mountainous wild land. It is not always clear where the ‘gardens’ end and the ‘wild’ begins. Many of these areas have been planted since the eras of the earliest plant collectors with non-native species which now make up their essential character and form a major part of their heritage significance to us today. We give some detailed background to the Trust’s circumstances:

- The National Trust for Scotland is Scotland’s largest garden owner with 70 properties supporting a garden of some kind;
- 35 properties have major gardens or designed landscapes (as defined in the Inventory of Gardens & Designed Landscapes in Scotland);
- These gardens are the product of over 400 years of garden evolution that have made use of the ever increasing numbers of plant species available to gardeners;
- During their heyday many of the landed estates sponsored plant collecting expeditions and in return acquired new plant introductions that now form the characteristic Scottish garden landscape heritage that we are all familiar with; a number of Trust Head Gardeners have in the past taken part in plant and seed collecting excursions and have themselves introduced new species into UK horticultural cultivation;
Trust gardens contain the largest variety of taxa in the UK, second only to the National Trust, and considerably more than the Royal Botanic Garden, Edinburgh;

The Trust holds computerised records for 85% of its plant collection and currently includes over 70,000 records, of which 13,500 are unique taxa – almost all of these recorded species are non-native ornamental trees, shrubs, herbaceous perennials, bulbs etc.

Other than productive walled kitchen gardens, gardens and their associated designed landscapes rarely have major physical barriers to prevent the spread of plant material out into the wild;

Designed landscapes include ‘borrowed’ landscapes beyond the formal boundaries of a created space, in such cases there is little or no distinction between gardened areas and adjacent wild land;

We recognise that there are important invasive non-native plants such as the well promoted water weeds, *Crocosmia*, *Leycesteria*, Japanese Knotweed, Giant Hogweed, *Rhododendron ponticum* and many others (as well as some invasive British native plants) and these problem plants are known to gardeners as potential nuisance if allowed to escape into the wild.

On most of its land the Trust has a default policy of planting native species and its Policy on Wild Land\(^1\) has been quoted as an exemplary contribution to the understanding and assessment of significance of some of Scotland’s most iconic landscapes. However, in designed landscapes and policy woodlands it might be considered appropriate to continue planting non-native species to replace existing plantings (storm damage/age) to help maintain their essential character.

The Trust calls for careful consideration, definition and explanation of ‘wild land’ and ‘into the wild’ in relation to banning the ‘introduction of non-native species into the wild’ in the proposed Code of Practice in case the Trust runs into situations where gardens can no longer survive with their ornamental plant collections (that rarely include any deliberately planted native species) and in clearly identifying those areas that will be considered as not being in the wild and thereby avoiding ambiguity as to where so-called wild land starts and finishes with adjacent gardens, designed landscapes, policy woodlands etc. The Trust anticipates that it would not be the only landowner to face this problem.

Whilst the Trust recognises the condition refers to the other provisions of that part of the Bill, for the avoidance of doubt we ask that consideration be given for Section 14 (2) to include a reference to the Code of Practice as follows:

“Subject to the provisions of this Part, *including those set out in the Code of Practice*, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence”.

\(^1\) ‘Wild Land Policy’ the National Trust for Scotland, 2002
The Trust welcomes the proposal that the Code of Practice is to be the subject of a further consultation exercise and it would wish to be registered as an 'interested' party in becoming involved in that exercise. Should there be opportunity it also offers any further assistance it can in helping to inform the sort of circumstances described above and which, it understands, the Code of Practice intends to address.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

SUBMISSION FROM ORNAMENTAL AQUATIC TRADE ASSOCIATION

We are responding to your call for evidence to emphasise our support for the “presumption against release” clauses. We have briefly outlined OATA’s role in the industry and activity with regards to invasive non-native species in the attached Annex.

Species can only become invasive if released or by escaping to the wild by one means or another. A very significant element of preventing releases is awareness among the public of firstly the law and secondly, legal or in the case of animals any welfare consequences of such action.

OATA wholeheartedly supports the view that the general public should not release pet fish or plants kept in aquaria or garden ponds to the wild. We have long campaigned using variations on this simple message. We believe irrespective of any of the complexities of the current laws this is the best message for the public.

Explaining to the public how the Wildlife and Countryside Act works or how Schedule 9 provides for a different level of protection to the environment can leave the majority confused. When you add in lengthy legal debate over what the “wild” actually is, then the discussion becomes labyrinthine. Any revision based on extensive lists revised periodically will tend to confound the intent of the law by creating confusion rather than clarification.

Thus we believe that a clear simple law that states that animals or plants of any species from aquaria or ponds should never be released to the wild has great advantages in terms of clarity and certainty.

This general presumption against release has the advantage of not creating lists, the existence of which is known only to relatively few people and that are in many instances reactive. That is animals or plants are added to lists after they have been proven to cause problems.

In effect the risk is caused by releasing, or allowing to escape, animals or plants, the proposed “presumption against release” law clearly and simply addresses that behaviour.

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1 In 2003 the Companion Animal Welfare Council stated that “Life in the wild is hazardous, needs are not always met, and in the context of survival of the fittest, the less fit frequently face food shortage, injury disease and lingering deaths.” Ornamental fish are either domesticated and/or originate from conditions vastly different from those found in the UK-they are generally not fit to survive in the wild in this country and though some may survive their release may be often be regarded as cruel.
For a few species there may need to be more explanation of the term “outwith the control” provision but such clarification in special cases should not obscure the overriding worth of the “presumption” clauses.

If professionals (in other sectors since ornamentals are not released in the wild deliberately by my industry) need to release any particular species, fish or other, for particular purposes then it does not seem unreasonable for them to acquaint themselves with the law relating to their business. That said the law applying to them must be as clear as possible and as importantly, as accessible as possible. No one should normally need to hire barristers to delve into the law to let them know what they are doing is legal. Every effort must be made to ensure individuals and businesses wishing to do the “right thing” can find the law by simple searches. While ignorance of the law is no defence, in this day and age there is no defence for information not to be readily available in a comprehensive format. Government agencies must play their part in ensuring this level of accessibility.

If we can be of further assistance please do hesitate to contact me,

ANNEX I

OATA represents the interests of some 750 businesses spread across the UK. Among our members are importers, wholesalers and retailers of ornamental aquatic organisms, both animals and plants, that are kept by the estimated three million or so households owning garden ponds and aquariums.

OATA has played an active role for more than a decade in policy formation and public communication, at both national and international levels, for well over 10 years. For the sake of brevity we will not detail the meetings, groups and committees in which we have participated here but can provide further details of our relevant activities if requested.

However we will point to the style of campaigning OATA has long adopted. This includes posters:

“The Pet Fish Belong.” Produced more than 10 years ago encouraging the public never to release any ornamental fish to the wild see: 
http://www.ornamentalfish.org/aquanautconservation/petfishbelong.php

“Keep your pond plants in the garden!!” see: 
http://www.ornamentalfish.org/aquanautconservation/invasiveplants.php
OATA has also listed species that it recommends are not sold but this more complex message is addressed to the trade rather than the public.

We have also arranged for plastic bags used by retailers to carry live animals and plants home from the shop by members of the public to be printed with the warning: 
“Ornamental fish and plants bought for aquariums and ponds must never be released into the wild”
http://www.ornamentalfish.org/aquanautconservation/mustnever.php [Link no longer operates]
Over a million of these are used annually.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL
WRITTEN SUBMISSION FROM PLANTLIFE

Plantlife Scotland is part of Plantlife International, the wild plant conservation charity. Plantlife acts directly to stop common plants becoming rare in the wild, to rescue wild plants on the brink of extinction and to protect sites of exceptional botanical importance. We carry out practical conservation work, work to influence relevant policy and legislation, seek to engage and involve people in our work and collaborate widely to promote the cause of wild plant conservation.

Our written evidence is limited to those areas that we explored in our response to the consultation in September 2009 and that have not appeared in the Wildlife & Natural Environment (Scotland) Bill, as introduced to Parliament on 9 June 2010.

Part 2: Non native species:
We fully support the policy intentions of this bill in relation to the control of non native invasive species:

1. Presumption against introduction of non native invasive species into the wild: Although there are difficult issues to resolve in ensuring that non native invasive plants remain under human control, we believe that the introduction of legislation to introduce a presumption against planting non native invasive species in land under extensive (or no) management that retains its semi natural character and is not subject to commercial cropping is appropriate and puts Scotland in the lead in this policy area in Europe.

2. Identification of a coordinating public body, with a specific role to address and coordinate responses to non native species: Combating and controlling the impact of non native invasive species, some of which can move extremely quickly, will not be effectively achieved without coordination through a single, clearly identified body in Scotland, who can work closely with the GB Secretariat for non native species.

3. Duty on public bodies to control, eradicate or contain specific listed species: Once a non native invasive species has been identified and is threatening the natural heritage value of an area, a legal requirement to act, is, we believe, the only effective way to ensure that early action is taken. Without early action, costs mount up and damage to natural, economic and social interests increases. For example, in 1999, the estimated cost of controlling Australian Swamp Stonecrop (Crassula helmsii) in England was £3,000,000. In 2002, Crassula helmsii was recorded in 511 10km2 in England and 20 in Scotland. Action to tackle Crassula helmsii now in Scotland will save millions of pounds and will prevent damage to Scotland’s freshwater systems. However, without legislative imperative, action is less likely to be taken: we suggest that a duty to control,
eradicate or contain priority non native invasive species, as listed by the GB Secretariat on non native species, is missing.

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**Part 3: deer**  
We support the written evidence on deer, submitted by Scottish Environment Link.

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**Part 4: Muirburn**  
From a plant conservation point of view, muirburn has very few, if any, benefits. Woody shrubs, lichens and bryophytes are all damaged by burning, with damaged populations taking decades to recover, if they can recover. It is our view therefore that muirburn should not be practised in sensitive habitats where the constituent plant communities cannot recover. These include oceanic heath, high altitude and montane scrub communities. While we accept that well managed muirburn, that follows the muirburn code, on the grouse moors of eastern Scotland has an economic function, we see the proposed extended muirburn season as a compromise that goes beyond our recommendation for the conservation of biodiversity. Extension of the muirburn season into the growing season for flowering plants, ie beyond 30 April, risks destroying whole communities and their habitats. Furthermore, muirburn is damaging to bryophytes and lichens at all times of year, which is why important bryophyte and lichen habitats should be protected (see below).

Certain habitats, including high altitude and steep and rocky habitats on Scotland’s west coast, are extremely important for internationally important species that are threatened by muirburn (see reports on species status at www.ukbap.org.uk). Scotland’s west coast, home to the oceanic-montane heathland, has suffered past extensive and unregulated burning, which appears to have been a limiting factor on the distribution of these internationally important oceanic heath communities. These plants have a highly disjunct global distribution and many have the bulk of their European population in Scotland. We would therefore encourage the committee to consider retaining power within the bill to limit muirburn at high altitudes, where recovery time is extremely slow for affected plant communities and on steep and rocky slopes of the West Coast where internationally important communities of rare bryophytes occur.

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**Other issues:**  
**Biodiversity duty:**  
The commitment by the UK and Scottish Governments to halt and reverse the decline in biodiversity by 2010 will, it is generally recognised, not be fulfilled. The current bill offers the Scottish Government the opportunity to fill the legislative ‘gaps’ in the biodiversity provisions of the Nature Conservation (Scotland) Act 2004. These are:
1. Requirement for public bodies to report to parliament on their meeting of the current biodiversity duty: we believe an additional sub-section to section 1 that requires Ministers to publish guidance (already fulfilled), promote it, monitor its implementation and report their actions to promote/monitor to Parliament (as part of the s.2(7) report) would be invaluable.

In addition, it would be also be valuable to explore the definition of public body, and ensure that anyone conducting publicly funding work is included.

2. More effective implementation of the strategy. In the view of many stakeholders, a key cause of the failure to meet the 2010 target is the unfocussed and unstructured implementation of the Scottish Biodiversity Strategy. We would recommend that the committee considers the following:

A. the s.2(4) list of species and habitats should include only those “of principal importance for the purpose mentioned in s.1(1)” (ie conservation). It should therefore be reviewed to restrict it to those where conservation actions are necessary.

B. Having identified the species and habitats most in need of conservation action, it is then appropriate to identify the actions needed, those responsible for those actions, and require those bodies/persons to take the appropriate actions. These plans should be underpinned in law through the requirement to report to parliament (below).

C. the report under s.2(7) would be fuller and more useful if it indicated progress on each action referred to in the paragraph above and, if action has not proceeded, what reason has been given by the body/person responsible for not taking that action.

Parity for plants in legislation - Schedule 8:
Plantlife has supported and contributed to the ongoing reviews of Schedules under the Wildlife and Countryside Act (WCA) (1981) in Scotland, including the fifth quinquennial review in 2007 (unpublished to date). While we regret the length of time this review has taken we would urge the government to use powers under the Natural Conservation (Scotland) Act 2004, to revise all WCA schedules on a regular basis for Scotland, including 5 and 8, the subject of the 2007 review.

However, review of Schedule 8 is not sufficient in itself to meet the spirit of WCA section 22, which suggests that species should be added to Schedule 8 if “in danger of extinction in Great Britain or is likely to become so endangered unless conservation measures are taken”. This contrasts with the current use of Schedule 8 to list and protect plants through Section 13(1)(a) from intentional picking, uprooting and destruction; and by Section 13(2) from commercial sale. Clearly if section 22 of WCA is to be met, and Schedule 8 is used as the most appropriate legislative mechanism, there is a need to argue for reform of Schedule 8 and its accompanying legislation in the WCA. While species vulnerable to collection continue to receive the appropriate legal
protection, those species which are vulnerable to habitat destruction and neglect continue to suffer.

The Wildlife & Natural Environment Bill offers the government the opportunity to amend, as a matter of urgency, Section 13 of the Wildlife and Countryside Act, to ensure that the places where plants grow are protected. As the act currently stands, it remains an offence to destroy a plant but not its habitat. Current SSSI site selection guidelines state that all viable populations of Schedule 8 species should be notified, which represents one way to protect plant habitats. However, SSSI site selection is not consistent with the current guideline, which leaves many populations of Schedule 8 species vulnerable to destruction.

Plantlife therefore proposes an amendment to Section 13 of the Wildlife and Countryside Act by adding another element, 13(3) covering habitat protection. Plants could then be scheduled for protection against physical damage and collection under 13(1), sale under 13(2), habitat destruction under 13(3), or any combination of these. This amendment enables the government to comply fully with the Bern Convention, which requires protection of the habitats of Appendix I plants and complete protection (including habitat protection) for other species, in addition to those on Appendix I (i.e. for Schedule 8 species). This implies protection is required for all the sites supporting these species, not just a selection of them.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL
WRITTEN SUBMISSION FROM PROFESSOR COLIN T REID

General
The Bill is welcomed for its efforts to consolidate and simplify the law, but there are three general observations to be made:

a) Despite the improvements made here, the law will remain complex and fragmented. In particular, the laws on species protected under EU law and under domestic law remain in separate places and the changes here only exacerbate the appalling state of the Wildlife and Countryside Act 1981, the key provisions of which have been subject to piecemeal, “cut-and-paste” amendments for years, with the same sections existing in two substantially different forms for Scotland and for the rest of Great Britain. As just one example, the simple fact that s.14 of the Bill proposes inserting a s.14ZC into the 1981 Act sends a clear signal of the need to consolidate the 1981 Act. After this Bill, too much of the law will remain difficult to piece together and to understand, and therefore hard to explain, to follow and to enforce. This Bill should be the start, not the finish, of a tidying up process.

b) The impact of the Bill depends heavily on the detail of further measures not set out within it, both regulations and Codes of Practice. There is therefore a great onus placed on those responsible for these further measures to ensure that they are made and scrutinised in a way that ensures their acceptance and that take account of the practicalities facing those living in and trying to make a living from the countryside.

c) At present, and more so after this Bill, the details of wildlife law will depend on regulations, orders, codes, directions and general licences. Given the dynamic nature of the environment, the flexibility these offer may be desirable in contrast to the comparatively fixed terms of a statute. Nevertheless, this makes it difficult for those who have to comply with or enforce the law be certain of where the boundary lies between lawful and unlawful behaviour. Especially since criminal liability is at stake, effort must be made to ensure clear, consistent and simple public access to all the material necessary to appreciate the legal position.

My overall impression of the Bill is given in the attached extract from a draft article that I have written on it that will shortly be submitted to the Environmental Law Review.

Part 2: Wildlife
The abolition of separate rules for game and of game licences, the simplification of the law by applying the rules that apply to other birds, the removal of landowners’ special powers of enforcement, the abolition of Areas of Special Protection and the clarification of the rules on snares are all welcome.
Section 6-11: A not wholly serious comment is that an unusual but technically elegant drafting approach in relation to these provisions of the Bill would be to deem hares and rabbits to be birds for the purposes of the Act and apply the existing law accordingly.

Section 12: Throughout the 1981 Act and related legislation, and again here, it is not clear on what basis certain offences are chosen as ones where single witness evidence suffices whereas for others the standard rules of corroboration apply. This is an area where there is scope for further review and harmonisation of the law.

Sections 14-17: The introduction of a clear, precautionary approach to the release of non-native species is welcomed. However, given the breadth of the strict liability offence and the limited defences which focus on avoiding the acts concerned, rather than on uncertainty over the status of the species or locations involved, there is a heavy onus on the ministerial orders and Code of Practice to clarify the position in many situations. There will be formidable difficulties in practice in resolving such issues as whether a species is “native”, what is its “native range” and what amounts to causing a plant to grow “in the wild”. The first two are matters of scientific dispute and the latter impossible to define without either over- or under-inclusion in terms of the mischief to be avoided. What is the status of species that had disappeared from Scotland but have returned, naturally (osprey) or through reintroduction many decades ago (capercaillie) or recently (red kite, beaver)? What about new species spreading naturally in response to climate change? Presumably for plants, fields are not “in the wild”, but what about forestry plantations, country parks, avenues of trees along drives or the planting undertaken by roads authorities on roundabouts and verges? Unless the orders and Code do a very good, thorough and clear job, there is scope for a lot of argument and uncertainty, presenting difficulties for any enforcement officer wishing to intervene on-the-spot and creating the risk of a criminal conviction for someone who thought that they were acting properly.

Given that the proposed s.14B of the 1981 Act (s.14(5) of the Bill) is imposing a positive duty on people, an express requirement on the Ministers to take steps to draw this requirement to the attention of those affected might increase the effectiveness of the measure, reducing the extent of unwitting non-compliance.

Although the current proposal (s.15) is not inconsistent with the Code’s status as not being formal law, given the important role of the Code there is a case for subjecting at least the first version of the Code to a formal scrutiny procedure in Parliament, beyond mere laying.

The spread of responsibility for invasive non-native species (s.16 of the Bill) makes sense given the range of circumstances involved, but the absence of a clear lead authority creates a risk of uncertainty or inaction as authorities are unsure who should act.
Section 18: The introduction of a wider ground for licensing to achieve significant social, economic or environmental benefits is acceptable and by creating a means to obtain permission for action thought necessary is likely to encourage compliance with the law.

The unification of licensing powers in the hands of the Ministers initially simplifies the law, but this is then undone by the wide powers to delegate which raise two problems. The first is that it is unclear whether it is intended that the delegation should be absolute or include a reserve power for the Ministers to “call in” requests for licences in delegated areas. The second is the absence of provision for publicity for delegations made to SNH by direction. Such directions should at least be laid before Parliament and be subject to appropriate publicity. The same points apply in relation to section 27(7) dealing with licences for badgers.

More generally, the proposals here do not address what I regard as a significant weakness in the present law. This is that although action against many species of bird is prohibited under the Wildlife and Countryside Act 1981, in practice wide authority to do acts that are normally unlawful is granted under the general licences issued under that Act. The limits of criminal liability are thus being set not by the Act, not by legislation, but by licences of general application which are subject to no formal process for scrutiny or publication (although now in practice available on the Internet). There are arguments of efficiency for the present system, but given the significance of the licences in determining criminal liability, obligations in relation to publication and some scrutiny (perhaps an annual report) seem desirable.

Part 3: Deer
Section 24(3): In passing I note that the Explanatory Note (para.125) makes no mention of a potentially significant change in the law, namely the removal of the limitation on the powers under control schemes that has prevented the imposition of an obligation to fence any land.

Section 26: Given the significance of the change in the law if a register of competent persons is introduced, and the range of important matters to be regulated, the introduction of such a register should require greater parliamentary scrutiny than passage through the negative resolution procedure. That procedure may be appropriate for adjustments once the system is operation, but the initial decision to activate this mechanisms should be subject to express approval.

Part 5: SSSIs
Section 30: De-notification of an SSSI is a significant legal step and should remain subject to the standard process for public participation.

Section 31: The open-ended power of the Ministers to exempt any type of operation from the requirement to obtain SNH’s consent is very broad and should be qualified in some way to ensure that exemptions are available only
where there conservation interests have been adequately considered in the process leading up to the operation taking place.

Extract from draft article by Prof. C.T. Reid to be submitted to Environmental Law Review

In announcing the Bill, Roseanna Cunningham, MSP, Minister for Environment said that it had three themes - balance, modernising and the welfare of wild animals - but it is difficult to see any unifying vision behind the Bill. Essentially it is a series of measures tidying up what law already says, rather than the reflection of a thorough review of our relationship with nature, and major issues of policy, such as the register of competence to shoot deer, remain open.

Looking at the stated themes, whether the Bill brings an appropriate balance to the law probably depends on one’s point of view. There is no consensus across society of balance between various interests in the countryside, a fact amply illustrated by the fact that the debates on changes to snaring that started before the 2004 Act was passed are only now reaching a legislative conclusion, and one that will fail to satisfy at least some of the participants on both animal welfare and land management sides. In terms of overall balance, the Bill imposes more obligations and restrictions on the owners and occupiers of land for the benefit of biodiversity and views will differ on whether these are these proportionate and efficient and how consistent they are with attitudes to landownership and land management reflected in other areas of policy.

In terms of modernising, there are some very significant gains, especially in relation to the game laws. Regardless of their content, there was a clear need to end the fragmentation of the law and few would disagree that, whatever their operation and effect today, elements of the game laws were founded on an anachronistic respect for the privilege of “the land-owning classes”. Concern for the welfare of animals is clearest in the snaring provisions, although many animal welfare groups would argue that only an outright ban on snaring would be acceptable in welfare terms. On other issues the welfare arguments become more complex when one starts to consider the controls on deer and non-native species, which place the focus on concern for biodiversity and protecting native ecosystems rather than on the individual creatures that might be culled for that purpose.1

The disappointment is in what the Bill does not do rather than what it does. There is some very welcome tidying up of the law, especially in relation to game, but there is a desperate need for further consolidation. The Wildlife and Countryside Act 1981 is wholly unfit for use, with so many “cut-and-paste” amendments having been made and the same sections existing in substantially different forms for Scotland and rest of Great Britain. Moreover, for those using the law in practice, a lot of the detail of the law and its application will not be in the Bill but in subsequent regulations and the Codes of Practice. The Code of Practice will play a vital role in effect defining the limits of criminal liability for non-native species, while the broad licensing powers for protected species and muirburn will alter the position in many

1 See, for example, the opposition to the cull of the (North American) ruddy duck to prevent hybridisation with the (Eurasian) white-headed duck, e.g. http://www.animalaid.org.uk/h/n/CAMPAIGNS/wildlife/ALL/355/
circumstances, and the powers to delegate licensing powers may again complicate the picture for those wanting to know what they are allowed to do.

The Bill makes some good progress, but does not cure the fundamental problem that the law in this area is complex and fragmented. The legislation is hard to piece together and to understand and therefore hard to follow and to enforce, especially when the impact of the various licensing powers is taken into account. We may have to accept that in terms of content a degree of complexity is the inevitable consequence of the complexity of the natural world and the absence of a coherent consensus across society on our relationship with it, in practical, economic, emotional and moral terms. But at least from the perspective of legislative technique, more could be done to help all of us who struggle to make sense of the law which we are all deemed to know.
Views on General Principles of Bill from Professor John Milne, Chairman of the Deer Commission for Scotland until 31 July 2010.

The views expressed in this submission are the personal views of Professor Milne and relate to deer (Part 3 of the Bill).

Sections 22, 23 and 24 – Deer management issues

1. In its advice to the Scottish Government, the Deer Commission for Scotland (DCS) recommended that the existing voluntary approach to local deer management should be strengthened in order to deliver sustainable deer management. In the red deer range these arrangements are provided by Deer Management Groups. There is no basis in legislation at present which enables Deer Management Groups to address or resolve conflicting private objectives or to deliver multiple public objectives (see paragraph 2 below). DCS in its advice to the Scottish Government rejected statutory Deer Management Groups or compulsory deer management planning because they would be expensive, increase the level of bureaucracy and need additional public funding to make them work. This advice was accepted by the Scottish Government (see paragraph 139 of Policy Memorandum).

2. DCS argued that the voluntary approach to local deer management has the potential to deliver sustainable deer management provided that cooperation of all landowners within a particular sub-population of deer or area can be secured and deer management plans, which take into account both public and private objectives, are developed and agreed, and then implemented. The voluntary approach also needs to involve those living in such an area and impacted by the effects of deer. The arguments for the benefits of a voluntary approach are developed more fully in Milne et al. (2010)¹. It is surely right that decisions about the objectives of deer management are decided and implemented locally by those with the knowledge and experience of managing deer and of local interests. The voluntary approach does not work well currently because there is no requirement for landowners with deer interests to join and participate appropriately in a Deer Management Group.

3. The Bill leaves the status quo in relation to the powers of SNH under Section 7 and 8 of the Deer (Scotland) Act 1996 other than expanding the coverage of damage by deer to include deer welfare and to the public interests of a social, economic or environmental nature. While these latter changes are welcomed, because they define

the public interest in a more relevant manner than in the 

Deer (Scotland) Act 1996, the Bill does not address concerns over the effectiveness of Sections 7 and 8 of the Deer (Scotland) Act 1996. In my experience in the use of Section 7, for example to achieve agreements with landowners in relation to avoiding damage to the natural heritage, it is exceedingly demanding of staff time to persuade landowners to agree to a scheme as there is a lack of incentive to become involved and no credible back-up powers as Section 8 has not been used because of perceived difficulties in its enforcement. Moreover, it deals with one specific public interest for the length of time set until damage to the natural heritage is no longer occurring and hence does not provide for longer term sustainable deer management which may need yet more involvement by SNH staff. The proposal in the Bill to expand the coverage of damage to include a wider range of public interests will only increase the amount of effort and time required in reaching Section 7 agreements because there are likely to be more cases and cases are likely to be more complex. At a time when cuts in public expenditure are likely to occur, it appears unwise to increase the public resources required to deliver sustainable deer management.

In its advice DCS recommended that the voluntary and devolved approach to deer management would be best supported and directed through a duty on relevant land managers to manage deer sustainably, described in a Code of Practice covering collaborative planning, consultation and implementation. This duty would replace Sections 7 and 8 of the Deer (Scotland) Act 1996. There should be back-up powers for SNH to compel land managers to develop and implement deer management plans where the voluntary approach is failing to protect the public interest. This power would be supported by offences relating to non-compliance and measures for SNH to enforce the plan and recover costs. This power would replace the existing compulsory control scheme in Sections 8 and 9 of the Deer (Scotland) Act 1996 which have always been regarded as impractical and have never been used. The proposal aimed to deliver sustainable deer management effectively without increasing the burden on SNH or increasing the amount of bureaucracy on landowners (the effort on planning and implementation as a duty would replace that involved in being part of Section 7 agreements).

I recommend that the voluntary and devolved approach to deer management would be best supported in legislation through a duty on relevant land managers to manage deer sustainably, described in a Code of Practice covering collaborative planning, consultation and implementation, and with appropriate back-up powers.

4. The consideration of urban and peri-urban deer, usually roe deer, is welcomed but what is included in the Bill falls short of the advice of DCS to Ministers. In its advice DCS stated “There are some situations, for example in areas where voluntary deer management groups do not exist, but deer management issues could arise, where the setting up of a formal panel would be the most appropriate route to encourage the delivery of the public interest. ... particularly in some woodland and peri-urban situations. These panels would be required to develop and deliver a deer management
plan. Panels would be “task and finish” groups focused on a specific issue, and then disbanded once delivery mechanisms were in place”. This would be an extension to the current use of panels described in Section 4 of the Deer (Scotland) Act 1996. I believe that such an extension to Section 4 would be valuable in dealing with roe deer issues in urban and peri-urban areas. The Bill only addresses the issue by adding to the powers of SNH “to assist any person or organisation in reaching agreements with third parties” and removes the limit of 9 persons from the number of members on a panel. The Bill increases the resources required by SNH without any clear outcomes specified.

I recommend that the existing provisions that allow SNH to appoint advisory panels to deal with local deer management issues (Section 4 of the Deer (Scotland) Act 1996) should be extended to allow SNH to place a duty on its members to prepare and implement a management plan within a specified area.

5. The Scottish Government has not taken the advice of DCS on sustainable deer management, apparently on the grounds that the duty to manage deer sustainably was not described precisely enough by DCS and that it would infringe the rights of landowners under the Human Rights legislation. I would argue that the duty can be clearly described in the Code of Practice and this should be approved by the Scottish Parliament to ensure that it was satisfied that the Code of Practice was fit for purpose. The proposal in the Bill for the proposed Code to be only laid before the Scottish Parliament would not provide for this and would need to be changed. In relation to the Human Rights legislation, the concept of a duty is not new to legislation in deer, for example in control schemes (section 8, subsection 7, Deer (Scotland) Act 1996) it is stated that “every owner or occupier shall take such measures as the scheme may require of him”. There is thus a precedent whereby those with the rights to take deer have a responsibility to manage deer. I would argue that the severity of the proposed duty is no greater than that which exists for control schemes described above. Parallels can also be drawn between the duty proposed and the access duties, imposed by the Land Reform (Scotland) Act 2003, whereby a landowner must manage land responsibly for access and where this duty is clarified in a code.

I recommend that the Committee reviews the advice given by Scottish Government officials in relation to the duty to manage deer sustainably.

6. As currently drafted, the Code of Practice has no force in law other than SNH having only to “monitor compliance with the Code” and “have regard to the Code in exercising its functions”. I consider this a major weakness. The Bill does not include the breach of the Code by a landowner as grounds for SNH seeking an agreement under Section 7 or making a control scheme under Section 8. Although such grounds could increase the use of Sections 7 and 8, it appears to be the only means possible in the current Bill to enforce the Code of Practice. If it proves impossible to introduce a duty to manage deer sustainably, then I would recommend that a breach of the Code by a

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landowner would be grounds for SNH seeking an agreement under Section 7 or making a control scheme under Section 8.

7. As currently drafted, Section 8 (6) and Schedule 2 of the Deer (Scotland) Act 1996 would require to be changed and brought in line with the provision for appealing Land Management Orders. These were included in the Nature Conservation (Scotland) Act 2004. In my opinion an appeal to the Scottish Land Court to affirm, or direct Scottish ministers to amend or revoke a scheme appears more workable than the exiting appeal process route through a public enquiry as described in Schedule 2 Part 12 paragraph 3 of the Deer (Scotland) Act 1996. **If it proves impossible to introduce a duty to manage deer sustainably, then I would recommend that Section 8 (6) and Schedule 2 of the Deer (Scotland) Act 1996 should be changed as described above.**

Section 26- Register of persons competent to shoot deer

9. The proposal under the Bill - 17 A, Register of persons competent to shoot deer - is welcomed and follows on from the advice of DCS. It was always accepted that there would be a period before the register could be introduced because of the need for those who shoot deer to demonstrate the skills and knowledge described through the industry-agreed standards at National Occupational Standard Level 2. The proposal by the deer sector that they would facilitate that process is to be welcomed. However, it would appear that 17 A would only be put in place by regulation depending upon the extent of the skills and knowledge of those who shoot deer as reported on by SNH. It is not clear why there would not be a need for a register even if most of those who shoot deer in 2014 can be classified as having the skills and knowledge. Also, what about those who start shooting deer after 2014? A register provides a means of ensuring that there is a reasonable probability that those who shoot deer at the time of the register being introduced and subsequently will do so such that the welfare of deer is protected. In the part of the Bill covering snaring, it is proposed that there will be an equivalent role for a register for those who have the skills and knowledge to snare certain animal species. Surely it is as important that the welfare of the estimated 135,000 deer culled each year receive the same consideration as other species. Moreover, a register would allow a much more accurate estimate of the number of deer of different species shot in Scotland to aid SNH in its management of deer populations than can be obtained using the routes that exist in the current deer legislation.

Whilst the attempt to modify the automatic occupiers’ exemptions which allow occupiers to shoot deer during the close season is welcomed, the approach would be strengthened to protect deer welfare if the register described above was put in place. According to the Policy Memorandum, the Bill would provide for a general authorisation to an occupier without a separate assessment of whether individual applicants are “fit and competent” to be so authorised. The introduction of the register would ensure that this loophole is closed.
I recommend that a register of all those with the skills and knowledge to shoot deer should be introduced in 2014 irrespective of the extent of those who shoot deer that have the skills and knowledge to do so.

J A Milne
16 August 2010
1. Introduction

1.1. The Royal Horticultural Society is pleased to respond to the draft Wildlife and Natural Environment (Scotland) Bill. Whilst the Society supports the objectives of the Bill, we believe that greater clarity is required over a number of areas within the Bill and seek reassurance that new powers created by the Bill will be executed appropriately and proportionately.

2. Alteration of Section 14

2.1. The RHS did not specifically object to this approach during the original consultation as it does not see any good reason for someone to plant a non-native plant in the wild. The Society can foresee, however, potential difficulties in interpretation in marginal areas, such as public spaces on the edge of villages and towns which might be ‘improved’ for Britain in Bloom or Best Kept Village competitions.

3. Addition of Section 14ZC

3.1. The RHS has deep concern with the provision which would make it an offence to be in possession of an invasive non-native plant. It is not clear from the text of the Bill how ‘possession’, ‘keeping’ or ‘under a person’s control’ would be interpreted. Is this an act by someone with a ‘mens rea’ or can this be an act of omission? The text of the Bill states that it would be a defence for the accused to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence. We would question whether it is possible for someone to be aware of accurate identification of closely related species, where one is deemed invasive and the other not. We therefore feel that this is an unreasonable expectation arising from an unreasonable clause.

3.2. In the explanatory documentation accompanying the Bill it is stated that, “The power to make orders [in relation to the keeping of invasive animals and plants] is not expected to be used widely and is subject to consultation.”. The Society wishes to see greater clarity about the process of deciding which species are to be made illegal to possess. The Society is concerned that any consultation leading to such a decision should be full and engage all stakeholders in a fair and balanced manner. Past experience has shown that horticultural stakeholders are rarely engaged at the beginning of such processes, leading to outcomes that are needlessly prejudicial to horticulture. There is also a difficulty with accurate characterisation and correct naming of INNS in the literature, especially where there is a lack of understanding of naming of cultivated plants. Proper consultation should allow such issues to be addressed and rectified.
4. **Addition of Section 14C**
4.1. It is not clear from the text of the Bill how the code of practice that may be issued by Scottish Ministers relates to the code of practice allowed for under Section 14ZB of the NERC, except that the Scottish code of practice would be required to provide guidance on those provisions which are not included in WCA and NERC. Any material that, “helps the public to understand the nature of the problem and what they should do to prevent harmful releases” should be welcomed, but it should also be noted that these codes of practice will also be taken into account by Courts of Law, although breaches of the codes would not constitute an offence.

5. **Sections 14D to 14K: Species Control Orders.**
5.1. The RHS is concerned that all that is required for a Species Control Order (SCO) to be put in place is for the ‘relevant body’ to be “satisfied of the presence on the premises of - … (ii) an invasive plant at a place outwith its native range;” There is no requirement to assess the level of threat and no indication what steps would be taken before the issuing of a Species Control Order.

5.2. The supporting documentation indicates that for an SCO to be necessary, the INNS will have to, or be likely to, cause significant harm to biodiversity, the environment or social or economic interests. The documentation also mentions two situations where such an approach might be required and within that mentions that an SCO could be used if a voluntary control agreement cannot be reached. The legislation provides for the enforcing body to make a charge to the owner of the premises on which an SCO is served for costs incurred in the execution of the SCO. The supporting documentation does say that such costs would be recovered to appeal against an SCO. The RHS’s view is that without sufficient safeguards this provision is disproportionate and while the supporting documentation lays out the circumstances and interpretation of the provisions which go some way to allaying fears, these are not part of the legislation. There needs to be much greater clarity about what would trigger the use of an SCO and what steps would be necessary to show that such a power is being used properly.

6. **Species Control Orders: powers of entry**
6.1. There is an apparent inconsistency between Section 14M which states an authorised person may enter premises to, “carry out an operation or other work in pursuance of section 14L(2)(a)” [enforcement of an SCO], and that to do this “at least 14 days’ notice of the intended entry has been given.” and Section 14H where an appeal “must be lodged not later than 28 days after the date on which the relevant body gave notice to the appellant…”

7. **Interpretation of sections 14 to 14O**
7.1. The RHS believes that there should be greater clarification regarding the definitions outlined in this section, specifically:
a. Premises – land and “lockfast places and other buildings”. It is not clear whether this covers greenhouses, polytunnels etc. It specifically excludes dwellings. Would this apply to greenhouses attached to dwellings?
b. Plants – including bulbs, corms, rhizomes, seeds and spores of a plant. This has implications for the understanding of the offence of possession of an INNS (Section 14ZC). The RHS would wish to see greater safeguards in the interpretation of this definition.

7.2. This section also defines the native range of a hybrid animal or plant as “any locality within the native range of both parents” which can only apply to natural hybrids and not to those that have arisen in gardens, where the parents have no overlapping range. An example here is the cross between Rhododendron ponticum (Iberian Peninsula, SE Europe and Turkey) and R. maximum (E. USA). As such the RHS views this definition as unhelpful and unnecessary.

7.3. Lastly, while not specifically stated in the legislation, the inference of non-native is any plant not native to Scotland, rather than the United Kingdom as might be assumed. This has implications for plants that are native in England and/or Wales but do not occur in Scotland. Possible difficulties may arise where a species is native in only part of Scotland – would it be illegal to plant it elsewhere in Scotland where it is not known to be native? What would be the position if a species had become extinct since it was first recorded but still occurred in England? Again this should be clarified and the implications fully understood before the legislation is passed and implemented.

8. Summary
8.1. The RHS believes that there are a number of possible difficulties which arise from the Bill as proposed, specifically:
a. The removal of Schedule 9 and the offence applying to any plant outwith its natural range
b. A lack of clarity over the two possible codes of practice provided for in Section 14ZB of NERC and 14C of WANE
c. An apparent conflict in the time periods applied in Section 14H and Section 14M in relation to an owner’s right of appeal
d. The definition of premises in Section 14P
e. The definition of native range for hybrids in Section 14P

8.2. The RHS has grave concerns relating to:
a. The creation of an offence of being in possession of an invasive non-native species
b. The introduction of Species Control Orders, in that the legislation lacks sufficient safeguards to prevent inappropriate or disproportionate use of these Orders. Safeguards would need to address questions of assessment of threat presented by the INNS, and interpretation of invasive non-native plant.
8.3. In our view these issues need to be addressed by the Scottish Executive if the Bill is to be proportionate, and effective in its implementation.
RSPB Scotland welcomes the introduction of this Bill. It includes long-awaited and valuable reforms or modernisations (eg game laws, INNS). It also brings forward a range of welcome ‘tidying up’ measures (eg SSSIs, species licensing). However, on deer management, it is less robust than is required. Its lack of an overall vision or action on issues such as wildlife crime or biodiversity mean that the bill is also a missed opportunity. Our evidence welcomes and supports the positive aspects of the bill, but also offers constructive suggestions for substantive improvements.

Overall vision
Scotland’s wildlife and natural environment are outstanding assets, valuable in their own right, as part of our culture and identity and as a major contributor to our socio-economic well-being. It is welcome that the Government intervenes, in the public interest, to ensure its continued protection and enhancement. That said, this bill has no overall narrative as to the Government’s long-term objectives for the environment – which would be required for an ecologically coherent policy.

It is now agreed that Scotland has failed to meet the 2010 targets for biodiversity conservation, and is making only modest progress towards the SBS objectives of restoring biodiversity. This bill could be a great opportunity to link together the individual measures with an overall vision. An improvement in the biodiversity provisions could ensure that public bodies make greater efforts to secure the overall objectives of the SBS, especially the restoration of biodiversity and the delivery of landscape-scale conservation management. We recommend that the Committee examine the nature of the Government’s long-term objectives for wildlife and the natural environment, and consider how these might be expressed legislatively and provisions framed to underpin their delivery.

Deer management
Future deer management structures must be capable of delivering sustainable management as set out in Scotland’s Wild Deer; a National Approach1. This means that deer populations, with no remaining native predators, have to be managed in the public interest. However, Deer Management Groups (DMGs) do not have to report on their activities; only about half of the DMGs had a Deer Management Plan by 2005, and only 10% of the DMGs had a formalised process for setting and monitoring cull targets. The current situation is ineffective. As a result, excessive deer browsing causes damage to protected areas and other important habitats. We supported the original DCS recommendation, and proposal of the Scottish Government, to introduce a duty on landowners to manage deer sustainably. This idea has been dropped, due to ECHR

compliance issues\(^2\) - we understand this, but consider other means can be used to meet the same end.

RSPB Scotland considers that this revision of deer legislation will fail unless the concept behind this recommendation is embraced and the bill amended accordingly. This can be achieved by:

- **Introducing a clear duty on SNH, and relevant public bodies, to further the sustainable management of deer\(^3\).**
- **A statutory system of deer management planning - with plans produced by SNH with the full participation of all relevant private and public stakeholders.**
- Failing the above, there should be a **provision to allow SNH to produce deer management plans where voluntary DMGs fail to do so** - and, in such cases, to recover costs.
- Such plans should set out clear deer management requirements that land managers should follow. In the event of non-compliance, Ministers should be empowered to make a Deer Management Order, requiring relevant actions to be taken – non-compliance with such an Order should be an offence.
- **This entire process should be supported by a Code of Practice setting out the requirements of sustainable deer management.**

Such an approach is not new. It mirrors the approach taken in the Nature Conservation (Scotland) Act 2004 in relation to SSSIs (eg Land Management Orders). It is also, in effect, a development of the principles already implicit in ss.7 & 8 of the Deer (Scotland) Act 1996. It also overcomes the ECHR issues as the general duty applies only to public bodies, while the new offence (non-compliance with Deer Management Orders) would be both sufficiently clear and can be made subject to appropriate safeguards for participation, appeals, etc. We commend such an approach to the Committee.

Failing the above, we believe that – at least – there should be further amendments considered to improve the practical effectiveness of ss.7 & 8 of the 1996 Act.

**Game Acts reform, and wildlife crime**

RSPB Scotland accepts that the current game licence system has effectively fallen into disuse, such that it cannot be revived as a practical regulation tool. However, we do not accept that total and absolute deregulation of the game shooting industry, as proposed in the bill, is justified or appropriate. Evidence suggests that most significant wildlife crime incidents are associated with the game rearing and/or shooting industries - albeit the representative bodies and many of those involved act responsibly and within the law. RSPB Scotland welcomes actions taken by the Scottish Government and others to address wildlife crime. Nevertheless it remains clear that, to date, these have had limited success, especially in addressing the illegal killing of birds of prey. **We are surprised that this bill has taken few, if any, steps to further address this.**

The recent “thematic review” of wildlife crime\(^4\) recommended that the Scottish Government examine the possibility of making employers/land managers in some way

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\(^3\) Clearer and stronger that the general purpose set out in s.1 of the Deer (Scotland) Act 1996, as amended.

liable when those under their control commit wildlife offences (so called “vicarious liability”). This recommendation has not been pursued, and the absence of any such provision in this bill is a missed opportunity. Two amendments could ensure the spirit of this recommendation is implemented. These are:-

1. An amendment that, subject to checks and balances to ensure fairness, extended responsibility for criminal acts committed by employees in carrying out their work to their employers/managers; and

2. An amendment that disestablishes the right to shoot, to an extent (that is, area affected or time period) proportionate to the circumstances, from shooting enterprises where a wildlife offence is committed and that enterprise has taken insufficient steps to prevent its occurrence.

Neither of these approaches imposes any burden on law-abiding, responsible citizens but both offer a strong deterrent to those contemplating any illegal practice. Indeed, they mirror corporate offences associated with both Health and Safety and anti-corruption legislation. We recommend that the Committee seriously consider whether measures such as these would be appropriate.

Other issues that would also assist the fight against crime might include:

- Completing Schedules A1 & 1A of the Wildlife and Countryside Act 1981, together with an amendment to that part of the Act that establishes the schedule to allow the inclusion of seriously threatened species (e.g. hen harrier) on Schedule A1.
- Amending the 1981 Act to make it offence to “cause or permit” offences under e.g. ss.1, 6 etc., in the same way as existing “cause or permit” provisions for ss.5(1), 11(1) & 11(2) (illegal methods of killing).
- A reconsideration of admissibility issues – to ensure that any evidence of wildlife crime is accorded sufficient weight to permit prosecution and that, for instance, the civil wrong or irregularity of trespass (without damage) does not, unnecessarily, prohibit prosecutions.
- The extension of provisions (those ‘imported’ into this bill from the various Game Acts, and one in the 1981 Act) on the acceptance of single witness evidence to other (appropriate) wildlife offences.
- Extending the existing 1981 Act provisions on the misuse of pesticides to include an offence of “being concerned in the use of” such chemicals. As with the Misuse of Drugs Act 1971, such a provision would assist the authorities when involved in wildlife crime cases involving complex forensics.

The bill retains, as legitimate quarry, a number of native wild birds whose conservation status is less than robust. RSPB Scotland is not seeking removal of these species from the quarry list. However, a system should exist for the levels of hunting to be monitored, with compulsory reporting, particularly if an adaptive management approach is to be applied to species such as wild geese. Without such a system, the Government may breach its obligation under Arts 7.1 & 7.4 of the EU ‘Birds’ Directive. As it is traditional practice to maintain bag records, this does not pose a significant increase in regulatory burden.

**Invasive non-native species (INNS)**
We strongly support the proposal for a ‘general no-release approach’ to non-native species regulation. We remain concerned, however, that these proposals are insufficient to ensure effective responses to this growing threat in terms of lines of responsibility. The most cost-effective response is to act at the earliest invasion stage possible. Without clear, pre-determined lines of responsibility, costly delays ensue. The determination of these lines of responsibility should be made obligatory under the new legislation. This could be done through a duty on the relevant public bodies, or through the inclusion of a clause in s.14B specifying that Scottish ministers must publish an INNS Implementation Plan for priority species. Sub-clauses should specify that these plans must identify which public body takes a lead coordinating role in response action; which actions that will be the responsibility of named bodies; and that all public bodies shall carry out the duties assigned to them in the Plan. The Priority INNS species must be specified by ministers, informed by the GB INNS Risk Assessment process and Scottish INNS Working Group, and should comprise those species that pose the greatest ecological or socio-economic threat.

The Bill allows Scottish Ministers the flexibility to regulate the release in Scotland of every species of animal and plant in the world – except two, the pheasant and the red-legged partridge. This is inconsistent and inappropriate. In 2009, over 5 million of these birds were recorded in Scotland on the poultry register – an underestimate of the number eventually released. We urge the inclusion in the Bill a capacity for ministers to regulate, in locally defined areas and/or at specified times, the release of non-native gamebirds should environmental damage be manifest or deemed likely as a result of future releases. This should, at present, lead to an order allowing the continued release of these species for legitimate sporting purposes. We caution against the ‘fossilisation’ of arrangements allowing the release of these birds with no capacity to regulate beyond designated areas, even if this becomes necessary.

Species licensing
The proposed devolution of species licensing to local authorities does not achieve anything useful and risks inconsistencies. This would represent a return to a situation similar to that which existed before the Protection of Birds Act 1954, which was changed exactly because of the inconsistencies that resulted. Moreover, we note that few local authorities appear to support such a change. In addition, we consider that “any other social, economic or environmental purpose” is far too wide and open-ended for the licensing of, for instance, the killing of Schedule 5 animals or the use of self-locking snares. For consistency, these purposes should be similar to those already applying to birds and plants.

In addition, we believe that the current 1981 Act definition of livestock is too wide and that, in relation to gamebirds reared for the improvement of shooting, it should be limited to circumstances where these animals are fully confined. S.27 of the 1981 Act should be amended to make this clear.

Muirburn
Muirburn can, where well-managed, have benefits for some wildlife. However, huge damage can arise from poorly-managed muirburn, or burning inappropriate sites. The current Hill Farming (Scotland) Act 1946 provisions require updating in line with modern
land management needs and evidence about the timing of breeding in moorland birds. Many moorland birds will have begun egg-laying within the current muirburn season. A good number of these species are in “unfavourable conservation status”. There is also evidence that climate change is causing earlier breeding.

We support as a minimum measure changes to the muirburn season to 1 October to 15 April, with the extension period of 30 April. The current muirburn dates allow burning up until 15 May in defined circumstances. **We are opposed to any changes to allow muirburn beyond the end of April when many birds are nesting.** We support amendments to allow Scottish Ministers to vary the muirburn season for environmental purposes, as well as those for muirburn licences for these purposes and for research.

**SSSIs**

Ss 29 & 30 make sensible changes to the 2004 Act that will result in more efficient procedures for SNH, without weakening SSSI protection or imposing new burdens on land managers. S.31 makes practical changes to procedures for Operations Requiring Consent. We support all these proposals.

We welcome and support s.32 – providing for restoration of damage to SSSIs according to the “polluter pays” principle. In addition, we would welcome a requirement for damage to SSSIs (and steps taken to restore damage) to be recorded and published.

The bill should also require SSSIs to be maintained at or restored to favourable conservation status (possibly by amending ss.3 & 12 of the 2004 Act). A new offence of attempting to damage a SSSI (similar to s.18 of the 1981 Act) would also be welcome.

**ASPs**

RSPB Scotland agrees that alternative measures exist to deliver the protection currently afforded by ASPs. However, these measures have to be specifically activated by SNH or by Scottish Ministers. We disagree with SNH that there is no need for ASP measures at any of the existing sites. We are of the strong opinion that steps must be taken, under the modern legislation, to replace the protection currently afforded to the Loch Garten ASP, before it is safe to repeal s.3 of the 1981 Act. Therefore, we oppose abolition of ASPs as currently proposed under s.4 of this bill - until and unless measures are taken to deliver similar levels of protection at Loch Garten under the alternative legislation.

**Other**

RSPB Scotland strongly supports the ‘vision’ set out in the SBS. However, Scotland has failed to meet its biodiversity targets for 2010, and has set new targets for 2020. To meet these new targets, it will be necessary to redouble efforts and revitalise the processes needed to deliver biodiversity restoration and large-scale conservation. This bill offers an opportunity, missed to date, to review the effectiveness of Part 1 of the 2004 Act and introduce amendments to re-invigorate the efforts to deliver biodiversity conservation. Strengthening the duty (s.1, 2004 Act) and introducing a statutory basis for all public bodies to be assigned (and carry out) actions to s.2 would ensure greater certainty of action and delivery.

Some, but not all, schedules to the 1981 Act have to be reviewed periodically, informed by advice from SNH. This results in an inconsistent approach. For example, schedule 1, relating to birds, has not been significantly updated since 1982. Schedule 5, on the
other hand, dealing with other animals, has been regularly amended to keep it fit for purpose. All schedules should be subject to the same formal periodic review, against objective criteria, to ensure that they remain relevant to their purposes.

Finally, this bill is, at least, the 11th amendment to the 1981 Act, Part 1, as applicable in Scotland. It is well overdue for consolidation. To ensure that it is well understood by all concerned, we would urge that **the Committee recommends that a consolidation be undertaken early in the next Parliament.**
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

WRITTEN SUBMISSION FROM SCOTTISH ASSOCIATION FOR COUNTRY SPORTS

This Association is now delighted with the progress that has already been made in moderating the original Bill to reflect informed public opinion, and more or less happy that the Bill is workable, useful and reasonable, subject to the notes below.

We would also ask you to note that we would be very grateful for the opportunity to attend any of the working committees and give oral or any other form of evidence on any aspect of the Bill if the opportunity arises.

NOTES

Badgers
In respect of badger sett disturbances, there is currently no provision to allow the lawful disturbance of a sett for what could perhaps be called ‘humanitarian’ reasons. Examples could be where a dog is trapped in a sett, if a small child crawled or fell in and got stuck, or if a badger known to be wounded, such as the victim of a road accident, crawled down the sett and required to be dispatched humanely.

This has been discussed with Ben Ross, SNH Licensing Officer, and while agreeing that there is currently no mechanism in the legislation to enable this to be done lawfully, he feels that ‘common sense’ would prevail, either by police not instituting proceedings or by a Fiscal dropping the case in the public interest. That may be the case, but it cannot be relied on - both police officers and fiscals are individuals, who may or may not do the sensible thing.

We are conscious that there is a difficult area here, where we do not want to provide loopholes under any circumstances which would allow badger diggers to escape unpunished, but there could usefully be a way of permitting the lawful disturbance of a sett, perhaps under the supervision of a constable, where the matter is urgent and necessary.

Currently, none of the licensable exemptions would cover this, and in fact, the licensing process is such that if an incident occurred, say, at 4pm on a Friday, even if a license were to be available via SNH, the time delay would be far too great.

I have taken the advice of our experts on these matters, and I am assured that disturbing a sett in this way would have only a relatively small and temporary effect on its occupation by the badgers.

Muirburn
As a member of the Moorland Forum, we fully support its recent statement in connection with notification to neighbours. In our view also, notification is no longer
necessary at all - it was instituted before modern telecommunications were available, to help prevent the spread of a fire to a neighbouring property. With the communications we have available today, if a fire were to get out of hand, it would quickly be reported and controlled - if necessary by the fire authorities.

Combining SSSI Sites
We still have reservations on the part of this which would allow two SSSIs to be combined without consultation. The concept of saving bureaucracy and expense is excellent, but there is still a loophole whereby a site which is notified principally for a specific species, such as a rare moss, could be combined with an adjacent site, and as a result ‘accidentally’ and unjustifiably become notified for bird species or heritage features which may not be relevant and which would in some cases be vigorously contested by landowners.

If this process is brought forward in the Bill, it should be possible for the ‘combined’ site to be described and notified in such a way as to leave the former parts described and notified for only the features for which they were notified originally, and this minor amendment would entirely deal with our concerns.

Sunday Shooting
The original reasons for making shooting for sport on Sundays and Christmas Day unlawful were simply to assist in the detection of poachers - the ‘working classes’ only had Sunday free from work, whereas the landowners could shoot any day they chose. The justification used was for religious observance.

Today, the working practices are entirely different, as are the measures and methods used to prevent rural crimes such as poaching. That said, today most of the population would consider Saturday and Sunday to be its main leisure time, and is thereby hugely disadvantaged by any restrictions on Sunday shooting, since that equates to 50% of its available leisure time.

This is also discriminatory in the religious sense - in modern Scottish society, we have a wide range of religions, some of which do not observe Sunday as a religious day or recognise Christmas as a religious festival.

Currently, the killing of pest species and all other forms of shooting may be carried out on a Sunday, and there is no longer any logical reason for legally excluding these days in respect of sporting shooting.

If shooting were permitted on Sundays and Christmas days, it would then be the personal choice of the individual whether to shoot for sport or not, and no one would thereby be disadvantaged. If it is borne in mind that when someone is taking part in a lawful activity and by definition thereby not breaking the law, the inclusion of Sundays as shooting days could be thought to have a broad social benefit, and we recommend that this be reconsidered.
Finally, by adding one more day to the shooting week, there is a potential for approximately 15% extra rural income, which may be felt to be significant and useful in achieving the government’s aims to revitalize the rural economy.

**Exclusions to permit taking of species outwith close seasons.**
In practice, this exemption is to allow for the catching up of certain species for rearing and conservation purposes. While the 14 day exemption now proposed does go some way to assist in what actually goes on in the countryside, the 14 day period is inadequate and unnecessarily restrictive.

There could be weather-related reasons to prevent catching up, or any number of logistical reasons - and the later the birds are caught up, the less the expense to the breeder in feeding them, which may impact on the financial viability of a rural business - this could easily be avoided.

Since the exemption is to enable rather than restrict, we would suggest that the exemption should run until at least the end of June, by which time most species involved will have stopped producing eggs in any event. In fact, no restriction is needed at all - the listed species are commodities rather than true wild species, and something which might impinge on the viability of rural industries in this way could easily be avoided.

In addition to this, a minor exemption to allow a currently unlawful but humanitarian and conservation-based action would be helpful. There are many instances each year where parent birds are killed while rearing a brood - often by road accidents. In practice, any such broods found are generally rescued by a countryman and reared then released.

There are also countless occasions where a hen incubating a clutch of eggs in a crop field is killed by agricultural operations. If these nests are discovered, the eggs are commonly hatched artificially and the young reared and released in due course.

If the exemption to allow the taking of these species were not restricted at all, this specific exemption would become unnecessary, but if there is only a limited exemption, these humane acts will be unlawful. Young broods, particularly from second nests, may be under the care of the hen in August or even September.

**Hares**
The proposal for a close season for hares is welcomed, but we would suggest that the proposed dates should be reconsidered. We have had the advantage of reading the submission of the Scottish Hawk Board, and support their suggestion that the close season for both species of hares should commence on 1st March and end on 1st July.
Firstly, those dates have been traditionally observed by the lawful sporting population for generations, and therefore have the benefit of being commonly known and observed by all except poachers.

Secondly, there are implications for all who fly birds of prey capable of taking a hare of either species as quarry. In nature, young raptors begin their training by being taught to hunt immature prey. As the prey matures, so does the raptor, and this is entirely natural.

Raptors such as eagles and the larger hawks are now commonly reared entirely lawfully in captivity, and require the same facility to learn how to hunt as their wild relatives, and it is essential that they are able to have lawful access to this young quarry at the appropriate time.

Should these dates not be approved, we would suggest that an exemption should be inserted in the Bill to allow the taking of hares of both species by birds of prey alone between those dates.

**Snaring**
We have reservations about the proposed legal presumption that a snare was set by the person whose ID tag is on the snare. There are countless ways in which this could be abused to either maliciously incriminate someone or to avoid incriminating the person who actually set an unlawful snare.

In our view, this matter requires more consideration, and a form of words found which achieves the desired effect (which is presumably to assist in the conviction of someone setting snares unlawfully) without being open to abuse in this way.

It may be sufficient to append the words ‘unless shown to the contrary’, but the existing form of words would create a legal position which is out of alignment with the principles of Scottish justice. In our view, the weight placed on the existence or otherwise of a tag on a snare should properly be a matter for the courts to decide on the evidence laid before them.

On a minor point, it might be thought useful to align the snare tag identification number with a Larsen trap ID number held by the same person. It may be helpful to have the same ID number for both since there will be an substantial overlap in the people using both forms of trapping, and this would perhaps help in time to increase the public perception that certain individuals are permitted to snare and trap lawfully.

This could simply be a matter of administration within a number-issuing police force, but if it was enshrined in the legislation, it may be useful in ensuring consistency throughout Scotland.
Species Control Orders
We are happy with the proposals, but we would suggest that appropriate steps be taken to ensure that the cost of an appeal against such matters should specifically be liable to legal aid, to ensure justice and equality.
**Wildlife Inspectors**
We feel that a clear definition of ‘wildlife inspector’ in this context is required, and that extremely careful consideration be given to that definition and to the persons or classes of person who should fall within it.

There is currently a widely held belief that certain organisations, notably the RSPB and SSPCA, have been given by the authorities a degree of credibility and power far beyond their remit as animal welfare charities. Their political lobbying activities, and the way in which some of their staff have been shown to have behaved in recent years, would perhaps suggest that it may not be appropriate for them to be given such blanket statutory powers as organisations, whereby they can delegate these statutory powers to any employee without any properly regulated monitoring or assessment process.

This matter is likely to become more contentious in the very near future, as the outcome of a number of cases currently making their way through the courts is publicised, and it would perhaps be appropriate for Ministers to have regard to these matters before making their final decision on this section of the Bill.

**Deer Management**
Our views on the originally proposed compulsory assessment of competence and the maintenance of a register of competence have been made clear from the outset, and we are immensely relieved that the original flawed proposals did not find their way into the Bill as laid before Parliament.

We are hopeful that our views, when the matter is re-examined in four years, will be found to have been correct, and that no system of compulsory testing or certification will be found necessary.

The process whereby this will be re-examined, the results published, and the whole matter made the subject of a full public consultation after that period is therefore welcomed.

In the Bill as proposed, however, whether by accident or by design, the imposition of a register of competence is not subject to any such review or public consultation, and this is completely unacceptable for the reasons stated in out earlier submissions. This is in respect of the proposed insertion of Section 17A into the 1966 Act.

We would value the opportunity to discuss this seriously flawed section of the Bill at the earliest possible opportunity, and will make ourselves available at any time for this purpose.
I will start by thanking the Scottish Government for the inclusion of the amendments to the Protection of Badgers Act 1992 as amended by the Nature Conservation (Scotland) Act 2004. I am sure that these changes will make a significant difference to the protection of badgers. I understand that the further amendment I submitted to define the term “current use” is still being considered. I was of course disappointed that our request for the term “reckless” to be used throughout the Act, which would have consolidated it with the use of that word in other similar legislation, was rejected. I firmly believe that this is the ideal opportunity to tidy things up and make sure that enforcement agencies dealing with similar legislation have a common thread and understanding of what a word means and where they can apply it in relation to their investigation of offences.

In relation to the proposed changes to snaring we are still of the opinion that the only suitable resolution to this problem is an outright ban. Despite the new regulation that were introduced in April THE SNARES (SCOTLAND) ORDER 2010 the incidence of badgers being caught in snares is still unacceptably high. I am sure that I do not need to include graphic accounts and photographs of the horrendous suffering and injuries these animals are subjected to for you to understand my concern. Crucially we are still receiving reports of badgers being caught in snares on fence lines and all too often reports that captured animals have been in the snares well in excess of any 24 hour period since the snares were last checked. There has been a steady increase in the number of badgers caught in snares, I am sure there are many more not reported, and although I realise I maybe a tad cynical the graph below clearly indicates an increase in incident since the decision not to ban snares was taken.
Already this year we have had 15 reported incidents. I realise that I am not a lone voice in asking the Scottish Government to reconsider its decision not to ban snares but I feel that I would be failing my membership and other interested parties if I did not ask it to do so.

Please don’t hesitate to contact me should you wish to discuss any of these matters further.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL
WRITTEN SUBMISSION FROM SCOTTISH COUNTRYSIDE ALLIANCE

The Scottish Countryside Alliance (SCA) is grateful for this opportunity to submit evidence to the Scottish Parliament Rural Affairs and Environment Committee for their consideration of the Wildlife and Natural Environment (Scotland) Bill. The SCA has consulted widely amongst its membership, many of whom have a direct interest in issues raised in the WNE Bill, and this SCA evidence is submitted on behalf of the SCA membership.

The Scottish Countryside Alliance is supportive of the general principals of the Wildlife and Natural Environment (Scotland) Bill.

The SCA does not wish to comment on every aspect of the bill, the comments that we wish to submit as evidence are set out below:

PART 2 - Wildlife under the 1981 Act
2. The SCA would submit that gamebirds, and the management of land to support them, are economic drivers in rural Scotland – contributing around £240m per annum to the Scottish economy. Management of land for gamebirds also creates and supports biodiversity. The SCA believes that this contribution from management of gamebirds needs to be recognised in legislation. The SCA is concerned that bringing gamebirds under the auspices of the Wildlife and Countryside Act 1981 detracts from their status as wealth and biodiversity creators.

3. Notwithstanding comments at 2. (above) the SCA supports the creation of a single offence of a person killing or taking a bird without the legal right or permission from someone who has the legal right.

5. The SCA supports the introduction of clauses to allow the ‘catching up’ of pheasants, partridges or mallard in a period of 14 days commencing with the first day of the respective close seasons for these birds. ‘Catching up’ for the purposes of breeding, is relatively common practice and this needs to be reflected in the new legislation. The SCA would propose that a period of 28 days commencing with the first day of the close season would, in practice, be better than the 14 days period currently suggested.

The SCA is supportive of the abolishment of the Game Dealers Licence. The SCA also supports the proposal to allow sale of game all year round provided that the game was legally taken outwith the closed season.

6. The SCA believes that the proposed closed seasons for Mountain and Brown Hare could be shortened. Commencement of the closed season for mountain hare on 1st April, and on 1st March for brown hare, would allow greater time for management of these species whithout impinging on their respective breeding seasons.
Allowing the killing and taking of brown hare in February and mountain hare in March would mean that control can be instigated when the worst of the winter weather is over and control to protect spring growth of crops may be required.

The SCA believes that it should not be an offence if a hare is unintentionally taken by a trained bird of prey when it is being flown at rabbits in the close season for hares. The SCA would like to highlight our support of the views expressed by the Scottish Hawk Board on this subject.

7. The SCA supports the creation of a single offence of a person killing or taking wild hares or rabbits without the legal right or permission from someone who has the legal right.

12. The SCA recognises that ‘single witness evidence’ is very rarely, if ever used, in cases of poaching or other areas of the law. The SCA understands that procurator fiscals would, in the vast majority of cases, be extremely weary of using single witness evidence to bring about a prosecution for any crime. The SCA believes that the ability to use ‘single witness evidence in certain proceedings under the 1991 Act’, eg poaching, is an anomaly and is not required in the new legislation.

13. The SCA has long been at the forefront of the campaign to ensure that every one who sets a snare does so in full accordance with the law and best practice. To this end we have actively promoted the uptake of snaring training courses and adherence to the ‘Practitioners Guide’.

The SCA welcomes the proposal to introduce a mandatory tagging system for snares. We believe that this will go hand in hand with training and will help to ensure that only those who are qualified to set a snare can legally do so. The SCA also believes that it should be an offence to set a snare, or be in possession of a snare on privately owned land, without the permission of the landowner.

14. The SCA welcomes the creation of offences prohibiting the release of invasive non-native species.

The SCA believes that care should be taken to define ‘non-native’ as opposed to ‘true native; and ‘naturalised’ species.

The SCA welcomes the fact that the bill specifically permits that common pheasant and red-legged partridge can be released. Such releases are vital for the continuation of the £240m per annum Scottish game shooting sector. The SCA would however point out that the common pheasant is a naturalised species on these islands (thought to have been present since Roman times and recorded as the ‘Common Pheasant’ in 1059AD) and therefore it would be ludicrous if the release of common pheasants were to be prohibited.

16. The SCA believes that the ‘polluter pays’ principal should be invoked by those seeking to control non-native species.

21. The SCA supports the abolishment of the requirement for those who wish to kill or take game to hold a Game License.
PART 3 - Deer
22. The SCA believes that it is sensible for SNH to have the management of urban and per-urban
deer populations within it’s overall deer management remit.

23. The SCA welcomes the introduction of a code of practice, by SNH, for the purpose of providing
practical guidance in respect of deer management. The SCA welcomes the inclusion of
stakeholders in the production of said code of practice.

24. The SCA welcomes the ‘sustainable deer management’ as opposed to ‘deer reduction’ ethos of
this bill.

25. The SCA welcomes the fact that closed seasons for deer will be maintained by this bill.

26. The SCA is working with other stakeholders and government to ensure satisfactory levels of
competence amongst those shooting deer in Scotland.

PART 4 – Other Wildlife etc
27. The SCA welcomes the provisions under this bill as they relate to the protection of badgers.

28. The SCA welcomes the provisions under this bill as they relate muirburn.

PART 5 – Sites of Special Scientific Interest
The SCA broadly agrees with the proposals relating to SSSI’s in part 5 of this bill.

PART 6 – General
35. The SCA believes that the title of the Act / Bill is a misnomer. The Act will be pertinent to wildlife
living in all environments that are to be found across rural Scotland, however reference to ‘natural
environment’ in the title of the bill does not reflect this. Almost all of the land in rural Scotland is
managed or influenced by man in some way, from intensively cultivated arable land to semi-natural
woodland and managed heather moors. These varied environments are often rich in wildlife but will
rarely fit the definition of ‘natural’.

The SCA believes that to truly encompass wildlife and rural environments across Scotland the
resulting Act should be cited as the ‘Wildlife and Rural Environment Act 2010’.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

WRITTEN SUBMISSION FROM SCOTTISH ENVIRONMENT LINK

Introduction
Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

LINK welcomes the opportunities to update the law on wildlife and the natural environment, afforded by this bill. We particularly welcome elements such as the provisions on non-native species and on arrangements for Sites of Special Scientific Interest and have some positive suggestions for improvement in these areas. Whilst welcoming parts of the bill, we also have deep reservations about other aspects, especially the disappointing and unworkable proposals on deer management.

The bill, however, could be more than the sum of its parts. It could establish a long-term vision for our natural environment. The Birds Directive is now over 30 years old, while the Habitats Directive is 18 years old. It is time that these were transposed fully into domestic law, rather than relying on policy intentions and the rather obtuse wording of the 1994 Regulations. The failure to meet the 2010 biodiversity targets demonstrates that the wider countryside and protected areas provisions of these directives are not working. Measures to better underpin the biodiversity strategy (see below) and require the ecological coherence of the Natura 2000 network (a concept recently established in the Marine (Scotland) Act 2010) could make Scotland a world-leader in nature conservation. In this way, protected areas and measures across the wider countryside could combine in ecosystem-scale conservation and ensure the restoration of our biodiversity. Peatlands (see box) are one example where such action would have multiple benefits.

| Peatlands | provide an excellent example of habitat restoration to deliver biodiversity objectives providing a range of ecosystem services of high priority. Scotland supports over 80% of the UK resource of blanket bog and there is considerable scope for peatland restoration to make significant contributions to climate change targets and water management obligations. Peatland restoration can be achieved cost effectively, as demonstrated by a number of NGO-managed peatland sites and partnership projects with support from the statutory agencies. Peatland restoration provides direct economic benefits in remote areas, and potentially offer huge cost savings for example through reducing water treatment costs. To deliver the right scale of restoration as a matter of urgency, before the habitat deteriorates further, losing biodiversity and exacerbating the |

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1 The Conservation (Natural Habitats, &c) Regulations 1994 – Regulation 3, relating to the overall vision and generic provisions of the habitats Directive is especially ineffective.
problems for water and climate change, requires leadership from ministers, long term commitment, clear targets and coordinated effort across the agencies to reflect the wider ecosystem service benefits beyond just biodiversity. As yet, the provisions of the Nature Conservation (Scotland) Act 2004 have not stimulated such co-ordinated and decisive action – this bill could be opportunity to do so.

Deer management

Wild deer are a national resource and belong to everyone. The right to shoot deer and the benefits associated with this right go with land ownership. With rights come responsibilities; in this case the responsibility to manage deer ‘sustainably’ – in the public as well as the private interest. In addition to income and employment associated with deer stalking, the public interest includes climate change mitigation (e.g. woodland regeneration for carbon sequestration, prevention of trampling of blanket bogs and release of carbon dioxide), biodiversity, protected areas, flood prevention and water quality.

The current voluntary deer management group system is failing to deliver sustainable deer management in line with the national strategy. Recent answers to Parliamentary Questions state that less than half of Deer Management Groups even have a Deer Management Plan and only 10% set and monitor culls. There are no sanctions for failing to produce a plan, or for failing to meet cull targets.

The Bill provides an opportunity to deliver truly sustainable deer management in Scotland. Currently, it merely introduces the option for Scottish Ministers to produce a Code of Practice (section 5A (9)) which SNH must only have “a regard to ... in exercising its functions under this Act”. This code has no force in law and will not deliver sustainable deer management. Instead, a statutory basis for all deer management planning should be introduced. This would ensure the public interest was taken into account in setting plans and delivering culls. Specifically, the Bill should introduce a responsibility on landowners to manage deer sustainably in accordance with such a plan and the Code of Practice. An approach of this sort (the ‘general duty’) was originally proposed by the Scottish Government but has been dropped due to ECHR concerns. It is our view that statutory deer management plans which make clear the requirements on land managers, whilst giving appropriate procedural safeguards, would deliver sustainable management without infringing on the human rights of landowners. Indeed, such a system is already used for addressing damage to designated sites caused by deer under section 7 & 8 of the current Deer Act.

At the very least, a provision should be made to allow SNH to require the production of a deer management plan in the public interest and to recover costs. Further measures should also be introduced to improve the practical effectiveness of sections 7 and 8 of the Deer (Scotland) Act 1996, as well as urgent reform of schedule 2

4 Parliamentary Questions S3W-33450, S3W-33451, S3W-33452
“provisions as to control schemes” to make the process more straightforward to intervene in the public interest.

**Game law reform**

LINK members, collectively, have made no assessment of the Game Law proposals and have no comments to make as an umbrella group. However, we are aware that several of our members, notably RSPB Scotland and the Scottish Wildlife Trust, will submit specific evidence on this matter and we commend these to the Committee.

**Non-native species**

LINK members fully support the policy intentions of this bill in relation to the control of non-native invasive species: invasive non-native species legislation needs to cover a range of actions; these cover tackling these species at the earliest invasion stage possible; preventing establishment in the wild, controlling their spread or eradication.

- **Presumption against introduction of non-native invasive species into the wild:** We very strongly support the general presumption against release, which is an innovative approach to a difficult legislative area and will put Scotland at the forefront of development of policy at an EU level.

- **Lines of responsibility:** The principal impediment to effective implementation of invasive non-native species legislation to date has been the lack of clarity and clear lines of responsibility and accountability. Legislation must specify where the lines of responsibility for specific non-native invasive species lie, requiring Ministers to identify lead coordinating bodies for specified invasive non-native species. This could either be through the obligatory publication of implementation plans for specified species, identified through the Scottish Working Group or through a duty on relevant public bodies.

We note that the bill (page 18, new s.14C) provides for a Code of Practice. LINK members fully support this proposal – indeed, believe that it should be a requirement not a power – as it would guide the activities described above. We note that the Scottish Working group has already begun work on such a Code, and have been pleased to contribute. We support the requirement (subsection (5)) to consult on the production of this Code, and look forward to making further contributions.

The Bill allows Scottish Ministers the flexibility to regulate the release into the wild of every species of animal and plant in the world, except two: the pheasant and the red-legged partridge. We believe this is inconsistent and inappropriate in the face of published scientific evidence regarding the impacts these species can sometimes have in terms of damaging ground vegetation, predation of invertebrates, over-enrichment of soil and passing parasites to native wild birds. We urge the inclusion in the Bill a capacity for Scottish Ministers to regulate in locally defined areas the release of non-native gamebirds, should further environmental damage be manifest or deemed likely as a result of future high density releases.
Species licensing
We welcome proposals to remove unnecessary duplication by the proposed amendments to Schedule 6 of the 1981 Act.

We are gravely concerned, however, by proposal at s.18(2) to extend the grounds on which species licences can be granted to include “for any other social, economic or environmental purpose”. The level of protection afforded to European Protected Species under the Habitats Directive should be the minimum appropriate level of protection for species of conservation importance in Scotland. We do not accept that there should be any diminution in protection afforded to our most vulnerable and important species.

We welcome the intention at s.18(3) to allow Ministers to delegate licence-granting power to Scottish Natural Heritage. This could amalgamate all licensing activity within authority which would improve consistency of decision making, as well as ensure it is underpinned by scientific rigour. For this reason, however, we do not agree that this power should also be delegated to local authorities. Whilst accepting that few local authorities would be likely to wish to exercise this power, it is our experience that local authorities do not have adequate expertise and experience, and there may be occasions where there is a conflict of interest. In practice, we would expect local authorities to consult with SNH and the case for extending licence-granting power beyond SNH has not been made.

Muirburn
Muirburn season: In many circumstances, we believe that muirburn is inappropriate for biodiversity and carbon storage and that Scotland should be moving towards a general presumption against muirburn as a land management practice, except in locations and circumstances where benefits are demonstrated and environmental damage avoided.

While LINK member organisations support the existence of the current muirburn season, we see the proposed extended muirburn season as a compromise that goes beyond our recommendation for the conservation of biodiversity. Extension of the muirburn season into the growing season for plants and the breeding seasons for animals risks destroying whole communities and their habitats.

Furthermore, we would stress that certain habitats, high altitude and steep and rocky habitats on Scotland’s west coast, are extremely important for internationally important species that are threatened by muirburn (see reports on species status at www.ukbap.org.uk). We would encourage the committee to consider retaining power within the bill to limit muirburn in sensitive areas, including at high altitudes, where recovery time is extremely slow for affected plant communities and on steep and rocky slopes of the west coast where internationally important communities of rare bryophytes occur. Damage through muirburn remains one of the biggest threats to these communities, which have extremely limited global distributions outside of Scotland.
ASPs
These proposals affect only birds, and one site in particular, the RSPB Scotland reserve at Loch Garten. LINK members support the evidence submitted by RSPB Scotland in relation to this issue.

SSSI provisions
In general, LINK members consider these proposals to be a commendable “tidying up” of matters covered by Part 2 of the 2004 Act. Therefore, we welcome and support the bill as introduced insofar as these matters are concerned. We would also commend the more the detailed submissions of some of our members.

Other issues
Biodiversity duty: The commitment by the UK and Scottish Governments to halt and reverse the decline in biodiversity by 2010 will, it is generally recognised, not be fulfilled. The current bill offers the Scottish Government the opportunity to fill the legislative ‘gaps’ in the biodiversity provisions of the 2004 Act. These are:

1. **Requirement for public bodies to report to parliament on their meeting of the current biodiversity duty:** LINK members believe an additional sub-section to section 1 of the 2004 Act that requires Ministers to publish guidance (already fulfilled), promote it, monitor its implementation and report their actions to promote/monitor to Parliament (as part of the s.2(7) report) would be invaluable. In addition, it would be also be valuable to explore the definition of public body, and ensure that anyone conducting publicly funding work is included.

2. **Legal underpinning of the SBS to enable effective implementation:** In the view of many stakeholders, a key cause of the failure to meet the 2010 target is the unfocussed and unstructured implementation of the Scottish Biodiversity Strategy. We would recommend that the committee considers the following:
   (a) A legal requirement to implement actions for those species and habitats most in need of conservation action. It is then appropriate to identify the actions needed, those responsible for those actions, and require those bodies/persons to take the appropriate actions. These plans should be underpinned in law through the requirement to report to parliament (see (c) below).
   (b) the s.2(4) list of species and habitats should include only those “of principal importance for the purpose mentioned in s.1(1)” (ie conservation). However, the current list includes many species for which urgent conservation action is not a priority. It is, indeed, rather unwieldy - confusing those using it. We would seek clarification that this list will be reviewed to focus on its original purpose – and amendment to clarify this purpose.
   (c) the report under s.2(7) should be fuller and more useful if it indicated progress on each action referred to in the paragraph above and, if action has not proceeded, what reason has been given by the body/person responsible for not taking that action.
This evidence is supported by the following members of Scottish Environment LINK:

- Buglife
- Bumblee Conservation Trust
- Butterfly Conservation Scotland
- Friends of the Earth Scotland
- Hebridean Whale and Dolphin Trust
- John Muir Trust
- Marine Conservation Society
- Mountaineering Council of Scotland
- The National Trust for Scotland
- Plantlife
- Ramblers Association Scotland
- RSPB Scotland
- Royal Zoological Society of Scotland
- Scottish Campaign for National Parks
- Scottish Wildlife Trust
- Woodland Trust Scotland
- WWF Scotland
1. BACKGROUND
The Scottish Estates Business Group (SEBG) represents a group of progressive land-based estates with significant agricultural and rural business interests. It aims to promote a modern business approach in the management of Scotland’s land resource in ways which deliver social, economic and environmental benefits. The group seeks to secure a sustainable and prosperous future for rural areas.

Estates are proven business models that assist the development of smaller rural businesses, and landowners and estates have a vital role to play in the ongoing and future development and prosperity of Scotland. SEBG is committed to rural economies and its members work hard across Scotland to stimulate enterprise and economic development.

2. OVERVIEW
SEBG is aware that the Scottish Rural Property and Business Association (SRPBA), with which SEBG works closely on a number of issues of common concern, is submitting its own detailed response to the Rural Affairs and Environment Committee so the Group’s own response does not replicate the more detailed technical points made in the SRPBA submission. SEBG commends the SRPBA response as encapsulating the views of SEBG Members, and also makes the following general comments on the Bill’s proposals.

In the current challenging economic climate, there is a need to support and facilitate business development, rather than hamper it with yet more inhibiting red tape. SEBG notes that the Bill imposes more obligations on owners and occupiers of land for the benefit of biodiversity, but would want to be reassured that these are necessary and proportionate. Further, the Group notes that whilst protection and enhancement of biodiversity are clear key objectives of the Bill, the socio-cultural and economic implications of the Bill’s provisions appear to have been either overlooked or at best marginalised in the drive to achieve perceived environmental benefits. Scotland is rightly world-renowned for its top quality country sports offering, an industry which contributes strongly to Scotland’s economic, social and cultural heritage. Yet the continued well-being of the game management and shooting sector may be undermined as an unintended consequence of some of the Bill’s provisions. SEBG urges caution where change is driven “for administrative tidiness” rather than for any real and evidence-based need for change.

SEBG is also concerned that the Bill proposes the creation of more open-ended and discretionary powers for Ministers, rather than require future proposals for change as may appear necessary in due course to be brought forward to Parliament for detailed scrutiny. Conferring more powers for Ministers to deal with future issues as they arise may appear to offer short cuts to their solution, but does little for openness,
Nevertheless, the Group is keen to work alongside other industry stakeholders with the Parliament as the detail of the Bill undergoes its legislative scrutiny, to try to ensure its provisions are practical, proportionate and likely to be effective in seeking to deliver its objectives.

3. SPECIFIC ISSUES COVERED BY BILL
BILL PART 2 - GAME LAW (Sections 2 – 12)
Game management relies on responsible private investment in wildlife and habitat management – which has produced and maintained Scotland’s most iconic habitats and species. This active management of free living species should be recognised, welcomed and protected. Whilst the Bill removes game birds as a defined category, the Group acknowledges and welcomes the fact that they will retain the same legal status as previously. The commercial value of game and therefore its significance to the economic wellbeing of the rural sector should not be overlooked or underestimated.

SEBG supports the Bill’s provisions to abolish the requirement to have a licence to take / kill game, the removal of the requirement to have licenses to deal in game, and the provisions which remove the restriction on dealing in game in the Close season.

On poaching law, SEBG welcomes the Bill’s intention of modernising and consolidating historic statutes to resolve anomalies and to enable clear interpretation and implementation by the police and courts. The Group agrees that definitions of game, quarry and pest species are needed so that all parts of the legislation reflect the investment in producing or controlling certain species which actively deliver public benefits to Scotland.

However, SEBG has some concern about the Bill’s provisions to remove the powers of landowners to deal with poachers. The Group does appreciate why these have been included, but has concerns about how poaching legislation will be enforced in the future. Dealing with poaching in some rural and remote rural areas can pose particular problems, for example where police support and action cannot readily be provided promptly, so SEBG would welcome instead a review of whether it might possible to update the current provisions in some way so that land managers might be able to retain the ability to apprehend suspected poachers, albeit in certain specific circumstances.

BILL PART 2 – SNARING (Section 13)
Snaring is an essential tool for agriculture, forestry, and game management in the control of rabbits and foxes. Used properly, a snare is a restraint, not a killing device. In Scotland, the industry’s approach is to ensure that snaring is used as a humane tool in the essential control of selected species. Codes of Practice on the use of snaring have been developed by the Scottish Gamekeepers’ Association, the Game Conservancy Trust and the British Association of Shooting and Conservation, and SEBG supports this approach, which seeks to ensure the humane treatment of wild
animals whilst at the same time allowing best practice in nature conservation, biodiversity and land management.

SEBG would be particularly concerned were any proposal to be put forward for inclusion in the Bill that sought to ban such an important tool. Well-managed snaring offers particular benefits for threatened species, for example capercaillie, blackgame, grey partridge, and endangered upland waders such as golden plover, lapwing, curlew and dotterel – indeed, some of these endangered birds have iconic status. Were snaring to be banned, then the management of upland moorland in Scotland for the benefit of ground-nesting birds would be impossible to carry out effectively, putting at risk a number of listed species such as the hen harrier and other moorland nesting birds such as the red grouse. There would be significant implications for good practice in land management if professional land managers were to be denied the tools with which to carry out their role responsibly. If land managers are to be able to carry out their vital roles as supporters and enhancers of natural biodiversity and to support wildlife, then they must be allowed to use the tools which enable them to do that responsibly.

Further, SEBG is wholly committed to working with industry organisations to improve training and to devise and implement a new accreditation scheme for those who set snares as part of their duties. As Members of PAW Scotland, we support the work of BASC, SGA and GCWT in the design and implementation of an effective industry accreditation scheme.

BILL PART 2 – NON-NATIVE SPECIES (Section 14 – 17)
SEBG is concerned that the proposals contained in the Bill focus on non-native species, when the issue in reality is that of invasive non native species. Climate Change is not a new phenomenon – what is changing is the rate of change. So decades and indeed centuries have seen the migration of all manner of species into Scotland – indeed, many of our more familiar species of trees such as sycamore or beech might be regarded in the purist sense as being non-native. We cannot seek to turn back the tide of environmental evolution. In order for certain species to survive, it may become essential in due course for them to expand their range, whether naturally or with the assistance of active land and species management. What we should be seeking instead is to tackle those species, the march forward of which is proving WREH³LQYDVLYH´ i.e. making a judgement based on the behaviour of the species in question rather than some arbitrary geographical or historical cut-off point. This approach would make the task much more manageable and therefore more likely to be successful.

So SEBG firmly opposes a general presumption against release and believes a more focused approach to be likely to be not only more effective, but also more proportionate and capable of delivery. The Group is also concerned that such a general presumption might be used in future to restrict the release of game. Such a move would not only impact severely and negatively on one of Scotland’s significant rural industries, but could also restrict Scotland’s ability to adapt to climate and environmental change. A no-release general presumption also fails to take account of crops grown for energy production.
Against that background, the Group welcomes the exceptions of common pheasant and red-legged partridge released for shooting from those of the Bill’s provisions which would make it an offence to release or to allow to escape any animal in a place outwith its native range – albeit that pheasants and partridges are not invasive and are regarded as naturalised. The shooting sector makes a significant contribution to Scotland’s rural economic well-being, with land management for game also bringing with it positive benefits for other flora and fauna. Nevertheless, SEBG challenges the concept of “native range” as the basis for legislative control, since species may change their native range over time and almost inevitably will do so in the future – probably increasingly – as a response to increasing climate volatility. It is unrealistic to legislate on the basis of nature being “freeze framed”.

SEBG welcomes the obligation included in the Bill to require a Code of Practice providing guidance to be laid before Parliament. However, the Group urges that Ministers should be required to consult with industry stakeholders on the preparation of the Code and that it should receive full parliamentary scrutiny rather than simply being laid before Parliament as currently proposed.

**BILL PART 2 – SPECIES LICENSING (Section 18 – 19)**

SEBG notes that some conservation species have good conservation status and require continuous investment in their control in order to produce agricultural, game and wildlife benefits. The terms of the current Open General Licences covering such species should be fixed in law as capable of being taken at all times to reflect those needs. The Group also feels that evidence should be sought as to whether other species might be added to the list, including raven, common buzzard, gull, pine marten and badger. For those wild birds not classified as game quarry or pest-predator, the current licensing system should be retained and clarified in order to allow the control of locally significant impacts on agriculture, game and wildlife management.

SEBG questions the Bill’s provision for SNH to be the main licensing authority. The Group feels it would be inappropriate for an organisation concerned with nature conservation to be the sole adjudicator of applications for licenses which on the face of it appear to contradict that core function. SEBG also opposes the provision to enable Ministers to delegate the function of any species management licence to local authorities, since it would lead to different approaches being taken in different areas, and a lack of consistency and application. Instead SEBG believes these powers should be exercised by Scottish Ministers.

**BILL PART 2 – ENFORCEMENT (Section 20)**

Recent years have seen a much firmer stance taken by Government, politicians, the public and indeed landowners against incidents of wildlife crime. Legislation has been strengthened, maximum penalties and sentences extended, and landowners have loudly and vociferously condemned such illegal activity. Existing sanction is already powerful. Landowners can be liable if they knowingly permit offences to be committed on their land, and further, may also be liable under EU cross compliance measures to
have withdrawn part of their Single Farm Payment – even where there has been no criminal conviction. In their joint thematic inspection of the arrangements in Scotland for preventing, investigating and prosecuting wildlife crime, the report of which was published in 2008, HM Inspectorate of constabulary for Scotland and the Inspectorate of Prosecution in Scotland pointed out that “Existing measures combined with measures to reduce an individual’s European subsidies would constitute a significant collection of punitive tools” (report page 24).

The Thematic Inspection report went on to recommend that the PAW (Scotland) Legislation, Regulation and Guidance sub-group should consider whether any further sanctions should be introduced. The sub-group is continuing its work and has yet to report its findings on this issue. In the light of that ongoing work, SEBG argues that it would be totally inappropriate for the Rural Affairs and Environment Committee to consider the addition any further punitive sanctions into the Bill before the sub-group has reported its conclusions to PAW (Scotland) and before there has been any in-depth public scrutiny of the propriety and effectiveness of yet further sanctions and full consultation on their potential introduction.

**BILL PART 3 – DEER & DEER MANAGEMENT (Section 22 – 26)**

SEBG recognises the importance of continuing work to improve even further skills and competence in the taking and killing of deer, supports the principle of ongoing professional development of practitioners and believes that this can best be delivered through voluntary training and promotion of best practice. So it welcomes the Government’s intention not to introduce a mandatory competence requirement at this time, and is supportive of ongoing efforts by industry organisations to develop further the existing system of competence training and accreditation so that it meets national occupational standards.

The Group also welcomes the Scottish Government’s move away from proposals for further statutory duties on landowners and instead the establishment of a statutory Code of Practice which will provide examples and descriptions of sustainable deer management. Clearly any definition of what constitutes “sustainable deer management” must necessarily take account not simply of environmental concerns but also economic and social sustainability, given the significance of the stalking industry’s contribution to the sustainability of Scotland’s rural communities. However, the Group urges that the draft Code of Practice should be drawn up in consultation with the industry and should made available for scrutiny and constructive comment by the sector before being put forward for Parliamentary scrutiny and approval.

**BILL PART 4 – MUIRBURN (Section 28)**

A well-managed moor on which muirburn has been properly utilised has more to offer to moorland birds, wildlife and the environment than an unmanaged moor, as well as greater biodiversity. With climate change having an increasing impact on Scotland’s weather conditions, the flexibility for land managers to be able to utilise muirburn when weather conditions are right rather than only during the traditional muirburn season would be helpful. SEBG welcomes greater flexibility being introduced into the dates of
permitted muirburn and the potential issuing of out of season licences. This will allow extension of the season into September in places where it would be of benefit, and also help to relieve the possibility of pressure to complete the annual muirburn programme late in the burning season when the risk of wildfires and potential impact on breeding birds is greatest.

However, the Group is firmly opposed to any reduction in the specified season and would not wish to see greater flexibility in the issuing and availability of out of season licences being offset by any consequent reduction in the current length of the season. Restricting the permissible burning dates would inevitably limit the ability of land managers to carry out management burning under good conditions, thereby causing it to be a more difficult practice to carry out safely and effectively. The change would also be likely to lead to a build-up of old woody heather which could not be dealt with before the earlier deadline, thereby increasing the risk of catastrophic wildfire.

Whilst SEBG recognises that the Muirburn Code might benefit from review, the Group would be concerned should any review be based on the premise of restricting further the muirburn season. Any review and revision of the existing rules should involve practitioners, with changes subsequently trialled for a suitable period before being formally introduced.
Introduction
The work of Gamekeepers, Stalkers and Ghillies positively influences Scottish biodiversity in terms of variety and abundance of species. At the same time, this work makes a significant contribution to the rural economy. The profession itself identifies the need for balance where different stakeholder and rural interests converge.

The SGA commented in its response to consultation on the Wildlife and Natural Environment Bill that it recognises there are advantages to updating legislation, particularly where this helps to enhance the biodiversity dividend and the rural economy. We further commented that the ensuing legislation should be clear and deliverable. We felt that this should be achieved within existing legislative frameworks wherever possible, and must not add further bureaucratic burdens. We noted concerns around definitions of ‘sustainability’ and ‘public interest’. We also pointed to anomalies regarding ‘Invasive non-native species’. For the most part, we acknowledge the principles of the Bill, as drafted, but draw attention in this written evidence to aspects which we feel should be considered for adjustment.

Part 2 of the Bill – game and wildlife

Section 2 - Game Birds
We understand the logic of bringing ‘Game’ species within the scope of the 1981 Act – a proposal that has been presented as a house-keeping issue. However, we are very alarmed that this designation fails to acknowledge the distinctive significance of Game birds and mammals (Red Grouse, Ptarmigan, Pheasant, Partridge, Mallard and Ground Game) as species that can be managed for harvestable surplus, generating significant dividends for the rural economy. This fact was not lost in past legislative design. We are concerned that there should be no unnecessary erosion in the ability to manage this important asset. Any restriction may impact on incentives for investment in game species and their habitat. There is a considerable body of research pointing to the benefits of this, essentially private, investment for a wider variety of species beyond Game. This needs to be consistent over time.

If this house-keeping is not adjusted to recognise the distinctive nature of game management, it is certainly our belief that any provision impacting on management of Red Grouse, Ptarmigan, Black Grouse, Partridges, Mallards, Hares and Rabbits should be achieved through primary legislation rather than through ministerial orders or similar means.

Section 3 Game Bird protection, poaching
We recognise that the Laws in relation to poaching are in need of overhaul, and the amalgamation into a single offence seems practical.

Powers of arrest
We do not have a strong view about powers of arrest, principally on the grounds of personal safety, although we recognise that removal of this facility would create an anomaly in relation
to the use of such powers by Water Bailiffs. Removal of powers in respect of game poaching may create confusion for managers who hold both game and fishery responsibilities.

**Section 5 – Game Dealer Licenses**
We recognise the benefits of the Bill in terms of marketing Game meat, with the proposal to remove restrictions on selling outside of open seasons. We remain concerned about the need to maintain Game meat traceability.

**Catching up**
We welcome the fact that the Bill seeks to clarify the position with regard to catching up of game birds for breed-stock purposes. However, we do not feel that the current proposal of a 14 day period is practical. The relevant shooting seasons close after 1st February, and Gamekeepers will then generally allow a period of time for birds to settle without disturbance. If the weather is open in early February, it would be difficult for Keepers to achieve their objectives, as birds may be widely dispersed. Hard weather helps to concentrate birds within key areas. For these reasons we suggest that the catching-up period is extended until March 14th, or 28th February with provision for a further two week extension in the event of open weather.

**Section 6 – Hare close seasons**
The SGA recognises the benefit of a close season for Hares, despite the fact that they are in good conservation status in Scotland. However, we think the seasons, as proposed, do not adequately reflect the time between breeding seasons in the case of both Mountain and Brown Hare. We think the close seasons should be set to commence on 1st April, running to 31st July in the case of Mountain Hares, and from 1st March to until 30th September in the case of Brown Hares. This still allows scope for appropriate management work and sport shooting. Control measures are necessary to mitigate the impact of crop and tree damage, disease management (particularly for Tick). With the introduction of a close season and good conservation status, we see no necessity for restriction of catch methods (including snaring) and welcome clarification of this within the Bill. At present, Mountain and Brown Hares are treated separately.

**Section 12 – Single Witness evidence**
With regard to Single Witness evidence, we understand that this is not given credence without additional corroboration. It therefore seems unnecessary to preserve this.

**Section 13 Snaring**
Since announcement of the intention to bring forward an accreditation requirement, the SGA, in partnership with other land management and shooting organisations, has worked hard to build up a snare training programme to deliver best practice pest control. Many of our professional members throughout Scotland have already attended courses during the Spring and Summer of this year. This demonstrates their commitment to best practice and welfare provisions, because they recognise the importance of retaining snaring for pest and predator control not simply for game, crop and stock protection, but just as significantly for wider biodiversity.

We recognise that the tagging requirement introduced for Larsen and Cage traps seems to have been introduced successfully. Whilst we understand the logic of extending this to snares, we remain concerned that the tagging should not interfere with the operation of the snare itself, particularly in the case of rabbit snares. We remain concerned about the practicalities, but
wish to contribute fully to ensure successful, introduction. At the same time, we wish to be sure that the implementation of a straightforward tagging system will be met with equal support to prevent any misrepresentation of an accredited, registered user. We recognise that the Police are best placed to manage the design and issue of tags in such a way that minimises any potential tampering. We note that they will have the facility to charge for managing this system, which we hope will be reasonable.

**Sections 14-17 Non-native species**
In response to consultation, we pointed to inconsistencies in the description and application of Non-Native and Invasive Non-Native Species terminology, and we don’t see that the Bill resolves these anomalies. We fear that this will leave a legacy of unintended consequences which will hinder, not foster our management of wildlife and the natural environment. We recognise the sense of a ‘precautionary principle’ going forward, but we do not think that the Bill sufficiently contrasts the benign and positive benefits that some species bring versus the destructive capabilities of other species.

Whilst we therefore recognise the fact that Common Pheasants and Red Legged Partridges are exempt from the no release presumption within the Bill, we are concerned that this places them in a category that is separate from a host of other Non-Native, but successfully managed / naturalised species, ranging from trees to mammals. This seems inconsistent, and appears to leave Pheasants and Red Legged Partridges open to intervention in a way that other species are not. We do not believe this separation is helpful or necessary and should be re-considered. If it is allowed to stand, we believe it would be appropriate to require any future amendment in respect of Common Pheasants or Red Legged Partridges to be enacted through Primary Legislation. This should involve review of the very significant contribution made by game management to the Scottish rural economy as well as the associated benefits flowing from habitat improvement for a variety of other species.

**Sections 18 & 19 Species licensing**
We have no particular comments on Species licensing arrangements except to observe that in delegating authority to SNH or a local authority, Scottish Ministers should be satisfied that the delegation will be executed fairly and fully recognising the relevance of “any other social, economic or environmental purpose”.

**Section 21 – Game Licences**
The SGA supports the proposal to remove Game Licences. Licensing raises very little money, is an administrative burden and does not appear to be re-invested in game management projects or related conservation research.

**Part 3 - Deer**
The SGA welcomes the direction of the Bill with regard to competence testing. This recognises both the depth of self-regulation already in existence, and the rich heritage of knowledge possessed by professional stalkers, which has made Scottish deer stalking a highly responsible activity.

We will work with other organisations to ensure that such knowledge and skills are fully engaged in competence regulations. It will be important that development of these
regulations involves all groups committed to Deer management. We expect these regulations to be given sufficient time to show their effectiveness in advance of any review.

We welcome the retention of close seasons, providing a natural welfare benefit for deer, particularly as these seasons include harsh weather months.

We note the provisions for out-of-season control agreements in respect of ‘damage’ caused by Deer. Repeal of ‘serious’ merely dilutes objective assessment as to the extent of damage, which may prompt spurious applications and is inconsistent with the approach taken with regard to issue of other control licences administered by the Scottish Government / SNH. We therefore believe that the grant of control licences should be following evidence of ‘serious damage’.

We look forward to sight of the draft Code of Practice for deer management. Much has been made about the need for convergence of economic, environmental and social benefits in deer management. The Code should be made available for review by those involved in deer management as well as by Parliament. We remain of the view that some aspects of deer management, such as driving with vehicles, collaborative and helicopter-assisted culling of deer, and the use of night-time stalking fail to take sufficient account of deer welfare.

Part 4

Section 27 - Badgers
We are in general agreement with the proposals in the Bill regarding Badgers. However, as raised in our response to consultation, we are concerned by the incidence of situations where foresters, developers and farmers are prevented from working near non-active badger setts, or where gamekeepers cull foxes that have occupied old setts. We believe that this is resulting in cases where perfectly law-abiding citizens are unable to progress predator control work, or at worst, are being taken to court. In some cases, setts that have remained unoccupied over a considerable time, and holes of unknown origin are declared sacrosanct on the basis of expert opinion. We think that it would be sensible to take the opportunity to use the current Bill to define ‘active’ and ‘inactive’ Badger setts. There needs to be a clear separation to assist legitimate land management.

Section 28 - Muirburn
The SGA is happy with the proposals in the Bill for amendment of the Legislation related to muirburn. We will be very happy to work with the Scottish Government and other organisations towards introducing an effective process for out-of-season licensing. This would be important for issues around habitat restoration / conservation management, pest/disease control and research.

Sections 29 – 32 SSSIs
The SGA has no specific comment to make on the Bill in relation to SSSI management.
Introduction
The Scottish Hawk board (SHB) is the representative body of falconers and bird of prey (falconiformes) keepers in Scotland and has amongst its board members representatives from the Scottish Hawking Club, British Falconers Club (Scottish Region) and the Campaign for Falconry. The SHB is primarily concerned with the impact any legislation will have on falconry or raptors either wild or in captivity.

Concerns
It is of concern to us that numerous parts of the WCA are being amended, as falconers, like so many that take part in other fieldsports, travel frequently though the borders of England, Scotland, Wales and Ireland in the course of conducting our sport. Unless clear continuity is agreed between the different devolved countries, we fear that a lot unintentional transgressions will occur due to the confusion of differing sections of the WCA. It is therefore imperative that the devolved governments agree a uniformed review.

It is also of concern that the word ‘etc.’ is used throughout the document. Is ‘etc.’ a clearly legally definable word for its inclusion in this Bill?

Other areas of concern are listed below.

PART 2
Section 3 - Protection of game birds etc. and prevention of poaching
20. The amendment to section 1 ensures that the offences under that section will apply to partridges, pheasants, mallards and red grouse which are bred in captivity and released for shooting.

23. Subsection (3) amends section 1(6) of the 1981 Act. Section 1(6) of that Act excludes birds bred in captivity from the definition of “wild bird”. The amendment qualifies section 1(6) in two respects. First, to ensure that birds bred in captivity and lawfully released for conservation purposes are protected as wild birds after release. Second, to ensure that a captive bred mallard, grey or red-legged partridge, common pheasant or red grouse will be treated as a wild bird if it is no longer in captivity and not in a place in which it was reared. This subsection ensures that the birds that are most often bred in captivity for sporting purposes are covered by the offences under section 1 and the exceptions under section 2 of the 1981 Act when they are released.

We have listed two sections of a number that seem incomplete and inconsistent. Why are other native reared and released species not included e.g. teal, and other grouse types which are all raised in captivity?

6 Protection of wild hares etc
‘(2) In this section, “close season” means -
(2) (b) in the case of a brown hare, the period in any year beginning with 1st February and ending with 30th September.’

Falconers training young hawks and eagles to hunt hare will seek to ‘enter’ them – introduce them to the intended quarry species by encouraging them to chase and catch their first individual of that species – from September, whilst the young hawk or eagle is learning and developing its powers of flight and knowledge of its intended quarry. Many falconers in Scotland also continue to hunt hare into February. The intended close season for brown hare would therefore impinge on this aspect of falconry. The close season for mountain hare is broadly in line with that of the falconers hunting season we suggest the close season for both

species be from 1st March to the 31st July as this would have little impact on falconers who target hares specifically.

However, the use of hawks and eagles to hunt rabbits for control purposes will be impacted by the imposition of a close season for hare. Although rabbit control with birds of prey is mainly carried out through the normal hunting seasons, some areas of rabbits warrant culling throughout the summer period. This is a particularly environmental friendly method of pest control and is favoured by those wishing to use a silent, effective method, where trapping or gassing is not an available tool. Quite often hares are present in these upland or lowland areas in close proximity to rabbits. Once a bird of prey is flying free there is no possibility to stop it taking a hare that may flush, by default the falconer will be guilty of an offence if his bird takes a hare. To impose a close season when a hawk or eagle is unable to distinguish between a rabbit or hare is going to place the falconer in an untenable position. To prevent unwarranted law transgressions an exemption clause should be added as highlighted in red below.

(2) A person is not guilty of an offence under section 10A(1) by reason of taking any such animal if he shows that—
(a) he had a legal right to take such an animal or permission, from a person who had a right to give permission, to take such an animal; and
(b) the animal—
(i) had been disabled otherwise than by his unlawful act; and
(ii) was taken solely for the purpose of tending it and releasing it when no longer disabled.
(c) the animal was taken by a trained bird of prey while being flown at another legal target species.

Non-native species
This matter has been discussed in at least 2 other consultations and has the potential to impinge greatly on the recreational flying of birds of prey as well as to those who use birds of prey for their livelihood for public education, pest control, animal health, aircraft safety etc.

There has never been any recording of any invasive alien species being levelled at any species of bird of prey flown by falconers in the UK in the 1000 years that falconers have practised falconry.

It must be clearly understood and reflected in the wording of the Bill that any ‘release’ by a falconer of their bird is with the sole intention that that bird will be returning to
captivity, unless the bird is specifically being rehabilitated back into the wild. We feel strongly that an intention clause (added below highlighted in red) must be added to the proposed legislation to allow falconers to continue flying their birds without fear of prosecution:

There is a similar problem with the release of ferrets specifically used to control rabbits, in a number of noise sensitive situations birds of prey are used to take rabbits flushed by ferrets. Also clear exemption must be included for the use of ferrets.

14 Non-native species etc.

(1) The 1981 Act is amended as follows.

(2) In section 14 (introduction of new species etc.)—

(a) for subsections (1) to (2) substitute—

“(1) Subject to the provisions of this Part, any person who—

(a) In the case of a bird of prey, releases, or allows to escape from captivity, without the intention for its return to captivity

(b) releases, or allows to escape from captivity, any other animal—

(i) to a place outwith its native range; or

(ii) of a type the Scottish Ministers, by order, specify; or

(c) otherwise causes any animal outwith the control of any person to be at a place outwith its native range, is guilty of an offence.

15 Non-native animals and plants: “14 (C) code of practice”

(1) The SHB submitted comments on the release of non-native species during the last consultations. As persons having ‘an interest in the code’, we request to be consulted in respect of the formation of 14 (C) Non-native species etc: code of practice, as this code in respect of 14 (1) (a) will be critical to the legal interpretations of the Act, which could otherwise severely and adversely impact the future of falconry in Scotland as it pertains to the flying of and hunting with trained non-native raptors.

(4) The SHB respectfully requests that the proposed time frame of 30 days between laying a draft code of practice (or replacement code) before the Scottish Parliament and the issue of such a code be extended to 90 days to allow adequate time for interested parties to format and submit comments vital to their interests.

21 Repeals relating to Part 2 and game licensing

The SHB fully supports the abolition of game licensing.
Scottish Natural Heritage (SNH) is the Scottish Government’s statutory advisor on natural heritage issues. The Wildlife and Natural Environment Bill brings much needed modernisation to wildlife legislation, and should also streamline regulatory procedures and make them more effective.

Following the recent merger with the Deer Commission for Scotland (DCS) our remit has expanded to cover a wider wildlife management role. The Bill will give SNH new powers and duties in a number of areas concerned with wildlife management. These will fit well with our enhanced role and we welcome the overall policy objectives of the Bill.

**Game**

The simplification of the legislation governing game and poaching will have significant benefits. We agree with retaining the protection of mountain and brown hares during their breeding seasons. We do not see a need for full protection as there is no evidence to show that current levels of exploitation are causing a decline in the species’ range in Scotland. Protection is currently given through the restriction on selling hares from March to July inclusive by the Hares Preservation Act 1892. We advised the Scottish Government that the two species have different breeding periods and should therefore benefit from tailored close seasons. The dates that have been included in the Bill reflect the peak breeding periods for each species. We will also be responsible for issuing licences for killing or taking hares out of season. As this will be a new licensable purpose, it is hard to assess accurately the future workload, although we do not consider that this will be too onerous.

Keeping the admissibility of single witness evidence for the prosecution of offences for poaching game birds, hares and rabbits is a legal anomaly. Whilst we understand the historic reasons for this, it does not extend to the prosecution of other offences under the Wildlife & Countryside Act 1981. For example cases involving the illegal killing of non-game wild birds require corroboration by two or more witnesses.

**Areas of Special Protection (ASP)**

This nature conservation designation dates from the 1950s and predates most current conservation legislation. The aim was to protect birds and their eggs, and to prohibit public entry to specified areas at certain times of the year. The protection given to birds by these Orders has been replicated and strengthened by the changes made to the Wildlife & Countryside Act 1981 by the Nature Conservation (Scotland) Act 2004. In addition, the provisions of the Land Reform (Scotland) Act 2003 and the Scottish Outdoor Access Code allow for better visitor management at locations where public access could otherwise cause a problem. We therefore believe that the ASP
designation has become redundant and that removing it from the statute will assist in decluttering the many designations that can be applied to land.

**Snaring**

The Bill proposes measures that will help regulate and promote good practice with regard to snaring. The overall result should be the promotion of better animal welfare in this area. SNH supports these proposed measures.

There is currently an apparent discrepancy between how snares are described in the Wildlife & Countryside Act 1981 and the Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations), so that it is uncertain whether snares are considered to be traps for the purpose of licensing under the 1994 Regulations. This particularly applies to the licensing of snaring to control populations of mountain hares. SNH would support measures taken to include snares as traps including any necessary amendments to domestic legislation.

**Invasive non-native species**

SNH is a member of the Scottish Working Group on Invasive Non-native Species, and has been working closely with the Scottish Government in developing the policy aims of the Bill. Many non-native species have either been deliberately introduced to Scotland or have found their way here unintentionally as a result of human activity. If they become invasive they can have a devastating effect on fragile natural environments in some locations, particularly on islands. SNH has recently carried out large scale programmes to remove mink and hedgehogs from the Western Isles.

The provisions in the Bill will reduce the threat of non-native species being released into the wild and make control and eradication schemes more successful. The new ‘no release’ presumption will be easier to understand, particularly when backed up by the code of practice. The code will need to clearly define the terms ‘native range’ and ‘in the wild’ as used in the Bill, but also recognise that some native ranges will change as a result of climate change. The native ranges of many species are already well defined, for example by the Botanical Society for the British Isles or the British Ornithologists Union. The introduction of the code should also be accompanied by an increase in awareness-raising amongst key target groups to help prevent future releases.

We expect control orders to be a valuable tool in helping public agencies to carry out large-scale eradication programmes, although we do not anticipate that we will need to use this measure very often. Most land managers are willing to enter into voluntary agreements to control invasive non-native species on their land. Control orders will therefore be a fall-back option where all attempts to reach a voluntary agreement have failed, or where the ownership of land is unknown. It is unlikely that we will recover costs from land managers through control orders unless eradication work is being carried out as a result of their actions, such as for example, the reckless release of non-native crayfish to a catchment where they were not previously found.
The Bill does not set out lead agencies for dealing with different invasive non-native species. A protocol has been set up by the Rapid Response Working Group, established under the Invasive Non-native Species Framework Strategy for Great Britain (jointly produced by the Governments of England, Wales and Scotland). This sets out which agency should be the lead coordination body for dealing with new invasions of non-native species. This could also be included in the code of practice.

Owners of certain species that are held in captivity, such as beavers, should be obliged through the Bill to tag their animals, so that they can be identified if they escape. There can be serious implications on the welfare of the escapees, on other landowners, and on the integrity of licensed reintroduction projects from these unmanaged releases or escapes. In addition the costs of recovering and keeping escaped animals can fall to public agencies if the owners of the animals cannot be traced.

**Species licensing**
The proposed transfer of all species licensing functions to SNH will result in a significant additional workload. The Financial Memorandum states that this work is currently carried out by 4 full time staff, at a cost of £109,769. Some Scottish Government licensing work (such as out of season goose licences) is carried out by Rural Payments and Inspections Division staff in addition to the above. If this work is also passed to SNH there would be further resource implications.

The consultation document for the Bill showed that the number of licenses issued by the Scottish Government increased by almost 250% from 2005 to 2008. Numbers are continuing to rise every year. We are discussing with the Scottish Government how the administration and monitoring of this extra workload can be accommodated at a time of severe financial constraints.

In addition to SNH taking on existing licensing duties from the Scottish Government the Bill introduces new licensing duties related to killing or taking hares and rabbits, and snaring. We will also be the licensing authority for the new social, economic or environmental purpose to be inserted in to the Wildlife & Countryside Act 1981. We welcome this new purpose, which we have long called for, as it will remove an anomaly in species protection. It is difficult to estimate what the demand for licences under these new purposes will be.

With the appropriate resources the transfer of all species licensing to SNH will present an opportunity to streamline the licensing process. For customers this will simplify what is generally accepted as being a confusing regulatory system. SNH already provides advice to the Scottish Government on the vast majority of its licences. The proposed changes will mean that we will be responsible for assessing issues such as public health and safety and socio-economic matters that are not currently within our remit, and will seek advice from other public bodies where we do not have sufficient expertise. Implementing these changes will require careful planning and development of policies and procedures well in advance of the enactment of the new legislation. We will
prepare guidance for SNH staff and licence applicants that will be made available on our website and against which our decisions can be scrutinised.

**Deer**

The proposals to amend the Deer (Scotland) Act 1996 originate from recommendations that were made to the Scottish Government by the DCS. These aimed to better safeguard wild deer welfare; improve the voluntary approach to deer management; and improve the delivery of public benefit within deer management. This would also contribute to the Scottish Government’s new wild deer strategy, ‘Scotland’s Wild Deer – A National Approach’ (WDNA).

Although the suggested statutory duty to manage deer sustainably has not been taken forward in the Bill, this will be implicit in the proposed statutory Code for Deer Management. This will help to support land managers to deliver their responsibilities associated with managing wild deer with guidance on achieving wider sustainable deer management. It will also set out triggers for government intervention where the public interest is at risk. This will allow scrutiny of the decision making process taken by landowners when SNH determines that deer are causing damage that needs to be addressed under section 7 (voluntary control agreement) or section 8 (compulsory control scheme) of the 1996 Act. The Code will be relevant to all species of wild deer and to all habitats, including urban deer. A draft structure has been developed.

The proposal to widen the section 7 and section 8 triggers to include damage to welfare and socio-economic interests will help address the current narrow definition of public interest and support SNH’s expanded socio-economic remit and objectives. We are working on how best to identify what is meant by damage in these new circumstances. This is essential not only to define when public interest has been affected but also to assist with monitoring compliance with the Code.

The principal aim of the register of competence recommended by DCS was to safeguard deer welfare, by ensuring that those who shoot deer have the necessary skills and knowledge. The effect of delaying the implementation of this will be to encourage the development of a competence scheme by the deer industry. The levels of competence and the impact of this on deer welfare will be assessed by SNH if a compulsory scheme has not been brought in before 1 April 2014. Linked to the competence register in the original DCS proposals was a requirement for individuals to produce a cull return. Comprehensive and accurate data is fundamental to good management planning. If the register is not brought into operation SNH will need to review the current deer data collection and collation to ensure it is fit for purpose. Specifically this data must assist in the monitoring of the Code. If a competence system is introduced it is estimated that its administration will require an 0.75 FTE.

The removal of the owner occupier rights to take or kill deer out of season in order to protect crops, pasture and enclosed woodland is likely to be replaced by a form of general licence. There is an expectation that this would not operate through the periods
of greatest welfare risk. Exceptions to this may be allowed, although the precise circumstances where damage overrides welfare considerations has yet to be confirmed.

**Badgers**
The Bill allows for the Scottish Government’s licensing functions under the Badgers Act 1992 to be passed to SNH. We currently issue around 50 licences per annum under this Act, mostly to allow the disturbance of setts for development. We also provide advice to the Scottish Government licensing team on a similar number of applications each year, mainly for the disturbance of setts for forestry purposes. The proposed transfer of licensing responsibility to SNH will therefore simplify this area of licensing. Any increase in resources required to cope with this additional work should be covered in discussions over the transfer of other licensing duties.

**Muirburn**
SNH has been working closely with the Scottish Government directly and through the Moorland Forum to develop the provisions put forward in the Bill. We support these changes as they have the potential to introduce greater flexibility in muirburn management, and will allow research to be carried out into the implications of burning outside the season. We are likely to be the licensing authority for the new out of season muirburn licences. Based on our current estimate of the number of licences that may be applied for each year, this would cost around £9,000 per annum in staff time and other costs.

It is important to note the distinction between the Scottish Ministers’ power to vary the muirburn season, and the ability for individual land managers to carry out licensed out of season burning. If the Scottish Ministers exercise their power to vary the season, this will apply to all land within the area specified, which could be the whole of Scotland, or land defined by its altitude or location. It is likely that such a blanket change to the season would be backed up by prior research to show that a change to the season will not have a detrimental effect on natural heritage interests. licences for burning out of season will apply to specific areas of land and for specific purposes. One of these purposes is for research, and this may back up a case for the Scottish Ministers to vary the season by order.

We consider that it is important for licence applicants to be able to show that their plans can only be carried out in the close season and that the benefits to be gained will override the underlying purpose of the close season. This will require the applicant to provide adequate information, and may mean that an ecological survey will need to be carried out.

**Sites of Special Scientific Interest (SSSI)**
The changes to be made to the Nature Conservation (Scotland) Act 2004 are aimed at streamlining the administration of the SSSI series. These provisions have been suggested by SNH and we have been working closely with the Scottish Government in their development.
Two of the provisions will have an effect on the boundaries of SSSIs; the ability of SNH to merge individual SSSIs, and the ability to denotify all or part of a SSSI without further consultation where the special interest has been lost as a result of an operation approved by a regulatory body. We do not have extensive plans to merge SSSIs, but will instead use this provision where this can be shown to reduce the administrative burden on land managers and SNH. Our initial consideration is that this may apply to around 5-10 SSSIs.

The new denotification provision will be used to adjust the boundaries of sites where designated land has been lost to development (housing etc) or roads. It seems unnecessarily bureaucratic to seek objections on scientific grounds to the removal of this land from a SSSI. In addition the decision to allow the development will have already been reached through an open public process that took account of SNH’s advice.

It is expected that the introduction of restoration notices will provide an easier means of securing restoration of illegal damage to SSSIs caused by those with an interest in the land. We see this as a fall-back option, and anticipate that these notices will help us to agree voluntary restoration with land managers instead, where this is possible. Therefore this will allow us to work constructively with land managers instead of relying on enforcement through the Police and Courts to restore damage. It is estimated that this will apply to around 5 situations annually.
Introduction

As currently drafted the Wildlife and Natural Environment (Scotland) Bill has the scope to rectify a legislative anomaly in relation to species licensing. Failure to do so might otherwise present a significant risk to offshore wind projects, including ScottishPower Renewables’ proposed Argyll Array project, and make it more difficult for the Scottish Government to meet its renewable energy and climate change emissions targets. ScottishPower Renewables urges the Scottish Parliament to ensure that the Wildlife and Countryside Act 1981 is modified to enable licenses to be granted for development activities for Schedule 5 species.

Background

There are many circumstances in which activities, including developments at sea, will involve a temporary disturbance of wildlife in the vicinity. A strictly controlled licensing system allows development to proceed where this is in the over-riding public interest, and where the impact on species is proportionate to the activity. In this way, biodiversity is protected at the same time as appropriate development is allowed. Such a system exists, under the Conservation (Natural Habitat, etc) Regulations 1994, to issue licenses for European Protected Species (EPS), such as dolphins, porpoises and whales. However, a parallel system does not currently exist for other species, including basking sharks, which are listed on schedule 5 of the Wildlife and Countryside Act 1981. This anomalous situation means that for these species, there is no listed purpose under which development, forestry or agricultural activities can currently be licensed, although for species granted the protection of EPS status, they can.

ScottishPower Renewables’ recommendation

Consistency is required across the legislation, in order that a coherent system of wildlife licensing can be created and to ensure important developments are not prevented by a legislative anomaly. This consistency can be achieved by modifying the 1981 Act to enable development activities to be eligible for licences to be granted. ScottishPower Renewables believes that the Wildlife and Natural Environment (Scotland) Bill provides this consistency, as outlined on page 58 of the Scottish Government’s consultation document.

ScottishPower Renewables
25 October 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

SCOTTISH RAPTOR STUDY GROUPS

The following views on the Wildlife and Natural Environment (Scotland) Bill are submitted on behalf of the Scottish Raptor Study Groups (hereinafter “SRSGs”) for Stage 1 of the Bill. SRSGs comprise experienced fieldworkers who, largely on a voluntary basis, carry out monitoring of raptors throughout Scotland. They provide the bulk of the data on raptor numbers, distribution and productivity required by Scottish Natural Heritage to enable it to fulfil certain legal duties under the Wildlife and Countryside Act 1981 as amended by the Nature Conservation (Scotland) Act 2004 and under the European Community’s Wild Birds Directive 79/409/EEC.

SRSGs have as part of their remit raptor conservation as well as monitoring, hence the views set out below. SRSGs feel that the Bill would be improved by incorporating in it provisions along the following lines:

LIVESTOCK DEFINITION – SRSGs consider that the present definition of livestock in Section 27(1) of the Wildlife and Countryside Act 1981 as including any animal which is kept for the provision or improvement of shooting or fishing is too wide and that instead the definition should extend only to any animal kept for this purpose that is wholly confined, meaning in the case of a game bird before it is put out to a release pen or equivalent. Logically livestock should be seen as kept wholly or primarily for food; for sport shooting “livestock”, in this case game birds, are kept primarily for shooting and only secondarily for food. SRSGs advocate such an amendment in order to counter what they consider to be unjustified calls for licensed control of certain raptor species at game bird release pens. If required during the passage of the Bill, SRSGs can demonstrate several reasons for labelling such calls for licensed control as unjustified.

RELEASE OF NON-NATIVE GAME BIRDS – This matter is linked with and follows on from the above point. SRSGs note that the Bill proposes measures to prevent further release of non-native species, apart from pheasants and red-legged partridges. SRSGs feel that the Bill should make available to Scottish Ministers a power to regulate the release of pheasants and red-legged partridges. It might be that in practice such a power would relate mainly to habitat damage by one or other of these two species - although as a side issue competitive feeding effect of the two species on native wildlife, for example, has still to be properly assessed. Nevertheless, it must be acknowledged that to release large numbers of either non-native species into an alien (and for them, arguably hostile) environment is to invite, indeed to encourage, the attention of predators (including raptors) which in turn can lead to unjustified calls for their licensed control.
VICARIOUS LIABILITY – Current measures to reduce wildlife crime (in this instance, criminal persecution of raptors) appear to be ineffective or at least to be far less effective than they might otherwise be. This is borne out by, for example, the frequent reports of poisoned raptors – and such instances are rightly called “the tip of the iceberg.” Poisoning and other forms of criminal activity have been shown to be restricting Scottish populations of, for instance, red kites, hen harriers and golden eagles. More effective law enforcement in this area is clearly needed. To this end, the Bill should contain a provision making employers and their agents absolutely criminally liable in cases of court convictions of their employees for certain wildlife offences. Consideration should be given to the types of offences in relation to which such a sanction would apply. The sanction is one that was highlighted in “Natural Justice”, the report of the recent joint thematic inspection by Her Majesty’s Inspectorate of Constabulary for Scotland and the Inspectorate of Prosecution in Scotland on arrangements for preventing, investigating and prosecuting wildlife crime, as one that merited consideration by the Scottish Parliament.

LICENSING OF LANDHOLDINGS ETC. – SRSGs note that the Bill proposes an element of deregulation of the game shooting industry, for example through removal of the requirement for a licence to take and kill game. While not querying simplification measures such as this but taking into account the points made under the vicarious liability heading above, SRSGs consider that there will remain a major gap in wildlife law enforcement unless the Bill rectifies the position. This gap is the lack of an overall system licensing system for game bird management and shooting. SRSGs advocate a system of licensing for both individual landholdings and individual persons including corporate persons, whether owners, tenants, managers (including gamekeepers) or sporting agents. SRSGs suggest that the licensed activities should include game bird management in a broad sense, letting of game bird shooting and an absolute right of game bird shooting – in other words in hand, non-let shooting. Such a system would have to guard against the possibility of, for example, an owner sub-contracting shooting rights to a company under his or her control. SRSGs believe that a licensing system of this nature – whereby licences would be withdrawn in instances of conviction for wildlife crime – would help considerably in reduction of that crime.

SRSGs feel that the various above measures, were they to be enacted, would not disadvantage to any material extent the law-abiding sector in game bird management and shooting and would increase only marginally the cost burden thereon. SRSGs are of the opinion that (1) the livestock definition and release of non-native game bird measures proposed would help to put game bird rearing and shooting on a more appropriately modern, conservation-compliant and sustainable basis and (2) the suggested licensing of landholdings/persons measures would reduce significantly raptor-related wildlife crime incidences, as described above or otherwise.
1. INTRODUCTION

1.1.1. Nearly all of the environment (the landscapes and biodiversity of flora and fauna) that we enjoy in Scotland is there as a result of active management. The title of this Bill is misleading because it actually deals mainly with the “managed” environment rather than the “natural” environment. As such, the day to day lives (and livelihoods) of land managers of all types (farmers, country sports managers, game keepers and foresters) will be affected by this legislation.

1.1.2. Farming and forestry are undeniably vital industries for Scotland, but the game management and shooting industry is also hugely important culturally, economically and in terms of the wider biodiversity benefits of management of land for this purpose. These industries attract substantial inward investment and collectively support many thousands of jobs and businesses. For this reason the SRPBA has taken a keen interest in the Bill.

1.1.3. The commercial exploitation of game species is hugely important to the Scottish economy. The PACEC report in 2006 has been widely quoted in estimating that the shooting industry is worth £240 million to the economy and supports 11,000 full time equivalents. Research from the Game and Wildlife Conservation Trust recently estimated that grouse shooting alone supports in Scotland 1,071 jobs earning £14.5 million in total wages and contributes £23.3 million to GDP. In contrast to farming and forestry, the country sports sector attracts investment and contributes to our rural economy without financial support from the public sector. Any new legislative burden on this sector therefore needs to be scrutinized very carefully to ensure that it is truly necessary and proportionate.

1.1.4. Nature conservation and environmental legislation in Scotland is already complex with a number of statutes previously heavily amended and this Bill will add to that complexity, so we would strongly advocate early consolidation of the law in this area.

1.1.5. Although generally supportive of the principles of the Bill, the SRPBA has some areas of concern. We will be happy to provide further detail on any aspect of our written evidence.

2. PART 2 – WILDLIFE UNDER THE 1981 ACT

2.1. WILD BIRDS, THEIR NESTS AND EGGS (sections 2-5)

2.1.1. This part of the Bill has been described as a simple updating of archaic laws, which is to be welcomed, but it should be noted that it also results in a general shift in how game birds are treated in Scots law. Game birds (e.g. partridge, pheasant, red grouse) and ground game (hares and rabbits) are all brought within the same regime as other species (i.e. the 1981 Act) with special provisions to allow shooting and to deal with poaching.
2.1.2. The Bill ensures that game birds effectively enjoy the same position in law as previously, which is welcomed. Whilst undoubtedly simpler, this regime does enable future changes to the game and quarry species listed in the relevant schedule without the benefit of full parliamentary scrutiny, thus posing a potential threat to the game management sector in Scotland if the lists were to be altered arbitrarily without proper consideration of the full consequences.

2.1.3. The SRPBA supports the removal of game licences and game dealer licences which serve no useful purpose now. We also support the removal of the prohibition on the sale of game meat out of season, recognizing the modern preservation of food by freezing. This will enable supermarkets to stock game meat all year and is to be welcomed, strengthening the “game is food” principle and allowing a wider range of people to enjoy game as food on a regular basis.

2.1.4. The SRPBA also welcomes the simplification of poaching offences for both wild birds and ground game. Whilst we appreciate the rationale for concern about enforcement of poaching offences, given police resources. These powers, if updated with appropriate checks and balances, could still be a useful tool in modern management akin to the powers of Water Bailiffs in the salmon fishing context.

2.1.5. While welcoming the provisions to allow the practice of "catching up" game birds at the end of a season (section 3(4)(e) of the Bill), we are concerned that the 14 day period is unrealistically short, given current good practice. This should be at least 28 days and preferably 42 days.

2.2. WILD HARES, RABBITS ETC (sections 6-11)

2.2.1. Land management practices have ensured that brown hares have made a recovery in Scotland. The proposed close seasons for these and mountain hares recognise welfare and conservation concerns. We would however like to see the close seasons for both species start a month later to reflect the breeding seasons and allow necessary management.

2.3. SNARING (section 13)

2.3.1. There are strongly held views on snaring, all sincerely held, but opposed. This clearly makes any attempt to regulate it controversial. Successive governments of all political persuasions have strengthened the regulation surrounding the use of snares but ultimately retained them as a legal method of control and we welcome the pragmatic approach from the current government. No land manager relishes the task of pest or predator control, but it is a necessary part of the job for the protection of crops, livestock and forestry, conservation and game management. Snaring will often be the only effective method to use and it must be retained as one of the tools available to the land or game manager.

2.3.2. It is frustrating for farmers, gamekeepers and other land managers who are dedicated to the highest standards of management that some animal
rights groups appear to believe that only they have welfare of animals at heart. The SRPBA supports welfare measures which are proportionate and maintain the high standards of which Scotland should rightly be proud. That is why snaring is necessary as a tool because in many cases it will be the most humane method of control, as professional opinion from the British Veterinary Association has previously confirmed.

2.3.3. We are therefore broadly supportive of the measures introduced in the Bill. A degree of resource and effort will be required to make them work, but the industry is fully committed to doing so in the interests of preserving snaring as a land management tool. The less bureaucratic and more simple government can make the measures the better. It is important that compliance with the regulations will not affect the effectiveness of the snare. Some have argued that the Bill should go further and require licensing of snares but we would question the necessity. The proposed system broadly achieves the same ends but keeps enforcement local. Enforcement will be the key. For professional gamekeepers, the requirements should not impose a significant change to normal practice, although they will add cost and bureaucracy (but less than a full blown licensing system). The effectiveness in apprehending those engaging in illegal snaring will be critical. We are not convinced that the proposals will necessarily assist the authorities in this regard, and it will be important to make the necessary resources available.

3. NON-NATIVE AND INVASIVE SPECIES (Sections 14 - 17)

3.1. The SRPBA recognises that the approach adopted in this Bill follows UK and international policies in drawing a sharp distinction between ‘native’ and ‘non-native’ species, promoting the former and resisting the latter. However, we believe that such a clear distinction cannot be drawn and that a general presumption against all non-native species on principle is misguided. This approach is increasingly thought to be unduly ‘fundamentalist’ and, in practice, unworkable. Some alleged native species may have long since died out for one reason or another and the timescale is such that there may have been major climate, land use and landscape changes, making introduction/re-introduction intrusive. Conversely introductions of certain species may have proved valuable and have been able to adapt to existing conditions. There are two important aspects for policy; safeguarding existing sensitive habitats from species which may modify such habitats and the control of invasive species, whether native or non-native.

3.2. The proposals in the Bill for identifying invasive species are still reliant on a list which will require to be reviewed from time to time using broadly the same process as is currently the case. This does not therefore avoid the Scottish Government’s criticism of the existing legislation as highlighted in its consultation paper on this Bill.

3.3. Expanding on the above, the SRPBA believes that the approach proposed in this Bill is flawed for the following reasons:

3.3.1. The difficulties of definition: the terms ‘native’ and ‘non-native’ cannot be rigorously defined because they are not absolute but relative terms, both
in time and space. The terms are human constructs, not natural attributes of species. They represent the ends of a spectrum; while the two ends are relatively easy to define, there are many shades of grey. Consequently arbitrary choices have to be made concerning the historical date after which introduced species are considered ‘non-native’, and concerning the spatial scale at which the native/non-native distinction is applied (e.g. UK, Scotland, region, locality). There are no objective or consistent criteria for guiding such choices. It seems inappropriate to try to apply black-and-white policy distinctions to a reality consisting of contested shades of grey. Similarly, the term ‘native range’ in the Bill is hard to define precisely, (i) because boundaries are zones and (ii) because species constantly adapt their range in response to environmental pressures.

3.3.2. The need to adapt to climate change: climate change is predicted to transform the Scottish environment and adaptation will require a flexible rather than a doctrinaire approach, and a continual rethinking of which species ‘belong’ in Scotland. Forestry Commission Scotland is already advocating the planting of non-native tree species for just this reason.

3.3.3. The value of non-native species: blanket opposition to non-native species fails to recognise the economic significance of many such species, notably in forestry, and the fact that many introduced species are highly valued by the public for social and cultural reasons. Moreover, some introduced species have been present long enough to have become ‘naturalised’ and hence ecologically important.

3.3.4. The damage caused by some invasive native species: invasive behaviour is neither inherent in nor unique to non-native species. Most introduced species cause little or no damage, while some native species (e.g. bracken) are damagingly invasive, as might be some formerly native species which have been re-introduced.

3.4. For these reasons, the SRPBA believes that the native/non-native construct is an unhelpful and distracting framework for the management of species. The native/non-native construct is one aspect of a species to which there should be regard, but policy should not be solely built around this. For species which are already present in Scotland, we advocate a more pragmatic and flexible approach which focuses instead on preventing damage. The potential for a species to cause harm in a particular place and time would be a more useful and less questionable criterion for guiding species management. It is invasive behaviour, not non-native status *per se*, that causes damage, so it would be more accurate and less confusing to avoid the terms ‘native’ and ‘non-native’ altogether and simply refer to ‘invasive species’. Older terms such as “vermin”, “pest” and “weed”, which highlight observed contemporary behaviour rather than contested notions of non-nativeness, would also be appropriate.

3.5. For proposed new introductions to Scotland, we recognise the difficulty that the invasive potential of some species may not become apparent for many years, and so we support a sensible precautionary approach to the control of legal and clandestine introductions.
3.6. Notwithstanding the comments above regarding the general approach, our specific comments on the Bill are as follows:

3.6.1. The SRPBA welcomes the exemption of common pheasant and red-legged partridge (if they cannot be regarded as native or at least naturalised) from the no-release general presumption. This recognises the significant socio-economic contribution that the shooting industry makes to the rural sector as well as acknowledging the fact that land management for game species produces substantial benefits for other species, therefore helping to maintain a diverse range of flora and fauna. We would like to see the draft Orders providing exemptions for other species as soon as possible.

3.6.2. Section 14ZC deals with the “keeping” of invasive animals or plants. We are concerned about how “keeping” will be construed and the level of knowledge required. The respective responsibilities of owners and occupiers (e.g. tenants or crofters) also need to be clear.

3.6.3. The notification requirements are potentially unduly onerous for landowners/occupiers depending on what level of knowledge it is reasonable to assume they have about all species present on what may be a large area of land.

3.6.4. It is unfortunate that the SRPBA has not been able to view the draft Code before giving evidence as this will provide a lot of the detail behind the provisions in the Bill. As a general comment on the proper use of a Code of Practice the SRPBA has a concern that specifying required behaviour in a Code but using it to “tend to establish liability” in prosecuting the various offences muddies the lines between what should properly be contained in the primary Act (setting out the law) and what should be in a “code of practice” (guidance only). We understand it is intended that the Code of Practice will clarify some “exceptions” to what are otherwise offences under the Act (e.g. for agricultural land and commercial and amenity forestry planting). This should really be in the Act as codes of practice are not effective to make what are truly amendments to the wording of the statute. The Committee may wish to take further evidence on this point from the Law Society of Scotland.

3.6.5. We have particular concerns about a statutory Code making recommendations about “best practice” (section 14C(2)G) where failure to follow the Code can be used as tending to establish liability (section 14C7). The SRPBA supports best practice but we believe that it should be a voluntary matter to choose to go above the legal requirement. The Code of Practice should simply provide guidance on recommended good practice.

3.6.6. It is not clear whether land tenure issues have been fully considered in the provisions about species control orders (sections 14D-14L) which raise potential issues for agricultural tenancies, depending on the terms of the Order and who is bound by it. It needs to be set out clearly in what circumstances it will be an owner or an occupier who is be liable to commit an offence. Therefore, the right of appeal will be important if a person is aggrieved by the making of a Control Order and we support that this appeal is to the Sheriff. The SRPBA has concerns that the requirement to enter
into a voluntary agreement in 42 days gives too short a time frame. Section 14F(2) also provides that a control order may require payments to be made either by the relevant body or by the owner / occupier in respect of reasonable costs incurred by a person carrying out an operation. The SRPBA strongly calls for adequate funding for these works to be made available if there is no fault on the part of the owner / occupier. The Scottish Government has previously cited European rules as a reason for not funding such works under the SRDP but if this is the case then alternative funding streams must be developed, and quickly.

3.6.7. The SRPBA accepts that persons authorised by the relevant body will have powers of entry to enforce these provisions but Section 14O allows them to be accompanied by “any other person” to assist. It is essential that these “other” persons are appropriately trained and experienced. It is also appropriate for compensation to be payable for damage done by authorised person AND those accompanying them, but the Bill at present only allows for compensation for damage caused by the authorised person.

4. SPECIES LICENCES (section 18 - 19)

4.1. The SRPBA has no substantial comment on the proposed changes to species licensing contained in the Bill. We do however believe that section 16 of the 1981 Act could be improved to more clearly reflect the circumstances in which licences to control particular predator species could validly be granted in furthering the requirements of the Birds Directive. We believe that there ought to be legislative recognition here of the ecological benefits and the cultural importance of game management for shooting in Scotland.

4.2. The Birds Directive requires the maintenance of populations of wild birds which corresponds to ecological, scientific or cultural requirements while taking into account economic and recreational requirements. It follows that control of some predator species may be required to meet this objective. Clearly such a process would need to be carefully monitored and in some cases there will be competing economic or recreational requirements which need to be balanced against each other, but licensing authorities ought to be able to be consider all the circumstances on a case by case basis. This is not how the 1981 Act is currently interpreted in Scotland.

5. ENFORCEMENT (section 20)

5.1. It is widely recognized that current legislation, in terms of both offences and maximum sentences for environmental and wildlife offences, has been strengthened considerably in recent years. Employers/landowners can currently be liable if they knowingly permit offences to happen on their ground. In addition, landowners/employers can be liable under cross compliance measures, whereby single farm payments can be withdrawn even if there is no conviction. This is a serious economic sanction. Indeed, the thematic review carried out by the Inspectorate of Prosecution in Scotland stated that “current measures combined with measures to reduce an individual’s European subsidies, would constitute a significant collection of punitive tools”.

6
5.2. Nevertheless, some have called for unprecedented measures such as criminal vicarious liability through the WANE Bill. The Thematic Review recommended that a properly constituted group should be set up for “legislation, regulation & guidance” with representation from relevant wildlife and rural agencies to review existing legislation and regulation and make recommendations. This group is working effectively and is considering whether or not it would be appropriate to place any provision for criminal vicarious liability before Parliament for consideration. This is the correct collaborative approach to any major change in the criminal law. It would therefore be entirely premature to try to consider introducing such a provision in a Bill already proceeding through parliament when there has not been proper scrutiny or consultation. This would be legislation for partisan or ideological rather than evidence-based reasons.

6. **PART 3 – DEER**

6.1. **DEER MANAGEMENT (section 22-24)**

6.1.1. It is impossible to analyse the effect of the Bill’s provisions on deer management without sight of the finalised Code of Practice which will provide much of the detail, for example what is meant by sustainable deer management and how this may be dealt with in different areas. The basic objectives of a policy should be contained in properly scrutinised legislation, such as what is meant by “sustainable management” and the “public interest”. This would give certainty, rather than these fundamental aspects being contained in a code of practice which can be changed without full parliamentary scrutiny according to the whim of a particular administration. Any definition of sustainable deer management must take proper account of economic and social as well as environmental sustainability, given the huge importance of the deer stalking industry to communities in large swathes of Scotland.

6.1.2. The current Scottish Government aspires to minimise government regulation and bureaucracy and encourage Deer Management Groups (DMGs) to develop and take ownership of information and processes associated with Sustainable Deer Management. The SRPBA also favours a voluntary approach to deer management planning. A compulsory approach is liable to make the process overly bureaucratic, less flexible and not guaranteed to be any more effective in practice. Any approach to deer management needs to be able to be adapted differently to different areas, different management objectives and different species. SNH should work with Deer Management Groups and support them in their effort to manage wild deer collaboratively. This would go a long way to establishing a common purpose and reduce the potential for conflict. Such collaborative working should include sharing of information such as cull returns. DMGs should also be involved in decision making particularly on the issue of out-of-season licences. DMGs cannot be expected to co-ordinate the management of a wild deer resource if government agencies issue licences to cull without agreeing this first with the DMG.
6.1.3. The SRPBA welcomes improvements to sections 7 and 8 of the Deer Act but is concerned about the change from "serious damage" to the lower threshold of "damage" to crops or woodland triggering the emergency intervention of SNH. It is in specifically these situations where there ought to be a higher threshold to justify such intervention.

6.1.4. Perhaps the greatest legacy of the DCS is the development of Best Practice Guidelines. Deer stalking in Scotland is one of the safest outdoor activities, demonstrably safer than it is in other countries in Europe. These Best Practice Guidelines have been produced following consultation and collaboration with the practitioners and their representative bodies. We suggest the development of these Best Practice Guidelines should be used as a model for developing a code for Sustainable Deer Management.

6.1.5. The Code should provide guidance on how to deal with those who don’t engage or co-operate with their DMG and to deal with disagreements between members with a recognised arbitration process.

6.1.6. As the Bill is currently drafted, the Code must only be laid before Parliament and there is no requirement for parliamentary scrutiny. This should be rectified. A draft of the Code must also be available for consultation before the Bill is passed.

6.2. **DEER CLOSE SEASONS ETC (section 25)**

6.2.1. The SRPBA’s view during the consultation on this Bill was that occupiers’ rights to shoot deer in specified circumstances out of season should be retained to protect their economic interests. It is impossible to comment on the replacement of these rights with a general licence without sight of the terms of such a licence.

6.3. **COMPETENCE (section 26)**

6.3.1. The SRPBA is of the view that the Bill represents a fair compromise between differing views on competence testing for deer stalkers. There is no evidence of a welfare or safety problem with deer stalking in this country but there is a keen “public interest” in the shooting of deer. Government and parliament need to be clear however, whether those voices who claim to represent the public interest really reflect the view of the general public or merely that of specific interest groups.

6.3.2. The SRPBA, in conjunction with a number of other sector organizations, fully supports the view that those who are involved in the deer management sector in Scotland should be competent. We believe the vast majority are and the SRPBA supports the evidence of ADMG and BDS in respect of this part of the Bill. The deer sector favours a voluntary approach, believing that legislative intervention rarely achieves the best outcomes when a voluntary approach has better “buy-in” from those directly affected. The SRPBA is currently working with other the industry bodies to develop a workable and effective self-regulatory scheme.

6.3.3. The SRPBA welcomes that the government has taken the views of the industry on board but, in order for self-regulation to be given a fair opportunity to succeed, the power to introduce a compulsory scheme should not be exercised before the review in 2014. In the interim it is necessary for
the industry to know what the government/SNH will view as “acceptable” by the time of any review and we are committed to working with government to achieve this.

6.3.4. As for much of this Bill, the detail of Part 3 of the Bill is still to follow. The draft regulations on competence will be very important in providing the detail of a proposed register. There needs to be full consultation on these regulations with all parties who may be affected.

7. **PART 4 – OTHER WILDLIFE ETC**

7.1. **BADGERS** - The SRPBA is generally content with the proposals made in the Bill relating to badgers, however would like to see a clarification that protection should apply to “active” badger setts only.

7.2. **MUIRBURN** - The SRPBA is content with the proposals for muirburn in Scotland. The removal of the extended muirburn season from 1-15 May at altitudes above 450m may cause problems for some land managers but provided that licences will be granted to make muirburn outside of the season, then we can accept this. The notification provisions are an improvement on the current position.

8. **PART 5 – SSSIs**
The SRPBA welcomes the introduction of restoration notices as a middle ground between voluntary action and restoration orders.
Introduction
The Scottish Wildlife Trust is grateful to the Rural Affairs and Environment Committee for the opportunity to comment on the Wildlife and Natural Environment (Scotland) Bill which was introduced to the Scottish Parliament on 9 June 2010. We welcome the bill as an opportunity to update the law on wildlife and the natural environment.

There is much to praise in the bill: the thrust of the provisions on non-native species is particularly welcome as are the proposals for Sites of Special Scientific Interest. We hope that our recommendations for improvements to the bill will assist the Committee.

We do have deep reservations, however, about other parts of the bill. The proposals on deer management, in particular, are unworkable and unsustainable and we hope that the Committee will wish to recommend a statutory duty of sustainable deer management. We also have deep concerns about the proposal to extend the licensable purposes under the Wildlife and Countryside Act 1981 to “any other social, economic or environmental purpose”.

The bill could go much further, however, in leading conservation policy and practice. Accountability should be added to the existing biodiversity duty. The EU Habitats Directive was adopted in 1992. Transposing the Habitats Directive provisions on ecological coherence into domestic law would significantly improve the current bill and give greater protection to Scotland’s wildlife, ecosystems and the services they provide which underpin Scotland’s economy. It is clear that restoration and recovery of Scotland’s degraded ecosystems is essential for reversing the decline in biodiversity. Such broad scale ecological restoration is also vital for mitigating and adapting to climate change through greenhouse gas sequestration (particularly woodland and peatland restoration) and through improving the resilience of rural and urban environments to future climate pressures.

The bill as introduced

Areas of special protection for wild birds
The Scottish Wildlife Trust agrees with the proposal to abolish Areas of Special Protection on the basis that the protection they afford is duplicated by other measures and that those measures have been put in place.

Reform of the game laws
We welcome the long-overdue updating of the game laws and believe that game offences should be treated as any other form of wildlife crime. The Scottish Wildlife Trust notes the bill’s proposal to maintain the status quo with relation to single witness
evidence being sufficient for prosecution for poaching. We further note that single witness evidence is sufficient for littering offences under the Environmental Protection Act 1990 and dog fouling offences under the Dog Fouling (Scotland) Act 2003. We see no convincing argument why single witness evidence should not be sufficient for general wildlife crime prosecutions. This would simplify enforcement and send a very powerful message to criminals.

Hares
We note that the brown hare is reported to be in UK decline\(^1\) and the conservation status of mountain hare is unknown\(^2\). Further, the mountain hare is at risk of range loss as a result of climate change. For these reasons we do not support the taking or killing of hares.

Snaring
The Scottish Wildlife Trust is of the view that snaring is contrary to European law (Habitats Directive Article 15) as it is an indiscriminate means of taking, capture or killing of species listed in Annex V capable of causing the local disappearance of, or serious disturbance to, populations of such species. We believe that the proposals in the bill are illegal and unworkable and that there should be a ban on snaring in Scotland.

Non-native species
We fully support and welcome the policy intentions of the bill on non-native species. There are clearly definitional issues relating to the concepts of “native range” and “wild” which we anticipate the Committee will wish to give consideration to. We fully support the presumption against the introduction of non-native species.

An omission in the bill is the lack of a single lead agency with responsibility for species control orders with relation to invasive non-natives. The bill talks of “a relevant body” which refers to Scottish Ministers, SNH, SEPA or the Forestry Commissioners. There is a danger that everybody’s problem will become nobody’s problem and in an era of increasing financial squeeze a duty which can be passed around four bodies will be actioned by none. A clear line of responsibility would be preferable.

We hope to see an amendment to the bill to make it a specific offence to capture, injure or kill an animal of a population which is or was part of a licensed reintroduction except under licence by Scottish Ministers.

Species licensing
We are seriously concerned by the proposal to extend the grounds on which species licences can be granted to include “for any other social, economic or environmental purpose”. The level of protection afforded to European Protected Species under the Habitats Directive should be the minimum level of protection for species of conservation


importance in Scotland, i.e. that the activity must be for imperative reasons of overriding
general public interest or for public health and safety; there must be no satisfactory alternative;
and that favourable conservation status of the species must be maintained. We do not
accept that there should be any diminution in protection afforded to our most vulnerable
and important species.

We support the proposal to allow Ministers to delegate licence-granting power to
Scottish Natural Heritage. This could amalgamate all licensing activity within authority
which would improve consistency of decision making, as well as ensure it is
underpinned by scientific rigour. We do not agree that this power should also be
delegated to local authorities. Whilst accepting that few local authorities would be likely
to wish to exercise this power, it is our experience that local authorities do not have
adequate in-house expertise and experience, and there may be occasions where there
is a conflict of interest. In practice, we would expect local authorities to consult with
SNH and the case for extending licence-granting power beyond SNH has not been
made.

We support the proposal to eliminate duplication by repealing the provisions of
Schedule 6 of the Wildlife and Countryside Act 1981 for the species listed in the bill as
introduced.

**Deer**
The proposal in the bill for a non-binding code of practice which may advise on
sustainable deer management is deeply disappointing and will perpetuate the current
environmentally damaging and unsustainable situation. Opportunities for biodiversity
benefits will be lost and measures to tackle climate change will continue to be
compromised.

The Scottish Wildlife Trust owns or manages over 20,000 hectares and our experience
of the present approach to deer management leads us to the firm conclusion that the
voluntary approach, whilst superficially attractive, does not work.

A binding requirement for the sustainable management of deer would benefit
responsible land managers, the wider environment through reduced negative impacts
on biodiversity from overgrazing and trampling pressure, reduced negative impacts on
carbon losses through preventing natural woodland regeneration and catalysing
peatland erosion, and reduced burdens on the public purse and neighbouring
landowners.

We fully support Scottish Environment LINK’s view that with rights come responsibilities
and that there should be a statutory basis for all deer management and that there
should be a duty on landowners to manage deer sustainably. We do not believe that
the current under-regulated situation operates in the public interest.
Muirburn
The Scottish Wildlife Trust supports the Scottish Environment LINK evidence on muirburn.

Sites of special scientific interest
We broadly support the proposals on SSSIs which could be strengthened by a requirement to publish a register of damage to SSSIs.

Proposals to improve the bill

The bill contains much to welcome, principally on non-natives, but the wide scope of the long title gives it the potential to be landmark legislation, leading the UK administrations in wildlife conservation. We propose three key areas where the bill could do this.

Biodiversity duty
The duty on all public bodies and public officials to further the conservation of biodiversity was a very welcome aspect of the Nature Conservation (Scotland) Act 2004. Experience has now shown that there is a lack of accountability which undermines the delivery of that duty. Public bodies should be required to report to parliament on their compliance or otherwise with the biodiversity duty. All persons undertaking publically funded work should be covered by the duty.

Ecological coherence
Ecological coherence, which was accepted as an important part of Scotland’s approach to marine conservation during the passage of the Marine (Scotland) Act 2010, is a prerequisite for meaningful landscape-scale conservation, a concept which has found widespread political and public acceptance.

The EU Habitats Directive of 1992 requires Member States ensure the ecological coherence of the Natura 2000 network to further the conservation of natural habitats and wild fauna and flora (Articles 2, 3 and 10). Article 10 is partially transposed by Regulation 37 of the UK Habitats Regulations.

The Regulations do not address the need to transpose Article 3 or 10 of the Habitats Directive to make provision for the ‘improvement of the ecological coherence of the Natura 2000 network’. A new measure is required to encourage the management of landscape features which are of importance for wild fauna and flora, such as buffer zones to European sites and habitat stepping stones, for example, ponds or hedgerows. Regulation 37 is insufficient.

The creation of functional landscapes that will allow migration and dispersal of species, including European Protected Species, will become increasingly important as wildlife attempts to adapt to external pressures such as climate change, diffuse pollution and development pressures. At a time of accelerating climatic and environmental change which will directly impact upon the natural range of habitats and species, the Natura
2000 series has to accommodate the imperative of acting to conserve biodiversity at a landscape scale.

If Articles 3 or 10 were fully transposed into domestic law, this would afford greater protection to semi-natural habitats outside Natura 2000 sites, improve the ecological coherence and resilience to climate change of the Natura 2000 network and thereby better deliver the Directive and better ensure the restoration and recovery of Scotland’s biodiversity.

**Restoration and recovery**
The bill provides an opportunity to address the urgent need for restoration and recovery of Scotland’s non-marine habitats and the ecosystem services they provide. The Marine (Scotland) Act 2010 requires Scottish Ministers and public authorities to act in the way best calculated to further the achievement of sustainable development, including the protection and enhancement of the health of the sea, so the concept of environmental restoration and recovery is clearly established in Scottish statute.

To apply this to Scotland’s terrestrial habitats would place Scotland at the forefront of UK conservation practice.

We propose that there should be clear targets for ecological restoration, binding on the appropriate level of government, up to and including Scottish Ministers. Local authorities should have a duty to identify opportunities for ecological restoration and to ensure that such areas, identified on the basis if science, are restored to ecological health and protected from development.

Public bodies’ delivery of public benefit would be enhanced by a duty to promote and deliver ecological restoration on land they own or manage.

Public bodies and local authorities should have a statutory duty to work together to develop a national ecological network.

Local authorities should have a statutory duty to identify and manage local wildlife sites ensuring that such sites are in favourable or recovering condition and to report upon their local wildlife site system at least every five years.
I am writing on behalf of the Shellfish Association of Great Britain (SAGB). We are the UK industry trade association based at Fishmongers’ Hall, home of the Worshipful Company of Fishmongers; one of the 12 great livery companies of the City of London.

We are concerned that the commercially important Pacific oyster (*Crassostrea gigas*) industry in Scotland could be negatively affected by the wording in sections 14-17. We should point out that Pacific oyster is on general release under a General licence granted by the Minister of Agriculture, Fisheries and Food of the Wildlife and Countryside Act 1981.

We suggest this species is afforded the same exemption as the common pheasant and red-legged partridge (section 14(2A)) as follows:

Subsection (1) does not apply to the following animal where this animal is cultivated for the purpose of being commercially harvested

(a) Pacific oyster;
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

WRITTEN SUBMISSION FROM SHERIFF T.A.K. DRUMMOND

Clerk’s Note: The discussion paper below was originally prepared by Sheriff T.A.K. Drummond for a meeting of the Partnership for Action Against Wildlife Crime in Scotland sub-group on Legislation Regulation and Guidance in September 2009

Legislation Regulation and Guidance Sub-Group On
Harmonisation of the Wildlife and Countryside Act and the Pesticide Regulations.

In order to provide a framework for part of our next round of discussions I have prepared this paper to enable members to give the subject matter advance consideration: it will also give members the opportunity of discussing the matters raised within their membership if thought appropriate.

I emphasise at the outset that this is no more than a discussion paper and would welcome alternative approaches to the issue.

There are three separate threads in this paper which are attempted to be drawn together in the conclusion viz
1. A freestanding structure of poisoning offences under the Wildlife & Countryside Act (WCA)
2. How the Pesticide Regulations came to be inextricably linked with the WCA offences and
3. How these two quite distinct frameworks can be advantageously disentangled.

The Basic Offences:

WCA (s.5) creates offences for the killing or taking of any bird or animal by use of a number of prescribed methods including the use of “poisonous, poisoned or stupefying substances.”

The terms of each of the relevant sections is set out below.
It will be seen that the action which triggers the offence is either, “setting in position”, “Setting for the purpose “or “uses.”

5.-{(l) Subject to the provisions of this Part, if any person-
(a) sets in position any of the following articles, being an article which is of such a nature and is so placed as to be calculated to cause bodily injury to any wild bird coming into contact therewith, that is to say, any springe, trap, gin, snare, hook and line, any electrical
device for killing, stunning or frightening or any poisonous, poisoned or stupefying substance;
(b) uses for the purpose of killing or taking any wild bird any such article as aforesaid, whether or not of such a nature and so placed as aforesaid, or any net, baited board, bird-lime or substance of a like nature to birdlime

11.- (1) Subject to the provisions of this Part, if any person-
(a) sets in position any self-locking snare which is of such nature and so placed as to be calculated to cause of certain bodily injury to any wild animal coming into contact therewith;
(b) uses for the purpose of killing or taking any wild animals.
animal any self-locking snare, whether or not of such nature or so placed as aforesaid, any bow or crossbow or any explosive other than ammunition for a firearm;
or
(c) uses as a decoy, for the purpose of killing or taking any wild animal, any live mammal or bird whatever, he shall be guilty of an offence.

(2) Subject to the provisions of this Part, if any person-
(a) sets in position any of the following articles, being an article which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal included in Schedule 6 which comes into contact therewith, that is to say, any trap or snare, any electrical device for killing or stunning or any poisonous, poisoned or stupefying substance;
(b) uses for the purpose of killing or taking any such wild animal any such article as aforesaid, whether or not of such a nature and so placed as aforesaid, or any net;
(c) uses for the purpose of killing or taking any such wild

Two relatively straightforward matters arise from those provisions viz:-

1 There is no offence of possession of any such substance with the intention committing an offence (I am referring only to poisoning offences) under Sections 5 or 11. (Theoretically a charge of attempting to commit these offences could competently be libelled but would require to be based on evidence of activity which went beyond mere possession and constituted preparation) and
2. A “poisonous, poisoned or stupefying substance” is not defined in the WCA: while it would include regulated pesticides it would not be restricted to regulated pesticides.

“Possession” and the Pesticide Regulations

Section 15A WCA (which was inserted by the Nature Conservancy Act 2004) is the only offence created by the WCA in relation to the bare possession of pesticides and Section 15A provides as follows:--

“15A Possession of pesticides

(1) Any person who is in possession of any pesticide containing one or more prescribed active ingredient shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if the person shows that the possession of the pesticide was for the purposes of doing anything in accordance with—

(a) any regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48), or

(b) the Biocidal Products Regulations 2001 (S.I. 2001/880) or any regulations replacing those regulations.

(3) In this section—

- “pesticide” has the meaning given in the Food and Environment Protection Act 1985 (c. 48), and
- “prescribed active ingredient” means an ingredient of a pesticide which fits it for use as such and which is of a type prescribed by order made by the Scottish Ministers.”

For your assistance The Food & Environmental Protection Act 1985 referred to in S.15A contains in Section 16 the source statutory provision for the creation of the offences of breaching the regulations and the Pesticide Regulations are the regulations themselves which are authorised under the 1985 Act. The Regulations specify the detailed provisions governing sale, supply use and storage etc.

(There may well have been charges brought using the new Section 15A but personally I am not aware of having encountered one.)

The relevant provision of the ’85 Act is as follows:--

S.16 (12) A person who-

(a) without reasonable excuse, contravenes, or causes or permits any other person to contravene-

(i) any provision of regulations;

(ii) any condition of approval of a pesticide; or

(iii) any requirement imposed by virtue of regulations or of subsection (11) above;
The Biocidal Products Regulations 2001 referred to in S.15A are described in the Explanatory Notes to the Regulations as having

“...effect with a view to enabling applications to be made at Community level that an active substance can be used as a biocidal product and authorising placing them on the market”

It will be clear from the foregoing that the WCA does not define its prohibition by reference to substances covered by the Pesticide Regulations but as a matter of practice the substances most commonly encountered were regulated pesticides. For evidential reasons (viz. evidence of a crime “not charged”) PF’s have required to include in the Summary Complaint or Indictment the alleged breaches of the Pesticide Regulations (e.g. storage breaches).

This has led, as a matter of practice, to the poisoning offences under Sections 5 & 11 becoming inextricably linked for prosecution purposes with the Pesticide Regulations which are complex regulations designed for another purpose entirely. It is unfortunate that prosecution for the criminal use of regulated substances for an unrelated unlawful purpose has come to rely in practice for its effectiveness upon regulations formulated for a different purpose.

A further consequence has been that the WCA offences and the Pesticide Regulations have become distant relations, if I might so put it, to the extent that the new S.15A introduced by the 2004 Act introduces, in terms, into the WCA wording derived from the pesticide regulations and refers to two statutory enactments which are not “wildlife” statutes (see above: Food & Environment Protection Act 1985 and the Biocidal Products Regulations 2001). It specifically introduces “pesticides”. The relationship between the two is accordingly growing closer and it will be borne in mind that the “source” offences in Sections 5 and 11 only require for conviction that the substances be “poisonous or stupefying”

Statistically and historically the most common method of the unlawful killing of both birds and animals in Scotland, in a Wildlife context, is by the setting of poisonous substances or baits.

A common outcome of police investigations in these kind of cases is that

(i) while possession of a regulated substance can be demonstrated and

(ii) a poisoned bait or poisoned carcass can usually be produced,

the proof of the statutory offence of “setting” or “using” the poisonous substance (Sections 5 & 11) will frequently require to rely upon inferences to be drawn from one or more of the following adminicles of circumstantial evidence:-

The location where the carcass is discovered

The linkage between the substance possessed and the substance found in the carcass after scientific examination.

The character or status of the functions carried out by the possessing suspect.
The circumstances of the discovery of the possession (e.g. in a gun bag or glove compartment of a vehicle.)

Whether or not the evidence is capable of bearing such an inference is largely a subjective judgement and will depend upon the circumstances of each case: it is commonly the core issue in an investigation and in a prosecution.

It is partly for this reasons that pleas of guilty will commonly be negotiated to charges restricted to the lesser offences under the Pesticide Regulations (those charges commonly being included for evidential reasons only, as mentioned above) or of bare possession under Section 15A WCA if appropriate (which I have not yet encountered.).

The Pesticide Regulations:

I turn now to the Pesticide Regulations themselves in the sense of examining a small part of their framework.

Against the background which I have set out above, it is instructive to observe that a review of the Pesticide Regulations is presently under consideration by the Rural Directorate: the consultation document entitled “Consultation on the Proposed Consolidation and Simplification of Plant Protection and Pesticide Legislation in Scotland” envisages within a proposed new framework:-

“15......Under these EC Regulations it is already a requirement for farmers and growers who produce food for people or produce foodstuffs for livestock, to keep records of all pesticide treatments. (my emphasis)
16. The Scottish Government believes that this requirement should apply equally to all professional users of pesticides (not just to farmers and growers who produce food for people or feedstuffs for livestock. The proposal is intended to further our aim of providing greater traceability and access to information on pesticide use... Extending the record-keeping requirement to all professional users of pesticides will show that one area is not being singled out.”
18......we intend to make it a requirement to keep these records for 10 years...
19 We do not see any need for specialised equipment to keep the information. Records can be kept in manuscript or on computer if it is available.”

The Pesticide Regulations are, of course, formulated principally for the control of substantial users of these substances in Agriculture, Forestry and Industry. The framework of regulation is designed to address issues of Health and Safety at Work and wider issues of public and environmental safety in the context of such substantial users.

The criminal use by a small number of people and, in industry terms, of minute quantities of, controlled substances, could reasonably be described as peripheral to the underlying statutory framework of the pesticide regime.
There is no obvious reason why non-domestic users and possessors of small quantities of regulated substances should require to observe any different standards from those required of industrial and agricultural users. In that context, possession and use in the course of employment are relevant considerations. An employer has a duty of care to employees and a wider duty of care towards the public who might be affected by the activity of employees.

An employer cannot simply close his eyes to an unlawful practice being carried out by an employee in the course of his employment. The suggestion that e.g. a large Chemical Company has no responsibility for unauthorised activities engaged in by their employees in the course of their employment would be unlikely to be favourably received by a court in a civil context.

In a wildlife context there is at least anecdotal evidence to support the suggestion that employees can come under pressure to engage in unlawful activity from a small number of unscrupulous employers. Those employees, if any such there be, are entitled to the protection of the law from such pressure, should there be such pressure. Employers, who might engage in such practices, if any such there be, merit prosecution for such activity.

It would appear to me that in the absence of some imaginative formulation of charges the existing wildlife legislation does not address this situation beyond bare possession of pesticides (S.15A).

I now attempt to draw these separate threads together into one package:

(1) There would be no need for the format of the existing form of charges merging WCA and PR in WCA prosecutions if there were a statutory provision in WCA along the following lines:-

“In any prosecution for an offence under this Act it shall not be necessary to specify that the possession storage or use of any poison, poisonous or stupefying substance might also be an offence under any other statutory enactment.”

(2) There should be a free standing offence under the WCA of “possession of a poison, poisonous or stupefying substance” which does not rely for its enforcement on the pesticide regulations. An appropriate provision would be:-

(i) “It is an offence for any person to possess any poison, poisonous or stupefying substance for the purpose of or with the intention of committing an offence under any part of this enactment or for the purpose of supplying it to another to enable that other to commit such an offence.

(ii) for the purpose of any prosecution under this Act the fact that the possession, storage or use of a substance is regulated by the Pesticide Regulations, the Poisons Act or the Medicines Act shall be sufficient evidence of its poisonous or stupefying quality.
The above provision makes possession of regulated substances (with intent) a criminal offence. A number of regulated or veterinary substances are commonly required to be kept legitimately. It is important that the possessor be provided with a legitimate WCA framework within which to do that.

The creation of a statutory requirement that a record of possession of a controlled substance by an employee should be maintained is entirely in line with the pesticide regulations and with Health and Safety requirements. That such a record should be countersigned by the employer is no more than and probably significantly less than, what would be required of any responsible employer whose employees are exposed to hazardous substances which are already covered by the Pesticide Regulations.

(i) Subject to the terms of subsection (iii) any person employed or involved in the management or operation of game or of vermin control who is convicted of any offence relating to the possession or storage of any substance regulated under the Pesticide Regulations shall in addition be guilty of an offence under this Act.

(ii) Subject to subsection (iv) such possession or storage shall, for the purposes of Sections 5 and 11 be presumed to be the equivalent of setting in position or use unless the contrary be proved.

(iii). It shall be a defence to any charge under Section... (i) that the substance in respect of which the conviction arose under the Pesticide Regulations was (a) stored in its original container and in accordance with the statutory conditions of storage (b) recorded in a register kept for that purpose and identifying the use for which the substance was possessed and (c) that any entry recording such possession and use has been countersigned by either the employer of the person in possession, or any person authorised to act on behalf of the employer, or in the case of a self-employed person, by the authorised supplier of the regulated substance.

(iv) The presumption referred to in Section .. (ii) will not arise where condition(c) in subsection (iii) is met.

Lest it be considered that this is a provision which could be viewed as unfairly targeting gamekeepers and other employees in rural employment it is important that it is made clear that it is a provision designed for their protection and that a statutory defence is provided which will provide protection for them not only from prosecution but from any pressures to act unlawfully.

I invite the members of the Sub-Group to give consideration to the issues raised in this discussion paper and in particular to the following question of principle:-

Whether the unlawful possession of poisonous substances in the context of wildlife crime should be “unhitched” from the Pesticide Regulations and made
free standing within and regulated by the Wildlife and Countryside Act which already regulates the illegal "setting in place" and "use" of such substances.

T.A.K.Drummond QC
September 2009

Addendum: for convenience of reference I extract, enumerate and merge the proposed draft amending provisions:

1. “In any prosecution for an offence under this Act it shall not be necessary to specify that the possession, storage or use of any poison, poisonous or stupefying substance might also be an offence under any other statutory enactment.”

2. (i) “It is an offence for any person to possess any poison, poisonous or stupefying substance for the purpose or with the intention of committing an offence under any part of this enactment or for the purpose of supplying it to another to enable that other to commit such an offence.”

   (ii) for the purpose of any prosecution under this Act the fact that the possession, storage or use of a substance is regulated by the Pesticide Regulations, the Poisons Act or the Medicines Act shall be sufficient evidence of its poisonous or stupefying quality.

3. (i) Subject to the terms of subsection (iii) any person employed or involved in the management or operation of game or of vermin control who is convicted of any offence relating to the possession or storage of any substance regulated under the Pesticide Regulations shall in addition be guilty of an offence under this Act.

   (ii) Subject to subsection (iv) such possession or storage shall, for the purposes of Sections 5 and 11 be presumed to be the equivalent of setting in position or use unless the contrary be proved.

   (iii) It shall be a defence to any charge under Section.. (i) that the substance in respect of which the conviction arose under the Pesticide Regulations was (a) stored in its original container and in accordance with the statutory conditions of storage (b) recorded in a register kept for that purpose and identifying the use for which the substance was possessed and (c) that any entry recording such possession and use has been countersigned by either the employer of the person in possession, or any person authorised to act on behalf of the employer, or in the case of a self-employed person, by the authorised supplier of the regulated substance.

   (iv) The presumption referred to in Section .. (ii) will not arise where condition(c) in subsection (iii) is met.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL
WRITTEN SUBMISSION FROM SKYE AND LOCHALSH ENVIRONMENT FORUM

On 31st August 2009, the Skye & Lochalsh Environment Forum (S&LEF) submitted a Report “Muirburn Code Revisions” as its contribution to the consultation exercise organised by the Rural Directorate Landscapes and Habitats Division Department of the Scottish Government. Acknowledgement of receipt was given by Fiona Leslie of the Natural Heritage & Management Team on the same day.

This further submission has been made necessary because of the regrettable subsequent adverse developments referred to below. They reinforce S&LEF’s grave concern about the need to achieve an effective deterrent as a matter of urgency.

During the months of February and March 2010, muirburn once again devastated many hectares of hill ground. Section A(5) on page 3 of S&LEF’s Report coupled with images on page 11 highlight particular concerns for the habitat and lives of otters. Sadly the cause of such destruction can be attributed to the following:

1) inappropriate weather conditions,
2) inexperienced operators who are usually crofters,
3) lack of manpower available to control the fires,
4) belief in escaping prosecution because law enforcement is rarely undertaken.

As an illustration of 4 above, crofters on Skye were informed by the police through a Wildlife Procurator Fiscal simply - “not to do it again”. This warning was given notwithstanding their determination to burn hillsides including coastal areas which they knew full well contained otter holts (shelter sites).

Muirburn can be undertaken responsibly. Examples are in Perthshire and more eastern counties of Scotland. So far as S&LEF is aware, this has rarely happened in the Western Highlands and Islands with the result that European Protected Species are constantly at risk from uncontrolled muirburn.

At present the only hope of non-legislative reform lies in the effect of Grazings Clerks being told by the Scottish Government’s Rural Payments and Inspections Directorate that their SRDP payments may be withheld if reckless muirburn is continued. At the instigation of S&LEF this was done on Skye with remarkable positive effect.
However this ad hoc procedure is no substitute for proper licensing coupled with certification of competency lodged with the authorities well in advance. In addition there ought to be education programmes designed to instil awareness of the law especially as it relates to the protection of otters, badgers, water voles and ground-nesting birds. Furthermore scientific based projects are required to analyse the effects of muirburn and establish the true cost to biodiversity beyond the known problems involving protected species. A thorough understanding of the EU Habitats Directive is also essential.

Currently the law is recklessly flouted throughout much of the rural areas of the West Highlands and Islands. If the equivalent illegal incidents were to occur in urban areas, there would be a public outcry and doubtless the courts would be inundated with troublesome actions. It is entirely unacceptable that crimes against biodiversity should be given any lesser treatment and that, when it comes to muirburn, both European and domestic laws are ignored with impunity.

Unless measures are introduced with serious intent to apprehend persistent perpetrators of uncontrolled muirburn, S&LEF fears that the law will become even more of a laughing stock than at present. Quite apart from the effects that it will have on the wildlife tourist industry, the devastation to biodiversity and the natural heritage of the Western Highlands and Islands will be both incalculable and shameful.

In addition to the obvious need for law enforcement agencies to give priority to breaches of the Muirburn Code, it is the opinion of S&LF that a key solution would lie in the Wildlife and Environment (Scotland) Bill making provision for all landowners to be held vicariously liable for the actions of their crofting tenants. This would obviate the need to obtain precise evidence of a specific culprit and place a responsibility for good management of estates on their owners some of whom have turned a blind eye for far too long.
The Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA) is grateful for the opportunity to provide written and oral submissions on the Wildlife and Natural Environment (WANE) Bill.

The Scottish SPCA made a full response to the initial consultation on the Bill.

The Scottish SPCA is the largest animal welfare charity in Scotland and our views focus on issues that can or do have an impact on animal welfare.

The Scottish SPCA is recognised as a specialist reporting agency to the Procurator Fiscal service and can report animal welfare related offences direct to this service, further all of our Inspectors are authorised by the Minister to enforce the welfare provisions of the Animal Health and Welfare (Scotland) Act 2006, as many cases of wildlife crime involve cruelty to captive wildlife, this legislation can also be used in many instances of wildlife crime.

The Scottish SPCA agrees that much of the legislation being scrutinised in this Bill is out of date, not practical in today’s terms and in many cases un-enforceable.

**GAME LAWS**

The Scottish SPCA welcomes the repeal and modernisation of Game Laws dating back to 1772. The Society strongly welcomes the introduction of close seasons for both brown and mountain hares.

The Bill addresses the issue of Poaching, which is in many cases a genuine animal welfare problem, causing great suffering to hares and deer by the use of dogs and inappropriate weapons, given the nature and location of poaching it is essential that convictions could be secured on the evidence of a single witness.

**SNARING**

The Scottish SPCA stated policy is opposed to the manufacture and use of all snares. On animal welfare grounds, the Scottish SPCA seeks a ban on all snares. In the Society’s view even target species deserve a better method of control. By their very nature, snares are indiscriminate and catch, injure and kill many non-target species, including protected animals and domestic pets.

The Scottish SPCA firmly welcomed the improvements made in relation to snaring by the Snares (Scotland) Order 2010, and supports the proposals in the WANE Bill in
relation to the identification of snares, which would enable the operator of the snares to be traced in the event of mis-use, and the requirement for the operator of any snare to undergo specific training.

The Scottish SPCA was involved in discussions with BASC Scotland and the Game and Wildlife Conservation Trust in relation to the content of the training courses that may be required following the passage of this Bill. The Scottish SPCA has not attended any of the courses currently being offered despite requesting an invitation to do so.

While the identification of individual snares will certainly aid enforcement, it must be recognised that suffering will still occur as enforcement can only occur after the mis-use of snares has been identified.

The Special Investigations Unit of the Scottish SPCA still receives complaints and carries out investigations in relation to the mis-use of snares. A recent case resulted in the accused being fined £3,500.00 by the court in the Dumfries and Galloway area, in relation to snaring Badgers.

Many other instances have been investigated that have not resulted in legal proceedings as the snare operator could not be traced.

NON NATIVE SPECIES
The Scottish SPCA fully supports strict penalties for anyone who intentionally or recklessly releases a Non Native Species. The Scottish SPCA believes that in relation to live animals, lethal methods of control in relation to Non Native species should be a measure of last resort.

SPECIES LICENSING
The Scottish SPCA believes that Scottish Natural Heritage should be the single licensing issuing body. Due to a potential conflict of interest, this function should not be administered by Local Authorities.

DEER
Given that Deer are not owned as such, much of the responsibility lies at the point of taking or killing, this is where successful deer management groups have been of use in managing the wild population.

At the moment, much of the work or advice of DCS can simply be ignored until it reaches the stage of a section 7 (voluntary) or 8 (compulsory) of the Act are developed, we are unaware of any section 8 powers having been used in recent years, the merged DCS – SNH should have the ability to compel landowners to act at an earlier stage.

There are many examples of very good voluntary deer management groups and they should be allowed to continue on that basis. Where a voluntary approach is not achieving sustainable management then land managers should be legally required to implement such a plan.
Landowners should meet the costs on any occasion where DCS / SNH have had to intervene.

The Scottish SPCA has raised the issue of competency on many occasions, the Society would strongly recommend that any person wishing to shoot deer must prove their competency to do so; such persons should be assessed by a competent authority and registered as competent in species identification, knowledge of seasons, firearms safety and legislation.

If a register of competent persons is introduced, there should be a provision to allow a person to be removed from the register if they are subsequently found to be acting in a non competent manner.

Close seasons for deer have an important welfare aspect, especially for hinds and dependent young; any changes to the close seasons must take animal welfare into account.

BADGERS
The Scottish SPCA welcomes the term “knowingly” being introduced into offences against Badgers.

M Flynn
Chief Superintendent
Thank you for inviting written evidence from the Scottish Environment Protection Agency (SEPA) on the Wildlife and Natural Environment (WANE) Bill.

SEPA submitted a written response to the Scottish Government’s public consultation on the WANE Bill in September 2009. SEPA has subsequently attended the Scottish Government’s WANE Bill Advisory Group since that time and has also worked closely with Scottish Government’s Invasive Non-Native Species (INNS) policy lead on the development of the INNS elements of the Bill, both directly and through the Scottish Government’s Scottish Working Group on Invasive Non-Native Species. As such, SEPA is substantially supportive of the INNS elements of the Bill, as expressed in our consultation response. The following comments will, however, provide some further elaboration of those views in relation to the Bill as introduced.

Before addressing the Invasive Non-Native Species elements, we would like to summarise the comments we provided previously in relation to the other areas of the Bill. In general, aspects addressing the management, control or protection of wildlife lie outwith the remit, responsibilities and expertise of SEPA and this is reflected in our initial consultation response. SEPA did not offer comment in relation to the proposals for revisions to existing legislation on game law, snaring or badgers. Comments of varying detail were provided on the other sections, mostly minor, but with a greater emphasis on the muirburn proposals and, as stated above, those for Invasive Non-Native Species.

Deer
In respect of the deer proposals, SEPA’s response noted that the identified public policy objectives addressed by sustainable deer management having the greatest relevance to SEPA’s functions are those relating to environmental quality, river catchment management and climate change. The management of deer is not an issue for which SEPA has any remit, responsibility or expertise. SEPA did not, therefore, offer specific responses to the consultation questions related to deer, beyond noting that Scottish Natural Heritage and the Forestry Commission Scotland, as members of all the Area Advisory Groups under Scotland’s two River Basin Management Plans (one covering the Tweed and Solway and the other covering the rest of Scotland), are in the best position to make the links between impacts of deer on river basin management objectives and deer management measures to address, for example, over-grazing issues leading to increased catchment erosion or missed opportunity for carbon capture. There is nothing additional in respect of deer in the Bill, as introduced, on which SEPA wishes to make additional comment.
Species licensing

SEPA’s original response to Scottish Government recognised that the species licensing elements of environmental legislation are an important element of the overall statutory framework through which Scotland’s environment is protected. SEPA does not, however, have any specific responsibilities in this area but is, itself, subject to licensing requirements for some of the macrophyte sampling undertaken as part of its environmental science monitoring programme. SEPA’s original response on this section of the consultation was made on the basis of SEPA’s views as a regulated body.

SEPA’s view was that the status quo position is confusing, it not being readily apparent to non-specialists which activities fall to licensing by SNH and Scottish Government respectively. SEPA is also not supportive of the proposal to pass certain species licensing responsibilities to local authorities, as this does not encourage a consistent application of the legislation, and places the licensing responsibility with authorities that often do not have sufficient in-house ecological expertise. Noting that, for this (local authority) option, the consultation document’s recommendation was that the local authority would be required to consult with SNH in any case, SEPA stated its view that the best option would be a single species licensing responsibility to be vested in SNH. SEPA’s view remains that SNH is the national body best placed to ensure a consistent approach to species licensing across the country and, with in-house access to appropriate ecological advice, without the need to increase the amount of external consultation required. As a holder of an annual licence covering a number of sites across Scotland, the local authority option could greatly increase and complicate the administrative burden for SEPA and other licensed bodies with licences covering activities across several local authority areas. The licensing requirements for SEPA include an obligation to make data returns to the licensing authority, annually in our case, and this is something much more easily delivered to a single licensing authority.

Muirburn

SEPA’s consultation response recognised the overall wildlife and habitat benefit of properly planned and managed muirburn. For the control of heather beetle, for example, there may be a need to burn earlier than currently permitted. Heather beetle appears to be more prevalent in response to climate change and is reported to damage large areas of heather leaving soils open to erosion.

SEPA remains of the view that a licensing of muirburn would be acceptable so long as it can be demonstrated, through the provision of a survey, that this activity is necessary and would not disturb or destroy wild birds and their nests, or other protected animals and plants. In addition there would need to be restrictions on burning practice to ensure high risk soils and watercourses were protected. Finally, other safety and environmental legislation would need to be followed, including bans on burning which (i) endangers the public, (ii) is likely to cause injury, interruption or danger to road users, and (iii) causes the emission of smoke which is prejudicial to health or leads to the creation of a nuisance.
In response to the consultation’s request for views on the proposal that Scottish Ministers be given powers to restrict certain types of burning practice which risk soil exposure and erosion, SEPA’s original response strongly supported this proposal. SEPA notes that this proposal has not been pursued through the Bill and it is proposed to address it through further evidence gathering in the first instance. SEPA would welcome involvement in the consideration of that process, though we appreciate that this is now outwith the remit of the Committee and the business of the Bill.

**SSSIs and species licensing**
SEPA has no specific comments to make on this aspect beyond our original support for a number of the proposals.

**Invasive Non-Native Species**
Of the issues covered by the proposed Bill, invasive non-native species is that of most direct relevance to SEPA’s remit under the Water Framework Directive. SEPA continues to support action by the Scottish Government to define the roles and responsibilities of appropriate organisations in order to put in place a clear and coordinated approach to dealing with invasive non-native species in Scotland.

SEPA considers the amended offences relating to release of plants or animals outwith their native range to be clear and appropriate. As introduced, the Bill uses the term ‘wild’ in relation to the release of plants; it is critical that this term is clearly defined and we suggest that this definition could be added to inserted section 14P, which also provides for the meanings of native range, invasive, premises, relevant body, animal and plant.

The Bill as introduced does not identify a lead organisation; as expressed in response to the original consultation, SEPA considers that to be most effective the Bill should identify a lead organisation with the power to take action (with support from other relevant bodies) to control, contain or eradicate species outwith their native range (including a power of access where necessary), and to facilitate that action where needed through a power to require individuals to control and remove invasive non-native species contained on their land, site or property.

The Bill proposes that the power to make control orders be conferred on a number of relevant bodies, which SEPA feels could perpetuate uncertainty over which organisation should lead action on invasive non-native species. To mitigate confusion over which relevant body should use a control order, clear guidance is required as to the circumstances under which each organisation would lead any action; should this approach be adopted SEPA would expect to enact this power in accordance with the principles of the Rapid Response Protocol for Great Britain, when agreed through the Memorandum of Understanding currently being considered by all relevant organisations.

The provisions of the Bill will be supported by enhanced guidance; SEPA welcomes the opportunity to contribute to the development this guidance both through membership of
the Scottish Working Group and direct liaison with the Scottish Government’s Invasive Non-Native Species policy lead.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Dave Gorman, Head of Environmental Strategy, SEPA Corporate Office, at the address shown above.

James Curran  
Director of Science and Strategy  
25 August 2010
This submission relates to the section of the Bill dealing with Deer (Part 3)

The Bill as introduced presents a number of valuable and worthwhile reforms. This submission relates only to the question of collaborative deer management, where we believe the Bill leaves a major weakness unresolved, leading to major public costs and other problems in the future.

Effective deer management is important for deer welfare, protection of forestry, agriculture, the natural heritage and public safety, as well as for the economics of sporting estate management and rural employment. This requires good collaboration between the owners of land occupied by any sub-population of deer, in both the planning and implementation of a Deer Management Plan.

A consistent theme throughout the entire history of deer management in Scotland since the Deer (Scotland) Act 1959 has been the failure of owners to collaborate effectively in the control of deer (especially red, sika and fallow) which range across their lands. The same theme arises almost without exception in every single Annual Report of the Commission and its predecessor the Red Deer Commission for the last fifty years, but these Commissions have lacked adequate powers to enforce lasting improvements.

The Bill simply provides for a Code of Practice. **This is not sufficient. Provisions to incentivise effective voluntary collaboration are of the utmost importance. This is the outcome preferred by both government and the private sector, but the Bill does not provide adequate measures to ensure it.**

The introduction of legislation requiring mandatory protection of the natural heritage (enforceable under European law) has forced public agencies to do what they can to resolve the situation in critical areas through intensive persuasion, together with financial and practical support, using what measures they do have for the introduction of voluntary control schemes. These have been largely effective in the short term, but there are four problems:

a) they are very costly to the public purse in both cash and agency staff time;

b) the selection of areas to apply these schemes rewards owners who have failed to collaborate effectively; no such assistance is given in areas where owners work well together and protect the public interest;

c) there is no guarantee that the improvements achieved will be sustained over any length of time before the whole process has to be re-instigated;

d) with a wider range of interests to be protected in future, many more schemes are likely to be needed in coming years.
For these reasons the Deer Commission for Scotland (DCS) proposed the introduction of an explicit statutory duty on owners of land to manage deer sustainably, supported by a Code of Practice, and powers for SNH to compel landowners to develop and implement a deer management plan, and to recover costs.

These proposals, initially supported by government in the consultation phase, addressed a complaint frequently made to DCS by deer managers themselves. Their own experience was that some owners often undermined the efforts of Deer Management Groups by failing to attend their meetings or ignoring their decisions, rendering the whole exercise futile.

The DCS proposals met no opposition in the consultation phase, but Scottish Government appears to have withdrawn this element on advice from its lawyers on human rights grounds. What they appear to have overlooked is that this is only making explicit what has been implicit in the legislation since 1959 – i.e. that owners of land are already responsible in law for managing deer to prevent damage to others' interests. Making this explicit would be a valuable component of any new legislation, since it is a principle which has failed to secure willing acknowledgement in a wide sector of the deer management world.

However, a more important omission is the withdrawal of the proposal to give powers to SNH to require the production and implementation of a competent Deer Management Plan, failing which the agency would undertake the exercise itself, and recover costs from those who did not collaborate. An effective and credible backstop power of this kind is the essential ingredient to incentivise voluntary collaboration – the approach preferred by one and all.

Simon Pepper and Andrew Barbour
27 August 2010

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1 An illustration of this is in the fact that, in the implementation of a compulsory control scheme, the agency has always had powers to recover costs from the landowner.
The Woodland Trust Scotland would like to submit the following information for consideration by the Committee in relation to the Wildlife and Natural Environment Bill. The Woodland Trust is the UK’s leading woodland conservation charity. We have three aims: to enable the creation of more native woods and places rich in trees; to protect native woods, trees and their wildlife for the future; and to inspire everyone to enjoy and value woods and trees. We own over 1,000 sites and have 300,000 members and supporters.

Introduction
A recent petition to the Scottish Parliament Petitions Committee (PE1340) raised the issue of inadequate protection for some of Scotland’s important trees. The issues raised relate to individual trees – particularly ancient, veteran and ‘Trees of Special Interest’ – trees that are not protected by existing measures such as felling licenses or Tree Preservation Orders (TPOs).

1 For a detailed description of what we mean by ancient, veteran and trees of special interest, we refer you to the following document: The Woodland Trust. (2008) Ancient Tree Guide no.4: What are ancient, veteran and other trees of special interest? Grantham. www.woodlandtrust.org.uk/publications

Further to our discussions with the petitioner and other stakeholders, we believe that the Wildlife and Natural Environment Bill would be an excellent opportunity to consider making provisions to extend the Conservation Area designation for the designation of Local Authorities discharge their duties in relation to wildlife and biodiversity through the protection of important trees that are currently unprotected. It is our understanding that this extension to the Conservation Area powers would require primary legislation and that is the reason we make this submission.

The proposal
At present, any felling or works to a tree above a designated threshold, within a Conservation Area must be notified to the responsible Local Authority (LA) six weeks before any work is carried out. The LA then has time to consider the proposed works and act appropriately to safeguard trees of special interest, whether that be through negotiation with the owner or through the use of a TPO.

We believe that the extension of the Conservation Area approach should be available to stakeholders to protect trees, especially of special interest (TSIs), where they have been identified as being of the highest value by their communities. This should be on the basis of the trees in their own right and not require the area to be of special...
architectural or historic interest. The proposed extension to Conservation Areas would enable an area to be designated by a LA Page 2 of 3 solely for the trees present and the conditions in place would only extend to the trees and not other architectural or historic interests. This would be a power and not a duty.

These proposals would mean there would be a presumption against any works carried out to trees in an area designated as a Tree Conservation Area (TCA), without prior notification to the LA. This alerts the LA to possible harm to an important tree and gives the LA time in which to decide if it needs to act in the interests of the community and give it the added protection afforded by a TPO. We believe that in many cases, through negotiation and advice to the owner, the requirement to TPO would be limited, thereby saving resources and costs. Furthermore, with prior knowledge of the tree resource and a review of the size thresholds in these areas, LA’s could deal with notifications in more cost effective ways.

If the Tree Conservation Area designation were introduced it would provide an additional tool for communities and LAs to use in protecting the most important trees in their local area.

Two recent Scottish Government publications, the “Policy on Control of Woodland Removal” and the “Scottish Planning Policy” both identify that woods and trees should be protected, especially those of ancient or veteran status. However an individual tree of special interest that is not within a conservation area or protected by a TPO, may be easily lost despite these polices. This is because as a tree owner and not a public body, the policies do not apply to them. It is only a public body that needs to consider the policies in taking a decision on a planning application or local plan for example. For these important policies to be effective at all levels, the local authority has to have the appropriate tools to influence the management or protection of trees, especially those that are outside planning application sites.

As a result of this gap, there is a difference between the situation faced by developers and other tree owners. A developer has to submit a planning application that alerts the LA to a threat to a tree and they can act to protect it if it is of appropriate value. An owner outside a Conservation Area does not need to alert the LA to any works to trees and some of those trees maybe of very great value to the community. It is an unfair system where owners of trees with TPOs have to obtain approval for further works to a tree, but owners of TSIs which are unprotected, have no restrictions upon then.

Communities are understandably very frustrated by this system and incensed when trees that they value are cut down without LA involvement. Judicious use of the Tree Conservation Area status for trees would be a cost effective way of preventing loss of trees of value.

In considering this question it is important to be aware that the requirement for owners to seek consent to fell trees (subject to exemptions) already operates over very wide areas, principally of the rural environment, through felling licence controls under the
Forestry Act. However the exemptions are such that 5 cubic meters per quarter, which is approximately the equivalent of \( \frac{2}{3} \) fully mature trees, can be felled without the requirement for a felling licence and as such does not protect individual ancient, veteran and trees of special interest or significant value.

The additional tool of the Tree Conservation Area would help improve this situation in a number of ways. First it would allow stakeholders and LAs to be proactive in the protection of their tree resource. Secondly it would allow LAs the time to protect the most important trees of special interest in a strategic manner. And thirdly it would allow areas of trees with multiple owners to be protected in a more cost effective way.

We believe that the introduction of a new Tree Conservation Area designation could result in local authorities being better able to prioritise the trees in their area that require TPOs. At the same time it would enable them to engage with applicants on managing and maintaining trees that may otherwise have been lost. Ultimately this could reduce the cost burden to LAs by Page 3 of 3 reducing the need for TPOs to be placed on all but the most important trees that are threatened. Furthermore there would be no requirement on LAs to use Tree Conservation Areas if they were not appropriate for them. The proposals would provide local solutions to local problems.

Should the Committee have any questions relating to our submission, we would welcome an opportunity to answer them, in writing or in person.

Angus Yarwood,
2 November 2010
Deer Management Plans, cull numbers and habitat assessment

Instructed by the Association of Deer Management Groups (ADMG), Playfair Walker has surveyed the 32 main DMGs that cover approximately 80 per cent of the red deer range in Scotland. While many of these groups contain smaller sub-groups (for instance the Monadhliaths DMG has four sub groups), others only comprise as few as four member estates or less.

Three questions were asked:

1. Does your Deer Management Group, Deer Management Units within your Deer Management Group or estates within your Deer Management Group have a Deer Management Plan?

2. Does your Deer Management Group discuss deer culls and numbers, set target culls for the coming season and review those of the past season?

3. Does your Deer Management Group, Deer Management Units within your Deer Management Group or estates within your Deer Management Group undertake Habitat Assessment or Monitoring?

Of the 32 DMGs, replies were received from 27 (84 per cent).

Based on those responses:

21 DMGs (78 per cent) said that either they as a group, or the majority of their member groups, had a deer management plan in place now, or would have one in place by 2011.

26 DMGs (96 per cent) said that they discussed deer culls and numbers, set cull targets, and reviewed the previous cull etc

21 DMGs (78 per cent) said that they undertook habitat assessments on all or part of their area. Of this number, 11 said that they only undertook habitat assessments on parts of their area, or that they were planning habitat assessment in 2011.

Survey undertaken for the Association of Deer Management Groups by Playfair Walker
September 2010
At the Committee Meeting at Langholm on the 7th September 2010 a number of important and useful points were raised with respect to the use of snares. Those organisations most closely involved with the use of snares have now been able to consider these matters in greater detail and we would like to furnish you with the following observations:

- It was suggested by Libby Anderson that snares were used in the control of 25% of the foxes that were culled each year in Scotland. In the Joint Industry Briefing on The Importance of Snaring that was produced in 2008 we reported that an earlier study had shown that 96% of gamekeepers reported the presence of foxes that needed to be controlled and that, after night shooting, snaring was the most effective method of control, used by 86% of them. Snaring accounted for 30% of all foxes controlled by gamekeepers, although on some land snaring counts for more than 75% of all foxes taken.

- It was suggested that there could be some form of restriction on the number of snares that estates or individual operators could use at any one time. We have considered this and recognise that it would be very difficult to set an arbitrary figure for either fox or rabbit snares. We also recognise that it is not explicitly stated in “Snaring in Scotland – A Practitioners’ Guide” that you should never set more snares than you can manage, ensuring that the number set can inspected every 24 hours and ideally soon after dawn as possible.

It is our intention to insert this into the next edition of the guide as a clear recommendation.
It was also suggested that there could be mandatory requirement for all of those using snares to keep a record of snaring activity. The guide currently recommends:

“Daily records of snaring activity, including each set snare, should be kept. This should include a map or GPS record showing the location of snares, and this should be copied to the land manager. A daily diary should record the success of individual snares along with other information, such as mis-catches, problems from interference and general observations”

Recording sheets have already been designed, to be used either electronically or in hard copy.

We would accept that such record keeping becoming a mandatory requirement.

With respect to the provisions requiring snares to be checked at least once every day at intervals of no more than 24 hours we would also recommend that it would be pragmatic to include an exemption from this to cover severe weather situations. A similar exemption exists with respect to the inspection of cage traps under the current General Licences to kill or take certain birds. This would mainly be applicable after heavy snowfall when an operator was physically unable to reach his snares, and when the snares would themselves have been rendered ineffective.

If there is any further information or clarification required on any issue surrounding the use of snares in Scotland please do not hesitate to contact me.

Yours faithfully,

Dr Colin B. Shedden
Director, BASC Scotland

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

SUPPLEMENTARY WRITTEN SUBMISSION FROM CAIRNGORMS NATIONAL PARK AUTHORITY

The Specific Issue of Loch Garten Area of Special Protection

The Cairngorms National Park Authority supports the proposal in the Bill to repeal Section 3 of the Wildlife and Countryside Act (as amended). This will have the effect of simplifying the designation system across Scotland whilst still ensuring that appropriate management mechanisms are available in circumstances when they are required. In the Cairngorms, the Park Authority is especially aware of the significant number of overlapping designations and the degree to which people can find this confusing and bureaucratic.

There is only one Area of Special Protection in the Cairngorms National Park, at Loch Garten, which forms part of the Abernethy National Nature Reserve. RSPB in their management of the site provide an exemplary demonstration of how to manage a nature reserve and a wildlife viewing facility sustainably. Their careful site management is important in helping to look after an important part of the biodiversity of the National Park but also in encouraging people to enjoy nature at first hand. The facility provides a significant economic spin-off for the surrounding communities.

There is very limited public knowledge of the Area of Special Protection designation generally, either locally or nationally. The designation is not marked on the ground in any way, nor publicised in visitor-oriented information about site. In common with many other parts of the Park where there are species-related sensitivities, RSPB’s success in visitor management at the site derives from providing a welcome to visitors and proactively providing clear information about how to behave responsibly. The local staff and volunteers at the site have been a key factor in this success. Such approaches to visitor management, relying on the promotion of responsible behaviour rather than on regulation, are very much in tune with the modern and progressive framework for outdoor access provided by the Land Reform (Scotland) Act and are a key part of our strategy for sustainable tourism across the National Park.

Since the formation of the Scottish Parliament a range of new legal mechanisms are available that were not around in 1950s (including the ability to make Notices, Byelaws and a Nature Conservation Order) depending on the scale and nature of the problems encountered at site level. Such mechanisms can be specifically tailored to address whatever problem is at hand. We are confident that the range of mechanisms is adequate to the task and that the processes by which they could be put in place have been carefully considered.
We would advise that public support is essential if any new set of measures to manage public access at the site is to work effectively. For this reason we would recommend that the evidence of the problems to be addressed by any new management measure needs to be carefully recorded and considered. For the same reason we advise that good public consultation should take place in advance, both locally and nationally.

In order to facilitate this process we have invited RSPB to seek advice from the Local Outdoor Access Forum for the National Park which was established under the Land Reform (Scotland) Act, precisely to advise on such matters. The next meeting of the Forum is in November and we will be pleased to keep the Committee and Ministers informed of their advice in due course.
Mountain hare range appears to be stable
Mountain hares (*Lepus timidus*) are an important quarry species in many parts of Highland Scotland. Moorland management for red grouse, notably improving habitat and controlling predators, has allowed mountain hare populations in Scotland to build up to densities ten times greater than seen anywhere else in Europe. But as well as being a positive sporting resource, these higher than normal densities of hares can pose challenges for some gamekeepers, shepherds and foresters. Where the tick-borne louping-ill virus is present GWCT research shows that moor mountain hares can help perpetuate the disease, impacting on grouse and sheep. As there is currently no alternative form of treatment, some hare populations have been temporarily and locally reduced to suppress the disease, protect the red grouse and thus ultimately save the heather moorland both hares and grouse depend upon. Similarly, some suppression of hare population densities may be necessary on some occasions to allow woodland regeneration.

Aware of these management demands the Game & Wildlife Conservation Trust (GWCT), SNH and Macaulay Institute published a report on the distribution of the mountain hare in Scotland in 2006/07. Land managers returned information that confirmed the current distribution of mountain hare coincides with that of managed grouse moors, specifically those that practise driven grouse shooting (Figure 1). The information from this survey was compared to a similar survey of mountain hare distribution undertaken in 1995 (Tapper, 1996). There has been very little change in the distribution of mountain hare between the two surveys (Figure 2). This is despite a perceived increase in the number of mountain hare taken throughout Scotland, with estates that reported mountain hare harvest in both 1995 and 2006/07 showing a 32% increase in the number taken. There does appear to have been a switch in the reasons for taking mountain hares, as in 1995 the majority (60.5%) were taken for organised sport, with 39.5% taken for other purposes. In 2006/07, the majority were taken for the purposes of tick control (50%) followed by let/un-let shooting (40%) and forestry protection (10%). 24,529 mountain hares were taken in 2006/07 across 90 estates; about 7.0% of the UK population of 350,000 mountain hares (Harris *et al.* 1995).

Dr Adam Smith, GWCT Director Scotland notes that this report shows grouse moor management is best for conserving mountain hares in Scotland. While this study could not provide any information about the effect of killing hares on the total population size, it strongly suggests that even where large bags are taken, the range does not appear to shrink, often the first sign of a population in trouble. GWCT feels that this research and ongoing monitoring suggests that Scottish moors can harvest hares without fear of
compromising their European status. Indeed, some moors need to do so in order to enhance and protect the very moorland management hares have come to depend on. However overharvesting could, theoretically, inhibit a hare population’s ability to recover, especially where it is isolated from other populations which could assist consequent recovery. Therefore it is good practice for moorland managers to consider the impact of their actions on their own and neighbouring hare populations while taking account of the need to secure the future of the key driver of the hare population, investment in red grouse shooting."

Figure 1 The distribution of mountain hares in 2006/07 in Scotland on a 10x10-km square basis. The use of a 10x10-km square scale resulted in some areas appearing to have mountain hares when in fact they were reported as absent. They are (from north to south) Yell (Shetland), Mainland (Orkney), the Morvern peninsula (adjacent to Mull) and Islay.

Figure 2 Comparison between mountain hare distribution in Scotland in 1995/96 (Tapper 1996) and 2006/07 on a 10x10-km square basis.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

SUPPLEMENTARY WRITTEN SUBMISSION FROM ONEKIND (FORMERLY ADVOCATES FOR ANIMALS)

1. Wildlife crime: Enforcement and evidence gathering

The comments made to the Committee on 15 September by Mark Rafferty of the Scottish SPCA, regarding the difficulty of reporting wildlife crime and getting police to attend and prioritise reports, very much reflect our own experience. Our own field research officer has encountered difficulty in obtaining police assistance when reporting suspected wildlife crimes.

The field research officer’s role at OneKind is to gather information that will support our campaigns, not to carry out investigations which will lead to prosecutions. OneKind has no law enforcement role and does not seek any such role.

Inevitably, however, the field research officer comes across many incidents where it appears that an offence has been committed and which need to be reported to the authorities. Very often it is also necessary to obtain help for a suffering animal. In these situations, he follows an organisational protocol which requires him to inform the police first of all and then, if a live animal is suffering, the Scottish SPCA.

The problem is that the police are very under-resourced to respond to these calls and can also sometimes give the impression of being less than willing. In a number of cases, a report has been made but no action has been taken or the response has been inadequate. In one case it proved extremely difficult to get the police to investigate a number of snares that appeared to be illegally set on a shooting estate. The response of Strathclyde Police, in whose area the snares were found, was first to pass the information straight to the Scottish SPCA and secondly to inform our officer that he should attend his local police station in Edinburgh and make a statement.

Ultimately it required some persistence to get the statement taken. The incident was originally reported on 11 August and we understand that the site was only visited on 8 October. This delay may have meant that evidence seen in August was no longer present two months later. A member of the public, faced with the initial lack of response and later communication difficulties, would probably have given up trying to report the incident and potentially illegal traps would have been left in the countryside.

This type of problem is likely to increase as police resources become more tightly stretched in the coming few years, and the investigation of wildlife crime, which is difficult and time-consuming, may become an even lower priority.

This leads us to support the case advanced by the Scottish SPCA for its Inspectors to be authorised as wildlife inspectors under ss.19ZC and 19ZD of the Wildlife and Countryside Act. The Scottish SPCA is recognised as a reporting agency to the Crown and its Inspectors were granted specific authorisation under the Animal Health and Welfare (Scotland) Act 2006 to gather evidence, to seize animals and evidence, and to
obtain warrants to enter domestic premises. As far as I am aware, there has been little or no objection to the Scottish SPCA’s use of these powers in the years since these were granted.

Authorisation as wildlife inspectors would confer limited powers of entry to premises, to obtain specimens for examination or to take samples on fully-trained, qualified Scottish SPCA Inspectors.

We noted Sheriff Drummond’s comments about people going onto land to carry out investigations where they do not have the authority to do so. But there is a very significant difference between private individuals going onto land and representatives of a national charity which is a reporting agency, whose inspectors are trained in all aspects of the law and evidence gathering and – crucially – are specifically authorised under statute to carry out certain specified functions.

While landowners’ rights must of course be protected, it can only be helpful if the public use their eyes and ears when they are in the countryside and pass on any matters of concern to an agency that will make it a priority to investigate.

2. Snaring: Inserted section 11D

John Scott MSP asked a question last week about a point raised in a submission by an associate solicitor from Grigor and Young, Elgin. The submission had suggested that the presumption in inserted s.11D that “the identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position” ought to be removed on the grounds that it was onerous. However that may be reading too much into the provision, which says simply that the person who was allocated the identification number and was the owner of the tag is assumed to be the person who set the snare. The Crown would still have to prove that the person who set the snare was also responsible for the offence under consideration, and the presumption would presumably be rebuttable.

3. Effects of snares on animal welfare

Aileen Campbell MSP asked Professor Thompson for information about the effects on an animal of being caught in a snare.

OneKind has recently commissioned research from the University of Cambridge on this issue. It cites a recent paper on the use of traditional and cable restraint devices to capture red foxes in central Spain. The paper summarises the findings as follows:

“For both snares in all settings, an average of 35% of fox captures were around the body rather than the neck. Overall, injuries were similar for all snaring methods and capture-loop placement, suggesting that the addition of swivels and a break-way hook did not improve the performance of the snare. Of 64 foxes, one was dead, two had

1 Rochlitz I, Pearce G P, Broom DM The Impact of Snares on Animal Welfare Centre for Animal Welfare and Anthrozoology, Department of Veterinary Medicine, University of Cambridge
severe internal organ damage (internal bleeding), one had joint luxation at or below the carpus or tarsus, two had major subcutaneous soft tissue maceration or erosion, three had fracture of a permanent tooth exposing the pulp cavity and four had major cutaneous laceration. Overall, 9.4% of animals had indicators of poor welfare by ISO\textsuperscript{3} criteria (severe injury). For how long these animals suffered from these injuries was not known, but could have been for up to 24 hours as the snares were checked once daily. Other measures of welfare, besides injury scores, were not collected.”

The paper also refers to a study\textsuperscript{4} which examined the use of neck snares to live-trap foxes, saying:

“Traps were set in a way that would reduce trauma to captured animals (for example, they included a swivel, and a stop that prevented the snare from closing to smaller than a circle diameter of 10-12 cm). Snares were checked once daily in the early morning. Of 21 snared foxes, two had severe injuries on external examination (the snares caused deep damage to their throats); these foxes were bigger than expected. Another fox was found dead one month after capture (overall mortality was 14%). The authors noted the potential for foxes to wrap the snare line around trees and woody vegetation during trapping, and that this could cause bodily harm to the fox.”

Behavioural and physiological responses also need to be considered along with physical effects. For example, an animal may suffer from extreme fear, severe cold or hunger while it is trapped. Extreme muscular exertion or stress (for example, brought on by repeated attempts to escape) may bring on exertional myopathy. This condition can develop over a period of days after being trapped and can lead to depression, muscular stiffness, lack of co-ordination, paralysis, metabolic acidosis and death, up to two weeks after the event.

OneKind
14 October 2010

\textsuperscript{3} International Organization for Standardization (ISO)

Here are some follow-up points on issues raised during the RAE Committee evidence session of 15 September. If there are any further queries please do not hesitate to get in touch.

The Review of National Goose Policy
Since 2000, efforts to address conflicts between geese and agriculture in Scotland have been overseen by a group of stakeholders, the National Goose Management Review Group, chaired by the Chief Agricultural Officer, with SNH secretariat, and informed by a Goose Science Advisory Group. Seven Local Goose Management schemes currently operate in areas with prominent goose issues (Islay, Coll and Tiree, Uist, Solway, South Walls, Strathbeg, Kintyre). These use a combination of coordinated scaring of geese from fields, and the establishment of designated goose feeding areas, funded by SNH.

Arrangements are currently subject to a five-yearly review. The 2010 Review of Goose Management Policy in Scotland is being prepared by a consortium of consultants under contract to the Scottish Government. LINK’s understanding is that the report will be passed to the Scottish Government by the end of October 2010. It will make recommendations for future policy in relation to goose management in Scotland.

Greylag geese in Orkney:
The number of greylag geese wintering in Orkney: RSPB data.
There is no local goose management scheme for greylag geese in Orkney. Most of the winter population of these geese originates in Iceland, and numbers have increased dramatically (see figure). This is remarkable considering that the overall Icelandic population has been stable (or perhaps even declining) in recent years.

The increase in winter numbers of Icelandic breeding greylags in Orkney is being fuelled by birds abandoning their former wintering areas further south in Scotland and terminating their migratory journey in Orkney instead. This is likely to be caused by climate change resulting in higher winter temperatures that facilitate wintering at more northerly latitudes. The highly nutritious grass pastures in Orkney provide foraging for the geese. The steady warming of the climate means that that this grass now grows throughout the winter with barely any period of dormancy, as used to occur in the past. With such high quality food now available all winter, it would appear that the Greylags have shortened their migration by some 200-300 miles.

There is also a smaller (but growing) population of greylag geese that breeds and resides all year in Orkney. This population can be considered as functionally separate from the wintering Icelandic greylags – though it too has interactions with agriculture. Neither of the Orkney greylag populations is the subject of local goose management schemes – however, breeding greylags are the subject of local schemes in Uist, and in Tiree and Coll.

**Geese, the Wane Bill and the reporting of bag data in Scotland.**
It is our view that decisions such as establishing new local goose management schemes are a matter of policy and rest with the Scottish Government, informed by the current review.

The principal area where the WaNE Bill could positively influence goose management arrangements – and simultaneously arrangements for wildlife management more generally in Scotland - lies in improving the **collection and reporting of bag data** to underpin the science required for an adaptive management approach to wildlife populations. It is widely recognised that Scotland, in relation to other comparable European countries, lacks robust mechanisms to assess, record and report the number of quarry animals and birds that are hunted.

For example: greylag geese are a quarry species and as such are shot for sport, either by individual wildfowlers, by groups of shooters organised by agents, or under the auspices of sporting estates. They are also shot under licence during the close season to prevent serious damage to agriculture. Licensees are required to report how many birds have been shot under licence, but there is no requirement or mechanism to record or report the other sources of shooting mortality – that from sport shooting. In contrast, countries such as Iceland and Denmark – both countries with strong shooting industries - put a responsibility on sport shooters to report the numbers of each quarry species that they have shot each year.

Scottish breeding greylags do in some areas impact agricultural incomes, work plans and indeed important agricultural biodiversity. There are currently strong calls to manage these populations in such a way that numbers are regulated to reduce impacts on agriculture and keep these impacts at manageable and sustainable
levels, but also to ensure that populations are not threatened with extinction and that actions are in line with national and European conservation legislation. There is a growing body of science showing that such an approach is technically feasible. However, this approach can only work if it is informed by accurate mortality data. Under current bag data arrangements, this is not possible. In order to move towards modern and effective goose management in Scotland, the collection and reporting of bag data must be improved. We urge the inclusion in the Bill of a clause giving Scottish ministers powers to require the accurate reporting of hunting bag information. We further urge that there is a time-limited requirement to act on implementing improved arrangements in this regard, to minimise unnecessary delays.

Pheasants and Red-legged Partridges
These two species are not native to Scotland. In some locations we believe they are established in the wild as breeding birds, but their presence in Scotland is solely, unambiguously and directly the result of human agency. The majority of birds present in the wild will have been released for sporting purposes, and the high numbers and widespread distribution of the species are entirely due to continued releases. The practice of releasing non-native gamebirds is currently largely exempt from regulation. Pheasant and red-legged partridge are not listed on schedule 9 of the Wildlife and Countryside Act of 1981 as amended by the Nature Conservation (Scotland) Act 2004, but the rationale for this is economic rather than ecological. At least 4 million pheasants and 1 million red-legged partridges were held for sporting releases in Scotland in 2009, according to the Defra Great Britain Poultry Register. We believe that this figure may not record some of the smaller local operations, and so is a minimum figure, and that the trend is increasing across years. Impacts of gamebird releases and gamebird shooting practices are multiple, but few have been formally investigated. The availability of hard data and scientific publications is very limited, for example in relation to the area of pheasant release pens and the numbers shot (see section on bag data above). However, it is evident that the density of releases is a key factor in relation to environmental impacts\(^1\). In areas where good habitat management is combined with moderate release densities, general wildlife impacts can be positive. In contrast, the available data show that at high densities of gamebird release, negative environmental impacts occur, and may in some cases be severe. For this reason, GWCT provides guidance recommending that release pen densities are kept below 700-1000 birds per hectare, or just over 14m\(^2\) per bird\(^2\).

Anecdotal reports – which are all that is available in terms of direct measurement of release densities – suggest that pen densities often exceed this figure in parts of Scotland (for instance in the Borders). For this reason, more hard data is needed, as has been gathered in other parts of the UK.\(^3\) There is good evidence, on the other hand, that damage can transpire when densities are too high. In recent years red-


\(^3\)PACEC, 2006. Economic and environmental impact of sporting shooting in the UK. PACEC, Cambridge, UK.
legged partridges and pheasants have been released more frequently on the edge of upland moorland. Craig Leek SSSI is home to an extremely rich bryophyte community with eight Nationally Rare species, and one Red Data Book species. Recently, a game estate adjacent to Craig Leek began releasing red-legged partridges. These birds roosted on the crags at Craig Leek, causing soil eutrophication with detrimental effects to the fragile bryophyte community there. Some of these rare bryophyte species are only represented by one known colony in the area, and just two or three populations in the entire UK. Therefore, soil enrichment by partridges severely threatens their existence in the UK (Rothero 2006), and demonstrates that releasing gamebirds in close proximity to sensitive areas with fragile species of high conservation importance can be extremely detrimental. It is also evident that other types of damage can be caused by high density of releases non-native game birds, with impacts potentially beyond designated areas, including:

- **Browsing of ground vegetation** - threatening high conservation priority plants, damaging designated sites, reducing plant species richness, altering hedge structure, excluding native perennials.

- **Predation of overwintering invertebrates**

- **Passing parasites to native wild birds**

LINK urges that the Bill should include a capacity for ministers to regulate the release of non-native gamebirds in specific situations and locations where environmental damage occurs. We emphasise that this is not a call to ban sport hunting, nor a denial of positive aspects of the industry – it is, rather, a wish to minimise or avoid future negative environmental impacts of high density releases, in a proportionate manner.

Examples of shoot licensing in other European countries

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4 Rothero, G. 2006. Baseline surveys of *Tortula leucostoma* and *Athalamia hyalina* on Craig Leek SSSI. Scottish Natural Heritage Commissioned Report No. 176.


1. **Germany**: there is a system of shoot licensing which is administered by German Laender (so this could mean different systems in each state). Licence applies to an area of land. Where agricultural land is included there is a requirement to kill a certain number of deer/wild boar a year so as to prevent agricultural damage. The licence can be removed in cases of wildlife crime conviction but enforcement is poor.

2. **Netherlands**: a licensing system also exists. This is also attached to a certain area of land. There has to be a minimum hectare of land under control to attach a shooting licence. Interestingly, shooters can include non hunted land in their hectare provided that landowner agrees. This means for example that where there is a nature reserve adjacent to hunted land, the nature reserve can include their hectares but remain a refuge if they see the benefit of fox control (for example) on neighbouring ground. The licence can be revoked in cases of confirmed wildlife crime incidents, and this is administered by Dutch authorities.

3. **Spain**: again a federal approach with individual Spanish states administering their own systems. In Mallorca, the licensing system is administered by the local state and is attached to an area of land. The hunting licence can be revoked for up to 5 years if evidence of illegal poisoning is found (red kite workers report that this has improved the situation for threatened local red kite population on Balearics). In Andalucía, a farmer/hunter killed one of the reintroduced bearded vultures and was convicted of setting out poison baits. This resulted in his hunting licence being revoked.

RSPB Scotland  
28 October 2010
SGA suggests that the balance of discussion of wildlife crime issues is based on “a presumption of information, which in many cases is not always substantiated by evidence”.

RSPB comment: there is an overwhelming weight of peer-reviewed science, summarised below, backed up by data published annually by the Scottish Government, that provides a significant weight of research evidence supporting the contention that those incidents of illegal poisoning detected represent a small proportion of the actual total.

SGA say that RSPB data on poisoning are at odds with those of SASA.

RSPB comment: numbers of victims published are the same in both organisation’s annual reports. There are, however, differences in the classification of what constitutes an “incident”. The RSPB has very clear and consistent criteria and incident definitions as set out in its 2009 annual report\(^1\) on the illegal killing of birds of prey in Scotland (see pg 4 of report). This shows that 2009 was indeed the worst year on record for incidents of illegal poisoning found in Scotland’s countryside. The criteria that SASA uses are not defined. Laboratory tests by SASA, confirming the presence of poison, are an essential component of the evidence in any individual prosecution for poisoning offences, and are not intended as a standardised index of the level of poisoning activity nationally, or its effect on wild populations. In addition, the RSPB documents annually other incidents of illegal killing, such as nest destruction, shooting and trapping. This includes incidents confirmed by post-mortem and/or witness. These data are not published elsewhere.

SGA say that “the publication of persecution statistics since the early 1990s has played an important part in generating awareness of policing and penalties, particularly helping towards reduction of indiscriminate poisoning.”

RSPB comment: from the 2009 report:

Confirmed poisoning incidents 1989-2009

\(^1\) RSPB Scotland 2010 The illegal killing of birds of prey in Scotland in 2009. RSPB Scotland, Edinburgh
While these data are difficult to use as an indication of trends, the fact remains that the number of incidents shows no sign of any reduction and the threat to Scotland’s wildlife is persistent and substantial.

SGA say that: they are not “aware of any research which maps actual unoccupied Eagle territories, but instead wonder whether these are theoretical projections”.

RSPB Comment: Whitfield et al (2006)\(^2\) clearly indicates that as part of the analytical process undertaken for the Golden Eagle framework\(^3\), the results of the three national censuses of golden eagles in Scotland, from 1982, 1992, and 2003, when all known territories were surveyed, were used to assess occupation levels of territories. Indeed, Whitfield et al. (2006 -Table 1) show the number of known and unoccupied territories in each Natural Heritage Zone (NHZ). The reason that no published map of these territories is available is that it would compromise the confidentiality of these traditional nesting territories.

In five NHZs, territory occupation showed a shortfall of >33% of known territories. Areas of good habitat with consistently high levels of illegal killing, such as the Eastern Highlands, represent the worst possible scenario for raptor populations, because they act as sinks. Once local birds are killed, the resulting vacant territories attract individuals from neighbouring areas, which are then killed in turn. The mobility of birds provides a continuous supply of victims, resulting in the crime in such areas suppressing the population nationally.

The scientific analysis undertaken during preparation of the Golden Eagle framework, using a considerable weight of peer-reviewed scientific evidence, clearly illustrates that there is a significant number of unoccupied, known former golden eagle territories. They remain unoccupied because there are insufficient immature birds surviving to breeding.


age. The reason that there are insufficient birds is due to the illegal killing of a significant number of eagles.

Over the 1999-2009 period, a total of 24 eagles were confirmed by SASA as being illegally poisoned. A further four birds have been poisoned in 2010.

There are two key points: firstly, in our experience, illegal poisoning activity takes place in remote areas, in circumstances where direct witnesses are few and far between and where material evidence can be easily concealed or destroyed by the perpetrators. Thus, a large proportion of these incidents will never be discovered. Secondly, it is reasonable to assume that, given that public access to many upland areas is largely concentrated on paths and tracks, any illegal activity away from such areas is likely to remain undetected. Of the two dead golden eagles found in 2009, the first was discovered by a group of walkers descending from a seldom-climbed hill, off a path, who just happened to walk around the “right” side of a rock outcrop. The second was fitted with a satellite transmitter. These were both exceedingly “fortunate” finds.

Such a limited, ad hoc search effort can never provide a consistent data set from which to draw conclusions regarding the full extent and impact of criminal activity. It is reasonable to suggest, however, that given the clear scientific evidence of a significant lack of birds reaching breeding age, coupled with the likelihood of actually discovering a victim, that the number of birds being killed is considerably larger than the small number detected every year – the “tip of the iceberg”.

SGA say that “game and wildlife management can create a reservoir of biodiversity, in the absence of which the situation for specific raptors might now be far worse.”

RSPB Comment: it has been claimed that if moorland management from shooting did not take place, then there would be less food available for birds of prey, or more predators that would reduce their breeding success. Green & Etheridge (1999)\(^4\) showed that the benefits from increased protection from fox predation on managed moors in no way counteracted the increased failure rates of hen harrier breeding attempts from persecution.

In outlining the results of the 2004 national survey, Sim et al (2007)\(^5\) showed that the only areas where hen harrier populations were declining were dominated by managed grouse moors. This reiterates previous work by Summers et al (2003)\(^6\) which demonstrated that the hen harrier was absent or declining in large areas of apparently suitable grouse moor habitat, including sites where it was well established in the recent past, for example in north and east Scotland.

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Redpath et al (2010)\textsuperscript{7} illustrated that in the whole of the UK in 2008, rather than the expected 499 pairs that should be successful on grouse moors (driven during 2003-07), only a very small percentage fledged young. This is further reflected by the very low numbers of this species, recorded by raptor study groups and other fieldworkers, who monitor this species in east and south-east Scotland, despite the abundance of ideal habitat.

In summary, while game and wildlife management can have a positive impact on the populations of some species, there is a considerable weight of evidence showing that persecution of birds of prey in these areas is having a marked effect on their populations.

The Scottish Gamekeepers Association is concerned about the nature of the debate on key issues raised during evidence sessions with regard to the WANE Bill. The prescriptive nature of many proposals, ranging from licensing, the approach to non-native and invasive non-native species and the balance of discussion on wildlife crime is heavily influencing current thought. Much of this is based on a presumption of information, which in many cases is not always substantiated by evidence. Inevitably, there are differences in perspective, but we owe it to our biodiversity to get the legislation right.

**Wildlife crime – poisoning**

During the course of verbal evidence sessions, confirmed incidents of pesticide abuse in respect of bird of prey poisoning have been presented as ‘the tip of the iceberg’. The SGA will continue to fight hard to reduce instances through a variety of means, including peer pressure and the promotion of best practice, because any case of raptor persecution simply holds back practical reconciliation of known conflicts. Poisoning cases are made clear through the publication of SASA¹ statistics, which have been acknowledged by all stakeholders as the official, independent measure of incidents. We are aware that the RSPB have cited its own publication², which contains such additional reporting. Some of their information appears to be at odds with that from SASA. It is the case that with far more vigilance, more and more incidents are being reported than in past years. That is not to say that such incidents are always confirmed. A brief review of SASA’s 2009 data will demonstrate how reported incidents, first considered as potential poisoning abuse, can subsequently turn out to be different, for example cases 09014, 09017, 09034, 09045, 09054, 09059, 09072 and 09093³.

We respectfully suggest that the RAE Committee uses the SASA information, also contained in the 2005-2009 PAW Scotland report⁴, as the authoritative position on poisoning statistics. This source does not confuse ‘possible’ and ‘probable’ information, which we know can lead to significant distortion of trends.

Nevertheless, we believe the publication of persecution statistics since the early 1990s has played an important part in generating awareness of policing and penalties, particularly helping towards reduction of indiscriminate poisoning.

We do not in any way seek to downgrade the significance of any wildlife crime incident, but in all of the debate about Scottish wildlife, it is rare that we

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¹ SASA Positive Results 2009 Report
² The illegal killing of birds of prey in Scotland in 2009, RSPB 2010
³ SASA Positive results 2009 report
⁴ PAW Scotland Bird of Prey Poisoning Hotspot Maps 2010
consider the successes. There is no doubt that protection and greater
tolerance have brought about advances in Scotland.

We note that in 1800\(^5\), it was estimated that there were 550 pairs of Golden
Eagles across the whole of the UK, prior to the start of persecution by farming,
shooting and other land management activities. The most recent available
estimates (from surveys carried out in 2003) put the Scottish Golden Eagle
population at 440 pairs\(^6\), 80% of the entire UK population in 1800.

A 2001 estimate of Buzzards in GB suggested a range between 44,000 and
61,000 pairs\(^7\). The Scottish population of common Buzzards was estimated
around that date to be up to 20,000 pairs\(^8\). Nearly 10 years have passed since
the previous survey, and it is likely that a current estimate will show a further
increase.

There are currently 749\(^9\) pairs of Hen Harriers in the UK, of which 630 pairs
(84%) are in Scotland. As with the Eagles, it would be helpful to know how
many pairs of Hen Harriers existed prior to the start of organised grouse moor
management in Scotland. This would help us understand whether their
continued survival in Scotland has, in some part, actually depended on
moorland management. We note for instance how, following the removal of
Gamekeepers from Langholm Moor in the 1990s, Hen Harrier populations
ultimately collapsed\(^10\). It seems clear from this that game and wildlife
management can create a reservoir of biodiversity, in the absence of which
the situation for specific raptors might now be far worse.

Recent discussion in relation to WANE legislation has focused on the iconic
significance of Golden Eagles, and why they might be poisoned. In parallel, it
has been suggested that more than 50 eagles a year are disappearing and
that a similar number of territories are unoccupied, both implied to result from
persecution – the so-called ‘tip of the iceberg’. Whilst recognising that there
were two poisoning cases in 2009, one of which is unrelated to game
management, there is no other credible evidence to suggest that 50 Eagles
vanish each year. If that were the case, then given the age at which they
reach breeding maturity, the Scottish Golden Eagle population should have
been facing extinction a long time ago. Neither are we aware of any research
which maps actual unoccupied Eagle territories, but instead wonder whether
these are theoretical projections.

The SNH commissioned report (No 193)\(^11\) indicates a shortage of sub-mature
Golden Eagles in the Eastern Highlands, pointing the finger of blame at
grouse management, yet Scotland still manages to take Eagles from this area
and export them to Ireland. This suggests a degree of confidence in the
robustness of the population to absorb and make up for the removal, and that
current estimates of the Scottish Golden Eagle population are now higher than

\(^5\) Stirling District Council conservation paper, 2001. Text provided by P. Stirling-Aird. This figure also used by
Dumfries & Galloway Council in Wildlife promotional literature
\(^7\) Quoted by BTO, Bird Trends status summary 2010
\(^8\) SNH Species briefing notes
\(^9\) RSPB website 2010
\(^10\) The Langholm Moor Demonstration Project, Joint Raptor Project
for Golden Eagles)
the 442 pairs last reported in 2003. This seems totally at odds with the impression created by some stakeholders that the Scottish Eagle population is in a very fragile state. It is in everyone’s interest to understand the current position.

Because of the incidence of just one poisoning case, it is very easy to attribute all uncertainties over population numbers to persecution. We feel this is particularly damaging. Eagles, by virtue of the range they require (25km–75km, up to the distance between Edinburgh and Glasgow, or in places, that between the East and West coasts of Scotland), will always be rare. Even minor land use changes may thus have profound impact (extension of forestry, introduction of wind farms, wider countryside access, localised deer culls, reduction in managed heather habitat).

Scotland has been rendered a small place by advances in infrastructure, technology and democracy. These have enabled a variety of land uses and changes. In developing relevant wildlife legislation and conservation plans, we must look at the totality of impacts for all rare species. Otherwise, it is all too convenient to lay blame on persecution, an approach which risks ignoring other important influences.

We make these points because we note the development of WANE debate around vicarious liability and licensing systems. We have no expertise to offer in respect of the competence of the legal argument for strict liability, but we are concerned that an estate / land licensing system merely adds bureaucracy and cost without necessarily achieving biodiversity objectives. We believe that alongside existing policing and penalties, it is important to consider both incentive and preventative measures to support biodiversity, including more targeted use of local predator / raptor species control licensing. This has not been given sufficient consideration so far in WANE deliberations.

Upland land use

The oral evidence sessions have been injected with suggestions that focus on upland grouse or deer management represents monoculture. Again, this seems to have been deployed to influence opinion in a way which owes more to politics than it does to biodiversity concerns. Global heather moorland habitat is rarer than rainforest, and 75% of it is found in Britain. Much of it has been lost to forestry and grazing pressure since 1945, and it is only where managed that it is capable of providing a vibrant ecology. The evidence for this is well documented, benefiting upland waders\textsuperscript{12} and other moorland bird species, including raptors. Further reduction in heather management is likely to limit such species.

Left unmanaged, heather grows rank, woody and of little nutritious value to animals. In this condition, it also represents a substantial fire risk. Land Managers do have some options including the conversion of moorland into grazing. However, if Land Managers are committed to retaining moorland, they will seek a return on investment to offset the expense. The land manager

can therefore make a decision to concentrate on a particular ‘harvest’, for instance grouse, deer, or a mix including other tourism applications, depending on economic and investment priorities.

What is absolutely clear is that far from any notion of monoculture or ‘slash and burn’, well managed heather moorland generates a substantial biodiversity dividend for Scotland at the same time as contributing to the rural economy. The abundance of flora and fauna in heather habitat is widely acknowledged by different agencies, so it seems counter-productive to demean its management when the potential upside for rare species is obvious. A considerable portion of Britain’s managed heather habitat comprises SPA, SAC or SSSI territory, which underlines the close relationship between management and biodiversity.

Hare management and moorland management

We note the related discussion on culling of mountain hares as part of land use plans, particularly in relation to grouse management. This is carried out to reduce the tick burden, affecting both birds and sheep. It is suggested that this has resulted in an overall decline in hare populations. Whilst this may result in periodic reductions in local numbers, it is clear that, as with other species, mountain hares can benefit from moorland management. The GWCT indicates that in Scotland, local moorland mountain hare populations are up to 10 times higher than anywhere else in Europe. This is due to control of predators and improvement of habitat. It contrasts with areas that are not managed, where hare presence is more patchy, probably as a result of greater predation, disease and poor food. The GWCT goes on to indicate that without the incentive to manage hare numbers, their numbers would be reduced. They also point out that it is legal and sustainable to take mountain hares in Scotland for sporting purposes and where a licence has been for disease and crop protection.

Separately, we also note the substantial increase in reported cases of the debilitating Lyme disease in Scotland. Apart from the toll of tick-borne disease on animals and birds, the impact on human health, whether resulting from wider countryside activities or from close association with the land (for instance via keepering) is of concern. We need to bear in mind within the WANE deliberations that any land management restrictions may have consequences that we have not yet properly considered.

Lyme Disease, Scotland, Annual Totals, at 21.6.10

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Borrelia (total) (Lyme Disease)</td>
<td>37</td>
<td>28</td>
<td>85</td>
<td>81</td>
<td>86</td>
<td>96</td>
<td>17</td>
<td>0</td>
<td>23</td>
<td>5</td>
</tr>
<tr>
<td>Borrelia burgdorferi</td>
<td>3</td>
<td>2</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>1</td>
<td>2</td>
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<td>2</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

* 2009 results are provisional, Data source: Health Protection Scotland

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13 "Mountain hare range appears to be stable", GWCT Release, September 2010
Concerns with regard to animal health, their populations and to human health may be mitigated in future with further research and controlled use of Acaricide treatment on the disease carriers, including deer and hares. We believe this will be worth exploring and may in time provide an answer to local cull management. In the meantime however, we believe that it is sensible to use all the tools at our disposal, including use of snares, to control local mountain hare populations. WANE legislation should facilitate this.

**Wildlife crime – poaching**

The stage 1 review of the WANE bill held in the Scottish Parliament RAE Committee session on 15th September 2010 was intended to focus on poaching. It did not, but instead concentrated on persecution. We would like to take this opportunity to indicate wildlife crime statistics produced by the National Wildlife Crime Unit (NWCU) over the course of recent months.

**Wildlife crime statistics by priority area**

<table>
<thead>
<tr>
<th>2010 Priority Area</th>
<th>Summer 2009</th>
<th>Autumn 2009</th>
<th>Winter 09/10</th>
<th>Spring 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Badger Persecution</td>
<td>10</td>
<td>6</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Bat Persecution</td>
<td>1</td>
<td>4</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>CITES Issues</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>FWPM</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Poaching &amp; Hare Coursing</td>
<td>97</td>
<td>51</td>
<td>73</td>
<td>87</td>
</tr>
<tr>
<td>Raptor Persecution</td>
<td>17</td>
<td>5</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>127</strong></td>
<td><strong>67</strong></td>
<td><strong>86</strong></td>
<td><strong>117</strong></td>
</tr>
</tbody>
</table>

Source - Scottish Wildlife Tasking and Coordination Group (SWTCG), Tactical Assessments 2009-10, NWCU

Poaching and hare coursing have never been less than 74% of all incidents in each period. This is a persistent, serious concern. It has significant economic impact on land management, diverts keepering and stalking resource to deal with the consequences, and dominates wildlife crime policing activity. The weapons used by poachers, including inappropriate rifles and cross-bows, pose major welfare issues for animals. Poaching and coursing warrants urgent attention as part of the WANE review, not cursory treatment as occurred at the meeting. We urge the RAE Committee to give due consideration to this substantial rural problem.

**Pheasant & red legged partridges as non-natives**

We remain concerned that identifying Pheasants and Red Legged Partridges as “exempt from a no-release presumption” within WANE legislation again owes more to political positioning than it has to do with biodiversity concerns. Far from clarifying their status, it causes uncertainty as to whether the exemption might be subject to future ‘amendment’. There are similar species, equally well adapted to the Scottish countryside, which are not singled out in the same manner. Crucially, there is a long heritage of management for Pheasants and Red Legged Partridges which recognizes best practice and provides an incentive for a variety of positive actions, from the retention of
field headlands and unharvested crops to planting of hedges and trees, which helps substantially towards maintaining our wider biodiversity mosaic. The presence of Red Legged Partridges is first noted in 1668\textsuperscript{14}, with first UK breeding recorded in 1770\textsuperscript{15}. Pheasants have a first breeding record in the UK sometime before the 10\textsuperscript{th} Century\textsuperscript{16}. By any yardstick, several centuries continuous existence in the UK represents a significant, established presence. Pheasants and Red Legged Partridges should be regarded as naturalised, alongside all the other species we take for granted, from Beech and Sitka Spruce Trees to Hares and Rabbits, all of which have been introduced in the past. In this respect, Section 2A of 14 Non Native Species etc. (“Subsection (1) does not apply to…(b) red legged partridge.”) within the WANE Bill is unnecessary.

Wider agency policing

In recent oral evidence, arguments have been raised by the SSPCA for greater involvement in the policing of wildlife. It is our belief that first and foremost, this should be carried out by the Constabularies, through well trained Wildlife Crime Officers and supported through the National Wildlife Crime Unit so they are equipped to deal with the full range of wildlife crime. Such policing will have commitment to ensuring that prosecution of the Law is carried out with strict impartiality, observing all relevant protocols and based on the rules of evidence. Crime is, and should fundamentally remain a police matter. We have particular concern that facilitating other agencies to carry out this work will carry institutional bias that may not always help solve wildlife crime. As mentioned earlier, we also believe policing and prosecution should be complemented by preventative initiatives, which have featured little in the debate so far.

Badgers

We referred in our written submission on the WANE Bill to the issue of unoccupied badger setts. As this has not formed any significant part of oral debate so far, we either assume that this point has been recognized, or that it has been submerged by other features. Nevertheless, we reiterate our concern that foresters, developers and farmers are unnecessarily prevented from working near \textit{non-active} badger setts, and that keepers are likewise unable to cull foxes that have occupied old setts. This has resulted in cases where perfectly law-abiding citizens cannot progress their legitimate work, or at worst, are being taken to court. In some instances, setts that have remained unoccupied over a considerable time, and holes of unknown origin are defined as Badger setts. \textbf{We repeat our view that it would be sensible to take the opportunity to use the current Bill to define ‘active’ and ‘inactive’ Badger setts.}

Scottish Gamekeepers Association
25 October 2010

\textsuperscript{14} Charleton, W. 1668 Onomasticon Zoicon
\textsuperscript{15} Brown, A. 2007. British Birds 100 214:243
This supplementary submission is lodged on behalf of the Scottish Raptor Study Groups (hereinafter “SRSGs”) for Stage 1 of the Wildlife and Natural Environment (Scotland) Bill. The submission arises partly from evidence given at the meeting of the Rural Affairs and Environment Committee on 6th October 2010, at which SRSGs gave evidence.

It has been said that the costs and burdens of a licensing system (relating to game bird management and shooting) would be disproportionate. SRSGs feel that these costs and burdens would be in no way disproportionate (and would not unduly inconvenience law-abiding estates) given the blatant disregard of the species protection laws that prevails in some quarters and its consequent adverse effect on populations of some scarce, specially protected raptor species. SRSGs contend that a system of licensing, relating to both landholdings and persons, coupled with a vicarious liability provision as suggested in SRSGs’ original written submission, are necessary elements to counter this problem. Incidentally and while quite rightly much attention has been paid to the iniquity of criminal poisoning, it should be noted that other forms of raptor persecution (such as shooting, trapping and nest destruction) are having a serious impact on, for example, hen harriers and peregrines in certain parts of Scotland.

It has been said that the answers to the raptor persecution problem are (one) better enforcement of the existing law and (two) reliance on a voluntary, self-policing system and code of good practice approach. The problem with the first of these propositions is that, although the existing law in itself is good, its enforcement leaves much to be desired; those determined to break the law are well aware of this. Useful practical steps would be to make wildlife crime technically recordable and to give additional powers of entry onto land (not buildings) for purposes of evidence gathering. The second proposition falls down as, while the more responsible owners and managers of land would do their best to make voluntary systems and codes of good practice work, there are those who would deliberately sidestep them – perhaps at the same time for form’s sake paying lip service to such voluntary systems and codes of practice.

SRSGs argued in their original written submission for alteration of the definition of livestock in Section 27(1) of the Wildlife and Countryside Act 1981, so that the definition should extend only to any animal (kept for the provision or improvement of fishing or shooting) that is wholly confined, i.e. in the case of a game bird before
being put out to a release pen. The present Section 27(1) definition has the appearance of an aberration that found its way into the 1981 Act. As much still remains to be discovered about the impact of non-native game birds on native wildlife it seems mistaken to countenance - as is the case through the present livestock definition - any control of native raptors (relatively scarce) in the supposed interests of keeping up the numbers of (already abundant) non-native game birds. SRSGs wish to make these points as, although the phrase “classing pheasant and red-legged partridge as livestock” was mentioned at the Committee’s 6th October 2010 meeting, the matter was not followed through with subsequent discussion.

An amendment to Section 16 of the 1981 Act was suggested (in the course of other evidence given to the Committee) so as to take into account economic and recreational issues in terms of Article 2 of the European Birds Directive when possible species control licensing is being considered. SRSGs consider that this is a misplaced suggestion. Any “taking account of economic and recreational requirements” – in the wording of Article 2 – that is used as an argument towards, for instance, licensed control of raptors at non-native game bird release pens is overshadowed by the greater economic and recreational requirements of those who want to see and to safeguard the living bird, in this case the native raptor. This is particularly so in the light of the minimal damage to non-native game birds due to raptors by comparison with various other much greater causes of mortality.

Patrick Stirling-Aird
Secretary, Scottish Raptor Study Groups
27th October 2010
At the Rural Affairs and Environment Committee meeting on 7 September 2010, Karen Gillon asked Malcolm Strang Steel what the SRPBA had said about single witness evidence in its consultation response, and this note is just to follow up on that issue as Malcolm did not have the information to hand.

At the consultation stage we were of the view that the status quo should be maintained i.e. single witness evidence should be retained for poaching offences.

Since the consultation, our CEO has chaired the PAW Poaching and Hare Coursing Crime Priority Group which has discussed this issue in some detail. This group is run by the police and comprises various industry bodies including the national Wildlife Crime Unit. The view from that group was that the use of single witness evidence is very limited and hardly ever used.

This matter was not raised specifically in our written evidence to the Committee. Whilst the SRPBA believes that single witness evidence could be useful in prosecuting these types of offences, we must take on board the views of those at the coalface in prosecuting offences. It may be useful for the Committee to explore with fiscauls or police how many successful prosecutions there have been in recent years based on single witness evidence. If it can be shown to be a reliable and useful tool then we see no reason why it should not be considered in relation to other serious offences. If on the other hand there are practical difficulties in using single witness evidence then perhaps its retention in the Bill is of questionable value. The Thematic Review carried out by the Inspectorate of Prosecution in Scotland found that there was no desire to reconsider the need for corroboration of evidence in other wildlife cases than it currently applies. On the contrary it was stated by one agency that corroboration served to protect against any accusations of malpractice.

The SRPBA has never made any statements opposing the extension of single witness evidence, but any measure introduced needs to be effective in the detection and prosecution of serious wildlife offences.

As a supplementary follow-up point, the issue of enforcement in relation to poaching and other offences was raised briefly yesterday and this note provides some information which the Committee may find useful in this regard which was not brought out yesterday.

The SRPBA has been working with Central and Tayside Police to devise a workable model to deliver additional rural policing through use of volunteer police specials.
specials would be recruited from employees across rural Scotland, keepers, foresters, farm workers etc. This would be part of a recognised police project called Employer Supported Policing which is already established in other business sectors e.g. retail and finance in urban areas. Employers grant their employees paid time off to undertaking policing duties within their own community area/region.

With an increase in all forms of rural crime and financial cut backs to come we think this project needs to be accelerated. We are currently working with the police to bespoke this approach for the rural sector in Scotland.

**Clarification**

Please also note a point of correction in the SRPBA’s written submission in relation to snaring. There was an unintentional error on our part in quoting the British Veterinary Association position, as contained on the BVA website http://www.bva.co.uk/activity_and_advice/1555.aspx and as previously quoted by the former Minister Mike Russell in the 2008 parliamentary debate on this subject http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor0220-02.htm. The BVA’s position was in fact that snaring would in some circumstances be the *least inhumane* method of control where control was necessary. Our submission misquoted this as *most humane* which was incorrect and we apologise for any confusion caused.
Preamble:
When I appeared before the Committee on 15th September I had no advance notice of the areas of interest or concern for the Committee.

Having now heard the deliberations of the Committee it seemed to me that there were four particular matters on which some additional clarification might be of assistance.

Those appeared to me to be:
(1) "vicarious liability" and poisoning offence
(2) Single witness evidence
(3) Powers of search and entry and
(4) extension of powers to wildlife inspectors.

1. Vicarious Liability
Poisoning Offences
Addendum to my Discussion Paper on Pesticides and WCA.

It may have been clear in my evidence that I was not enthusiastic about an approach being adopted which proposed the creation of some form of vicarious liability.

In my Discussion Paper I had proposed the introduction of an offence of possession of regulated substances "with intent": this was designed to address the evidential problems which flow from a discovery of noxious substances in circumstances where the evidential link to e.g. the poisoned carcass, cannot be made.

I had further suggested certain control measures which would have the effect of making the employer answerable for noxious substances possessed by his employee.

Those suggestions were based to some extent upon long experience of the operation of the Misuse of Drugs Act 1971.(MDA)

I had not previously considered it necessary to take the WCA as far as the next level on the scale of offences under the MDA.
Having heard some of the representations which were made to the Committee on Wednesday 15th September, an additional charge could usefully be added to those which I suggested in my Discussion Paper which was before the Committee, namely a charge of: -

"...being concerned in the using or placing in position of any prohibited article or substance for the purpose of committing an offence under the WCA..."

The effect of such an addition would be to replicate in the WCA the family of charges which originates in the Misuse of Drugs Act 1971 namely, (1) “bare” possession (2) possession with intent to supply and (3) being concerned in the supply.

"Bare possession " is already in WCA Section 15A. The logical place for the additional charges in the WCA would be in Section 15A (i) (ii) and (iii). For the information of the Committee the well established, much used and extremely effective charge of “being concerned “ in the prohibited activity as set out in Section 4(3)(b) of the Misuse of Drugs Act (MDA) is defined in the context of the MDA in the following terms :

“I doubt whether it is altogether helpful to treat such a provision[S.4(3)(b)] in a United Kingdom Statute merely as if it were a form of statutory concert. Under the Criminal Procedure (Scotland ) Act 1975 the charge “guilty actor or art and part” is implied in all Scottish indictments. Judging from its terms and the context in which it occurs, I consider that section 4(3)(b) is enacted in the widest terms and was intended to cover a great variety of activities both at the centre and also on the fringes of dealing in controlled drugs. It would, for example, in appropriate circumstances, include the activities of financiers, couriers and other go-betweens, lookouts, advertisers and many links in the chain of distribution. It would certainly, in my opinion, include the activities of persons who take part in the breaking up of bulk, the adulteration and reduction of purity, the separation and division into deals and the weighing and packaging of deals.”( Kerr v HMA 1998 SCCR 81)

A charge of “being concerned in the using or placing in position” of regulated substances or baits, for example, would be available in circumstances where e.g. a number of dead/poisoned birds are found on a particular estate: historic evidence is available demonstrating that the location has previously produced poisoned birds: an employee or employees have been found in possession of noxious substances: samples from different sources around the suspected location produce positive results from swabbings: noxious substances are recovered but ownership/possession cannot be attributed to a specific individual. In any combination of the foregoing circumstances, or more, it may be possible to establish that there is a course of conduct ongoing (see the Kerr definition above) of which the employer/owner cannot be unaware and could provide an effective foundation for a charge of “being concerned in” the prohibited activity. This would be capable of addressing the kind of “corporate activities” of which the Committee has heard; it would avoid the complexities to which I referred
which might arise unnecessarily from an attempt at deploying “vicarious liability” : it would have the advantage of being an operational concept with which every police officer and prosecutor in the country is familiar.

It may also be that the very presence in the WCA armoury of offences of such a sweeping offence would by its very presence operate as a substantial deterrent. I would be happy to expand on this further if the concept found favour with the Committee but suffice it to say at this stage that this addition could represent the logical completion of a family of charges whose scope is well recognised in law.

It should be borne in mind that the historical foundation for this category of prosecution probably goes back to a time when there was little or no organisational police activity in the more remote rural areas. In addition, such police presence as there may have been could have regarded bicycle transport as the cutting edge of technology.

The principal means of detection and apprehension would have been the local gamekeeper.

There remains scope for the use of “single witness “ prosecution but it should be borne in mind that this is very much the exception to the normal Scots Law requirement for corroboration.

As I mentioned in my evidence on 15th September the requirement for corroboration is one of the safeguards against wrongful conviction which is part of a much wider structure within Scots law. It is not a principle which is elected for arbitrarily in selected cases.

If the need for corroboration were to be dispensed with in wholesale categories of cases the question can reasonably be asked why it should exist at all and that is a matter which goes to the heart of our separate legal system.

3. Powers of Search and entry .
This subject is not unrelated to the lack of cohesion to which I pointed in part of my evidence. In order to illustrate just one part of the difficulties which can be experienced in practice I have now extracted from the statutes to which I referred , a number of the provisions relating to the powers of entry and search granted to Constables and Inspectors respectively.

In the interests of brevity I have not extracted them all and for the assistance of the Committee.

I append those extracts as Appendix 1 to this supplementary submission.
I would urge the Committee to cast an eye over these purely to gain some appreciation of their scale and complexity.

Even a cursory examination of the relevant provisions demonstrates that these are extremely detailed and have been crafted with care.

Within those powers distinctions are drawn between separate operational functions: the statutory provisions themselves, in most cases, are specific to particular sections of the relevant legislation as opposed to the grant of general powers.

One would be entitled to conclude from the careful drafting that proportionate balances were at least under consideration and were being reconciled between (i) the powers necessary for the enforcement of the statutory enactment and (ii) the fundamental freedoms being encroached upon.

I was accordingly a little surprised to find that it was being suggested before the Committee, if I understood the position correctly, that one of the levels of Inspectors in terms of the 2006 Act should be given the powers of police officers.

Again, if I understood matters correctly, it was being suggested at one stage that such a course would not require amending legislation. I did not understand that particular submission.

There is, however, one underlying and important provision in the powers of search and entry to which no specific reference was made viz. S.17 of Schedule 6 Animal Health and Welfare Act 2006.

“17 The powers conferred on constables by this schedule are without prejudice to any powers conferred on constables by law apart from this schedule.”

(I did touch on that matter briefly and indirectly at one stage in my own evidence (2.2.38).)

The reference may not have been clear but it was when I made reference to certain difficulties which are already being encountered in relation to the powers of inspectors, namely, whether or not they competently can, or even require to, administer any form of caution when they are seeking e.g. explanations from a suspect. (I put that in the neutral form of “seeking explanations” for reasons which follow immediately below.)

This particular issue has already arisen indirectly in one animal welfare case of which I am aware and I understand was a live issue in one other.
4. The Powers:
The powers granted to Inspectors under the 2006 Act have not yet “bedded down” in practice: some areas of potential conflict have been flagged as mentioned above.

It will be appreciated, however, that the Inspectors rightly have no power to arrest or detain a suspect and, on the face of the statutory provisions, have no power to interview or question them.

These powers of detention, arrest and questioning are, of course, inherent powers of a constable without prejudice to any powers conferred on constables by law apart from this schedule. Envisaged by S.17 of Schedule 6 above.

The consequences for successful prosecutions resulting from investigative excesses by non-police “investigators” are all too well known.

In the interests of brevity I will not dwell on this matter further other than to point out below:-

An Additional Relevant Consideration:
One other significant matter arises in this connection namely, that it is probably the case that notwithstanding that the SSPCA is a reporting agency in Scotland, neither of the Charities mentioned in evidence before the Committee (RSPB and SSPCA) is a “public authority” and “…has no public functions within the meaning of Section 6 of the Human Rights Act…”(RSPCA v Attorney General [2001] 3 All ER 530 (at para 27)(Copy attached at Appendix 2) being private bodies regulated by their own respective Councils.

The grant of the equivalent powers of police to private individuals or organisations which are outwith the accountability of the ordinary Parliamentary process is a matter which should be viewed by legislators with some anxiety.

It is not simply a matter of “training” as was mentioned at one stage: it is a matter of accountability.

In the context of accountability I would invite the Committee to consider the issue for the moment from an alternative standpoint viz: each of the organisations concerned is undoubtedly today wholly benevolent. What if one of those organisations decided as a matter of perfectly proper private internal policy to target an activity which was otherwise lawful but contrary to their own internal policy?

e.g. 1. the Guga cull off the Butt of Lewis (August 2010) which is Licenced by SNH but is currently opposed by SSPCA.

e.g 2. snaring, of which the Committee has already heard something on their respective private policy considerations
e.g. 3. What if the Directorate or Council of either of the organisations were at any time to be represented by, or influenced by, more extreme elements of the Animal Rights spectrum?

These are private organisations controlled by the membership. Would “their” inspectors in their employment be entitled to act in a manner which was contrary to organisational policy of thir employer?

The foregoing may sound unlikely or even hypothetical events but that is the very category of conflict which was under consideration as recently as 2001 in *RSPCA V Attorney General* (cit above) where the expulsion of members of the RSPCA for activities related to the English Hunting legislation was under consideration.

I raise the above matter simply to introduce a note of caution that careful consideration requires to be given by the legislature before the granting of equivalent powers of police to private organisations or to individuals which are outwith the recognised processes of public accountability.

The Legislature is supreme and is entitled to take whatever view on these matters that it considers appropriate but it is necessary, in my opinion, that it should take into account considerations such as accountability when contemplating the kind of step which was advanced in evidence before it.

It would equally be unfortunate if principle were to be obscured in the tensions which inevitably arise when budgets and resources enter the equation.

**Conclusion:**
Finally I make brief reference to two separate additional matters viz:

**The Licensing System under the WCA.**
Some passing references to the issuing of licences under the WCA were made before the Committee in a number of different contexts.
I simply wish to add that the licensing system which began its life as a relatively modest approval scheme has developed in recent years into a minor body of law in its own right. One recent example purported to amend the substantive criminal law.

I simply suggest to the Committee that the Licensing system under the WCA is in need of attention.

The WCA Licensing system is one of the subjects on the present programme of work for the Legislation Regulation and Guidance Committee of PAWS but no work has yet been done on it.
**Codification of Wildlife Penal Provisions:**
In the course of my evidence I was invited at one stage by a member of the Committee to reflect on the possibility of codification of the penal elements of our wildlife legislation.

I have given the matter some thought and contrary to a view which I may have expressed in evidence I am of the opinion that it could be done.

I would not expect that the Committee would require further specification at this time.

T.A.K.Drummond QC
24 September 2010
Appendix 1

COMPILATION OF POWERS OF ENTRY AND SEARCH
Appendix 1.
Compilation of Search and Entry powers under Relevant Legislation  
(All Emphasis is mine for ease of reference)

Original Section 19 WCA

19.- (1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under this Part, the constable may without warrant—
(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
(b) search or examine any thing which that person may then be using or have in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing;
(c) arrest that person if he fails to give his name and address to the constable's satisfaction;
(d) seize and detain for the purposes of proceedings under this Part any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 21.

(2) If a constable suspects with reasonable cause that any person is committing an offence under this Part, he may, for the purpose of exercising the powers conferred by subsection (1), enter any land other than a dwelling-house.

(3) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that—
(a) an offence under section 1, 3, 5, 7 or 8 in respect of which this Part or any order made under it provides for a special penalty; or
(b) an offence under section 6, 9, 11(1) or (2), 13 or 14, has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable (with or without other persons) to enter upon and search those premises for the purpose of obtaining that evidence.

In the application of this subsection to Scotland, the reference to a justice of the peace includes a reference to the sheriff.

Protection of Wild Mammals (Scotland) Act 2002

7 Arrest, search and seizure

(1) A constable who suspects with reasonable cause that a person has committed or is committing an offence under this Act may without warrant—
(a) arrest that person;

(b) stop and search that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found on that person;

(c) search or examine a vehicle, animal or article which appears to belong to, or be in the possession or control of, that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found in or on it;

(d) seize and detain for the purpose of proceedings under this Act a vehicle, animal or article which may be evidence in connection with the offence or which may be made the subject of an order under Part II of the Proceeds of Crime (Scotland) Act 1995 (c. 43).

(2) A vehicle, animal or article seized under subsection (1)(d) above shall be returned to the person from whom it was seized as soon as any proceedings under this Act are concluded without the conviction of the person accused.

(3) A constable may enter land (but not a dwelling house) in order to exercise a power given by subsection (1).

Section 19 WCA as amended by Nature Conservation (Scotland) Act 2004

43 Powers of investigation etc.: police

(1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, without warrant—

(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person,

(b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person’s possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing,

(c) seize and detain for the purposes of proceedings under this Part any thing which may be evidence of the commission of the offence.

(2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, for the purpose of exercising the powers conferred by subsection (1), enter any land other than a dwelling or lockfast premises.

(3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Part has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter
those premises, if necessary using reasonable force, and search them for
the purposes of obtaining that evidence.

(4) A warrant under subsection (3) continues in force until the purpose for which
the entry is required has been satisfied or, if earlier, the expiry of such period as
the warrant may specify.

(5) A constable authorised by virtue of this section to enter any land must, if
required to do so by the occupier or anyone acting on the occupier’s behalf,
produce evidence of the constable’s authority.

(6) A constable who enters any land in the exercise of a power conferred by
this section—

(a) may—

(i) be accompanied by any other persons, and

(ii) take any machinery, other equipment or materials on to the land,
for the purpose of assisting the constable in the exercise of that power,

(b) may take samples of any articles or substances found there and remove
the samples from the land.

(7) A power specified in subsection (6)(a) or (b) which is exercisable under a
warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a
power conferred by subsection (2) or by a warrant under subsection (3), being
either unoccupied land or land from which the occupier is temporarily absent,
must leave it as effectively secured against unauthorised entry as the
constable found it.

(1) Any person authorised in writing by SNH may, at any reasonable time,
enter any land for any of the following purposes—

(a) to determine whether to give or confirm an SSSI notification or a
notification under section 5(1), 6(5), 7(3), 8(1) or 9(1) in relation to the land,

(b) to assess the condition of any protected natural feature of the land,

(c) to determine whether or not to offer to enter into a management agreement in
relation to the land or to ascertain the terms on which it should offer to enter into
such an agreement,

(d) to ascertain whether a management agreement is being, or has been,
complied with,

(e) to determine whether or not to formulate a proposal under section 29(2) for a
land management order,
(f) to ascertain whether an offence under section 19(1) or (3), 27(1) or 36(1) or (2) or under byelaws made by virtue of section 20 is being, or has been, committed on or in relation to the land,

(g) to ascertain whether an operation required to be carried out by a land management order or an order under section 40(1) has been carried out in accordance with the order,

(h) to carry out operations in pursuance of section 37 or 40(5),

(i) to determine any question in relation to the acquisition of the land by agreement or compulsorily,

(j) to determine any question in relation to compensation under section 20(3) of the National Parks and Access to the Countryside Act 1949 (c. 97) as it applies in relation to byelaws made under section 20 of this Act,

(k) to put up, maintain or remove signs, or to do anything else, for the purposes of section 41,

(l) where SNH is not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).

(2) Any person authorised in writing by the Scottish Ministers may, at any reasonable time, enter any land for any of the following purposes—

(a) to determine whether a nature conservation order, or an amending order or revoking order, should be made in relation to the land,

(b) to determine whether a land management order, or an order under section 32(3) amending or revoking such an order, should be made in relation to the land,

(c) where the Scottish Ministers are not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).

(3) The powers conferred by subsections (1) and (2) to enter land for any purpose mentioned in those subsections include power to enter for the same purpose any land other than that referred to in the subsection in question.

(4) Nothing in this section authorises any person to enter a dwelling or lockfast premises.

(5) Any person who intentionally obstructs a person acting in the exercise of any power conferred by this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Schedule 4 makes further provision about the exercise of the powers conferred by this section; and references in this section and that schedule to a power conferred by this section include references to such a power exercisable by virtue of a warrant under that schedule.
2004 Act Schedule 6

19ZC Wildlife inspectors: Scotland

(1) The Scottish Ministers may authorise any person to carry out the functions conferred by this section and section 19ZD(3), (4) and (8) (and any person so authorised is to be known as a “wildlife inspector”).

(2) An authorisation under subsection (1)—

(a) shall be in writing, and

(b) is subject to any conditions or limitations specified in it.

(3) A wildlife inspector may, at any reasonable time and (if required to do so) upon producing evidence of authorisation, enter and inspect—

(a) any premises for the purpose of ascertaining whether an offence under section 6, 9(5) or 13(2) is being, or has been, committed on those premises;

(b) any premises where the inspector has reasonable cause to believe that any birds included in Schedule 4 are kept, for the purpose of ascertaining whether an offence under section 7 is being, or has been, committed on those premises;

(c) any premises where the inspector has reasonable cause to believe that any birds are kept, for the purpose of ascertaining whether an offence under section 8(1) is being, or has been, committed on those premises;

(d) any premises for the purpose of ascertaining whether an offence under section 14 or 14A is being, or has been, committed on those premises;

(e) any premises for the purpose of verifying any statement or representation which has been made by an occupier, or any document or information which has been furnished by the occupier, and which the occupier made or furnished—

(i) for the purposes of obtaining (whether for the occupier or another person) a relevant registration or licence; or

(ii) in connection with a relevant registration or licence held by the occupier.

(4) In subsection (3)—

(a) paragraphs (a) to (c) do not confer power to enter a dwelling except for purposes connected with—

(i) a relevant registration or licence held by an occupier of the dwelling; or

(ii) an application by an occupier of the dwelling for a relevant registration or licence,

(b) paragraph (d) does not confer power to enter a dwelling.

(5) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A is being, or has been,
committed in respect of any specimen, require any person who has possession or control of the specimen to make it available for examination by the inspector.

(6) Any person who has **possession or control of any live bird or other animal** shall give any wildlife inspector acting in the exercise of powers conferred by this section such assistance as the inspector may reasonably require for the purpose of examining the bird or other animal.

(7) Any person who—

(a) intentionally **obstructs a wildlife inspector acting in the exercise of powers conferred by subsection (3) or (5); or**

(b) **fails without reasonable excuse to give any assistance reasonably required under subsection (6),**

shall be guilty of an offence.

(8) Any person who, with intent to deceive, falsely pretends to be a wildlife inspector shall be guilty of an offence.

(9) In this section—

- “relevant registration or licence” means—
  - (a) a registration in accordance with regulations under section 7(1); or
  - (b) a licence under section 16 authorising anything which would otherwise be an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A;
- “specimen” means any bird, other animal or plant or any part of, or anything derived from, a bird, other animal or plant.

19ZD Power to take samples: Scotland

(1) **A constable who suspects** with reasonable cause that a specimen found by the **constable in the exercise of powers conferred by section 19** is one in respect of which an offence under this Part is being or has been committed may require the taking from it of a sample of blood or tissue in order to determine its origin, identity or ancestry.

(2) **A constable who suspects with reasonable cause that an offence under this Part is being or has been committed in respect of any specimen** (“the relevant specimen”) may require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.

(3) **A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed,** require the taking of a sample of blood or tissue from a specimen
found by the inspector in the exercise of powers conferred by section 19ZC(3)(a) to (d) in order to determine its origin, identity or ancestry.

(4) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed in respect of any specimen ("the relevant specimen"), require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the inspector suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.

(5) No sample from a live bird, other animal or plant shall be taken pursuant to a requirement under this section unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.

(6) No sample from a live bird or other animal shall be taken pursuant to such a requirement except by a veterinary surgeon.

(7) Where a sample from a live bird or other animal is to be taken pursuant to such a requirement, any person who has possession or control of the specimen shall give the person taking the sample such assistance as that person may reasonably require for that purpose.

(8) A constable entering premises under section 19(2), and any wildlife inspector entering premises under section 19ZC(3), may take with him a veterinary surgeon if the constable or, as the case may be, inspector has reasonable grounds for believing that such a person will be required for the exercise on the premises of powers under subsection (1) or (2) or, as the case may be, (3) or (4).

(9) Any person who—
(a) intentionally obstructs a wildlife inspector acting in the exercise of the power conferred by subsection (3),
(b) fails without reasonable excuse to make available any specimen in accordance with a requirement under subsection (2) or (4), or
(c) fails without reasonable excuse to give any assistance reasonably required under subsection (7),
shall be guilty of an offence.

(10) In this section—
(a) “specimen” has the same meaning as in section 19ZC;
(b) in relation to a specimen which is a part of, or is derived from, a bird, other animal or plant, references to determining its origin, identity or ancestry are to determining the origin, identity or ancestry of the bird, other animal or plant."

Protection of Badgers Act (Sched 6)
“11 Powers of constables

(1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, without warrant—

(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;

(b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person’s possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing;

(c) arrest that person;

(d) seize and detain for the purposes of proceedings under this Act any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 12(4) below.

(2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, for the purpose of exercising the powers conferred by subsection (1) above, enter any land other than a dwelling or lockfast premises.

(3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Act has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.

(4) A warrant under subsection (3) above continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.

(6) A constable who enters any land in the exercise of a power conferred by this section—

(a) may—

(i) be accompanied by any other persons; and

(ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the constable in the exercise of that power;

(b) may take samples of any articles or substances found there and remove the samples from the land.
(7) A power specified in subsection (6)(a) or (b) above which is exercisable under a warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) above or by a warrant under subsection (3) above, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”

Animal Health & Welfare 2006 Act

36ZA Seizure of carcases etc.: further provision for Scotland

(1) The Scottish Ministers may by order make provision for—

(a) the seizure of anything (whether animate or inanimate) which appears to them might be capable of carrying or transmitting any disease to which this subsection applies;

(b) the destruction, burial, disposal or treatment of anything seized under the order; and

(c) regulating the matters mentioned in paragraphs (a) and (b).

(2) Subsection (1) does not authorise provision for the seizure of a live animal, bird or amphibian; but an order under that subsection may provide for the seizure of carcases and of anything obtained from or produced by an animal, bird or amphibian.

(3) Subsection (1) applies to the diseases in the case of which any power of slaughter is exercisable under or by virtue of section 16B, Part 2B or Schedule 3A.

(4) A person commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person throws or places, or causes or suffers to be thrown or placed, into—

(a) any river, stream, canal, navigation or other water; or

(b) the sea within 4.8 kilometres of the shore,

the carcase of, or anything obtained from or produced by, an animal, bird or amphibian which has been slaughtered in the exercise of any power conferred by or under section 16B, Part 2B or Schedule 3A.

(5) In this section, the references to an animal mean any kind of mammal (except man).

(8) A person to whom a restriction notice is given must arrange for each creature to which the notice applies and which is owned by the person—

(a) to be castrated or (as appropriate) sterilised within such period, of not less than 21 days, as may be specified in the notice; or
(b) to be slaughtered within such period, of not less than 21 days, as may be specified in the notice,
whichever the person considers appropriate.

(9) But where a request for a review is made under section 36Q(1), the operation of the restriction notice is, so far as relating to the matters subject to review, suspended until the review is determined.

(10) For the purposes of subsection (2), exceptional circumstances include circumstances in which the imposition in relation to the livestock of the restrictions and requirements mentioned in subsections (6) to (8) is likely to—
(a) cause the extinction of the breed or type of which the livestock is a member; or
(b) jeopardise the sustainability of a common or well-established breed.

(11) For the purposes of this Part, “slaughter” includes the killing of a fish.

Enforcement

36U Powers of entry

(1) An inspector may enter any premises in Scotland for the purpose of—
(a) ascertaining whether a function of the Scottish Ministers or inspectors under this Part should be exercised; or
(b) doing anything in pursuance of or in connection with the exercise of that function.

(2) An inspector acting under subsection (1) must, if required, produce evidence of the inspector's authority.

36X Interpretation

In this Part—

- “keeper” includes an owner;
- “inspector” means—
  (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
  (b) a person authorised by the Scottish Ministers for those purposes;
- “livestock” means—
  (a)
any creature, including a fish, which is kept, fattened or bred for the production of food, wool, skin or fur;
(b) any creature, other than a dog, which is kept for use in the farming of land; and
(c) any equine animal;
• “premises” includes—
  (a) any land or building; or
  (b) any other place, in particular—
    (i) a vehicle or vessel; or
    (ii) a tent or moveable structure;
• “TSE” means transmissible spongiform encephalopathy.”.

12 Powers of entry etc.

After section 62F of the 1981 Act there is inserted—

“62G Powers of entry etc.: Scotland

(1) An inspector may enter any premises in Scotland for the purpose of—
(a) ascertaining whether a power of slaughter conferred by or under any provision mentioned in subsection (3) should be exercised; or
(b) doing anything in pursuance of or in connection with the exercise of such a power.
(2) A power of slaughter conferred by or under any provision mentioned in subsection (3) extends to the taking of any action for the purposes of or in connection with the exercise of the power.
(3) The provisions are—
(a) section 16B of;
(b) section 32 of;
(c) Schedule 3 to;
(d) Schedule 3A to,
this Act.
(4) **An inspector** acting under subsection (1) must, if required, produce evidence of the inspector's authority.

(5) Where any power of entry conferred on an inspector by this Act is exercised in relation to premises used exclusively as a dwelling-house, 24 hours' notice of the intended entry is to be given to the occupier unless the inspector thinks the case is one of urgency.

(6) Any power of entry conferred on an inspector by this Act must be exercised at a reasonable hour unless the inspector thinks the case is one of urgency.

(7) In this section and sections 62H and 62I, an “**inspector**” means—

(a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or

(b) a person authorised by the Scottish Ministers for those purposes.

(8) In this section and sections 62H and 62I, “**premises**” includes—

(a) any land or building; or

(b) any other place, in particular—

(i) a vehicle or vessel; or

(ii) a tent or moveable structure.

**62H Warrants**

(1) A sheriff or justice of the peace may issue a warrant authorising an inspector to enter (if necessary using reasonable force) any premises in Scotland for the purpose mentioned in subsection (2), if satisfied by evidence on oath that—

(a) the first condition is satisfied; and

(b) either the second or the third condition is satisfied.

(2) The purpose is that of—

(a) ascertaining whether a function of the Scottish Ministers or inspectors under this Act should be exercised; or

(b) doing anything in pursuance of or in connection with the exercise of such a function.

(3) The evidence must include—

(a) a statement as to whether any representations have been made by the occupier of the premises to an inspector concerning the purpose for which the warrant is sought;

(b) a summary of any such representations.
(4) The first condition is that there are reasonable grounds for an inspector to enter the premises for that purpose.

(5) The second condition is that each of the following applies—

(a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision;

(b) the occupier has failed to allow entry to the premises on being requested to do so by an inspector; and

(c) the occupier has been informed of the intention to apply for the warrant.

(6) The third condition is that—

(a) the premises are unoccupied or the occupier appears to be absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or

(b) the object of entering would be defeated if the occupier were requested to allow entry or informed of an intention to apply for a warrant.

(7) A warrant issued under this section must be executed at a reasonable hour unless the inspector thinks the case is one of urgency.

(8) A warrant issued under this section remains in force for one month starting with the date of its grant.

62I Entry and warrants: supplementary

(1) This section applies to an inspector who enters any premises by virtue of a power conferred on the inspector by or under this Act or under a warrant under section 62H.

(2) The inspector may take on to the premises—

(a) such other persons as the inspector thinks necessary to give the inspector such assistance as the inspector thinks necessary;

(b) such equipment as the inspector thinks necessary.

(3) The inspector may require any person on the premises who falls within subsection (4) to give the inspector such assistance as the inspector may reasonably require.

(4) The following persons fall within this subsection—

(a) the occupier of the premises;

(b) a person appearing to the inspector to have charge of animals on the premises;

(c) a person appearing to the inspector to be under the direction or control of a person mentioned in paragraph (a) or (b).

(5) If the inspector enters any premises by virtue of a warrant issued under section 62H the inspector must at the time of entry—
(a) serve a copy of the warrant on the occupier of the premises; or
(b) if the occupier is not on the premises, leave a copy of the warrant in a conspicuous place on the premises.

(6) If the inspector enters any unoccupied premises the inspector must leave them as effectively secured against entry as the inspector found them.”.

13 Inspection of vehicles

After section 65A of the 1981 Act there is inserted—

“65B Inspection of vehicles: Scotland

(1) If each of the conditions in subsection (2) is satisfied, an inspector may stop, detain and inspect any vehicle to ascertain whether the provisions of any of the following are being complied with—

(a) this Act;
(b) an order under this Act;
(c) a regulation of a local authority made in pursuance of such an order;
(d) regulations made by the Scottish Ministers under this Act.

(2) The conditions are—

(a) that the vehicle is in an infected place or area;
(b) that the inspector is accompanied by a constable in uniform.

(3) In this section, a “vehicle” includes—

(a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
(b) anything on a vehicle;
(c) a detachable part of a vehicle;
(d) a container or other structure designed or adapted to be carried by or on a vehicle.”.

32 Taking possession of animals

(1) An inspector or a constable may, if it appears that a protected animal is suffering—

(a) take, or
(b) arrange for the taking of,

such steps as appear to be immediately necessary to alleviate the animal’s suffering.
(2) However, subsection (1) does not authorise the destruction of a protected animal (for which section 35 makes provision).

(3) If a veterinary surgeon certifies that a protected animal is—

(a) suffering, or

(b) likely to suffer if its circumstances do not change,

an inspector or a constable may take possession of the animal.

(4) **But an inspector or a constable may** take that step, or arrange for the taking of that step, without the certification of a veterinary surgeon if—

(a) it appears that the animal is—

(i) suffering, or

(ii) likely to suffer if its circumstances do not change, and

(b) it is reasonable in the circumstances not to seek the assistance of, or wait for, a veterinary surgeon.

(5) Where possession is taken of an animal under subsection (3) or (4), **an inspector or a constable** may also take possession of any dependent offspring of the animal.

(6) Where possession is taken of an animal under subsection (3), (4) or (5), **an inspector or a constable** may—

(a) remove the animal, or arrange for it to be removed, to a place of safety,

(b) care for the animal, or arrange for it to be cared for—

(i) at the place where it was found,

(ii) at such other place as the inspector or constable considers appropriate.

(7) **An inspector or a constable** may use (or arrange to have used) a mark, microchip or another method for identifying any animal so taken.

(8) **An inspector or a constable may**, in acting under subsection (6)(b)(i), make use of any equipment found at the place.

(9) A veterinary surgeon may examine, and take samples from, an animal for the purpose of determining its condition for the purposes of subsection (3).

(10) In considering, for the purposes of subsection (3) or (4), whether an animal is likely to suffer if its circumstances do not change, account may be taken of any suffering of other animals that are (or were recently) subject to similar circumstances at the same place.

(11) **Any expenses reasonably incurred by an inspector or a constable in consequence of acting under this section are to be reimbursed by the owner or any other person responsible for the animal concerned.**

(12) This section is without prejudice to—
(a) the ability of an **inspector or a constable** to take possession of an animal
with the consent of its owner or of any other person who is responsible for it, and
(b) any other authority for taking possession of an animal.

**49 Vets, inspectors and constables**

(1) In this Part, “veterinary surgeon” means a person registered in the register of
 veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (c. 36).

(2) In this Part, an “inspector” is, in the context of any particular provision, a person—
(a) appointed as an inspector by the Scottish Ministers, or authorised by them, for the purposes of the provision, or
(b) appointed as an inspector by a local authority for the purposes of the provision.

(3) In subsection (2)(b), a “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

(4) An inspector incurs no civil or criminal liability for anything which the inspector does in purported exercise of any functions conferred on the inspector by a provision of this Part, or by regulations made under this Part, where the inspector acts on reasonable grounds and in good faith.

(5) Subsection (4) does not affect any liability of any other person in respect of the thing done.

(6) In this Part, a “constable” means a constable of a police force.

(7) Schedule 1 makes provision in relation to powers of inspectors and constables for the purposes of and in connection with this Part.

**SCHEDULE 1**

**POWERS OF INSPECTORS AND CONSTABLES FOR PART 2**

*(introduced by section 49(7))*

**Entry and inspection in connection with Community obligations**

1 (1) An inspector may enter and inspect any premises for the purpose of ascertaining compliance with any regulations made under Part 2 which implement a Community obligation.

(2) Sub-paragraph (1) does not apply in relation to domestic premises.

**Entry and search where animals in distress**

2 (1) A sheriff or justice of the peace may grant a warrant under this sub-paragraph if satisfied—
(a) that there are reasonable grounds for believing that there is at premises a protected animal which—
(i) is suffering, or
(ii) is likely to suffer if its circumstances do not change, and
(b) that paragraph 5 is complied with in relation to the premises.

(2) A warrant under sub-paragraph (1) authorises an **inspector or a constable to enter and search** the premises for the purpose of exercising any power conferred by sections 32 and 35.

(3) An inspector or a constable may—
(a) enter and search premises for the purpose of exercising any power conferred by sections 32 and 35, and
(b) do so without a warrant under sub-paragraph (1),
if it appears that immediate entry is appropriate in the interests of an animal.
(4) Sub-paragraph (3) does not apply in relation to domestic premises.

Entry and inspection in connection with offences

3 (1) An inspector may, if there are reasonable grounds for believing that an offence under Part 2 has been committed at premises, enter and inspect the premises for the purpose of ascertaining whether or not an offence under that Part has been committed there.
(2) Sub-paragraph (1) does not apply in relation to domestic premises.

Entry and search etc. in connection with offences

4 (1) A sheriff or justice of the peace may grant a warrant under this sub-paragraph if satisfied—
(a) that there are reasonable grounds for believing—

(ii) that evidence of the commission of, or participation in, a relevant offence is to be found at premises, and
(b) that paragraph 5 is complied with in relation to the premises.
(2) A warrant under sub-paragraph (1) authorises an inspector or a constable to—
(a) enter the premises, and
(b) search for, examine and seize any animal (including the carcase of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence.
(3) An inspector or a constable may—
(a) enter premises and search for, examine and seize any animal (including the carcase of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence, and
(b) do so without a warrant under sub-paragraph (1),
if it appears that delay would frustrate the purpose for which the search is to be carried out.
(4) Sub-paragraph (3) does not apply in relation to domestic premises.
(5) In this paragraph, a “relevant offence” is—
(a) an offence under sections 19 to 23,
(b) an offence under section 24,
(c) an offence under section 29,
(d) an offence under section 40(11).

Conditions for granting warrants

5 (1) This paragraph is complied with in relation to premises if either of the conditions specified in sub-paragraphs (2) and (3) is met.
(2) The condition is—
(a) that—
(i) admission to the premises has been refused, or
(ii) such a refusal may reasonably be expected, and
(b) that—
(i) notice of the intention to seek a warrant has been given to the occupier of the premises, or
(ii) the giving of such notice would frustrate the purpose for which the warrant is sought.
(3) The condition is that the premises are unoccupied or the occupier is temporarily absent.

Stopping and detaining vehicles etc.

6 (1) A constable in uniform may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.
(2) An inspector, if accompanied by a constable in uniform, may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.
(3) A vehicle or vessel may be detained under sub-paragraph (1) or (2) for as long as is reasonably required for the exercise of the power concerned.
(4) The power concerned may be exercised either at the place where the vehicle or vessel was first detained or nearby.

Entry and search etc.: supplementary

7 A warrant granted under a provision of this schedule remains in force for one month beginning with the date on which it was granted.
8 (1) A relevant power is exercisable only at a reasonable time.
(2) Sub-paragraph (1) does not apply if it appears that exercise of the power at a reasonable time would frustrate the purpose of exercising the power.
9 (1) A relevant power is exercisable, if necessary, by using reasonable force.
(2) Sub-paragraph (1) does not apply to a power conferred by paragraph 1 or 3.
10 A person exercising a relevant power must, if required, produce evidence of the person’s authority.
11 (1) A relevant power includes power to take onto premises—
(a) such persons for assistance, and
(b) such equipment,
as are required for the purpose of the exercise of the power.
(2) A relevant power includes power to secure the taking of any of the steps mentioned in sub-paragraph (3).
(3) Those steps are—
(a) carrying out tests on, and taking samples from—
(i) an animal (including a carcase of an animal),
(ii) any equipment, substance or other thing,
(b) using a mark, microchip or another method of identifying an animal.
12 (1) A qualifying person must—
(a) comply with any reasonable direction made by a person exercising a relevant power, and
(b) in particular, give that person such information and assistance as that person reasonably requires.
(2) In sub-paragraph (1), a “qualifying person” is—
(a) the occupier of premises in relation to which a relevant power is being exercised,
(b) a person who appears to be responsible for animals at the premises,
(c) a person who appears to be under the direction or control of a person referred to in paragraph (a) or (b).

13 A person exercising a relevant power in relation to unoccupied premises must leave the premises as effectively secured against entry as the person found them.

**Offences of obstruction**

14 (1) A person commits an offence if, without reasonable excuse, the person contravenes paragraph 12(1).

(2) A person commits an offence if the person intentionally obstructs a person in the exercise of a relevant power.

15 (1) A person commits an offence if the person intentionally obstructs a person in the exercise of a power conferred by—

(a) section 32,
(b) an order under section 34(1),
(c) section 35.

(2) A person commits an offence if the person intentionally obstructs a person in the carrying out of—

(a) a deprivation order,
(b) a seizure order,
(c) an interim order under section 41(9) or 43(5).

**Powers of constables: supplementary**

16 A constable may arrest without warrant any person whom the constable reasonably believes is committing or has committed an offence under—

(a) sections 19 to 23, or
(b) paragraph 14 or 15.

17 The powers conferred on constables by this schedule are without prejudice to any powers conferred on constables by law apart from this schedule
APPENDIX 2

RSPCA v Attorney General

[2001] 3 All ER 530
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

BAILII Citation Number: [2001] EWHC 474 (Ch)
HC 2000 1695

Royal Courts of Justice
Strand
London WC2A 2LL
26th January 2001

Before:
MR JUSTICE LIGHTMAN
BETWEEN:

THE ROYAL SOCIETY FOR THE
PREVENTION
OF CRUELTY TO ANIMALS
Claimant
and

(1) HER MAJESTY'S ATTORNEY
GENERAL
(2) RICHARD HANNAY MEADE
(3) NIGEL BARON VINSON OF RODDAM
DENE
(4) GILLIAN ROSEMARY ATKINSON
Defendants

Mr David Unwin QC & Ms Francesca Quint (Instructed by Messrs Nabarro Nathanson, 50 Stratton Street, London W1X 5FL) appeared on behalf of the Claimant.
Mr John Martin QC & Mr Michael Patchett-Joyce (Instructed by Messrs Charles Russell, Killowen House, Bayshill Road, Cheltenham, GL50 3AW) appeared on behalf of the Second, Third and Fourth Defendants.
Mr William Henderson (Instructed by the Treasury Solicitor, Queen Anne’s Chambers, 28 Broadway, London SW1H 9JS) appeared on behalf of the Attorney General
INTRODUCTION

1. These are charity proceedings commenced with the leave of the Charity Commissioners by the Royal Society for the Prevention of Cruelty to Animals ("the Society"), a registered charity. The Society has a long established policy opposing hunting with dogs ("the Policy on Hunting"). There have for some years been campaigns to persuade supporters of hunting to join the Society and together to bring about a change in the Policy on Hunting. The Society considers that these campaigns and the activities of members who join the Society for the purpose of bringing about a change in that policy in order to protect field sports (whether or not pursuant to such campaigns) are damaging to the Society and it wishes (if it lawfully can) to adopt: (1) a policy on membership ("the Membership Policy") which will enable the Society to remove and exclude these persons from the Society and (2) an administratively convenient scheme for implementing the Membership Policy ("the Scheme"). Both the Membership Policy and the Scheme are highly contentious, and there is a dispute whether the Rules admit of their adoption and whether (if they do) the members of the Council as the governing body of the Society ("the Council") would be acting properly as charity trustees if they did adopt them. In these circumstances the Society seeks the guidance of the court: (a) to the construction of the relevant rules; and (b) whether it can adopt the Membership Policy and the Scheme. There is also raised as a preliminary issue the question whether existing members and applicants for membership who may be affected by the adoption or implementation of the Membership Policy and the Scheme have the necessary standing to raise questions as to their lawful character and to participate in these proceedings.

2. The Society currently has about 1,400 life members and 53,200 annual members of whom 15,836 are joint members. (Couples living together as partners at the same address may apply for joint membership). To become a member it is necessary to sign a declaration of support for the objects of the Society. Membership subscriptions are not a significant source of income for the Society compared with gifts and legacies. Life membership for an individual costs £500 and for joint members £750. Annual membership costs £17.50 for an individual and £25 for joint members. The administrative costs of processing applications for membership means that the financial benefit to the Society is limited. The direct administrative costs to the Society of individual and joint members paying by cheque total £12.79 and £17.56 respectively in the first year of joining and £11.86 and £16.19 respectively in subsequent years. Legacies are the main source of income for the Society. In 1998, the year’s legacy income was £26 million. The members elect the Council and can speak and express their views at Annual and Extraordinary General Meetings and on polls. If they disapprove of the policies adopted by the Council, they can vote in new members of the Council who will adopt different policies. The Council had delegated to its Supporters Care Department ("the Department") as an administrative function the processing of applications for membership.

3. There are 25 members of the Council. They are charity trustees within the meaning of the Charities Act 1993. 15 of the 25 are elected by postal vote of members entitled to vote
(one third of the 15 retire each year). 10 are elected regionally by the Society's local branches. These retire every third year. The Council formulates the Society's policies on animal welfare and decides on priorities for its work and expenditure. The Society's work is very broadly based and is carried out by a combination of paid staff and volunteers (who may be, but often are not, members of the Society). There are currently five priority areas: the inspectorate, companion animals, farm animals, alternative to laboratory animals and international work. In 1998 the Society investigated 124,374 cruelty complaints, leading to 3,114 convictions and 819 banning orders, and treated 180,095 animals. The Society has a long history of campaigning for changes and improvements in animal welfare including campaigns to support legislation. These started in 1826 with a petition to Parliament to abolish bull baiting. Since 1976 the Society has steadfastly maintained the Policy on Hunting which opposes all forms of hunting with dogs or other animals and supports moves to introduce and pass legislation banning foxhunting. The Policy on Hunting has been an issue on which over the years there has been recurrent conflict between members of the Society.

4. The Policy on Hunting is strenuously opposed by the supporters of foxhunting, and these supporters include members of the Society and non-members who support the aims of the Society. The second defendant, Mr Meade, is an annual member of the Society and a former member of the Council who under the names (in 1996-7) of the Country Sports Animal Welfare Group ("CSAWG"), (in 1988) of the Animal Welfare Committee of the Countryside Alliance ("AWCCA") and (in and since 1998) of the Countryside Animal Welfare Group ("CAWG") has campaigned to change the Policy on Hunting and to this end has set out to recruit as new members of the Society persons who, as well as supporting the objects of the Society, are supporters of hunting with the object that these new members will vote at meetings of the Society to bring about the change to the Policy on Hunting which he wants. The Council is anxious to prevent campaigns to recruit supporters of hunting as new members for this specific purpose and pending the determination of the questions raised in this case has placed in abeyance some 600 applications for membership made in the period commencing in December 1999 and ending in March 2000. The third and fourth defendants are two of such applicants. The Society joined the first defendant, the Attorney General, as a defendant to represent the interests of charity. The second to fourth defendants applied to be joined as defendants and were so joined on terms to which I will later refer.

CONSTITUTION OF THE SOCIETY

5. I turn to the constitution of the Society. The Society was founded in 1824 as an unincorporated association having as its objective “the mitigation of animal suffering and the promotion and expansion of the practice of humanity towards the inferior classes of animated beings”: see the Recital to the Royal Society for the Prevention of Cruelty to Animals Act 1932 ("the 1932 Act"). By 1932 its membership had grown to over 7,500 and in that year by the 1932 Act (a Private Act) the Society was incorporated. The 1932 Act has been supplemented on administrative and investment matters by two later Acts passed in 1940 and 1958, neither of which is relevant. Section 4 of the 1932 Act provided:

"The objects of the Society shall be to promote kindness and to prevent or suppress cruelty to animals and to do all such lawful acts as the Society may consider to be conducive or incidental to the attainment of those objects."

6. The Rules of the Society have undergone a series of changes over the years. A resolution at a general meeting is required for any change in the Rules. Since the history of a provision in the Rules can in rare cases be relevant on construction when the Rules
are ambiguous or uncertain (see National Grid Plc v. Laws (1997) PLR 157 at para 73), I shall shortly set out the history of the relevant provisions in the Rules, adding a few comments as I proceed.

7. The 1932 Rules provided (in Rule IV) that the Council shall have the management of the Society which may delegate its powers and duties to a committee of the Council ("a Committee"). This continues to be the position under the current rules. The 1932 Rules further provided (in Rule III(1)) that a donation of £20 constituted the donor a life member and (in Rule III(2)) that the payment of an annual subscription of £1 constituted the subscriber an annual member. Rule III(3) placed a safeguard in respect of such donation or payment giving rise to automatic membership of the Society:

"(3) Provided always that the Council shall have power to refuse any donation or annual subscription at any time if the Council shall be of the opinion that it would not be advisable to accept such donation or subscription having regard to the objects of the Society and the Council shall not be under any obligation to give any reason for such refusal to the individual firm, corporation, association of persons or other body presenting the same"

Rule III(3) is the predecessor of the current rule (Rule III.7) whose meaning and effect lies at the heart of this dispute, but there are changes in the terms of the rule and the context. The effect of Rule III(3) was to confer on the Council a power delegable to a Committee not to accept a donor or subscriber as a life or annual member by refusing to accept the donation or subscription, but this power existed only so long as the donation or subscription had not been paid over and could only be exercised if the Council considered that it would not be advisable to accept the donation or subscription "having regard to the objects" (and not any policy) "of the Society". At that time there was no provision for automatic renewal of annual membership (first introduced in the January 1976 Rules): an existing annual member had to apply for membership in the succeeding year in the same way as a non-member and in this context Rule III.3 was clearly applicable on a renewal of annual membership. The words "at any time" made plain that a donation or subscription from an applicant for membership might be refused though a subscription had been accepted from him in previous years. Rule XXVIII, which is much in the same terms as the current rule, made provision for the expulsion of a member whose conduct was prejudicial to the interests of the Society.

8. The 1964 Rules made no material change save that in Rule III(3) there was added to the words "shall have power to refuse" the words "and/or to return" (the wording in the current rule) and Rule III(6) provided that no persons should become a life or annual member under the age of 18. The amendment to Rule III(3) extended the power of the Council to refuse membership where the donation or subscription had been paid over: the Council could return it and such return had the same effect as if it had been refused.

9. In 1973, Charles Sparrow QC conducted an inquiry into the affairs of the Society. It is plain from contemporary documents that Rule III(3) was viewed as exercisable to prevent any annual member renewing his membership: there was (as I have said) at the time no provision for automatic renewal. His report ("the Sparrow Report") made certain recommendations which the Society accepted and implemented.

10. The January 1976 Rules made significant changes which are reflected in the current rules:

"III(1) (a) Completion of a form of application supplied by the Society for life membership and payment to headquarters of a subscription of £... shall, subject as hereinafter
mentioned, constitute the applicant a life member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members

... 

(2) (a) Completion of a form of application supplied by the Society for annual membership and payment to headquarters of a subscription of £... shall subject as hereinafter mentioned constitute the applicant an annual member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members...

(b) Such person shall continue to be an annual member for twelve months from the date on which his application shall have been accepted an his name entered on the register of members and thereafter from year to year upon payment of the appropriate annual subscription ...

(6) The Council shall have power to refuse and/or to return any membership subscription at any time if the Council shall be of the opinion that it would not be advisable to accept or retain it. This power shall be exercised only by resolution of and after full consideration by the Council.

(7) A member shall cease to be a member of the Society and his name shall be removed from the register of members

(a) If his annual subscription is in arrear for three months.

(b) If by notice in writing addressed to the Society he resigns his membership.

(c) If he is removed from membership of the Society by the Council under powers conferred by the Rules.

(d) If he becomes of unsound mind."

The significant changes effected were that there was no longer automatic membership upon payment of the subscription only to the power of the Council to refuse or return the subscription: there is conferred upon the Council an absolute discretion delegable to a Committee whether to accept the application for membership; the annual member is given a right to renewal of his membership upon payment of the appropriate subscription; and the delegable power of the Council to refuse to accept or to return a subscription becomes a non-delegable power exercisable subject to the important procedural safeguards in favour of the person affected. This fundamental change in the structure of the Rules (as it seems to me) renders it unhelpful when construing the relevant January 1976 and later Rules to have regard to the terms of their predecessors before 1976.

11. The August 1976 Rules reduced the age for eligibility for membership to 17. Otherwise they made no relevant change.

12. The August 1979 Rules added a provision to Rule III(1)(a) that the completed form of application should contain a declaration of support for the objects of the Society.

14. The current Rules were adopted in 1997 and will be referred to as "the Rules". The Rules (like their predecessors) provide for the management of the affairs of the Society as follows:

"IV The Society shall be under the management of a Council hereinafter called the Council which shall subject to these Rules control the affairs, funds, property and proceedings of the Society and without prejudice to such general powers shall in particular have power –

...4. To appoint Committees of the Council and to entrust to such Committees such powers and duties as the Council thinks fit...

5. To make Bye-laws (not inconsistent with these Rules) for the management of the affairs of the Society and the regulation of the proceedings of the Council and the Committees...

By-laws made by the Council provide that the quorum for a meeting of a Committee of the Council shall be four.

15. Rule III provides that the Society shall consist of life members, annual members, ex officio members and junior members. The sub-rules to this rule read (so far as material) as follows:

"1. Life Members:

(a) Completion of a form of application supplied by the Society for life membership, which form shall contain a declaration of support for the objects of the Society, and payment to Headquarters of a minimum subscription of two hundred and fifty pounds or such higher sum as may from time to time be determined by resolution of the Council shall, subject as hereinafter mentioned, constitute the applicant a life member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members maintained at the Headquarters of the Society...

2. Annual Members

(a) Completion of a form of application supplied by the Society for annual membership, which form shall contain a declaration of support for the objects of the Society, and a payment in whole or committed part to the National Charity, Registered Charity No 219099 of a minimum subscription of eight pounds or such higher sum as may from time to time be determined by resolution of the Council shall, subject as hereinafter mentioned, constitute the applicant an annual member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members maintained at the Headquarters of the Society...

(b) such person shall continue to be an annual member for twelve months from the date on which his application shall have been accepted and his name entered on the register of members and thereafter from year to year upon payment in whole or committed part to the National Charity, Registered Charity No 219099 of the appropriate annual subscription provided that he shall not be entitled unless otherwise qualified to any of the rights and privileges of membership or speak or vote at any annual or extraordinary general meeting of the Society until three months after payment in whole or committed part (whichever is the case) of his first subscription.
5. The Society may establish and maintain a junior membership in accordance with the arrangements from time to time approved by the Council provided that such arrangements shall not confer any privileges or rights in relation to the conduct of the affairs of the Society.

6. No person shall be eligible for membership, other than junior membership, of the Society who has not attained the age of seventeen years.

7. The Council shall have power to refuse and/or to return any membership subscription at any time if the Council shall be of the opinion that it would not be advisable to accept or retain it. This power shall be exercised only by resolution of and after full consideration by Council.

8. A member shall cease to be a member of the Society and his name shall be removed from the register of members, and he shall thereupon forfeit all rights and privileges of membership.

(a) If his annual subscription is in arrear for three months.

(b) If by notice in writing addressed to the Society he resigns his membership.

(c) If he is removed from membership of the Society by the Council under powers conferred by the Rules.

16. Rule XI.16 provides:

"It shall be deemed conduct prejudicial to the interests of the Society if any officer or member of the Society or of any Branch at any time publicly misrepresents [the policy of the Society] in any communication of a public nature unless the said officer or member satisfied the Council that such misrepresentation was intentional or accidental..."

17. Provision for the expulsion of members is made in Rule XXVIII which (so far as material) reads as follows:

"A member of the Society as defined by Rule III shall cease to be a member and shall thereupon forfeit all rights and privileges as such if his conduct, in the opinion of not less than two thirds of the members of the Council present and voting at a meeting of the Council, has been prejudicial to the interests of the Society provided that prior to such meeting reasonable notice in writing shall have been given to the member of the intention of the Council to consider his conduct and an opportunity afforded him to submit any explanation either personally or in writing... The members of any Committee of the Council which has recommended the Council to exercise the power contained in this Rule in any particular case shall not be entitled to vote when any resolution in that case is put to the Council."

In answer to a question raised before me I should make it clear (a) that conduct "prejudicial to the interests of the Society" for the purposes of Rule XXVIII is not confined to conduct so described in Rule XI.16; and (b) that the fact that the Rules deem the specified conduct as prejudicial does not mean that the Society could not have held it to be prejudicial in the absence of Rule XI.16: Rule XI.16 merely underlines the seriousness
of such conduct and removes any possible doubt that it can trigger the exercise of the power of expulsion.

18. For completeness I should add that in 1996 a resolution was passed to expand the declaration of support for and compliance with the objects of the Society required of applicants for membership to include a declaration that the applicant for membership does not participate in any activity which is considered by the Society to involve avoidable suffering to animals. Lloyd J. on the 31st March 1999 held that this proposed rule change designed to require compliance with the Policy on Hunting was void for uncertainty.

**STATUS OF THE SECOND, THIRD AND FOURTH DEFENDANTS**

19. The first question which arises is the status of Mr Meade, Baron Vinson and Ms Atkinson in these proceedings. Each of them may be affected by the outcome of the proceedings. Mr Meade has been an annual member since 1970. He applied to be joined as a defendant and was made a defendant by a consent order dated the 5th June 2000. Baron Vinson and Ms Atkinson are applicants for membership whose applications are being held in abeyance. They likewise applied to be joined, and by a consent order dated the 2nd October 2000 they were also joined, but without prejudice to the right of the Society and the Attorney General to contend, if they wished to do so, that:

(a) Baron Vinson and Ms Atkinson are not persons interested in the Society or persons who would have alright to complain to the court about their exclusion from membership irrespective of the reasons for exclusion and

(b) depending on the answer to (a) above, they should not be parties to the proceedings.

In the case of all three added defendants (to whom I shall refer collectively as "the Added Defendants") all questions of costs were reserved.

20. The question of the status of the Added Defendants may be of limited significance on this application, since at the hearing the Society and the Attorney General raised no objection to their full participation in the hearing. But in view of the request by the Society and the Attorney General that I should provide some guidance on this question in case it arises again in relation to the Society, I shall do so.

21. The first issue is whether the Added Defendants are persons interested in the Society within the meaning of section 33(1) of the Charities Act 1993 and accordingly persons entitled (with the requisite permission of the Charity Commission) to commence charity proceedings challenging the propriety of any decision of the Society to remove them from membership or refuse them membership or renewal of membership. Section 33(1) provides that charity proceedings may be taken with reference to a charity either by the charity or by any of the charity trustees or by any person interested in the charity. In the case of In re Hampton Charity [1989] 1 Ch 484 at 494 G, Nicholls LJ (giving judgment of the Court of Appeal) said as follows:

"If a person has an interest in securing the due administration of a trust materially greater than, or different from, that possessed by ordinary members of the public..., that interest may, depending on the circumstances, qualify him as a 'person interested'. It may do so because that may give him ...

'some good reason for seeking to enforce the trusts of a charity or secure its due administration."
The circumstances referred to by Nicholls LJ include the particular respect in which the person in question is seeking to secure due administration: he may have the requisite interest in the due administration of the provisions of the trust e.g. in respect of his membership whilst at the same time having no such requisite interest in the due administration of provisions e.g. concerning the purchase or sale of land. The rule (like the parallel rule requiring the applicant for judicial review to have a sufficient interest) is not a technical rule of law, but a practical rule of justice affording a degree of flexibility responding to the facts of each particular case. The answer is clear in the case of Mr Meade. Rule III 2(b) makes provision for renewal of the membership of an annual member: the annual member has a special interest in the proper construction of that provision and of Rule III.7 and their due implementation so far as it may affect him. In respect of renewal he has an interest going beyond that of ordinary members of the public. He has likewise such an interest if the Council purported to exercise its power under Rule XXVIII to expel him. A life member also has such an interest in the construction and implementation of Rules III.7 and XXVIII so far as it may affect him. But I do not think that a disappointed applicant for membership has any such sufficient interest. Any member of the public is free to apply for membership: the exercise of that liberty cannot elevate the status of a non-member into that of a person interested. To extend the right of suit to any such applicant would be to cast the net too wide: consider Scott v. National Trust [1998] 2 All ER 705 at 715g. I should add, in view of the suggestion by Mr Martin to the contrary, that it does not seem to me to be a factor of any significance on the issue of the status of the Added Defendants that in 1932 by a private Act the Society was transformed from being an unincorporated association into a corporate body. The fact that the Society is now constituted by an Act of Parliament does not give a member or prospective member any greater right of access to the court.

22. The second issue is whether Baron Vinson and Ms Atkinson are able to challenge the Society's decision on their applications for membership in judicial review proceedings in the Administrative Court. It is well established that judicial review proceedings are inappropriate where the issue can be the subject matter of charity proceedings. The question raised is whether Baron Vinson and Ms Atkinson are able to bring judicial review proceedings if they do not have the necessary interest to bring charity proceedings. The answer to this question is in the negative. There is a serious question whether the Society is the sort of public body which is amenable to judicial review, most particularly in respect of decisions made in relation to its membership: consider Scott v. National Trust at p.716 F-G. The fact that a charity is by definition a public, as opposed to a private, trust means that the Trustees are subject to public law duties and judicial review is in general available to enforce performance of such duties. There is therefore a theoretical basis for allowing recourse to judicial review. It is also true that the Society is a very important charity and its activities (in particular the inspectorate and its prosecutions for cruelty to animals) are of great value to society. In particular its inspectorate is the largest non-Governmental law enforcement agency in England and Wales. But in carrying out these activities the Society is in law in no different position from that of any citizen or other organisation. Unlike the National Trust, the subject of consideration by Walker J. in Scott v. The National Trust above, the Society has no statutory or public law role. All I will say is that, though theoretically and in a proper case an application for judicial review may lie, it would not (at any rate in any ordinary case) lie at the instance of disappointed applicants for membership whose interest was insufficient to meet the statutory standard for the institution of charity proceedings. The statutory standard is laid down as a form of protection of charity trustees and the Administrative Court would rarely (if ever) be justified in allowing that protection to be circumvented by the expedient of commencing (in place of charity proceedings) judicial review proceedings. That does not mean that a disappointed applicant for membership is without recourse, for he can complain to the Charity Commission or the Attorney General and request them to take action.
23. The third issue is the status of Baron Vinson and Ms Atkinson to participate in these proceedings. It is open to the court in any proceedings, and this includes charity proceedings commenced by the trustees of a charity, to permit persons interested in the widest sense of the term to be joined as parties and (whether or not so joined) to permit such persons to make representations to the court. That is the situation in this case. I have permitted counsel for the Added Defendants to address me and I have found their contribution of the greatest value.

REFUSAL AND RETURN OF SUBSCRIPTIONS

24. The second question is whether upon the true construction of Rule III.7 the Council is vested with power on repayment of the member's subscription to remove a life or annual member from membership and to refuse renewal of his membership by an annual member.

25. The Rules have grown over the years like Topsy and the patchwork that exists today is a puzzle to construe. The overriding principle of construction must be, so far as the language used admits, (as may be presumed to have been intended by the draftsman) to make a coherent and sensible scheme by giving (so far as this is possible) effect to all of its provisions and avoiding any contradiction or logical inconsistency or any reading which deprives a provision of any legal effect.

26. Rule III 2(a) in the case of an annual member (as Rule III.1 in case of a life member) provides that on completion of the application form and payment of the required subscription "subject as hereinafter mentioned" the applicant shall become a member as from the date the Council in its absolute discretion accepts the application and his name is entered on the register of members. On their face Rule III.1(a) and Rule III.2(a) provide that the applicant's membership is made subject to the later provisions in the Rules and to the exercise by the Council of an absolute discretion exercisable according to the best interests of the Society whether or not to accept his application. It is clear from the language of the Rules that the Council can delegate the exercise of this absolute discretion to a Committee. (I shall say something later on the power of delegation). On its face Rule III.2(b) provides that renewal of annual membership is automatic on payment of the required subscription. On its face Rule III(7) is a free-standing provision. It says nothing about the effect on membership of the exercise of the power conferred, but the required formalities attaching to the exercise of the power make it highly probable that it is not simply and solely concerned with individual repayments of subscriptions, but was intended to have a substantive effect on membership. It is common ground that the language of Rule III.7 precludes any delegation by the Council to a Committee of the exercise of the power conferred by Rule III.7: the Council must alone exercise it. To make sense of the provision it must be implicit in the decision to refuse or return subscriptions that there is the refusal of, or removal from, membership of the person whose subscription is refused or returned.

27. The Society contend that Rule III.7 confers on the Council a free-standing right at any time to refuse to accept or (if paid) to return the subscription tendered or paid by a life or annual member, and in particular by an annual member exercising his right of renewal of his membership, and thereby remove him from membership. The Added Defendants contend that the rule is an addendum to, or qualification of, the absolute discretion of the Council to accept or refuse applications for membership stipulating how that discretion to refuse an application is to be exercised. I find answering this question exceptionally difficult. The second alternative involves holding that the Council itself must make the decision in every case where an application for membership is refused, a scarcely practicable and improbable scenario; it requires reading the words "subject as hereinafter contained" as a gloss, not on the provisions constituting the applicant a member (where
the words are to be found), but on the provision conferring an absolute discretion on the Council to accept applications for membership (a provision to which the words have no such connection); and it imposes on the provision conferring on the Council a delegable absolute discretion whether to accept a member the qualification that the Council is not to refuse any application unless the Council itself decides that it is contrary to the interests of the Society to accept it. These appear to me to be the most serious obstacles to accepting this construction. When I turn to the Society's construction, I am troubled construing Rule III.7 as conferring on the Council a freestanding right to return life and annual members' subscriptions and to refuse to accept renewal subscriptions by annual members, for this is tantamount to conferring a power to remove them from membership without recourse to the expulsion provisions contained in rule XXVIII with the important safeguards there provided. I am also troubled that it means that the exercise of the power in respect of life members operates to require repayment of their entire subscription with no allowance for their membership to date.

28. After anxious consideration I have concluded that Rule III.7 confers upon the Council (in addition to the absolute discretion conferred by Rule III.1 and 2(a) whether to accept any new applicant for life or annual membership) a power at any time to remove from membership and prevent the renewal of any annual membership by returning any subscription paid and refusing any subscription proffered. Rules III.1 and III.2 made plain that an applicant's life or annual membership constituted by payment of subscription and acceptance of his application for membership is "subject as hereinafter mentioned" and this must include being subject to Rule III.7; and though the formula "subject as hereinafter mentioned" is not to be found in Rule III.2(b), even as the yearly member's first year of membership is subject to Rule III.7, so must his annual membership in subsequent years. The possibility of removal from membership under Rule III.7 is an incident of annual membership whether original or renewed. The exercise by the Council of its power under Rule III.7 constitutes (for the purposes of Rule III.8(c)) the removal of the member from membership of the Society by the Council under a power conferred by the Rule III.7. It is of critical importance in this context to underline the procedural safeguards in respect of the exercise of this power which date back to the January 1976 Rules. Before this power can be exercised in respect of any member, the Council itself must give full consideration whether it would not be advisable to accept or retain the subscription and accordingly to continue that member's membership and must have passed a resolution to that effect. This procedure requires the Council as part of its full consideration to take into account any representations made to it by the individual to be removed from membership. The merit of each individual's case requires separate consideration as it does in the case and/or exercise of the parallel power under Rule XXVIII. The existence of these procedural safeguards, which do not fall far short of the safeguards provided by Rule XXVIII, provide comfort in reaching this conclusion.

DELEGATION

29. I have already said that the Council has no power to delegate any part of the decision-making under Rule III.7, in contrast with the power of the Council to delegate to a Committee its discretion whether to accept or reject an application for annual or life membership under Rules III.1 and 2(a). It is however important to recognise the limits under the Rules on this latter power of delegation to a Committee. The power is limited to delegating the exercise of the discretion to a Committee: the Council cannot delegate the discretion to anyone else (e.g. the Department) and the Committee has itself no power to delegate any discretion delegated to it by the Council. The Council (or a Committee as its delegate) can exercise its discretion by deciding to accept all applicants and giving instruction to this effect to the Department; it can lay down fixed criteria for acceptance or rejection which leave no discretion for the Department and require the Department to refer to the Council or a Committee all applications where a discretion (or judgment) has
to be exercised. The administrative inconvenience occasioned by these constraints can be ameliorated. The Byelaws may be amended to reduce the quorum for a Committee to which the exercise of the powers and duties arising under rules III.1 and III.2(a) is delegated; or the Rules maybe changed to permit delegation by the Council of these powers and duties to another body or official (e.g. the Department).

**JURISDICTION OF THE COURT**

30. I must now turn to the question raised whether the court should on this application authorise the Council to exercise its powers under the Rules to exclude from membership in order to safeguard the Society from damage. There are three stages to be gone through. The first is to decide what is the proper approach of the court on this application for guidance. The second is to decide whether the Council can adopt the Membership Policy. The third is how far the Council can implement the Membership Policy by adopting the Scheme.

31. I turn first to the question of the correct approach to be adopted by the court on this application for guidance and approval. There is a stream of authority to the effect there is a distinction between cases where trustees seek the approval by the court of a proposed exercise by them of their discretion and where they surrender their discretion to the court: see e.g. *In re Allen Meyricks Will Trust* [1966] 1 WLR 499 at 503. In cases where there is a surrender, the court starts with a clean sheet and has an unfettered discretion to decide what it considers should be done in the best interests of the trust. In cases where there is no surrender, the primary focus of the court's attention must be on the views of the trustees and the exercise of discretion proposed by the trustees. Though not fettered by those views, the court is bound to lend weight to them unless tested and found wanting and it will not without good reason substitute its own view for those of the trustees. Mr Henderson for the Attorney General however submitted that there is no difference between the two solicitors and that in both cases the court is vested with the discretion previously vested in the trustees. In support of this proposition he relies on the speech of Lord Oliver in *Marley v Mutual Security* [1991] 3 All ER 198. In that case the trustees entered into a contract for sale whose binding effect was made conditional upon obtaining the prior approval of the court. The question raised for judicial guidance was rather the question of fact whether the price agreed was the best price reasonably obtainable than how a discretion should be exercised. Lord Oliver (giving opinion of the Privy Council) held that in that case the trustees had surrendered their discretion to the court and that the court in such a situation was engaged solely in considering what ought to be done in the best interests of the trust and the beneficiaries, and that for that purpose the parties were obliged to put before the court all the material appropriate to enable it to exercise that discretion. By the terms of the contract, the trustees reposed in the court the decision whether the price was such that the contract should become unconditional and be completed. No question arose as to the distinction between a case where there was a surrender of discretion (as was held to have occurred in that case) and a case where there is no such surrender. My view that Lord Oliver's speech lends no support to Mr Henderson's proposition accords with that expressed by Hart J. in *Public Trustees v. Cooper* (unreported 20 December 1999). I shall accordingly proceed on the basis that there is no surrender of discretion in this case and that my primary focus should be on the views of the Council and the exercise of discretion proposed by them.

**THE MEMBERSHIP POLICY**

32. The Council take the view that it is in the best interests of the Society to exclude from membership anyone whose application for membership is, was or in the future will be made for the real or predominant purpose to protect field sports for their own sake and not in order to promote animal welfare and that as a means of
achieving this there should be excluded anyone whose application for membership is, was or in the future will be the result of a campaign by CAWG or any other pro-hunting body to recruit members of the Society. The Council accordingly propose to adopt the Membership Policy, that it should treat the existence of the purpose referred to or the fact of such recruitment as constituting grounds for not accepting the applicant as a member under Rules III(1)(a) and III(2)(a), for removing life and annual members from membership and for preventing renewal of annual membership under Rule III.7. (I shall consider later separately how the Council propose to implement the Membership Policy by use of the Scheme). The thinking of the Council lying behind the Membership Policy (as reduced to writing in the course of the hearing) is as follows:

"The Society exists for the purpose of its objects and not for the benefit of its members.

**The Society does not wish to have as members those who apply to join for an ulterior purpose in circumstances in which damage is being or likely to be caused to the Society.**

An applicant has an ulterior purpose if his/her real or predominant purpose for applying is to protect field sports for their own sake and not in order to promote animal welfare.

Applying to join in response to a Campaign as defined in the Schedule to the Claim Form is evidence of such an ulterior purpose.

Damage is caused by the Campaign itself and by those who join in response to it. The damage relied on is that set out in Mr Tomlinson's witness statement.

The Society does not wish to exclude those who disagree with it, or wish to change, its policies, provided they are motivated by animal welfare reasons."

I shall refer to this writing as "the Policy Document".

33. Mr Tomlinson’s witness statement sets out the history of the Society's relationship with Mr Meade and the damage occasioned to the Society by campaigns orchestrated by him. Mr Meade has filed evidence in answer. The position may be stated as follows. Since early 1996 Mr Meade (either alone or with a few others) has under a variety of names led a campaign directed at persuading the Society to abandon the Policy on Hunting and expend its energies so released elsewhere, and as the means to this end has encouraged those who support hunting with dogs to join the Society and use their votes and voices as members to this end. The names he has used include the CSAWG, the AWCCA and the CAWG. It is the firmly held belief of Mr Meade and many others (including a substantial number of members of the Society) that the Policy on Hunting is highly damaging to the Society and that in particular it creates a divide between the Society and those concerned with the countryside. The debate between the two sides on the question whether the Society should abandon the Policy on Hunting has been acrimonious both within the Society and outside. So long as the policy on Hunting continues to be followed, this debate is likely to continue. I may add that no doubt, if the Society at any time abandoned the Policy on Hunting, that change would likewise be the catalyst for further equally acrimonious debate whether the Policy on Hunting should again be adopted.

34. The Council consider that the campaigns and the activities pursued in advancement of the campaigns are damaging to the Society in four ways:
(a) they damage the reputation of the Society, most particularly damaging being claims made in the course of the campaigns that the Society is in the hands of a small group of Animal Rights supporters and is no longer focused on its proper concerns of animal welfare;

(b) they hinder the work of the Society, most particularly by diluting the impact of the Society's support for a legislative ban on hunting, presenting the Society as divided as to the Policy on Hunting and obstructing the achievement by the Society of the goal of the Policy on Hunting, namely procuring the legislative ban;

(c) they lead to a waste of the Society's resources in countering the campaigns, and in particular answering unfair criticism, complaining about unfair advertisements or investigating the genuineness of applications for membership.

(d) the admission of new members, whose reason for joining the Society is to obstruct the widely supported Policy on Hunting, is calculated to damage the morale of members, volunteers and staff.

35. The Added Defendants can, as it seems to me, argue with force that the Society is exaggerating the damage occasioned by the campaigns and underestimates the extent to which the damage of which the Society complains is attributable to the underlying public debate as to the merits of a ban on hunting; and that there is indeed a debate and division amongst members of the Society as to the merits of the Policy on Hunting the existence of which cannot and should not be covered up. It does appear to me to be questionable whether the damage to the Society as perceived by the Council will be greatly alleviated by the steps which the Council proposes to take. The division amongst the Society's membership on the Policy on Hunting will continue nonetheless, for the supporters of hunting include members who are outside the reach of the Council's proposals for exclusion. But having read the whole of the evidence I think that the material before me requires me to find that the Council has grounds (rightly or wrongly) for taking the view that the campaigns are damaging to the Society; that the Society is seriously at risk of damage caused by members whose overriding concern is to support hunting with animals and to change the Policy on Hunting; that the Society should take steps designed to protect itself from this damage; and that a step to this end would be to exclude from membership those members at whom the Membership Policy is directed. The Council can fairly take the view (which may or may not be correct) that this course is in the interests of the Society (amongst others) for two reasons:

(1) the incentive for the conduct of campaigns may be seriously reduced if membership is withheld from applicants whom the campaigns persuade to apply for membership to further their objects; and

(2) the exclusion of members who join for this purpose may keep out those who as members would prove to be what the Council considers to be trouble makers.

36. The powers of the Council to exclude from membership are conferred by Rule III.1 and III.2(a) (where the power is expressed to be exercisable at the absolute discretion of the Council) and by Rule III.7 (where the power is expressed in terms of a discretion exercisable “if the Council shall consider that it would not be advisable to accept or retain the subscription”). In both cases the powers are fiduciary and accordingly the obligation is upon the Council to exercise the powers for the purposes for which they are conferred in what they consider to be the best interests of the Society. I am satisfied that the Council is acting in good faith and in what it considers to be the best interests of the Society in deciding that it should adopt the Membership Policy. It seems to me that, if
the Trustees honestly take this view and it is one which they can honestly and reasonably
take. (subject only to one question to which I will next turn) this is a course which they are
titled to take and which I can and should endorse; see e.g. *Gaiman v. National
Association for Mental Health* [1971] Ch 317.

37. The one question which I must consider is whether this proposed course on the
part of the Council is open to objection under the provisions of the Human Rights
Act 1998 ("the HRA"). Mr Martin has submitted that the provisions of the HRA
requires the Council in the exercise of its powers under the Rules to respect the
human rights of members and applicants for membership, and most particularly
their freedom of speech and thought; and the Rules must accordingly be read as
prohibiting the adoption of the Membership Policy and the Scheme since they
contravene those rights. I shall consider in turn the two avenues by which this
conclusion is reached.

(a) The first is Article 6(1) which makes it unlawful for a "public authority" to act in a way
which is incompatible with a Convention right. Article 6(3) provides that "public authority"
includes a court and any person certain of whose functions are of a public nature. Article
6(5) provides that a person is not a public authority by virtue only of Article 6(3) if the
nature of the act is private. I do not think that section 6 of the HRA is of any
assistance. The Society is not a public authority and has no public functions within
the meaning of section 6 (see para 21 above); and in any event the acts in question
relate to its regulation of membership and that is a private act within the meaning
of section 6(5). The court is a public authority, but that status does not impinge on the
question whether one party to the proceedings before it has a Convention right to which
another party is bound to give effect. The court is bound to give effect to such a
convention right if established: in this context that is the full extent to which the status of
the court as a public authority is engaged.

(b) The second avenue is section 3 which requires that primary and subordinate
legislation must be read and given effect in a way which is compatible with Convention
rights. Section 21(1) provides that "subordinate legislation" means any:

(f) order, rules, regulations, scheme, warrant, Byelaw or other instrument made under
primary legislation."

That section also provides that primary legislation includes a private Act. It is possible
that the Rules constitute subordinate legislation within the meaning of section 3(1) of the
HRA in so far as they are "an instrument made under primary legislation": and that
accordingly they must so far as possible be read and given effect to in a way which is
compatible with Convention rights. I have however some difficulty accepting that the
Rules are the sort of "instrument" which the legislation was intended to cover. But in any
event, the proposed use of the Rules is not directed at or calculated to interfere with the
freedom of speech or thought of members or prospective members: both members and
prospective members are left to think and say whatever they like. The Council by the
Membership Policy is not concerned to muzzle members or applicants for membership or
censor what they say or do. This is confirmed by the Policy Document. The Council
reserve the right to invoke Rule XXVIII if the conduct of any members is such as to
require the Council to invoke the power of expulsion, but that is not a matter of concern
today. The proposed criterion for exclusion relates to the reason for joining the Society:
the Society has a legitimate interest in excluding those whose reasons for joining may
render their membership contrary to the interests of the Society. What really is in
question in this case is not the freedom of speech or thought of members or applicants
for membership, but the freedom of association under Article 11 of the Society itself: that
freedom embraces the freedom to exclude from association those whose membership it
honestly believes to be damaging to the interests of the Society: see Cheall v. UK (1985) 42 DR 178 at 185 and Gaiman at p.331 B-C. For these reasons the Rules do not require to be read as precluding adoption of the Membership Policy or Scheme: there is no ground for challenge to either of them or the underlying Rules of the Society on human rights grounds or other grounds.

THE SCHEME

38. I turn now to the Scheme which the Society proposes to adopt to implement the Membership Policy. The Society recognises the difficulty of carrying out an investigation into an individual's reasons for joining the Society. To have to determine whether a particular member had or has the Ulterior Purpose referred to in the Policy Document is very hard. It is for this reason that the Membership Policy extends to excluding those who joined as a result of a campaign. But even to investigate whether a member in fact did join or is joining as a result of a campaign has its difficulties. For this reason the Society wishes to implement the Membership Policy by adopting the Scheme which lays down as a convenient rule of thumb the principle that any existing member who at the date of his original application for membership fell, and any applicant for membership who now falls, within certain defined categories set out in a schedule to the amended Claim Form maybe treated as falling within the class of persons to be excluded under the Membership Policy. The preference of the Council is to be able to treat the fact that in its opinion a person falls within one or more of the categories as conclusive that he falls within the class of persons to be excluded from membership under the Membership Policy without any need for consideration of the merits of any particular case. This means that no regard need be paid to any representations by the party affected that he does not fall within the category; that, (notwithstanding the fact that he does fall within a category), he does not meet the criterion for exclusion under the Membership Policy; or that otherwise he should not be excluded.

39. The categories set out in the Schedule to the Claim Form reads as follows:

"Definitions

In this Schedule the term 'a Campaign' means either of the following:

(i) The CAWG Campaign: i.e. the current campaign organised by the Countryside Animal Welfare Group ('CAWG'), the immediate aim of which is to increase the number of country sports supporters who are members of the Society (including any attempt to recruit new members of the Society by an individual, body or group which supports the aims of CAWG).

(ii) An Associated Campaign: i.e. a campaign organised by any individual, body or group, an aim of which is similar to the immediate aim of the CAWG Campaign, (including any attempt to recruit new members of the Society by an individual, body or group which supports such a campaign).

Categories of Applications

A. Where the application was made following a request for an application form made on a prepared pro forma which is associated with the Campaign.

B. Where the application is received from a person who has made a statement, or on whose behalf a statement has been made, indicating that the application is being made in response to a Campaign."
C. Where (a) it appears that the applicant is a member of the same family, or lives at the same address as an applicant whose application falls within either of the Categories A or B above or has been assisted to apply by such an applicant.

and

(b) the applications were made with three months of each other.

D. Where the applicant or the person requesting the application form has an address in an area in respect of which there is evidence of a current local Campaign (which evidence may include an abnormal number of applications for the area).

E. Where it appears that

(a) the application is one of two or more applications made at the same time by members of the same family or by persons living at the same address

or

(b) a request was made by one person for two or more application forms

and, in either case,

(c) the request or application was made during a Campaign.

F. Where it appears that

(a) the request for the application form or the application itself was made during a Campaign.

and

(b) either the request or the application shares some unusual attribute or distinguishing feature in common with other requests or applications made in response to a Campaign.

G. Where the application was made in response to a Campaign on the World Wide Web or by e-mail.

H. Where it appears that the applicant (or one of them in the case of a joint application) is an official of a group which is conducting a Campaign either locally or nationally.

I. Where the application is made by a person who has made an application for membership in the last 2 years which was refused by or on behalf of the Council as falling within one of the Categories A to H above."

I comment that the inference that a member or applicant who falls within a category had or has the ulterior purpose or joined or is joining as a result of a campaign is stronger in the case of some categories than others and in each case the inference may be displaced by evidence of the existence of some other explanation. Yet in each case the chance that a member or applicant in the view of the Society falls within a category without more entitles the Society to ban that person from membership for two years.
40. It is in my view quite clear that the Council cannot apply the Scheme in the exercise of its powers under Rule III.7 and accordingly remove life or annual members or prevent the renewal of membership of annual members. As I have already said, Rule III.7 requires full consideration by the Council whether it would be inadvisable to accept or retain the subscription of the member in question and accordingly to allow his membership to continue. It is implicit in this provision that the full merits in respect of each member must be explored. The sole criterion is whether the continued membership of the individual in question is inadvisable, i.e. against the interests of the Society. For this purpose the Council is entitled to decide that it was inadvisable to renew membership of a person because he originally joined with the ulterior purpose or pursuant to a campaign if the Council consider that this single factor in the individual case in question justifies this extreme course and that there are no sufficient countervailing circumstances. The date that the member joined is highly relevant, in particular because the further back in history the date he joined, the more difficult it is likely to be to prove the necessary circumstances relating to his joinder, the less relevant those circumstances may be in deciding whether his continued membership is inadvisable and the harsher the impact on the member of removing his membership. But in deciding the individual case it cannot be sufficient that he member in question falls within any one of the categories. If he does so, this may (depending on the facts) constitute prima facie evidence of the existence of the ulterior purpose or that his membership resulted from a campaign. But the requirement for full consideration before the power is exercised to remove from membership must imply that the member will be afforded the opportunity to put forward his case (at least in writing) in respect of his categorisation, the existence of the ulterior purpose, whether he joined as the result of a campaign, the countervailing circumstances and whether his continued membership is advisable before the power under Rule III.7 can be exercised. I have the gravest doubt whether the expenditure of time, effort and costs required can ever justify the adoption of this procedure save in the most exceptional cases.

41. I turn now to the question whether in the exercise of the absolute discretion conferred by Rule III.1 and III.2(b) to accept or refuse applications for membership the Council can apply the Scheme in respect of the admission of new members. I have already considered in paragraph 29 the extent of the power of delegation. In any particular case where a discretion has to be exercised the Council or Committee must make the decision. The question raised by the Society is whether the Council or Committee can treat the fact that an applicant falls within one of the categories or appears to fall in one of the categories as conclusive and should be under no obligation to give the applicant the opportunity to establish that he does not fall into the category in question, that his reason for joining is not one to which the Council objects or that in any event his membership application should be accepted. This draconian approach proposed by the Council is very much the Council's first choice, for it has dual merits of the utmost simplicity and maximum economy in application. It is very much the Council's second choice to use the categories as giving rise only to a prima facie presumption of the existence of grounds for rejection of those who do, or appear to, fall within them on which the Society can act in the absence of rebutting evidence.

42. I have given full weight to the first choice of the Council, but after long and anxious consideration I have concluded that it is not in the interests of the Society or conducive to its good name to adopt such an arbitrary and unattractive method of implementing the Membership Policy. To exclude from membership of this important charity persons to whom (if the full facts were allowed to be taken into account) no conceivable objection could be taken, persons who may not only contribute their subscriptions and services but leave legacies to the Society, must be a method of last resort. The significance of a decision to exclude is accentuated by the provision in the Scheme that any person whose application for membership is rejected is precluded from making a further application for two years. I have in mind that circumstances may arise where emergency action is
required calling for the expulsion of a group of members which includes "the innocent" as well as "the guilty" e.g. where there is an imminent threat of a take-over or other irreparable damage: see e.g. Gaiman at p.339. But that is not the situation here. What is in question is a fully considered long term policy, and the plight of the "innocent" must take on greater weight when an alternative course is available. If the damage done to the Society by the admission of persons whom the Membership Policy is designed to exclude is such as to require measures to preclude them joining the Society, the extra cost and administrative inconvenience involved in adopting the Council's second choice must likewise be justified. In the context of a charity of the standing, size and substance of the Society, this should not prove in any way disproportionate, having in mind the critical importance of the public image and reputation of the Society for fairness and justice. That public image and reputation must be of critical importance to the success of the Society in particular in respect of its activities and its attraction of support (financial and otherwise). As I read the evidence in this case this important factor has not been taken into account or given any or any sufficient consideration or weight by the Council when making its choice of method of implementation of the Membership Policy. If the Membership Policy is to be adopted in respect of applicants for membership, they should be so informed in the application form or an accompanying document; they should be invited to state whether they fall within any of the categories from which inferences may be drawn; and if they fall within a category, they should be invited to give their reasons why nonetheless they should be admitted to membership. This does mean that a discretion will need to be exercised in any case where an application is refused. This course will meet the real risk of injustice arising from wrong categorisation and of a categorisation giving a false indication. There is a problem that under the Rules as they stand any exercise of discretion whether to admit or reject an applicant must be made by the Council or (as its delegate) a Committee. An amendment of the Rules is clearly called for enabling delegation e.g. to a Committee of less than four or to an executive employed by the Charity to discharge this function. I am far from clear that such an amendment is not called for as matters stand at present irrespective of the adoption of the Membership Policy. At the same time consideration should be given whether and how the Rules should be amended generally so that they no longer represent a patchwork of amendments over the years with the inevitable construction difficulties to which such a patchwork gives rise and whether the Society should adopt in their place a set of Rules which are clear and consistent and enable it to function effectively.

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT BILL

SUPPLEMENTARY WRITTEN SUBMISSION FROM SIMON PEPPER

Part 3 Deer

I would like to remind the Committee of an issue which seems to have evaded much scrutiny in its discussions so far, and which is absolutely crucial: whether the measures in the Bill are sufficient to promote effective collaboration amongst owners of land.

Notwithstanding a number of very useful measures proposed in the Bill to improve the quality of deer management planning where it is working, there is little or nothing to change the dynamic which currently allows large numbers of owners to simply opt out of participation in Deer Management Groups (DMGs), taking no responsibility for the impact which their action/inaction has on others’ interests. This is a serious problem, undermining the prospect of effective deer management across the whole country.

It would be very unfortunate if this rare opportunity for improved legislation were to be missed. All the interests involved clearly support the principle that measures are needed which create the conditions for DMGs to operate effectively, with the willing participation of relevant owners. Key to this voluntary dynamic is the availability of a credible statutory backstop power, for use only when the voluntary approach fails. The lack of such a power has been a serious constraint on effective deer management for the last 60 years, as routinely observed in countless reports.

The current approach is not sustainable, involving as it does reliance on costly and time-consuming interventions by the agencies (SNH/DCS, FCS, Scottish Government) to secure co-operation in the case (only) of designated sites which cover a small proportion of the country. The cost is prohibitive; the outcomes are not secure; it rewards those who fail; and its application is geographically limited - there is no prospect of adequate resources to use this approach on the wide range of issues which are arising in response to public interest issues.

The Committee must question the Minister closely on this matter. As it stands, the Bill does not create the conditions which would incentivise reluctant owners to participate. The Deer Commission proposed a duty on all owners of land to manage deer sustainably; failure in the fulfilment of this duty (explained in a code of practice) would have been the trigger for interventions and ultimately backstop powers which – if they were credible - would be most unlikely to be needed in practice. If the Minister wishes to reject this proposal, it is important to know how she expects the prospects of voluntary collaboration to be improved.
We know from experience that preserving the freedom to opt out will simply perpetuate the highly unsatisfactory situation where a variety of interests – both public and private – suffer adverse impacts as a result of the failure of some owners to exercise their own rights responsibly. This should be a key issue in consideration of the Bill’s provisions.

Simon Pepper
21 October 2010
Wildlife and Natural Environment (Scotland) Bill at Stage 1

I am writing to provide further detail on some of the issues raised in the Committee meeting on 3 November.

Wildlife crime recording
Mr McArthur raised the issue about the recording of wildlife crime.

Under the Scottish Policing Performance Framework all categories of crime form part of Force assessments. This means that any crimes can form part of Force priority setting and resourcing decisions, based on local circumstances. The Scottish Policing Performance Framework has been in place since 2007.

This issue was also recently addressed by the Minister for Environment in response to the Public Petitions Committee, in their consideration of Petition 1315 “Stop the illegal killing of birds of prey”.

Biogeography theory
Mr Wilson asked about concerns that current reserves might not be adequate to deal with the changing climate.

The EU Habitats Directive requires a ‘coherent ecological network of special areas of conservation’, sufficient to achieve a range of objectives with respect to species and habitats. With our partners, in particular SNH, we are considering the challenges that climate change will present to the coherence of this network. This comes together with a desire to increase the ability of the landscape as a whole to function as a green network, and to take measures to promote biodiversity at the widest possible level. This will both be good for species diversity and for the many benefits that the economy and communities enjoys from a vibrant natural environment. Examples of this approach include the adoption of an ecosystem approach to planning of the Scottish Biodiversity Strategy, and the promotion of a National Ecological Network and the Central Scotland Green Network under the Government’s National Planning Framework. We can aid species to adapt to a changing climate by ensuring that the wider landscape permits them to move in response.

Invasive and non-native species – roadside verges
Mr Wilson raised the issue of road verges in relation to invasive and non-native species.

At present, roadside verges are included in the draft INNS Code of Practice as an amenity location that is considered to be outwith the wild. The draft Code has been produced to assist the Committee during Stage 1 and as such
this will be one of the areas where we would be interested to hear views as part of the formal consultation on the code.

As the draft Code notes, a non-native plant can be caused to grow in the wild by planting in a non-wild place, with the result that the plant then spreads into the wild. It also notes that reasonable steps should be taken when planting in a non-wild place to prevent plants from spreading into the wild. Areas in which efforts are not made to control the particular species which grow, such as road verges and boundary hedges, may act as stepping stones to wild areas.

If you require anything further please do not hesitate to contact me.

Kathryn Fergusson
Scottish Government
17 November 2010
Wildlife and Natural Environment (Scotland) Bill: The Minister for the Environment (Roseanna Cunningham) moved S3M-7484—That the Parliament agrees to the general principles of the Wildlife and Natural Environment (Scotland) Bill.

After debate, the motion was agreed to (DT).
Wildlife and Natural Environment (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-7484, in the name of Roseanna Cunningham, on the Wildlife and Natural Environment (Scotland) Bill.

15:26

The Minister for Environment (Roseanna Cunningham): I thank the Rural Affairs and Environment Committee for its careful consideration of the bill and for its extremely helpful report. The committee has been assisted by the evidence and insight of a great many people from a variety of sectors and walks of life. The range of people and organisations that have been involved shows just how far reaching the impact of the bill is.

The committee’s report highlights two watchwords for the bill: balance and compromise. Those are absolutely right. The bill is about balancing competing demands on the Scottish countryside, whether we are talking about land managers running a business, conservationists seeking to protect species and habitats, deer stalkers and grouse shooters, or walkers and birdwatchers. All those people make legitimate calls on the resources of the countryside. The bill seeks to ensure that the law in relation to the countryside acknowledges those competing demands and applies compromise and balance in dealing with them.

I am pleased that the committee has recognised that practical approach. We certainly share the more visionary aspirations that have been articulated by others, but the bill is intended to be about the nuts and bolts. It will create a number of criminal offences. We need to be careful about the language that we use when people might be prosecuted. There are no general statements and duties in the bill, in part because the possibility of unintended consequences looms large, particularly regarding the legal and judicial interpretation of such statements. The committee has recognised that but, rightly, it has questions on how we are addressing the wider issues. I am happy to write to the committee in more detail about that work. There is not enough time today to do real justice to the committee’s report, so I will limit my comments to some key areas—wildlife crime, snaring, invasive non-native species and deer. The Government’s full written response to the committee will be published next week.

I turn first to wildlife crime. When we set out to draft the bill, we regarded the legislative framework as being robust and we believed that
what was needed was effective enforcement of the law. I remain of the view that enforcement is key and I agree with the committee that wildlife crime should be vigorously pursued by the police and the Crown. However, as members know, I cannot direct the police or the prosecution service as regards their operational decision-making processes.

The committee recognised the strength of feeling that wildlife crime generates, in particular the poisoning of Scotland’s striking birds of prey. A year ago, I wanted to be able to stand here now telling Parliament that the persecution of birds of prey had become a rarity and that poisoning statistics showed a marked decline. Sadly, I cannot do that, because 2010 is set to be one of the worst years on record for poisoning of birds. The committee has recognised that something more must be done, and I agree. I looked long and hard at a range of options, including all those that were put to the committee and those that were raised in the report “Natural Justice: A Joint Thematic Inspection of the Arrangements in Scotland for Preventing, Investigating and Prosecuting Wildlife Crime” and through the partnership for action against wildlife crime—PAW—Scotland.

There are many interesting ideas about how best to tackle the problem. It is my view that any further measures must be carefully thought out and, crucially, must be specifically targeted so that the whole of the rural sector is not penalised because of the criminal actions of a minority. I have therefore indicated to the committee that I intend to lodge an amendment that will introduce vicarious liability, which was one of the options that were mentioned in the “Natural Justice” report. It will target criminality and ensure that employers whose employees are involved in persecution of wild birds will be forced to shoulder responsibility for the actions of those employees. There will, of course, be a defence of due diligence, as there must be, but turning a blind eye will no longer be an option.

There is a proposal in the report that we take a power to introduce a licensing scheme for shooting businesses. Such a move would undoubtedly be a severe disincentive for people who contemplate committing offences, but the fact that it would be such a significant step suggests to me that it is not appropriate for an enabling power. If it looks to be preferable that we go down that road, I would very much prefer that we carry out a proper consultation and legislate in the normal way.

With that in mind, I should add that I have no plans to try to take over the newly launched wildlife estates initiative and to make it part of a compulsory scheme. I recognise that that scheme is a genuine attempt by the Scottish Rural Property and Business Association, the Scottish Estates Business Group and others to embed sustainable management in sporting estates, and that any attempt by Government to hijack it would kill it stone dead.

I am interested in ideas on how to improve enforcement against wildlife crime. The proposal that we provide the Scottish Society for the Prevention of Cruelty to Animals with additional powers is worthy of consultation, but I am concerned about including enabling powers in a bill before even initial discussions have taken place. Consultation should come first.

I turn to snaring, which has long been a controversial and emotive issue. This Government recognises that pest and predator control is necessary to protect livestock and crops and that, in some circumstances, snaring is the least bad option. I thank the committee for agreeing that snaring is “a vital part of land management”.

Our intention in introducing further regulation in this area is to ensure that snaring is carried out by trained operators, working to the best standards of animal welfare.

I draw the chamber’s attention to the comments of Dr Hal Thompson, the eminent wildlife pathologist of the British Veterinary Association, who told the committee:

“What is in the bill is excellent. If the bill is adopted and its provisions put in place, that will provide for very effective use of snares.”

He went on to say that the bill would introduce sensible and reasonable controls that “present a balance between the people who require snares and the people who are interested in the protection of animals and animal welfare. I do not have any problems with what the bill contains in that regard. It is a commendable piece of proposed legislation.”—[Official Report, Rural Affairs and Environment Committee, 6 October 2010; c 3234.]

However, I recognise that we cannot rest on our laurels, so I am content to agree to the committee’s recommendation that a further review of snaring be carried out in five years to assess the effect of our proposals.

At this stage, I am not clear on what the committee’s proposal for individual identification numbers for each snare would deliver. It seems that it would lead to a burdensome system of record keeping for the police, which would only add considerably to the cost of administering the scheme.

I agree with the committee that we need to keep abreast of technological developments, especially those that protect animal welfare, and I advise the
chamber that the Wildlife and Countryside Act 1981 contains an order-making power that will allow us to update regulations as required.

I welcome the committee’s support for the Government’s approach to invasive non-native species. Members will be acutely aware of the problems that they cause. As we know, red squirrels face a threat from their grey invasive non-native cousins, but there are also less well-known species that pose a threat, such as piri-piri burr, which is a plant that has caused considerable problems on Lindisfarne. If members are wondering what on earth it is, it is a New Zealand plant with small seed-heads that are covered in hooks that attach themselves to walkers and dogs. It outcompetes native species. Alarmingty, it has already spread to Harris and is also, unfortunately, appearing in my constituency.

Although much of the bill relates to rural Scotland, we know that invasive non-native species are no strangers to urban areas. Last week, we heard that American signal crayfish had been found in the River Kelvin in Glasgow. The cost of invasive non-native species to the Scottish economy is upwards of £200 million. The bill will allow us to be better prepared in the future for invasive non-native species, and it will ensure that action can be taken when it is the best thing to do.

The committee recommended that there should be a lead body for invasive non-native species and, in its evidence to the committee, Scottish Natural Heritage indicated its willingness to take on that role. I agree with the committee’s analysis, and confirm that a lead body will be identified to co-ordinate responses to invasive non-native species. I will ensure that that is publicised and included in the code of practice.

The code of practice will be an important document and I am happy to accept the recommendation of the Subordinate Legislation Committee and the lead committee to make the code subject to parliamentary procedure. The best way to proceed is to propose that the code be subject to affirmative procedure when it is first introduced, and that any future revisions be subject to negative procedure. That will strike the right balance and allow flexibility for future changes in what can be a fast-moving area.

I turn briefly to deer. As with some other matters, the committee had to navigate through some conflicting evidence on the state of deer management in Scotland. I am pleased that the value of retaining the voluntary and privately delivered approach to deer management has been recognised. However, improvements can be made and the bill will do that. It will give SNH a better framework within which to work when the voluntary approach fails to deliver for the greater public interest. The Subordinate Legislation Committee and lead committee also recommended that the code of practice on sustainable deer management be subject to parliamentary procedure. Again, I accept that recommendation, and am considering the most appropriate way to do it. I will write to the committees with further detail.

I thank the committee for recognising that the Government listened and acted in response to the consultation on deer and that, as a result, the deer provisions in the bill are acceptable to the Committee.

I look forward to hearing members’ contributions in the course of this afternoon’s debate.

I move,

That the Parliament agrees to the general principles of the Wildlife and Natural Environment (Scotland) Bill.

15:37

Maureen Watt (North East Scotland) (SNP):

Consideration of the Wildlife and Natural Environment (Scotland) Bill at stage 1 was a challenging and fascinating task for the committee. The bill contains a number of different subjects as part of its package of provisions, covering game management, wildlife crime, species licensing, invasive non-native species, protection of badgers, management of deer and the administration of designated protected areas, such as areas of special protection and sites of special scientific interest.

On the surface, the bill is largely practical and seeks to update and strengthen existing law to make it fit for the Scottish countryside of the 21st century. However, it also raised some fundamental questions that galvanised people across Scotland to make their views known to the committee. What should our priorities be in the countryside? What is the ideal balance between different management objectives, such as grouse moor management, protection of species, forestry targets and environmental concerns, and how can we achieve that balance?

When the committee visited the Langholm moor demonstration project, which is an experiment that is attempting to manage a grouse moor with a sustainable hen harrier population, it became clear that what could appear on first sight to be a vast natural wild moor, is actually a piece of land that is extensively managed. Foxes are being controlled, birds are being fed and heather is being burnt. As much as the bill is about the natural environment, it is also about how land is managed.

All committee members engaged with the bill from the outset, and I thank them for their dedication. I also thank all those who gave evidence to the committee, and those who
assisted the committee with our external meeting in Langholm, Dumfriesshire, and with our informative visits to the Langholm moor demonstration project, Alvie estate near Aviemore, and the RSPB Scotland-managed Loch Garten and Abernethy reserves in the Cairngorms national park.

I also take this opportunity to thank the committee clerks and the Scottish Parliament information centre for their support during stage 1.

As I am sure that members will appreciate, there was no shortage of strongly held views on issues such as snaring, species licensing, game and deer management, and wildlife crime. I will come to each of those shortly. I should also say that, although the committee was not in complete agreement on how to take forward some of the issues, we were unanimous in agreeing that the bill is necessary and important and that the Parliament should support it at stage 1.

On a general issue, it was made clear to the committee that wildlife law has become increasingly complex and difficult to follow. How can we expect everybody to understand the law when there is such confusion and lack of clarity? When the committee heard that respected legal experts struggle to make sense of it, it realised that consolidation of the law was overdue. The committee believes that that should be a priority for any future Administration.

Let me now turn to the various issues in the bill, starting with the provision on game law. The committee supported the Government's intention to modernise archaic game laws and to bring game birds under the auspices of the Wildlife and Countryside Act 1981. The committee also supported the creation of a single poaching offence, which should prove to be more transparent and effective. On the topic of ground game—brown and mountain hares, specifically—the committee welcomed the proposed introduction of close seasons to protect dependent young at important times for their welfare.

Wildlife crime and single-witness evidence became a central issue in the committee's considerations, and a very lively session was held on the subject. The bill restates the current position that poaching offences and egg stealing can be prosecuted on the evidence of a single witness, but other wildlife crimes require corroboration. A majority of members thought that position is not sustainable and that the law must be made consistent, either by extending single-witness evidence to all wildlife crimes or by abolishing it altogether. Members had different views on which route to recommend—I am sure that others will clarify their positions during the debate.

There was a great deal of discussion about the on-going problem of raptor persecution—a situation which seems, as the minister stated, to be getting worse, rather than improving. The committee agreed that the law is not working. We should be seeing more prosecutions for persecution of raptors and fewer reported cases, but sadly we are not. A majority of the committee therefore welcomed the minister's announcement that she intends to lodge an amendment at stage 2 to introduce a vicarious liability offence, which will target not just individuals who directly poison a bird of prey but landowners who direct them to do so. It is important that our laws can deal with the few who are tarnishing the reputation of the vast majority of estates, which do a great deal for Scotland both culturally and economically.

The committee unanimously welcomed the recent wildlife estates Scotland initiative, a voluntary initiative that is managed by the Scottish Rural Property and Business Association and the Scottish Estates Business Group, supported by the Scottish Government. It seeks to set and maintain the highest standards for our sporting estates.

Some committee members supported enabling powers being put in the bill so that future Administrations could introduce an estate licensing scheme if the vicarious liability offence and voluntary scheme were shown not to be making an impact on the problem. I note that I did not agree with that recommendation, but I am sure that other members will give their views on it, in due course.

Deer management is another important issue that the bill deals with. It proposes a series of amendments to the Deer (Scotland) Act 1996 in order to realise fully the intentions of that legislation. There can be few finer sights in Scotland than a red deer stag standing majestically on a hill, and many tourists come to Scotland to see deer in their natural environment. However, as Scotland has somewhere in the region of 750,000 deer and they have no natural predator, deer numbers need to be managed to prevent significant damage to habitat and to ensure that any threat to public health and safety is kept to a minimum.

The committee agreed with the Government that the most effective method of managing deer across the country is to encourage co-operation and collaboration among all those who manage deer for a variety of objectives. However, the committee also heard persuasive evidence that the system is simply not working as well as it should be, and it therefore calls on the Government to re-examine the operation of deer management groups, which gather local landowners together to agree how to manage deer
numbers in a particular area, and to ensure that all those who are responsible abide by the proposed code of practice.

The committee supported the Government’s proposed presumption against the release of invasive non-native species. In this country, we have seen many examples of non-native species becoming invasive and damaging natural wildlife and habitat, from the non-native grey squirrel, which the minister mentioned, and the rhododendron to the signal crayfish, which was discovered only last week in the River Kelvin. The best way of preventing future generations from having to deal with problems that are caused by non-native species is to have a presumption against the release of such species.

There were less contentious measures in the bill that the committee supported, such as bringing consistency to the laws protecting badgers; making changes to when and how muirburn should be practised; and the proposed streamlining of designations of protected sites, such as areas of special protection and sites of special scientific interest. The committee welcomes all those provisions, with some minor suggestions and recommendations.

As I said at the beginning of my speech, in many ways the fundamental question behind the bill is what our priorities should be in the countryside. How do we achieve a balance between public and private interests, between landowners and environmentalists, and between animal welfare organisations and those who shoot for sport? The bill has begun to answer that question and to better address the balance. I look forward to its being strengthened further at stage 2.

15:46

Sarah Boyack (Edinburgh Central) (Lab):
First, I thank the committee, the clerks and all those who contributed to the consultation process and the analysis of those comments in preparing the report that we have in front of us for the stage 1 debate. The bill is complex, with controversial elements and detailed proposals, but it is also wide ranging and, potentially, involves a huge number of stakeholders in rural and urban Scotland.

One of the key things that comes through from discussions in the Parliament on landscape, farming, crofting, recreation, access, tourism and human activity is the fact that balances must be struck. Decisions on how we use our land have a huge impact on our flora and fauna that pass us by, but which are crucial to maintenance of our biodiversity and the quality and health of our environment for the future. That means protecting and enhancing our natural environment, and making sure that we have the right frameworks and interventions where that is appropriate.

One of the long-term challenges that comes from climate change is the fact that SSSIs may need to be reviewed. The Scottish Wildlife Trust makes powerful arguments about the need to take a wider ecosystems view. That may be beyond the bill, but it will become part of the backdrop of our future land use. Therefore, we very much welcome the provisions on SSSI amendment and restoration powers, which we think will make a positive difference.

The provisions on deer management are long awaited. The John Muir Trust is disappointed that the Scottish Government has stepped back from its initial proposals and asks about the extra costs to the public purse if the management action that is required by the code is not undertaken—for example, in relation to woodland planting targets. I wonder whether the minister would like to comment, in her winding-up speech, on those comments from the John Muir Trust.

Labour welcomes the proposals for a statutory code of practice for deer management. We also welcome the fact that SNH would have to have regard to that code in exercising its powers to secure sustainable deer management. Like the committee, we seek clarity on how that would work. We think that it is an important issue that needs to be clarified properly. The committee has asked the Scottish Government to clarify whether all landowners will have to abide by the code and what powers SNH will have for intervention if the code is ignored or breached. That is a fundamental point, so it would be helpful to all who are involved in deer management to have that clarified by the minister from the outset.

We support the committee’s view that everyone needs to be around the table to ensure that the code is right from the start. So, we support the committee’s recommendation to the minister that NFU Scotland and at least one environmental organisation be at the table at the start in order that we can make sure that the code has broad support. We also support the committee’s suggestion that there be a review of deer management groups. In the light of the new provisions in the bill, that would be a very useful step.

There are suggestions in the report for further consideration of definitions. The committee has come up with a sensible recommendation that the Scottish Government use the term “damage” throughout the bill and remove the word “serious”. That will be debated in the context of amendments at stage 2.
We also support the measures to improve action on non-native species. As the minister has said, where they are introduced, they can cause huge damage to biodiversity and bring about major costs, as well impacting on other species. For that reason, we strongly welcome the minister’s commitments, which we will support at stage 2.

Since our Parliament was established, we have made progress on wildlife crime, and this bill provides us with an opportunity to enhance our law and give further clarity on its enforcement. There are still places in Scotland where species are illegally poisoned, but no one is ever prosecuted. Some excellent work is being done by the partnership against wildlife crime, which is pulling together people and agencies to give a sharper focus and greater co-ordination to work on wildlife crime.

The committee strongly supported new provisions on vicarious liability, so I welcome the minister’s commitment to take that forward and we very much look forward to her official response to the committee’s report next week. We think that the proposal will make managers and landowners much more focused on ensuring that there is best practice on their estates, and it will send out the right message.

We also support the rationalisation of poaching offences in the bill to support a single poaching offence.

The principle of single-witness provisions has worked well with regard to poaching, and we think that it should be extended to tackling other wildlife crimes, too. We also support the potential use of SSPCA inspectors to help to tackle wildlife crime.

As the minister said, the committee has heard divergent evidence on snaring and has attempted to deliver a compromise. Labour still remains unhappy about the current practice of snaring. We accept that there have been improvements through the Nature Conservation (Scotland) Act 2004, that technology has changed, that monitoring has been tightened and that more is possible still. However, we remain faced with the fundamental problem that many animals still suffer.

Having chaired the last committee that considered snaring, I know that some people will argue that the new provisions will make the bill work. However, we remain to be convinced and we think that, as suggested by the committee, ministers should have the power, through the bill, to enable a ban on snaring. There are still animals suffering that were not intended to be caught by snares. I understand that OneKind has suggested that five years after the introduction of the provisions is too long to wait for a review, and so recommends a shorter timescale of two years. I hope that the committee can consider that at stage 2. Certainly, a five-year timescale would see the issue kicked further into the long grass—it would not be considered even in the next session of Parliament. We suspect that there is no majority in Parliament for a ban on snaring, but that does not mean that we cannot take more serious action on snaring.

There is a need to support the bill tonight, as it contains important new powers. There is an opportunity for delivering clarity at stage 2. If improved, the bill could certainly deliver much-needed support to improve the quality of the environment and ensure its protection. We will try to amend the bill at stage 2, and we will work constructively with colleagues to try to develop majority support on what are extremely contentious issues, as the minister ably outlined earlier.

We are happy to support the principles of the bill, so that it can be taken forward to stage 2 for amendment.

15:53

John Scott (Ayr) (Con): I declare an interest as a farmer, and thank everyone who has contributed to getting the bill to this stage 1 debate.

The Scottish Conservatives welcome much of this largely amending bill that deals with modernisation of game law, abolition of areas of special protection, improvements to snaring, species regulation, changes to deer management and changes to muirburn practices. We support most of the bill, while recognising that there is a need for consolidating legislation at some future date.

However, there will still be much to debate at stage 2, and the principal concern that I have is the Government's intention to introduce vicarious liability into the bill by amendment at stage 2 in an attempt to stop raptor persecution.

Let me state categorically that Scottish Conservatives utterly condemn those who carry out raptor persecution, in the same way that we condemn deer poaching and other wildlife crimes, and we want to make every attempt to stamp out these abominable crimes.

However, the scale of raptor persecution is the unanswered question. The case that is being made for the introduction of vicarious liability is largely predicated on the alleged disappearance of approximately 50 golden eagles in the north-east of Scotland each year, with the suggestion being that they have been poisoned or otherwise killed. However, that suggestion is simply not entirely credible, as Sheriff Drummond pointed out in evidence to the committee when he noted that
Everyone who has lived and worked with livestock and wildlife in rural Scotland knows that if birds and animals are conceived in the first place and survive until birth, they can regrettably die for 101 reasons and from various combinations of circumstances that can include hunger, weather conditions and misadventure. That sad fact is worse in the wild and in wilderness conditions. We should look at this week’s weather, for example. The unusual early snowfall will reduce raptor food supply and affect the success of next year’s breeding of golden eagles. Those are simple but well-known issues that relate to the effect of available food supply on body conditions and, ultimately, on fertility.

It is simple animal husbandry, but those very real issues affect successful breeding patterns in all animals and birds; the science is well documented in that regard. We do not believe that poisoning and persecution is widespread. The great proportion of disappeared birds are simply not born, or else they die of natural causes.

We do not believe that the case has been made for the introduction of vicarious liability, as it is neither a proportionate nor reasonable response to a partly real and partly imagined crime. We do not view it as a positive way forward, especially given that it may be an active disincentive to land and estate ownership in Scotland.

Much more reasonably, we believe that police forces throughout Scotland should be strengthened by the creation of more dedicated wildlife crime officers to investigate all forms of wildlife crime, including raptor persecution, and by using existing legislation if and when evidence can be found to demonstrate that a crime has been committed. We also believe that police forces should be strengthened, where it is appropriate in remote and rural areas, by increasing the number of special constables.

On estate licensing, I welcome the wildlife estates Scotland initiative that the SRPBA has developed in conjunction with SNH, RSPB Scotland, the Scottish Estates Business Group, the Game and Wildlife Conservation Trust and others. It will raise the level of sustainable management of estates throughout Scotland and help to meet targets in biodiversity, sustainability and climate change, as well as delivering socioeconomic objectives. I agree with the minister that now is not the time—and nor is there a need—for estate licensing.

On deer management, we largely welcome the revised provisions in the bill. However, we still have concerns about how best to make deer management groups work successfully, given the different priorities that different estates have in relation to managing a transient deer population that now—as Maureen Watt mentioned—numbers around 750,000. I welcome the minister’s intention to consider that further.

I support the Government’s intention to allow the continued use of snaring in a much more humane way than it has been practised in the past. I share members’ concerns about catching wildlife other than foxes or rabbits, but I believe that snaring is still a very necessary tool for the control of foxes in particular. In that regard, I look forward to the further development of snares, which we should aim to use in the future as restraining devices with breaking strain releases and individual identities so that ownership of each snare can be established.

Finally, I will say a word on geese and the emerging problem of species that are now overwintering as a result of climate change in Orkney, other islands and northern mainland areas. I am sure that Liam McArthur will want to draw attention to that problem too, and he will perhaps support me in asking the Government to at least think about the issue before stage 2.

I also welcome the more relaxed provisions on muirburn and the greater flexibility that is proposed. We will support the bill, and we look forward to lodging appropriate amendments at stage 2.

15:59
Liam McArthur (Orkney) (LD): It is a pleasure to be here, all the more so since I spent a large part of the past two days in Kirkwall airport waiting for Edinburgh airport to reopen. On the up side, that allowed me to read through a number of briefings for the debate and undertake an impromptu surgery with constituents, many of whom had been there a great deal longer than I had.

I start by adding my thanks to all those who helped in the production of the stage 1 report on the WANE bill—my fellow committee members, the clerks, SPICe and other support staff and, of course, the wide range of individuals and bodies who have given evidence in recent months. The fact that, at times, the evidence has been contradictory does not detract from its value to the committee in reaching conclusions on a wide range of often contentious issues. The visits to Langholm, Alvie and Abernethy proved particularly informative, and I thank those who hosted us, not least Jamie Williamson of Alvie estate, whose dramatic retractable window is surely worthy of a mention on the public record.

I also commend the minister for the way in which she has engaged with the committee. The
initial consultation process was clearly thorough, but we have welcomed her attempts to anticipate and respond to the concerns of committee members, be they unanimous or held by a majority. We have seen further evidence of that today. It has been helpful and I hope that it will continue through stages 2 and 3.

Although further improvements are undoubtedly necessary, and I will try to touch on some of those, the bill has generally received a broad welcome. Concerns that the reference to the natural environment in the bill’s title underplays the extent to which much of what we are talking about is actively managed are understandable, but I am not sure what would be achieved by a name change at this stage. It is imperative to stress, however, the value that we attach to that activity. As the committee’s report acknowledges up front, management of land plays a significant role in creating and sustaining the types of biodiversity and landscape that have come to be valued as typically Scottish. The economic, social and cultural importance of that activity is also recognised and highly valued, as the convener suggested.

Similar to the issues surrounding the title of the bill are the concerns that have been raised about the supposed lack of an overarching narrative. Although I am happy for the Government to give more consideration to how a coherent approach to safeguarding Scotland’s biodiversity can be achieved, perhaps through a beefed-up land use strategy, I accept that the bill is essentially intended to tidy up the law in a range of areas. As such, retrofitting a narrative seems fraught with dangers. Indeed, I do not believe that providing a narrative is necessarily an integral part of legislation. However, it is an entirely necessary function of legislation to set out clearly what the law is. As Sheriff Drummond said, it is getting difficult for legal experts to “find and see the direction in which” the law

“is going.”—[Official Report, Rural Affairs and Environment Committee, 15 September 2010; c 3078.]

Professor Reid said:

“having clearer legislation is so important to ensuring public access and understanding. It helps you ... ensure that it is understood and enforced.”—[Official Report, Rural Affairs and Environment Committee, 6 October 2010; c 3222-3.]

In that regard, it is incumbent on any future Administration to embark on a consolidation of the law before, or at least at the same time as, proposing any further amendments to it.

That brings me to the changes that are being proposed at present. I do not want to diminish the importance of other issues in the bill, but I hope that members will understand why I choose to concentrate my remarks on snaring, wildlife crime and deer management, in that order. Initially, snaring was widely considered the most contentious aspect of the bill. Those who advocate an outright ban on the practice have argued their case powerfully and, in most cases, constructively. There is little doubt that, despite the steps that have been taken in recent times to improve the design and placement of snares, abuses still occur, sometimes with deeply disturbing consequences.

However, on the balance of the evidence that the committee has taken, I am persuaded that the case for allowing snaring to continue as one tool in pest and predator management has been persuasively made. I believe that further safeguards are needed, as well as improved training in relation to animal welfare and better record keeping. It is also imperative that innovation in snare design and use continues to take place. That is why, in part, I accept the need for a reserve power in the bill. It will allow time for the changes to bed in, provide an incentive to make them work, and look to further improvements. I am also conscious that any outright ban would be unlikely to deter many of those who are guilty of malpractice.

I acknowledge the consensus that exists in condemning acts of wildlife crime. Sadly, despite efforts in recent years to tighten up laws and increase resources, the signs are that the problem persists and is getting worse, as the minister has confirmed. Raptor persecution in particular drew much of the committee’s attention during stage 1 and I offer the following thoughts as we look ahead to stage 2. We need greater clarity on what constitutes a recordable wildlife crime if we are to achieve greater consistency between police forces, but we must also add to the potential armoury of those who are tasked with combating such crimes, which are not imaginary, as John Scott asserted, although I associate myself with his comments on geese.

The Government’s willingness to introduce a vicarious liability is therefore welcome, although it is not straightforward, nor is it a silver bullet. Concerns about the potential for the power to be abused must be addressed in amendments, although due diligence will remain a defence and obtaining evidence will be essential to any successful prosecution. However, along with changes to offences relating to the possession of illegal poisons and “concerned in the use of” provisions, the change can help to shift the balance and provide a real deterrent.

On evidence, I have reservations about extending the SSPCA’s powers, but I await with interest the outcome of further work on the
subject. In the meantime, I am coming to the view that single-witness evidence has illusory value and could safely be dispensed with, although current inconsistencies need to be addressed one way or the other.

On licensing, I note the concerns of the SRPBA and others about reserved powers. I sympathise with some of those misgivings and I welcome the wildlife estates initiative, but there could be value in keeping pressure in the pipe while we see how events unfold.

I share the Government’s view that a pragmatic approach to deer management structures must be taken. The approach should be one in which firm and effective back-stop powers can and will be exercised if plans are not produced or implemented. In that regard, I want amendments to clarify when and how the powers will be triggered. It is essential that back-stop powers have teeth.

I welcome the bill’s general principles and thank everyone who assisted the committee in producing its stage 1 report. I look forward to helping to ensure that further improvements to the bill are made, in the interests of our wildlife and managed natural environment.

16:05

Bill Wilson (West of Scotland) (SNP): I confess to some confusion. I see Roseanna Cunningham sitting on the front bench, but surely she is the wrong minister and it should be Adam Ingram for the wean bill.

In light of John Scott’s comments, I say that vicarious liability is a tremendous idea, which is long overdue.

It is probably fair to say that single-witness evidence has vexed the committee. Currently, such evidence is acceptable for poaching and egg-stealing offences. I was initially very much in favour of extending the approach to wildlife crime but, after I understood that single-witness evidence means that an individual can be convicted without corroborating evidence, I began to have my doubts. Should it be possible to convict an individual solely on the word of another? Perhaps it is time to repeal the law. Whatever the minister decides, as a matter of principle, the law must be regularised. Either single-witness evidence is unacceptable and should be abolished, or it is acceptable for offences that occur in remote areas and it must logically follow that it should be possible to convict for wildlife crimes on single-witness evidence. As a point of principle, it should be one or the other.

We live in uncertain times. Climate change is resulting in the movement of species’ ranges and changes in ecological communities. If we are to meet our biodiversity targets, we must be prepared for such changes. That is what lies behind the recommendation for an ecologically coherent network of environmentally protected sites. Even if climate change were not occurring, simple island biogeography theory would predict a progressive loss of diversity from small, isolated reserves. Climate change can only exacerbate the situation. An ecologically coherent network need not exclude development; a wide range of actions could be taken that would have minimal impact. Furthermore, clearly defined objectives would benefit developers. A clear definition of where it is intended to leave room for species movement would assist developers in knowing what type of development would be appropriate.

I appreciate that the minister does not think that the bill is the appropriate place to introduce a duty in relation to an ecologically coherent network. I understand her logic. There are alternative vehicles, such as the land use strategy. A clear commitment from the minister to consult on the proposal for an ecologically coherent network, even if the measure were not to be included in the bill, would be a positive step.

On the whole, the muirburn code does not appear controversial, but there remains a concern that inappropriate muirburn might be causing significant soil damage in some parts of the country. The committee has proposed that there should be a mechanism that allows the withdrawal of Government money from landowners whose failure to abide by the muirburn code causes soil damage. I hope that the minister will consider the proposal.

The committee heard evidence that snaring might be an important tool in predator control. I should say that I believe the scientific evidence that foxes do not predate lambs to be clear and overwhelming. I am not a vegetarian and I have no inherent objection to killing an animal, but there are concerns about the ethics of snaring and about the specificity of the species that are targeted.

The bill will be the first piece of legislation on snaring to be passed by the Scottish Parliament. After some 12 years, that is a positive step, but we should go a little further. I hope that the code of practice will work, but if we are to know whether it is working we will need to examine the situation some years down the line. I am therefore delighted that the minister accepted the committee’s recommendation that there be an independent study into the code’s effectiveness. The knowledge that snaring will be re-examined five years down the line would reassure members and the country as a whole that we have not simply legislated and then washed our hands of the
matter. It follows that, if the code is shown not to be working and it cannot be made to work, Parliament should act. For that reason, I ask the minister to consider introducing the power to ban snaring via a super-affirmative instrument.

Having perused the draft code on the introduction of non-native species, I must say that it looks to be a positive step. However, I have one concern. Roadside verges are not defined as wild areas, which means that planting on them is not restricted. Of course, the draft code makes it clear that, should a non-native species be planted and then escape into the wild, the individual who planted the species can be held responsible. That is right and proper and should discourage the planting of non-native species on roadside verges, but that will not be prohibited. An individual could decide to plant anyway and hang the consequences.

I enjoy pretty flowers on roadside verges as much as the next person does, and the people who voluntarily plant our verges should be praised. I understand that concern will be felt about discouraging such individuals from a public-spirited act, although I do not imagine that many of them are doing it just now. However, the risk to our countryside from invasive non-natives is real. As the climate changes, which species are invasive is likely to change, so I urge the minister to consider altering the definition of roadside verges. However, those who plant our verges should not be discouraged, so perhaps the Government could create a website that recommends native species that are suitable for planting. That would have the additional advantage of enhancing our biodiversity.

Considerable concern is expressed about the decline in the number of bees. Native flowers on our roadside verges might help to halt that decline. Bees are educated consumers and are fussy about the nectar on which they dine. Foreign fast foods are not for them—we have no burger-and-chips bees; it is fine Scottish nectar that our bees seek. I urge the minister to support Richard Lochhead’s campaign for Scottish foods: for the sake of our bee numbers and bees’ delicious vomit, which we all like to spread on our toast of a morning, let us have roadside verges that are planted with native species.

The bill is excellent, but even what is excellent can be improved. I am proud to belong to the party that introduced the Flood Risk Management (Scotland) Bill, which was aimed at introducing sustainable and environmentally friendly flood control, and the Marine (Scotland) Bill, which will create an ecologically coherent network of marine protected areas. The Wildlife and Natural Environment (Scotland) Bill will add to the Government’s excellent environmental record.

16:12

Peter Peacock (Highlands and Islands) (Lab):
The bill has turned into a worthwhile document and I am happy to support its general principles. The bill provides the opportunity to tidy existing legislation and to clarify and tighten the law.

I will focus on raptor poisoning. If I have time, I will touch on deer, snaring and bees, which Bill Wilson introduced, although I will talk about bees in a slightly different context from him.

In talking about raptor poisoning, I make it clear that I am a member of the RSPB and of the Scottish Ornithologists Club. Devolution has brought many new opportunities to legislate, but legislation on some subjects is still comparatively rare. The bill is significant because it provides what is still a rare opportunity to consider its subject matter and to try to do something important—to right the on-going wrong of raptor poisoning, to send clear signals of intent from the Parliament about what we want to happen, to take the toughest actions that we can to eliminate the practice and to remedy an unacceptable set of behaviours that, sadly, not only continues but seems to be growing, as the minister said.

Our raptor populations, which include eagles, peregrine, hen harriers and—yes—buzzards, stand as a symbol of a magnificent natural Scotland. It is unacceptable that such beautiful and majestic creatures are still poisoned, shot, trapped and killed. We see that that is unacceptable to people in Scotland in general from the reaction to such crimes. Today, the Parliament has another opportunity to make it clear that such practices are unacceptable to the Parliament, too.

The bill provides an unrivalled opportunity to take actions against the perpetrators of such crimes against raptors. I warmly welcome the minister’s intention to introduce a new provision on vicarious liability, which I am pretty confident—subject to seeing the detail—we will support.

That said, I am under no illusion about how difficult it will be to secure convictions under such a provision. I hope that its existence will be sufficient to create a climate whereby we bear down further on the crime of raptor poisoning. However, vicarious liability will not of itself go far enough. I urge the minister to consider other charges and offences, particularly one that would, figuratively and literally, capture those involved in raptor persecution, whether it is because they handled the poisons, the traps or the gun that shot the bird.

If the Government is prepared to keep single-witness evidence in law for the collection of bird eggs, I see no reason why it should not be extended to cover raptor persecution. However, I
agree with other committee members that it has to be one thing or the other—it should be either extended or taken out entirely.

Further, I urge the minister to make provision for the possible future—I stress “possible future”—licensing of estates to provide a potentially tough outcome for those estates on which persecution is shown to be continuing. The potential loss of the ability to continue activities as a result of the loss of their licence would have a powerful effect. As a society, we license all sorts of people and things, such as taxi drivers, window cleaners, social workers, lawyers, street traders, pubs, off-licences, gaming activity and betting. If, to protect the public interest, we can license people to do those things, it is entirely reasonable that we license to protect raptors. Although I would prefer that provisions on that were in the bill now, I accept that that would be a significant development of policy. The matter has not been fully consulted on, and it would be difficult to come up with a workable scheme in the short term. It is for those reasons that I consider that the recommendation of the committee for a reserve power is entirely appropriate. I stress that there is a variety of ways of doing that. I ask the minister to keep an open mind to the idea of working with others in Parliament to consider the possibilities, including a licensing scheme that would not cover all estates but would isolate those where problems are continuing.

I support the potential extension of the powers of the SSPCA—I stress “extension”, as the SSPCA already has significant powers in relation to the welfare of animals. It would be worth while to extend those powers to allow the SSPCA to investigate the persecution of raptors. I urge the minister to lodge an amendment at stage 2 to give ministers powers to do that, after the consultation that she has rightly said is still required takes place.

It is also important, in tidying up the law, that the minister clarifies once and for all—in the bill, I hope—which birds that are kept for release for shooting purposes are livestock and which are not. There is ambiguity about that and I hope that the minister will take the opportunity to correct that.

On deer, I support the principles that the minister has set out in the bill. Greater clarity is required on compliance with the code by landowners and to ensure that the complex provisions from the Deer Commission, which will continue under SNH, can be brought into play effectively. Further clarification on that is required, too.

I agree with the position that Sarah Boyack set out on snaring. More could be done on that issue and I support what Liam McArthur said in that regard.

Finally, on bees, the bill gives us an opportunity, if we think imaginatively enough, to give Parliament and ministers powers to protect various groups of bees in certain parts of Scotland that are not yet subject to disease. I urge the minister to keep an open mind on the issue and to consider it imaginatively—in due course I will give her some ideas on how to do that.

16:18

Robin Harper (Lothians) (Green): I agree with practically every word of Peter Peacock’s speech. He has saved me a little time because I do not need to cover everything now.

I will pick up on two of Peter Peacock’s observations. I agree whole-heartedly with his comments on snaring. The proposals are a good start, but we need to ensure that, if the provisions do not work, we return to the subject, preferably within five years. We should still be able to consider an outright ban on snaring. That is my objective, and the objective of my colleagues in the Scottish Green Party and of many others from whom we have heard.

In response to what John Scott said about eagles, I point out that, if people are poisoning eagles, they hide the evidence of their crime as well as they can. There is good evidence of that practice from the Highlands, where someone was observed catching a buzzard in a crow trap and was then tracked to where he buried it in a rabbit hole; when the buzzard was pulled out, the corpses of another seven buzzards were also found. That kind of thing happens and, on that evidence, there is no reason for us to think that it is not happening in the Western Isles, too.

I agree with Liam McArthur that geese are a problem, but they are also climate change refugees. Surely we should be doing what we can within our powers to welcome them and, at the same time, control the problem in a reasonable and rational way.

Several mentions have been made of climate change. The bill has no overarching purpose in that regard. No member has mentioned Professor Sir John Lawton CBE’s supplementary evidence on the bill, which came as a late submission to the committee. He makes the strong argument for the backdrop to the bill being “ecological coherence and habitat connectivity”.

He points out that “These subjects were not originally included within the scope of the ... Bill as introduced. However, I believe the inclusion of provisions in the Bill relating to ecological coherence and connectivity will make the Bill a more complete package of measures and would genuinely further the protection and enhancement of wildlife and the natural environment in Scotland.”
Surely we are talking not just about a tidying exercise but about a bill that provides a complete package of measures to protect our wildlife and natural environment.

Sir John goes on to say:

“The Scottish Government has targets for improving the condition of designated areas ... However, there are currently no such targets for improving the connectivity of semi-natural habitats or ensuring new developments are located and designed in such a way as to minimise further fragmentation (or in fact enhance connectivity through good design) ... there are some notable ... policy initiatives (e.g. Glasgow Clyde Valley and Central Scotland Green networks)“.

Why do we not try to include Sir John’s proposal in the bill as a general principle across Scotland’s environment? Picking up on what Bill Wilson said, I think that doing that would be extremely good for bees and other insect populations that have to survive in sensitive areas that have become cut off from other such areas. We must minimise fragmentation. I would welcome a response from the Government on the general principle that Sir John outlines of

“a general duty within primary legislation on public bodies to have regard to further the ecological coherence and connectivity of existing protected areas, including the features outside those areas which contribute to ecological coherence.”

I hope that the committee will have time to consider that during its detailed consideration of the bill.

Deer management has been mentioned several times. I commend all the comments that have been made on that. There is concern about the absence of powers if non-participation continues and deer management groups do not produce deer management plans or landowners fail to introduce such plans. We need further measures under the bill to introduce powers of compulsion. The committee called for clarification on how to make landowners abide by the code of practice on deer management and, in particular, on how breaches of the code could lead to SNH intervention and how they could trigger sections 7 and 8 of the Deer (Scotland) Act 1996. I ask the minister to say whether the Scottish Government will support an amendment to make those processes clearer and more robust in the bill.

Rob Gibson (Highlands and Islands) (SNP):

Although I am not a member of the Rural Affairs and Environment Committee, I am delighted to take part in the debate, because I have had previous involvement with the subjects to which the bill relates and wish to contribute some remarks that will, I hope, be helpful.

Robin Harper cited Sir John Lawton’s remarks about ecological coherence, which are interesting, but the issue might be more suitably addressed through the land use strategy. We are talking about the management of land. By and large, the land of Scotland is highly managed—very little of it is wild—but its ecological coherence can be addressed in that context. As we know, ecologies change. At present, the rewetting of peatlands, which is a particular interest of mine, is improving habitats for many of our species. It also allows us to tackle some climate change issues by sequestering carbon. There will be changes in the way in which land is used, in the way in which certain ecosystems are developed and so on. It is difficult to address the issue of ecological coherence here, given that it was raised only following the bill’s introduction.

Robin Harper described geese as refugees. When people first began to live off Solan geese, or gannets, and other birds on islands such as St Kilda, I wonder whether they saw them as refugees, as likely to be food or—as someone has put it in more modern terms—as flying duvets. It might be suggested to people in North Uist, who are responsible for a lot of the correspondence on the problem that members in the Highlands and Islands receive, that there is an opportunity to make some new industries out of the excessive numbers of geese that are present. They find it difficult to get people to shoot the geese, but perhaps a new industry will come out of that.

I have a serious point to make about non-native species. We regularly have to pass secondary legislation on mink. That is an example of a long-running effort to remove a non-native species from our midst. It has always worried me that we do not get updates on record keeping about how well we are doing, except perhaps once a year, when the secondary legislation is considered. It is important that the bill should make more detailed provision in that area, if possible.

I note the moves to give beavers—a reintroduced species—protected status. I wonder what would have happened to the osprey, when it first came back in the 1950s, if we had treated it as a non-native species. We must be careful to recognise which animals and birds can live in our habitat and have been here before, and ensure that they are protected.

The issue of deer management, which is close to my heart, has been raised. I wish that deer management were practised to the full extent that it can be, but I believe that it is not. Although we recognise the great job that deer management groups do, I am concerned that the management of deer is tied up so much with the ownership and value of land, from which it should be somewhat detached.
We still have far too many deer. If there were an opportunity for them to live in a more natural habitat, which would include woodlands, they might grow larger; that would provide us with a much better stock of animals. We are hampered by the fact that the sale of estates is governed by the number of stags that can be shot. Careful consideration must be given to the issue of deer management. The Deer Commission for Scotland has just merged with SNH. We must see how that arrangement works out, but the voluntary principle must be kept under close scrutiny.

I turn to the issue of effective enforcement and the police response to wildlife crime. Other members have mentioned that illegal raptor persecution is still too widespread in various parts of Scotland. The recent incidents in my region this summer, at Skibo and Moy, illustrate the need for urgent efforts to be made to tackle such persecution, as raptors are a key part of our Highland natural heritage and are a major attraction for eco-tourists. It worries me that findings of eagle, sparrowhawk and buzzard carcasses were reported in May this year. The owners of Skibo castle said:

"The owners and management of Skibo Castle are committed conservationists and do everything they can to support the welfare of wildlife and birds and will co-operate fully with the investigation."

I am not talking about guilt or innocence here, but it is very difficult for estates to manage such incidents. It depends on their outlook and their views on what the estate is for. It is important that, under the bill, we will at last make some link with what gamekeepers do—perhaps, they think, in the best interests of their employers. We ought to know that the employers are quite clear on that.

I welcome the letter from the Scottish Estates Business Group and the Scottish Rural Property and Business Association, which have "repeatedly condemned such incidents". They suggest that a better way forward is possible.

Vicarious liability measures are absolutely essential for the bill, and I hope that they, along with many other measures, will strengthen our support for wildlife in this country.

16:31

Jim Hume (South of Scotland) (LD): We have had an interesting debate this afternoon, and I too start by declaring an interest, in hill farming. I took a particular interest in the section on muirburn.

There can be no doubt that we are fortunate to live in a country of such beauty. The scenery in every corner of Scotland is complemented by diverse wildlife. Indeed, I argue that our most profitable natural resource is our environment and wildlife. It is not just profitable; it provides great enjoyment for everyone who goes into the country.

A report that was commissioned by SNH and published this year estimated that nature-based tourism was worth nearly £1.5 billion annually to the Scottish economy, and that it supported 39,000 full-time jobs. Wildlife tourism alone is estimated to generate £127 million each year, and it is the driving force behind more than 1 million visits annually.

The intentions behind the Wildlife and Natural Environment (Scotland) Bill are good. It was appropriate to hold an extensive consultation to ensure that a wide range of stakeholders could help to shape the bill prior to its introduction. It seems rather ridiculous that there are still sections of game law that are derived from a piece of legislation that was passed before the US declaration of independence. I welcome the bill’s attempts to provide a more modern legal framework for tackling wildlife and environmental issues.

There are a number of concerns in my region. Country sports play an important part in the economy there, with many hotels surviving only because of the winter visitors for game shooting and because of the environment. An independent survey from eight years ago estimated that 80 per cent of woods in the Borders were used at some stage for country sports. Many of them were planted solely for that reason. In one year there were up to 196,000 participation days in rural sports, and in the Borders alone an estimated £29.5 million was spent by providers and participants. We must be careful not to shoot ourselves in the foot with a well-intentioned bill. I also recognise the importance of pheasant rearing and release in that regard, and I would be interested to hear the minister’s views on that when she sums up the debate.

Vicarious liability has been discussed, and no one here will wish to condone any land user giving orders to kill wildlife illegally, so the bill must tighten up that area. It must also ensure that land users cannot be prosecuted for a crime just because it happened on their land. I am glad to hear that the minister will lodge an amendment regarding due diligence to address that point.

The sections of the bill that seek to legislate on non-native species are of particular interest to me, because non-native species are of some relevance to me and others in the South of Scotland. American signal crayfish have become a significant problem in various areas of the country, with Loch Ken in Dumfries and Galloway being especially badly affected. It is estimated that the income that is generated by people who use the loch for boating and angling exceeds £740,000 per annum. That has come under threat from the
crayfish, which eat young fish and destroy their habitat. I understand that, in a five-month period last year, more than a million of the creatures were captured on the loch in a Government-funded pilot scheme, which highlights how serious the problem is. Such is their impact that the species was described by Colin Bean of SNH as

"the Steve McQueen of the invertebrate world", because the crayfish can escape from anything, probably due to their being amphibious.

That is only one example of the kind of economic and environmental impacts that an invasive non-native species can have when introduced into an alien ecosystem. It is therefore only right that we take a dim view of those whose actions, or inaction, endanger native animals and plant life, so I welcome the Government's efforts to tackle invasive non-native species. However, I am mindful of the number of organisations and members awaiting clarification on certain of the provisions, which I am hopeful will be provided at stage 2.

When we consider that Scotland possesses 80 per cent of the UK's blanket bog peat and that the amount of carbon currently lying underneath our soil represents about 190 years' worth of Scotland's total emissions, we get a sense of how potentially serious the degradation of our peatland is. The continued presence of about 750,000 deer in Scotland, many of which are located in peatland areas, is probably not helping.

With that figure in mind, as Liam McArthur said, it is worth looking at deer management. However, I am aware of the concerns about possible contraventions of the European convention on human rights by placing a legal duty on landowners to manage deer sustainably, and of the disagreements that became apparent during the consultation. I note the committee's belief that the deer management provisions in the bill have struck an acceptable compromise and I broadly support them.

I look forward to monitoring the bill as it progresses through Parliament, as it is important that we streamline and simplify the legislation in the areas specified in the bill.

16:37

Jamie McGrigor (Highlands and Islands)

(Con): I am delighted to sum up in this debate. It is vital that we get the bill right for those men and women who work in the hills and glens and keep them well managed, even when, as now, they are hindered by several feet of snowdrifts while we sit cosily in the chamber. They are straightforward, tough people—the very salt of Scotland's earth—and they deserve a fair deal.

The minister said that she had listened to many people from different walks of life. Well done to her for that, and well done also for recognising the importance of this sector of rural life. She has listened to people who do not often get heard and who do not get heard often enough.

I thank my friend John Scott and other members of the Rural Affairs and Environment Committee, as well as the committee clerking team, for a thorough stage 1 report, which has informed today's debate. Much of the debate has focused on wildlife crime and, as John Scott set out, we believe—like Bill Wilson—that the argument has not been made convincingly that single-witness evidence should apply on this issue. Rather, as Sheriff Drummond suggested when he gave evidence, the focus should be on the collection of solid evidence. Given that the evidence to the committee suggested that it was incredibly rare for someone to be prosecuted for an offence of egg stealing on the evidence of a single witness, it surely is illogical to extend single witness evidence to other wildlife crime. Such a move might even open up the door to frame-ups. Surely law is good only if it works to stop crime.

Likewise, the Scottish Conservatives have serious worries about the Government's intention to introduce vicarious liability at stage 2, because we again pay heed to the words of Sheriff Drummond, an expert on wildlife crime, who said:

"There are so many ways round it. Vicarious liability has been floated as some kind of answer. It is not an answer".—[Official Report, Rural Affairs and Environment Committee, 15 September 2010; c 3104.]

Much legislation already exists, and we should surely concentrate on achieving better enforcement of current laws before adding additional measures to the statute book. In other words, we should tighten up existing laws and ensure that they work against wildlife crime.

Snaring is another subject that many members have raised. I am well aware of the strong feelings about snaring—indeed, I, too, have strong feelings about it—and I welcome the committee's balanced conclusions on it. Its report states:

"the Committee also acknowledges that pest control is a vital part of land management and that, if properly regulated and managed, limited and appropriate use of snares should continue to be an option for land managers in Scotland."

As Bert Burnett of the Scottish Gamekeepers Association said this week, the majority of practitioners are already highly skilled, and they have welcomed the tightening of snaring regulations and demonstrated a clear willingness to meet modern expectations by signing up for detailed practical and written training in order to meet the highest welfare standards.
To many of my constituents in the Highlands and Islands, snares remain a vital tool in controlling escalating fox numbers, which can do much damage to our populations of rare waders and ground-nesting birds as well as to valuable game birds, not to mention the lambs on numerous sheep farms throughout the Highlands. At this point, I suppose that I had better refer members to my agricultural interests in the register of members’ interests.

On game management, we are happy to welcome the modernisation of game law and the abolition of game licences. The bill will also repeal the restriction on selling game at certain times of the year by amending section 4 of the Game Act 1831, which was aimed at stopping the killing of game birds and hares during closed seasons. Refrigeration now means that game that has been killed in the open season can be kept and sold throughout the year. I hope that the bill will open up more marketing opportunities for those who wish to sell Scottish game in restaurants and shops all year round.

The SRPBA is right to argue that any future changes to the list of game species must be subject to full parliamentary scrutiny. I strongly support the committee’s call for any proposed removals from the game species list to be subject to affirmative rather than negative procedure, which would mean that any proposals would be voted on.

More generally, I welcome the Government’s and the committee’s recognition that shooting and red deer stalking are of real economic importance to many areas of Scotland. That is especially so in the Highlands, where the income from country sports provides work for gamekeepers and numerous other jobs associated with them.

I want to put on record my support for the wildlife estates Scotland initiative, which I was pleased to see the minister launch at Colquhalzie in Perthshire on 23 November. Everyone involved in that initiative is to be commended. I know that those people will step up to the mark in showing to the public that our Scottish country estates are integral to protecting and preserving our natural environment. The pilot scheme will run in the Cairngorms national park area, and will no doubt be reviewed regularly. The scheme is not, as some have suggested, some sort of voluntary licensing scheme; it is a voluntary accreditation scheme in which the code of acceptable good practice that everybody should follow will be set out.

Finally, Bill Wilson referred to bees. He may know that the bees in many hives in Scotland stopped breeding in September because they knew that bad weather was coming. That shows that a bee is better than the BBC at weather forecasting.

The Scottish Conservatives are happy to support the general principles of the bill, and we welcome the fact that many of the concerns that existed, particularly relating to deer management, have been dealt with.

16:43

Elaine Murray (Dumfries) (Lab): I thank everyone who provided written and oral evidence on the bill, the committee clerks, and our hosts at the meetings that we undertook.

When the bill was introduced, it appeared at first to be a rather random amalgam of different pieces of legislation, and I found it difficult to feel enthusiastic about it. However, during its progress I have, like Peter Peacock, learned to love it more and to become more engaged with it and enthusiastic about it, as it has enabled us to consider how to tackle issues such as wildlife crime and to tidy up some rather antiquated regulations, such as the game laws. As usual, the committee’s recommendations offer opportunities to strengthen further the regulations.

Robin Harper and Rob Gibson referred to the overarching vision for the environment. During stage 1, some contributors have been disappointed that there is no overarching vision for the natural environment in the bill through, for example, strengthening the biodiversity duty or improving ecological coherence, and they have pointed out that that was, however, achieved in the Marine (Scotland) Act 2010. Ecological coherence would provide corridors for the spread of wildlife should the conditions alter—through climate change, for example—and it would help to preserve biodiversity. I know that the minister feels that that is not appropriate in a bill that will create a criminal offence: I bow to her knowledge as a solicitor. I presume that the difficulty is because of possible ambiguities about the meaning of terms such as "biodiversity duty" and "ecological coherence" in a bill that will create criminal offences. That said, I am sympathetic to the need to make progress on those issues. If that cannot be done in the bill, we need to consider carefully how it can be done elsewhere.

Wildlife crime took up a lot of the committee’s time and has taken up a certain amount of time in the debate. Scotland’s natural environment and the wildlife that inhabits it are among our greatest assets, as many have said. A recent SNH study estimated that wildlife tourism is worth about £126 million annually to the Scottish economy, which compares fairly closely with the income of £137 million that is generated by all field sports. However, past practice has decimated some of
that wildlife, particularly raptors, as Peter Peacock and Robin Harper said. Some species were persecuted to the point of local extinction and have had to be reintroduced. An example is the red kite in Galloway, which is now a considerable attraction. The species had to be built up in the past 10 or 12 years through a reintroduction programme and now makes a significant contribution to the economy in the area.

Unfortunately, because raptors are predators, they are still targeted through poisoning and, in some cases, shooting. Despite all the outrage, the situation is not improving, as the minister said, and stronger action needs to be taken. I am afraid that John Scott appears to be in denial on the issue. We cannot shy away from the fact that some of that illegal activity appears to stem from shooting estates. Wildlife crime does Scotland’s image no good at all and it is unhelpful to wildlife tourism and field sports.

**John Scott:** I am not in denial about the issue and I acknowledge that it exists. It is the comments on the scale of the problem with which I have difficulty. Vicarious liability is, to use the overquoted comment, a sledgehammer to crack a nut. I hope that the member accepts that this is my position.

**Elaine Murray:** There is a lot of evidence in terms of successful pairs of breeding raptors in particular habitats and so on. There is also evidence on the other side. We are broadly supportive of the minister’s intention to lodge an amendment at stage 2 to introduce vicarious liability. Obviously, we have yet to see the amendment.

Current legislation allows the prosecution only of the person who actually carried out the crime, which is usually the gamekeeper, and does not recognise that the keeper might be under pressure from his boss to reduce the loss of his birds. Why should the guy on low wages in a tied cottage have to take all the responsibility? After the conviction of a 22-year-old gamekeeper in Karen Gillon’s constituency just a few weeks ago, his lawyer stated that he had been trying to impress his boss. There is a precedent. Vicarious liability already exists in the licensing trade, as a pub landlord can be held responsible if his or her staff break the law. However, we received evidence that it might be difficult to enforce such a provision.

If vicarious liability does not work and if that stick is not successful, we will need another tool in the toolbox. We believe that we should give ministers the power to develop a licensing scheme and to introduce it under the super-affirmative procedure. I, too, welcome the wildlife estates initiative. Nobody intends to hijack that. We want it to work. If it works, and if vicarious liability works, there will be no need to introduce a licensing system, but if those measures do not work, we will need to clamp down further on wildlife crime. Some of the provisions in the voluntary code could form the basis of a licence.

Labour and the SNP have been sympathetic to an outright ban on snaring; the issue has been discussed at both parties’ conferences. I was happy with that position until I visited the Langholm moor demonstration project the summer before last—although I did not do so as part of the bill process. That project involves the SRPBA, SNH and Natural England. As members have said, it aims to manage uplands to support game birds, hen harriers and wild ground-nesting birds. There is a little part of me that cannot quite see an alternative to using snaring in that type of terrain. I am a bit anxious that, if we take away snaring, we might damage that type of project. There has been contrary evidence on the issue. Bill Wilson alluded to that and mentioned the question whether predation of lambs by foxes leads to significant losses. Bill Wilson thinks that it does not, but John Scott thinks that it does.

The contrary evidence is such that I think that I support the recommendation that the effectiveness of the regulations needs to be monitored, maybe after five years. It has been suggested that that needs to be done after two years, and perhaps we should look at that at stage 2. I would like that to be coupled with a power to introduce a complete ban, in the event that what is proposed in the bill does not work. In that sense, it is a bit like the situation with vicarious liability.

**John Scott:** Will the member give way?

**Elaine Murray:** No. I have already taken an intervention and I need to get on.

On deer management, as others have said, deer are an iconic species, especially the red deer, which, like the golden eagle, is strongly associated with Scotland. However, large numbers of deer are damaging to the environment, through overgrazing, and to biodiversity.

Some stakeholders have expressed disappointment that the compulsory approach that was suggested in the consultation has been replaced by a voluntary code. We believe that clarification is necessary on what measures will be taken if landowners do not participate in deer management groups, or if the groups fail to produce deer management plans. The code of practice is welcome, but what will happen if it is breached? What sanctions will SNH be able to apply? We might need to consider further whether a duty to comply with the code is required and should be added to the bill.

The provisions on non-native species are broadly welcome. The most contentious issue is whether pheasants and red-legged partridges
should be exempt. The issue is not whether they are native but whether, if they are released in large enough numbers, they can cause damage to the environment. If that is the case, we believe that it would be appropriate for reserved powers to be available.

Bill Wilson and Peter Peacock made important comments about native species, notably bees, which I hope will be looked at further at stage 2.

The Presiding Officer (Alex Fergusson): I must hurry you, I am afraid.

Elaine Murray: I conclude by saying that I welcome the bill. I am more enthusiastic about it than I was, and I look forward to further discussion of it at stage 2.

16:51

Roseanna Cunningham: There is broad agreement on the general principles of the bill, for which I am extremely grateful. I thank the members who have contributed to the debate, as well as the members of the Rural Affairs and Environment Committee, who have been involved in the process of getting the bill this far.

As is patently obvious, there are positions on some sections of the bill that will never be reconciled because one group of stakeholders wants more control in one direction, which is resisted by others. In some of those areas, there is no easy compromise that will satisfy everyone.

There is a tension between the idea of more centralised control of aspects of rural management and the continuing desire for things to be worked out voluntarily. It is clear that the Government has tended towards the voluntary approach, unless there has been compelling evidence that we should act to the contrary. I accept that we are dealing with a broad continuum, and that the tension that exists on those issues will not go away.

I will try in the time that is available to address as many as possible of the points that have been made, but it is inevitable that I will not be able to deal with all of them. Matters that I cannot deal with now will be picked up directly with the appropriate member or in the Government’s response to the committee’s report.

Maureen Watt and others mentioned consolidation. I do not believe that there can be any principled objection to the idea of consolidation, but the difficulty arises when one begins to consider the practicalities of it, because it is a highly resource-intensive exercise and there may be other pressing cases for consolidation that would take priority when it comes to parliamentary time. I know, for example, that the committee has already raised the prospect of consolidation of crofting legislation. It is difficult to see how one could pursue too many bits of consolidation. I see that one member of the committee is shaking his head—I suspect that he is pleading, “No, no.” Carrying out too much consolidation can be problematic.

Many members mentioned snaring. I understand what an emotive issue it is, but we must remember that not snaring would not mean that animals would not die. The control would still have to happen. Among the questions that members raised is whether we should hold a review in five years—which I point out is the committee’s recommendation; it is not a timescale that I plucked from the air—in two years or at some intermediate point, as appropriate. We have to allow sufficient time for the new rules to come into play.

We already have the capacity to deal with snaring as we go along. We do not need any reserved powers; we have the powers already. Those powers could extend to a severe restriction on snaring that would respond to every concern that has been expressed: the powers already exist in the Wildlife and Countryside Act 1981. The power to move to the final step of an absolute ban should require very serious consultation because the implications for rural Scotland of doing so would be pretty serious.

Deer have been mentioned by a number of members. Again, in that area, we are sticking with the voluntary principle, and I make no apology for that. A number of questions have been asked about what will happen when the code fails. The bill will sharpen SNH’s powers of intervention, including by bringing in clear time limits. We do not think that any additional powers are required to protect the public interest. The costs of the Government’s proposals would pale into insignificance when compared to the cost of statutory deer management. I understood the committee to be content with the deer proposals. In this time of financial stringency, we want to consider carefully whether we should move into an area that would add cost.

The deer code will apply to all landowners, not just to private landowners, and it will set out examples of sustainable management. If landowners are not taking note, that will prompt SNH’s intervention powers—[Interruption.]

The Presiding Officer: Order. The only person I really want to hear is the minister. I can hear far too many other people.

Roseanna Cunningham: People rarely have difficulty hearing me, Presiding Officer.

On the more general issue of wildlife crime, I was rather disappointed by John Scott’s remarks. The statistics that we have are about verifiable
poisonings, not about disappeared birds. We know that many disappeared birds will have died natural deaths, but that does not mean that we can ignore the poisonings and the appalling publicity that they generate.

I also remind people who talk about the licensing of shooting estates about the importance of shooting estates to the economy. The information that I have suggests that they are worth £240 million to the Scottish economy. It is estimated that 58,000 workers are paid by shooting, which amounts to the equivalent of 11,000 full-time jobs. That is an enormous contribution to our economy and we have to be careful that we do not damage it.

Karen Gillon (Clydesdale) (Lab): Will the minister taken an intervention on that point?

Roseanna Cunningham: I do not have enough time.

We would move towards licensing shooting estates very carefully and gingerly.

Lots of issues have been raised, not so much about vicarious liability, which is generally welcomed, but about other potential changes that might be made, including single-witness evidence. We have looked at all those issues. Some people wanted single-witness evidence to be wiped out altogether, and some wanted it to be extended. We came to the ultimate view that, since there was no particular balance of opinion one way or the other, we would be as well sticking with the status quo. I accept that some people might feel differently, but I remind people that the broader justice review—the Carloway review—is considering corroboration in Scots law in a wider context, so it might be worth focusing on that.

Issues around invasive non-native species seem to be uncontroversial, and I welcome that. Other, smaller points have been raised and I will go back to individual members on them, if they will allow me to.

I am not a particular adherent of littering legislation with multiple reserved powers, as has been suggested for the bill. Some of the powers are absolutely appropriate, but others are not. I believe that the bill will make a fundamental and good change for the future of wildlife management in Scotland. That is extremely important: the natural environment is enormously important in Scotland. I am very glad that there is unanimous agreement on the bill, and I look forward to its subsequent stages.
The Presiding Officer: The next question is, that motion S3M-7484, in the name of Roseanna Cunningham, on Wildlife and Natural Environment (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Wildlife and Natural Environment (Scotland) Bill.

The Presiding Officer: That concludes decision time.

Meeting closed at 17:05.
I welcome the publication of the Rural Affairs and Environment Committee’s Stage 1 report on the Wildlife and Natural Environment (Scotland) Bill.

Wildlife crime is given a particular priority within COPFS. The Scottish public’s keen interest to protect our natural environment is deep rooted and, properly reflecting this public interest, Scottish prosecutors are alive to the issues involved in tackling wildlife crime.

As the Committee are more than aware, the prosecution of offences involving wildlife often presents unique challenges and as a result in September 2004 a dedicated team of specialist wildlife prosecutors was appointed. There are eleven Procurator Fiscal Areas across Scotland and there is now at least one wildlife specialist in each Area, and in several areas there are more than one. These specialist prosecutors consider and take decisions in wildlife cases, and will personally conduct any subsequent prosecution in these cases.

In January 2005, COPFS convened a Wildlife and Habitats Crime Prosecution Forum which continues to meet twice yearly. Its membership includes the police, RSPB, SNH, SSPCA and Scottish Government departments. It provides structured liaison with wildlife crime reporting agencies and the other organisations which are closely involved in the investigation of wildlife crime, provides training opportunities for our specialists and lets us identify any strategic issues which arise in individual cases. In the last year our Wildlife Specialists have taken an active role in the Mock Wildlife Crime trials as well as attending the Wildlife Crime Officers Basic Training course at the Scottish Police College.

In 2007 following a Parliamentary debate on wildlife crime, the Minister for Environment and I announced a joint thematic inspection by Her Majesty’s Inspectorate of Constabulary for Scotland (HMICS) and the Inspectorate of Prosecution in Scotland (IPS) to consider and report on the prevention, investigation and prosecution of wildlife crime in Scotland. The report was published on 16 April 2008.

The report was positive but made a number of recommendations for the improvement of prosecution of wildlife crime. COPFS has worked closely with our partners in the Partnership Against Wildlife Crime (Scotland) to implement all of the (COPFS) recommendations made in the report.

In February this year I appointed the first member of Crown Counsel dedicated to Wildlife Crime.
Alex Prentice is the Assistant Principal Advocate Depute within COPFS. His role is to support and provide legal advice to specialist prosecutors, to present the Crown case in any criminal appeals on wildlife matters and thereby to assist in providing a consistent approach to the prosecution of wildlife crime across the country.

While there has been significant progress made in the investigation and prosecution of wildlife crime, I can assure you that COPFS is not complacent and will continue to pursue those who commit offences of wildlife crime seriously and takes a robust approach to prosecuting such offences.

Frank Mulholland
Solicitor General
13 December 2010
WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

Rural Affairs and Environment Committee
Stage 1 Report

SCOTTISH GOVERNMENT RESPONSE
15 December 2010
GENERAL PRINCIPLES OF THE BILL

Ecological coherence

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<tr>
<th>Committee Comment</th>
<th>Scottish Government Response</th>
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<td>Para. 164</td>
<td>A wide range of action is being taken by the Scottish Government and agencies, which can be gathered under three headings, information, trials and pilots, and large-scale ecological coherence proposals. Information is a critical element in improving ecological coherence as we need to translate the overall concept into practical land use and management changes. A partnership of SNH, Forestry Commission and Forest Research has led in producing such a tool (generally referred to as BEETLE) and Forest Research has undertaken a number of contracts to provide this information for specific projects. There have been a number of trials and pilots in specific areas to test the concepts and practicality of improving ecological coherence. For example, in 2006 Forestry Commission Scotland, Scottish Natural Heritage and Highland Birchwoods collaborated on a woodland establishment incentive - Highland Locational Premium. This provided incentives in proportion to the additional ecological coherence created by paying for increases in the size of native woodland ecological networks. The Government’s National Planning Framework 2 identifies two projects of national status. The first of these is the Central Scotland Green Network, a project which includes ecological coherence within a wider spread of objectives. The second action is to develop a National Ecological Network.</td>
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<td>Para. 165</td>
<td>The Committee also notes the Minister’s comments that the Bill was not the appropriate vehicle for taking the issue forward. The Committee asks the Scottish Government to consider whether the emerging land use strategy may be a suitable vehicle for making progress on this issue. The Land Use Strategy is currently open for public consultation. The Scottish Government will give consideration</td>
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Scottish Government Response

The wide range of action is being taken by the Scottish Government and agencies, which can be gathered under three headings, information, trials and pilots, and large-scale ecological coherence proposals. Information is a critical element in improving ecological coherence as we need to translate the overall concept into practical land use and management changes. A partnership of SNH, Forestry Commission and Forest Research has led in producing such a tool (generally referred to as BEETLE) and Forest Research has undertaken a number of contracts to provide this information for specific projects. There have been a number of trials and pilots in specific areas to test the concepts and practicality of improving ecological coherence. For example, in 2006 Forestry Commission Scotland, Scottish Natural Heritage and Highland Birchwoods collaborated on a woodland establishment incentive - Highland Locational Premium. This provided incentives in proportion to the additional ecological coherence created by paying for increases in the size of native woodland ecological networks.

The Government’s National Planning Framework 2 identifies two projects of national status. The first of these is the Central Scotland Green Network, a project which includes ecological coherence within a wider spread of objectives. The second action is to develop a National Ecological Network.
| Response | to this as part of the consultation response. |
### Biodiversity duty

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<tr>
<th>Committee Comment Para. 170</th>
<th>The Committee notes that the safeguarding of Scotland’s biodiversity requires the private sector, which holds most of Scotland’s rural land, to play its part. A variety of levers - legislation, codes of practice, policy and funding (which includes cross-compliance) – are already in existence. The Committee invites the Scottish Government to consider whether it is making best use of these levers in order to ensure that the country overall meets its biodiversity target.</th>
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<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government is currently working to develop policy as a result of the new global targets and obligations agreed at the UN Convention on Biological Diversity at Nagoya. The Scottish Biodiversity Strategy recognises that everyone has a role in biodiversity conservation. The delivery structures in place involve a range of people and organisations from public and private sectors.</td>
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**Is the legislation becoming too muddled?**

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<th>Committee Comment</th>
<th>Scottish Government Response</th>
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<td><strong>Para. 180</strong></td>
<td>The Committee considers that the case for consolidating the law in this area was very well made in evidence to it, particularly as even legal experts were of the view that the law was complex and difficult to follow. The Committee therefore recommends that, following the passage of this Bill, serious consideration should be given to consolidating the current range of legislation.</td>
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<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Wildlife and Countryside Act 1981 would clearly benefit from consolidation. However consolidation requires considerable resources and there may well be other areas of law that would be given greater priority in terms of Parliamentary time.</td>
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<td><strong>Para. 182</strong></td>
<td>The Committee notes the discussions which took place on what the appropriate levels of parliamentary scrutiny, if any, should be, for the codes of practice provided for by the Bill. The Committee considers that the codes established by the Bill should be subject to Parliamentary scrutiny, given that the INNS code helps establish liability for offences created by the Bill, and the deer code details circumstances which could lead to SNH intervening in the use of a person’s property. The Committee notes the precedent for other codes of practice, such as those concerning the welfare of cats and dogs, to be subject to Parliamentary scrutiny. The Committee therefore recommends that the codes of practice relating to both deer management, and INNS, should be subject to parliamentary procedure and that the Scottish Government gives serious consideration to using the affirmative procedure for the INNS code.</td>
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<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government accepts that the codes of practice should be subject to parliamentary procedure and will bring forward appropriate amendments at Stage 2.</td>
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### The marine environment

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<th><strong>Committee Comment</strong></th>
<th>The Committee draws the attention of the Scottish Government to the comments raised by the Crown Estate above and recommends that the Government clarify the issue with the Crown Estate before Stage 2.</th>
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<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government has contacted the Crown Estate Commissioners to confirm that the Bill will not place a duty on the Crown Estate to deal with all invasive non-native species in the marine area.</td>
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PART 2: WILDLIFE UNDER THE 1981 ACT

Game management

Committee Comment Para. 213
The Committee also notes, however, that a future administration in Scotland could, by negative procedure, amend the legislation to remove a game species from the list of birds which may be killed or taken outwith the close seasons. As this would be a radical change, the Committee recommends that any proposal to remove the game species from Schedule 2 of the 1981 Act, be subject to affirmative, rather than negative, procedure.

Scottish Government Response
The Scottish Government accepts this recommendation and will bring forward an appropriate amendment at Stage 2.

Committee Comment Para. 219
However, the point made by the RSPB about the need for better record-keeping and monitoring of mortality rates of certain species on estates and bag counts, should be further considered by the Scottish Government. The Committee is under the impression that the vast majority of estates keep records of what is shot on their land, and that it should therefore be possible to make this information more widely available to inform scientific analysis of the health of a particular species. If there are concerns regarding commercial sensitivities, provision should be made to enable such evidence to be anonymised.

Scottish Government Response
The Scottish Government agrees that bag returns could provide useful additional data for species management purposes. We intend to initiate discussions with shooting industry representatives with a view to developing a scheme. We would prefer to consult on this issue before moving to legislate. It may be the case that we conclude that a voluntary scheme is preferable to a statutory scheme.

Committee Comment Para. 224
The Committee looks forward to the results of the goose review. The Committee recommends that the Scottish Government give detailed consideration to any proposals or recommendations that emerge from the review, and assess whether any of them would be best taken forward as part of this Bill.

Scottish Government
The Scottish Government will give careful consideration to the outcome of the goose review, including whether any changes
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<th><strong>Response</strong></th>
<th>to legislation that may be required should be achieved in the Bill.</th>
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<td><strong>Committee Comment</strong></td>
<td>The Committee notes that there is, therefore, an anomaly in legislation, which allows shooting of certain species on Sundays and Christmas Day, but not others. The Committee recommends that the Scottish Government takes the opportunity to addresses this anomaly during the passage of this Bill.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government does not consider it appropriate to change the law to allow shooting of wildfowl on Sundays and Christmas Day without prior consultation on the cultural, practical and conservation issues surrounding such a change. The Scottish Government is not aware of widespread support for such a change.</td>
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<tr>
<td><strong>Committee Comment</strong></td>
<td>The Committee asks the Scottish Government what welfare, environmental or economic reasons there are for setting the catching-up period at 14 days? If there are no such particular reasons, the Committee would be minded to recommend that the Scottish Government amends the Bill at Stage 2 to extend the period for catching-up.</td>
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<td><strong>Scottish Government Response</strong></td>
<td>The practice of catching-up in close season is currently illegal. The Scottish Government considers that the new provision of 14 days in the close season for catching-up should be sufficient.</td>
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<tr>
<td><strong>Committee Comment</strong></td>
<td>The Committee notes the comment made by the Game and Wildlife Conservation Trust proposing the inclusion of black grouse in the catching-up provisions but does not have sufficient information regarding the possible consequences of such a change to make any recommendation. The Committee therefore draws this to the attention of the Scottish Government for further consideration.</td>
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<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government has been advised that some grouse managers do catch-up black grouse for breeding purposes and so will bring forward an appropriate amendment at Stage 2.</td>
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<td><strong>Committee Comment</strong></td>
<td><strong>Scottish Government Response</strong></td>
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<td>Para. 259</td>
<td>The Committee notes the evidence on whether the close season, for brown hares in particular, should be reduced by a month. The Committee is not clear on whether reducing the close season by such a time would have any significant negative welfare impact on live young and therefore asks the Scottish Government to reconsider the close season dates to ensure that they take account of the welfare of live young specifically.</td>
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<td><strong>Para. 261</strong></td>
<td>The proposed close seasons are based on the welfare of hares, in particular the periods when there are likely to be dependant young. SNH advised the Committee that nearly half of all females are pregnant in February. Therefore shooting hares in February is likely to impact on the actively breeding population and harm dependant young.</td>
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<tr>
<td><strong>Para. 264</strong></td>
<td>However local population levels should be carefully monitored. The Committee notes the research being carried out by SNH to assess the extent of local populations of mountain hares and recommends that the Scottish Government give this full consideration when it is published.</td>
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<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government will give full consideration to the research currently being undertaken by SNH once published.</td>
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<td><strong>Scottish Government Response</strong></td>
<td>The Committee asks the Scottish Government to note the concerns raised by falconers that the Bill may penalise them for inadvertently allowing a falcon to take a hare, rather a rabbit, during the close seasons.</td>
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<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The provisions in the Bill make it an offence for anyone to intentionally or recklessly kill, injure or take a hare. Therefore a falconer will not be penalised where their actions are not intentional or reckless.</td>
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## Enforcement of wildlife crime

**Committee Comment**  
**Para. 307**  
The Committee notes that the Partnership for Action Against Wildlife Crime Scotland has recently established a definition of ‘wildlife crime’. The Committee recommends that the Scottish Government ensures that this definition is used by all police forces in Scotland in order to ensure a consistency of approach in responding to reports of wildlife crime and properly recording such instances. The Committee also notes that a consolidation and rationalising of the law regarding wildlife crime may enable an even clearer definition to be established in future.

**Scottish Government Response**  
The National Wildlife Crime Unit, who collate and analyse wildlife crime incident data for the UK, already provide all Police Forces with a detailed list of categories that they expect to come under the definition wildlife crime. The PAW Scotland definition would not benefit the recording process as it is less detailed than what is already in place. Its purpose is to prescribe the role and activities of PAW Scotland.

**Committee Comment**  
**Para. 309**  
The Committee is encouraged by the Minister’s comments that the Scottish Government was ‘open’ to giving further consideration to the request by the SSPCA that its powers be extended to allow them to investigate wildlife crimes, where a dead animal is involved. On the basis that this is likely to be the last piece of wildlife legislation considered for some time, the Committee recommends that the Scottish Government gives consideration to putting an enabling power in the Bill to allow for the possible extension of the SSPCA’s powers, subject to the outcome of a full consultation on the proposal and endorsement by Parliament.

**Scottish Government Response**  
While the addition of SSPCA Officers to support enforcement of wildlife crime appears an attractive option, the Scottish Government considers this to be a substantial step in terms of Criminal Justice. Such a move should not therefore take place without extensive consultation and detailed consideration of the knock on effects of any change. This issue could be considered for inclusion in a future Criminal Justice Bill, following consultation.
### Committee Comment
**Para. 323**  
The Committee condemns as wholly unacceptable the illegal killing of raptors which continues across Scotland. The Committee recommends that the Scottish Government instructs police forces to investigate rigorously suspected cases of raptor persecution. The Committee also recommends that the Scottish Government likewise instructs the Crown Office and Procurator Fiscals office to prosecute wildlife crime vigorously.

### Scottish Government Response  
Scottish Ministers cannot instruct the Police or Crown Office. Scotland’s Police Forces are independent and determine their own priorities through well established and robust processes. The Crown Office apply high standards in the way they progress all reports to their Procurators Fiscal and have most recently established and supported a network of specialist Wildlife and Environmental Procurators Fiscal.

### Committee Comment
**Para. 352**  
The Committee accepts that it would represent a challenge and a significant development of policy to introduce a fully worked up system for licensing sporting estates in the Bill at this stage. The Committee also notes that the issue would not have been subject to consultation and as a result introducing such a system would be inappropriate at this time. However, the Scottish Government may wish to consider the appropriateness of introducing an enabling power in to the Bill which would permit them to introduce a licensing scheme, only after full consultation with stakeholders and parliamentary scrutiny under the super-affirmative procedure. Should it take the power, the Scottish Government could consider formally adopting the estates initiative with appropriate modifications as a code of conduct applicable to all estates. However, any such power should only be used if the Scottish Ministers are not satisfied that the voluntary approach to good governance and any vicarious liability offence are working.

### Scottish Government Response  
As a matter of legislative practice the Scottish Government considers that such a significant step is not appropriate for an enabling power, but should be the subject of consultation and legislation in the normal way. From a policy point of view a licensing scheme might also be considered disproportionate at this stage in that it would impose costs and an administrative burden on all shooting businesses rather than focusing on those involved in criminality.
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<td><strong>Para. 359</strong></td>
<td><strong>Committee notes Sheriff Drummond’s proposal to establish a presumption of guilty intent for anyone found in possession of a regulated substance. The Committee also notes his comments on whether an employer could be proven to have knowingly caused or permitted the possession of such a substance. The Committee considers that Sheriff Drummond’s proposals, and the introduction of a vicarious liability offence, are not mutually exclusive, and invites the Scottish Government to consider the proposal.</strong></td>
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<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government agrees that that these proposals are not mutually exclusive. The Scottish Government carefully considered all proposals raised before the Committee and concluded that this proposal would not deliver the intended change in the enforcement and prosecution of wildlife crime.</td>
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<td><strong>Committee Comment</strong></td>
<td><strong>Scottish Government Response</strong></td>
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<tr>
<td><strong>Para. 360</strong></td>
<td><strong>The Committee also notes the view that there is a further gap in the armoury of potential offences, that which seeks to catch those “concerned in” the use of illegal poisons for the purpose of raptor persecution or in other activity “concerned in” the offence of bird persecution. The Committee urges the Scottish Government to consider developing further offences which cover these points to further strengthen the grounds for potential prosecution.</strong></td>
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<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government has considered this proposal in detail and does not consider that this would deliver the intended change in the enforcement and prosecution of wildlife crime.</td>
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<td><strong>Committee Comment</strong></td>
<td><strong>Scottish Government Response</strong></td>
</tr>
<tr>
<td><strong>Para. 361</strong></td>
<td><strong>The Committee invites the Scottish Government to consider the merits of an announcing an amnesty on illegal substances such as carbofuran.</strong></td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government is actively considering how to put in place a scheme that would allow land managers to dispose of pesticides such as carbofuran.</td>
</tr>
<tr>
<td><strong>Committee Comment</strong></td>
<td><strong>Scottish Government</strong></td>
</tr>
<tr>
<td><strong>Para. 362</strong></td>
<td><strong>The Committee recommends that the Scottish Government reports to Parliament annually on the number of illegal raptor killings, detailing the number of cases brought and those which were successfully prosecuted.</strong></td>
</tr>
</tbody>
</table>
| **Scottish Government** | The Scottish Government accepts this recommendation and **
| **Response** | will put in place the necessary arrangements. |
Areas of Special Protection

<table>
<thead>
<tr>
<th>Committee Comment Para. 378</th>
<th>However, the Committee retains a concern that the levels of protection at Loch Garten, currently afforded by the ASP, will not be automatically replicated in existing legislation, and urges the Scottish Government to work with SNH and the RSPB to ensure that the site at Loch Garten could not suffer, or potentially suffer, as a result of the loss of its ASP status.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government Response</td>
<td>We understand RSPB is currently working with the Cairngorms Outdoor Access Forum to address access issues at Loch Garten.</td>
</tr>
</tbody>
</table>
Snaring

<table>
<thead>
<tr>
<th>Committee Comment Para. 420</th>
<th>The Committee recommends that the Scottish Government works with the relevant bodies to continue to secure further advances in snaring technology and in our understanding of animal behaviour. Both these factors should help in the development of more humane snares and snaring techniques and reduce the amount of non-target species caught.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government will continue to monitor technological developments in snaring and will seek to implement these where practicable.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Committee Comment Para. 429</th>
<th>The Committee invites the Scottish Government to take stock, after an appropriate period of perhaps five years, as to the outcomes of the snaring provisions and whether they have been deemed to have had a positive effect. Accordingly the Committee invites the Scottish Government to consider whether to take a power to enable them to ban snaring. Such a power should only be exercised under the super-affirmative procedure and only if the Scottish Government considers that the current approach is not working and cannot be made to work.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government agrees to review the outcomes of the Government’s proposed snaring provisions after 5 years and will bring forward an appropriate amendment at Stage 2.</td>
</tr>
</tbody>
</table>

We do not think that a power to ban snaring outright is appropriate for an enabling power. This would be better handled by primary legislation following the appropriate consultation. Should it be considered necessary to further restrict snaring in the meantime, there is power under section 11 of the 1981 Act to make orders in relation to how snares are used. |

<table>
<thead>
<tr>
<th>Committee Comment Para. 434</th>
<th>The Committee recommends that the Scottish Government works closely with those delivering the relevant training courses on snaring to ensure that everyone who requires the training receives it no later than two years following the commencement of the provision.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government agrees with this recommendation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Committee Comment</th>
<th>Scottish Government Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Para. 439</td>
<td>The Committee asks the Scottish Government to give consideration to issuing a separate identification number for each individual snare tag. The Committee also recommends that the Scottish Government ensures that such numbering be sequential, to allow for easy identification, and that records are kept of which numbers have been issued to which operators. Alternatively, the Committee asks the Scottish Government to consider fitting a barcode, or some other means of electronic identification, to each tag which could easily and practically be used to keep records of when a snare had last been inspected.</td>
</tr>
<tr>
<td>para. 443</td>
<td>It is unclear what a separate identification number for each snare would deliver. The Bill currently proposes that Chief Constables will issue a single unique number to a snare operator. The Scottish Government considers the crucial element of improvements in snaring practice are that the operator is trained to best practice standards and that snares that are set can be linked to their operator. The current proposals achieve this. The proposal for individual numbers for each snare would impose a significant administrative burden on the police with little benefit in terms of improved practice or more effective enforcement in return.</td>
</tr>
<tr>
<td>Para. 443</td>
<td>The Committee asks the Scottish Government to note the points raised regarding the legal presumption in the Bill, which states that the ID number on a snare would relate directly to the person who physically set the snare. The Committee further asks the Scottish Government to consider this issue alongside the Committee’s comments on the possible issuing of a unique sequential number for each snare tag.</td>
</tr>
<tr>
<td>Scottish Government Response</td>
<td>The presumption is rebuttable. The Scottish Government has considered the points raised and concluded that the provision is appropriate. It does not prevent the accused from having a fair opportunity to rebut the presumption. If a snare was set with a unique sequential number it is likely that there would still be a presumption linking this to the operator.</td>
</tr>
<tr>
<td>Committee Comment</td>
<td>The Committee notes the comments made on the inconsistency between domestic and EU legislation on the definition of a snare and how this leads to uncertainty about licensing snares as a method of catching mountain hares in</td>
</tr>
</tbody>
</table>
particular. The Committee recommends that the Scottish Government consider how best to correct this anomaly.

Initial legal advice is that seeking to clarify this point could potentially bring us into conflict with EU law. We will consider further and also take into account the outcome of a court case which is considering this point. If we do need to provide clarification, we could do this through the Conservation (Natural Habitats, &c.) Regulations 1994.
Invasive and non-native species

<table>
<thead>
<tr>
<th>Committee Comment</th>
<th>The Committee notes that roadside verges are defined as non-wild in the draft code, and that there is particular potential for invasive plants to escape from such verges into the wild. The Committee would not want to prevent local communities from planting colourful displays to brighten up their area. However, the Committee asks the Scottish Government to give further consideration to whether it is appropriate for roadside verges to be designated as being wild, and, if it is considered appropriate, whether any additional measures could be taken to limit the risk of escapes from such areas.</th>
</tr>
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<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government will consider this in line with consultation on the draft code of practice.</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Committee Comment</th>
<th>The Committee also believes that it is appropriate for SNH to have powers to recover costs of removing a species from a property from the landowner, if circumstances warrant it (the Committee expects that this would happen very rarely). However, the Committee recommends that the Scottish Government ensure that the code of practice gives detail and examples of what would lead to this ‘polluter pays’ principle being invoked.</th>
</tr>
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<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government accepts this recommendation and will bring forward an appropriate amendment at Stage 2.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Committee Comment</th>
<th>The Committee also recommends that the Scottish Government ensure that trigger points that would lead to a Species Control Order being issued also be detailed clearly in the code of practice.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government accepts this recommendation and will bring forward an appropriate amendment at Stage 2.</td>
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</table>

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<thead>
<tr>
<th>Committee Comment</th>
<th>The Committee believes it is important for one clearly identified agency to act as a lead coordinating body for INNS provisions in Scotland, to avoid issues being passed from one organisation to another with no action being taken to address the problem. The Committee supports the view of SNH that it should be the lead coordinating body for such matters and recommends this to the Scottish Government.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government accepts this recommendation and will bring forward an appropriate amendment at Stage 2 to include information about this in the code of practice.</td>
</tr>
<tr>
<td><strong>Committee Comment</strong></td>
<td>The Committee is not aware of pheasants or red-legged partridges currently being regularly released in Scotland in such high densities as to cause significant damage to habitat or biodiversity. However, the Committee asks the Scottish Government to consider putting a reserve power in the Bill to allow it to restrict the release of these species, should they ever be released in such numbers as to cause significant habitat and biodiversity damage.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government is not aware of any evidence that suggests that such a reserve power would be necessary. Current legislative tools, such as Nature Conservation Orders, have provided an appropriate lever where habitat and biodiversity damage has occurred.</td>
</tr>
<tr>
<td><strong>Committee Comment</strong></td>
<td>The Committee notes the call for the Pacific oyster to be added to the list of exempted species and asks the Scottish Government to clarify its position with regard to the Pacific oyster.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>In Scotland pacific oysters are primarily cultivated in mesh bags. They are unable to reproduce in Scotland due to prevailing low water temperatures and therefore are not released from captivity or outwith the control of any person. The no-release presumption therefore does not apply. If sea temperatures increased to a point where pacific oysters were reproducing in Scottish waters then the Bill provides the flexibility for Ministers to list species by order to which the release provisions do not apply, or to issue licences (if that was considered an appropriate course of action).</td>
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### Species licensing and protection

<table>
<thead>
<tr>
<th>Committee Comment</th>
<th>Scottish Government Response</th>
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</thead>
<tbody>
<tr>
<td><strong>Para. 512</strong></td>
<td>The Committee recommends that the Scottish Government reconsider which body, or bodies, should be delegated the function of issuing licenses, in light of the volume of evidence received stating that it is not appropriate or necessary for local authorities to have this function.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government considers that it is important that flexibility be maintained to allow licensing to be delegated to local authorities in the future, where the licensing relates to development planning.</td>
</tr>
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<tr>
<th>Committee Comment</th>
<th>Scottish Government Response</th>
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<tbody>
<tr>
<td><strong>Para. 513</strong></td>
<td>Should local authorities remain as potential licensing bodies, the Committee invites the Scottish Government to clarify what might happen should a local authority decide against following the advice of SNH on whether to issue a species licence or not.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>Local authorities would be required to consult SNH. If the local authority were to disregard any such advice without good reason, the decision to grant the licence could be subject to judicial review.</td>
</tr>
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<tr>
<th>Committee Comment</th>
<th>Scottish Government Response</th>
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</thead>
<tbody>
<tr>
<td><strong>Para. 533</strong></td>
<td>The Committee notes the Ministers comments on the status of pheasants as livestock. The Committee would be grateful for further clarification as to the point at which pheasants cease to be deemed as livestock.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>For the purposes of licensing under section 16 of the Wildlife and Countryside Act, the Scottish Government takes the view that pheasant poults are livestock while they are dependent on a keeper. In practice this means that the poults are livestock while they are in a release pen or in the immediate vicinity of a release pen (release pens are usually open-topped to allow pheasant poults to fly in and out).</td>
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<tr>
<th>Committee Comment</th>
<th>Scottish Government Response</th>
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</thead>
<tbody>
<tr>
<td><strong>Para. 536</strong></td>
<td>The Committee notes the anomaly that beavers are currently being released under licence in Scotland, but are not specifically a protected species and draws that to the attention of the Scottish Government.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The Scottish Government is aware that beavers are not a protected species at present in Scotland. The Habitats Directive requires that we give protection to listed species in</td>
</tr>
<tr>
<td><strong>Response</strong></td>
<td>their “natural range”. We do not consider that beavers in Scotland are presently in their natural range. If beavers are eventually reintroduced to Scotland we would expect to add beavers to Schedule 2 of the Conservation (Natural Habitats, &amp;c.) Regulations 1994 and so give them full protection under the law.</td>
</tr>
<tr>
<td><strong>Committee Comment</strong></td>
<td>The Committee asks the Scottish Government to give consideration to how to best protect the native Scottish black bee, given its current classification as a farmed creature. The Committee also asks the Scottish Government to examine whether such bees could be considered as wild creatures, in order to secure their genetic protection. The Committee also asks the Scottish Government to consider whether the Bill could be used imaginatively to secure greater options in providing further protection to populations in areas such as Colonsay.</td>
</tr>
<tr>
<td><strong>Scottish Government Response</strong></td>
<td>The scope of the Bill is wildlife and the natural environment. It is unlikely that this could be made to include farmed animals. However we will examine whether it is possible to make an Order under the section 14 of the 1981 act to prevent bees being released on Colonsay that might threaten the future of the black bee. It remains likely however that the issue relating to farmed bees will need to be addressed by agriculture colleagues.</td>
</tr>
</tbody>
</table>
PART 3: DEER

Code of practice

<table>
<thead>
<tr>
<th>Committee Comment Para. 581</th>
<th>SNH told the Committee that the code on deer management provided for in the Bill is currently being drafted. On 29 September, when giving evidence to the Committee, SNH reported that one meeting had, at that stage, been held to agree the structure of the code and that officials were planning the timetable of its development to coincide with the timetable of the Bill's progress through its parliamentary stages. The Committee notes that the NFUS is not currently amongst those groups helping formulate the code of practice for deer management, and recommends that they, and at least one environmental organisation, are invited to participate at future meetings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The NFUS and several environmental organisations have been invited to attend meetings on the code from the outset.</td>
</tr>
<tr>
<td>Committee Comment Para. 583</td>
<td>Given the importance of the code of practice for deer management, and the Scottish Government's intention that the code stands as a <em>de facto</em> duty of sustainable management, the Committee recommends that the code be subject to parliamentary scrutiny.</td>
</tr>
<tr>
<td>Scottish Government Response</td>
<td>The Scottish Government accepts this recommendation and will bring forward an appropriate amendment at Stage 2.</td>
</tr>
<tr>
<td>Committee Comment Para. 584</td>
<td>The Committee also asks the Scottish Government to clarify whether all landowners will have to abide by the code and whether SNH will have powers of intervention on any type of land should the code be breached.</td>
</tr>
<tr>
<td>Scottish Government Response</td>
<td>An occupier of land where there is a significant presence of deer may need to manage deer in some way in order to prevent deer having an impact that damages the public interest. Although a breach of the code in itself will not be an offence SNH would have a hierarchy of advisory and enforcement powers, the use of which will be guided by the code. SNH powers of intervention would be legal on land as defined in section 45 the Deer (Scotland) Act 1996.</td>
</tr>
</tbody>
</table>
Control agreements and schemes

<table>
<thead>
<tr>
<th>Committee Comment Para. 592</th>
<th>The Committee also supports the introduction of timescales to both the control agreement and control scheme systems, in an attempt to speed up the process and raise levels of participation. However, the Committee also notes the concerns of the British Deer Society that a six month timeframe for a voluntary agreement to be made may require additional flexibility in certain circumstances and recommends that the Scottish Government considers giving SNH the power to extend this period at its discretion.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government Response</td>
<td>The 6 month timeframe in the Bill does not compel SNH to move to a control scheme. It will be at the discretion of SNH as to whether 6 months, or longer is the appropriate timeframe.</td>
</tr>
</tbody>
</table>
### PART 4: OTHER WILDLIFE

#### Protection of badgers

<table>
<thead>
<tr>
<th>Committee Comment Para. 639</th>
<th>The Committee recommends that the Scottish Government gives consideration to amending the Bill at Stage 2 to address the points raised by several organisations with regard to the legal disturbance of setts that are no longer active.</th>
</tr>
</thead>
</table>
| Scottish Government Response | The Protection of Badgers Act 1992 contains a definition of a badger sett. A badger sett means any structure or place which displays signs indicating current use by a badger (section 14). Further interpretation of this is a matter for the Courts.  

The 1992 Act also contains extensive licensing provisions relating to interference with badger setts.  

The Scottish Government does not consider any amendment to be necessary. |
### Committee Comment

**Para. 667**
The Committee notes that muirburn can be a very helpful land management tool that has economic, social and environmental benefits. It is also aware that if poorly and/or irresponsibly practised it can have a negative effect on wildlife, such as ground nesting birds, habitat, soil and biodiversity. The Committee supports the muirburn code and regulations in trying to prevent poor practice. With regard to SEPA's comments regarding muirburn causing soil damage, the Committee asks the Scottish Government if it is possible to withdraw or limit funding to any landowner who was not complying with the muirburn code and keeping their land in good environmental and agricultural condition and, if so, whether there have been any instances of this.

### Scottish Government Response

Adherence to the muirburn code is a requirement of cross compliance, under GAEC 6. The Scottish Government Rural Payments and Inspections Directorate are able to reduce or withdraw payments (under Single Farm Payment, Scottish Beef Calf Scheme and certain elements of SRDP) for land managers who breach the muirburn code in a manner which results in soil erosion, or a high risk of soil erosion. To date, there have been no cross compliance penalties imposed under GAEC 6. Under cross compliance, SMR 1 and SMR 5 also require land managers to adhere to certain legal requirements in relation to birds, flora and fauna and designated sites. No cross compliance penalties have been imposed under SMR1 or SMR5 for muirburn-related incidents.
Thank you for the Subordinate Legislation Committee’s Stage 1 Report on the Wildlife and Natural Environment (Scotland) Bill. The Scottish Government’s response to the Committee’s recommendations, and to the relevant recommendations of the Rural Affairs and Environment Committee, is set out below.

**Section 14(5) – Power to specify invasive animals and plants out with their native range which specified persons must provide notification of**

The Scottish Government is currently considering whether an amendment is required in light of this recommendation.

**Section 15 – Non-native species code**

The Scottish Government will bring forward amendments at Stage 2 to make the first code of practice, and any replacement code of practice, subject to affirmative procedure. The Scottish Government will also bring forward amendments at Stage 2 to make any revision to the code of practice, or revocation (where this is not being replaced) subject to negative procedure.

**Section 23 – Deer management code of practice**

The Scottish Government will bring forward amendments at Stage 2 to make the code subject to negative procedure.

If you require any further explanation do not hesitate to contact me.

Yours sincerely

KATHRYN FERGUSSON
16 December 2010
Wildlife and Natural Environment (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 21  Schedule
Sections 22 to 35  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 3

Peter Peacock

45* In section 3, page 2, line 2, at end insert—

<(  ) In that section, after subsection (5C), insert—

“(5D) Subject to the provisions of this Part, any person, being the owner or concerned in the management of any area of land, who causes or permits to be done an act on that land which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”.>

Roseanna Cunningham

1 In section 3, page 2, line 32, after <a> insert <grouse,>

2 In section 3, page 2, line 32, leave out <, pheasant or red grouse> and insert <or pheasant>

Karen Gillon

Supported by: John Scott

19 In section 3, page 2, line 36, leave out <14> and insert <28>

Roseanna Cunningham

3 In section 3, page 3, line 17, at end insert—

<(  ) In section 5(5) (use of cage traps or nets for breeding purposes), for “game bird” substitute “grouse, mallard, partridge or pheasant included in Part I of Schedule 2”.

Roseanna Cunningham

4 In section 3, page 3, line 17, at end insert—

<(  ) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (2)—

(i) after “than” insert “—
(a) an order under any of”,
(ii) for “and” substitute “or”,
(iii) after “11(4)” insert “; and
(b) an order under section 22(1)(a) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge”,

(b) in subsection (3)—
(i) after “No” insert “—
(a)”,
(ii) after “11(4)” insert “; or
(b) order under section 22(1)(a) which removes from Part I of Schedule 2 any bird referred to in paragraph (b) of subsection (2),”.

**John Scott**

20 In section 3, page 3, line 17, at end insert—

<(< ) In section 22 (power to vary Schedules), after subsection (2A), insert—

“(2B) Before making an order under subsection (1) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge the Scottish Ministers shall consult such persons appearing to them to be representative of persons interested in the killing or taking of birds of the kind proposed to be removed by the order as they consider appropriate.”.

**Peter Peacock**

46 In section 3, page 3, line 17, at end insert—

<(< ) In section 27(1) (interpretation of Part I), in paragraph (c) of the definition of “livestock”, at the end add “(except a mallard, grey or red-legged partridge, common pheasant or red grouse which is kept for the provision or improvement of shooting which is not wholly confined within secure housing)”.

**After section 3**

**Liam McArthur**

21 After section 3, insert—

<\Duty on owners, lessees and occupiers of land: provision of information on numbers of birds shot

After section 5 of the 1981 Act (prohibition of certain methods of killing or taking wild birds), insert—

“5A Duty on owners, lessees and occupiers of land: provision of information on numbers of wild birds shot

(1) The owner, lessee or occupier of land must keep a record of the number of each species of wild bird that is lawfully shot on or over such land.

2
(2) The information recorded and kept under subsection (1) must be provided, on request, to Scottish Natural Heritage.

(3) Scottish Natural Heritage may, from time to time, publish information received under subsection (2) in an anonymised format.”.

Bill Wilson

47* After section 3, insert—

<**Duty on the Scottish Ministers to establish a system to record the numbers of wild birds killed or taken**>

After section 5 of the 1981 Act (prohibition of certain methods of killing or taking wild birds), insert—

“**5A Duty on the Scottish Ministers to establish a system to record the numbers of wild birds killed or taken**

(1) The Scottish Ministers must establish a system for the recording of the numbers of each species of wild bird that is lawfully killed or taken.

(2) The Scottish Ministers may by direction delegate their duty under subsection (1) to Scottish Natural Heritage.

(3) The owner, lessee or occupier of land must, in accordance with the terms of the system established under subsection (1)—

(a) keep a record of the number of each species of wild bird that is lawfully killed or taken on or over such land;

(b) report the recorded information to the Scottish Ministers or, where subsection (2) applies, Scottish Natural Heritage.

(4) Any owner, lessee or occupier of land who does not comply with the provisions of subsection (3) is guilty of an offence.

(5) The Scottish Ministers or, where subsection (2) applies, Scottish Natural Heritage may, from time to time, publish information received under subsection (3) in an anonymised format.”.

After section 4

Peter Peacock

48 After section 4, insert—

<**Protection of wild birds: intervention by the Scottish Ministers**>

After section 3 of the 1981 Act (areas of special protection), insert—

“**3A Protection of wild birds: intervention by the Scottish Ministers**

(1) The Scottish Ministers may make an order (a “regulation of activity order”) in respect of an area of land in which they have reasonable cause to believe that any of the matters specified in subsection (2) are taking place within that area.

(2) Those matters are any activities that are taking place in that area, or any part of it specified in the regulation of activity order, at any time or during any period so specified which concern—
(a) the killing, injuring or taking of any wild bird or any wild bird so specified;

(b) the setting in position of any of the following articles, being an article which is of such a nature and is so placed as to be calculated to cause bodily injury to any wild bird coming into contact therewith, that is to say, any springe, trap, gin, snare, hook and line, any electrical device for killing, stunning or frightening or any poisonous, poisoned or stupefying substance;

(c) the taking, damaging or destroying of the nest of such a bird while that nest is in use or being built; or

(d) the taking or destroying of an egg of such a bird; excepting anything permitted by any other enactment.

(3) The Scottish Ministers must publish guidance on matters they may take into account to enable them to conclude whether there is reasonable cause to believe those matters specified in subsection (2) are taking place within that area.

(4) Before publishing guidance under subsection (3), the Scottish Ministers must consult any person appearing to them to have an interest in determining the guidance.

(5) Where the Scottish Ministers—

(a) conclude that there is reasonable cause to believe that those matters in subsection (2) are taking place within that area; but

(b) before making a regulation of activity order,

they must give particulars of the intended regulation of activity order either by notice in writing to every owner and every person concerned in the management of any land included in the area with respect to which the regulation of activity order is to be made, or, where the giving of such a notice is in their opinion impracticable, by advertisement in a newspaper circulating in the locality in which that area is situated.

(6) A notice under subsection (5) must give every owner and every person concerned in the management of any land included in the area with respect to which the regulation of activity order is to be made, 3 months from the issuing of the notice to provide the Scottish Ministers with notice of an action plan to respond to the matters contained within the notice issued by the Scottish Ministers.

(7) The Scottish Ministers may make a regulation of activity order only if—

(a) responses have not been received from every owner and person concerned in the management of any land included in the area with respect to which the regulation of activity order is to be made;

(b) they believe that the action plans provided under subsection (6) are insufficient to respond to their concerns; or

(c) they have reasonable cause to believe that matters specified in subsection (2) are still taking place in the area with respect to which the order is to be made.
(8) Where subsection (7) applies, the Scottish Ministers may make a regulation of activity order—

(a) imposing restrictions on the owners and persons concerned in the management of any land included in the area with respect to which the order is to be made in respect of such activities relating to the killing and taking of wild birds as may be specified in the order;

(b) requiring the owners and persons concerned in the management of any land included in the area with respect to which the order is to be made to register the taking or killing of any game; and

(c) requiring the owners and persons concerned in the management of any land included in the area with respect to which the order is to be made to produce a management plan setting out how they will respond to that order, regardless of whether or not they have already produced a management plan under subsection (6).

(9) Where the Scottish Ministers have made a regulation of activity order they must—

(a) make provision for Scottish Natural Heritage to monitor that order;

(b) provide for the terms on which Scottish Natural Heritage are to monitor that order;

(c) require Scottish Natural Heritage to provide reports to the Scottish Ministers at 6 monthly intervals on the compliance with that order.

(10) A person authorised in writing by Scottish Natural Heritage may enter any area of land with respect to which a regulation of activity order applies provided that it is for the purpose of monitoring that order.

(11) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless it is for the purpose of monitoring a regulation of activity order.

(12) Nothing in this section authorises any person to break any lock barring access to any area of land to which the person is authorised to enter.

(13) Where after 2 years Scottish Natural Heritage consider that the terms of the regulation of activity order are consistently being met, the Scottish Ministers may revoke the order.

(14) The revocation of an order does not prevent the Scottish Ministers from imposing a subsequent regulation of activity order upon the same area of land where the Scottish Ministers have reasonable cause to believe that any of the matters specified in subsection (2) are taking place within that area.

(15) Where Scottish Natural Heritage consider that the terms of a regulation of activity order are not being met over the course of two successive reports under subsection (9)(c), the Scottish Ministers may revoke the rights of the specified owners and persons concerned in the management of any land included in the area with respect to which the order applies to undertake the activities regulated by that order under subsection (9)(a) and (b) by a specified date.

(16) An owner or person concerned in the management of land with respect to which the regulation of activity order applies whose rights have been revoked under subsection (15) may appeal to the Land Court against such a revocation.
An appeal under subsection (16) must be lodged not later than 28 days after the date on which the Scottish Ministers gave notice to the appellant of the decision under subsection (15).

The Land Court may suspend any effect of any revoking of rights pending the determination of an appeal.

The Land Court must determine an appeal under subsection (16) on the merits rather than by way of review and may do so by—

(a) affirming the revocation of rights under subsection (15);

(b) directing the Scottish Ministers to rescind the revocation of rights under subsection (15); or

(c) making such other direction as it thinks fit.

A decision of the Land Court on appeal is final except on a point of law.

A regulation of activity order shall not apply to any land below high-water mark of ordinary spring tides.

Section 5

Karen Gillon
Supported by: John Scott

In section 5, page 5, line 18, leave out <14> and insert <28>

Karen Gillon
Supported by: John Scott

In section 5, page 5, line 25, leave out <14> and insert <28>

Karen Gillon
Supported by: John Scott

In section 5, page 6, line 18, leave out <14> and insert <28>

After section 5

Liam McArthur

After section 5, insert—

<Annual report on illegal killing of wild birds

After section 6 of the 1981 Act (sale etc. of live or dead wild, eggs etc.), insert—

“6A Annual report on illegal killing of wild birds

(1) The Scottish Ministers must as soon as practicable after the end of each calendar year lay before the Parliament a report on the incidence of the illegal killing of wild birds under this Act in the reporting year.

(2) In preparing a report under subsection (1), the Scottish Ministers may require wildlife inspectors to provide them with such information as they consider necessary to fulfil the requirements of that subsection.”>
Peter Peacock
51  After section 5, insert—

<Protection of certain wild animals>

Protection of certain wild animals

In section 9 of the 1981 Act (protection of certain wild animals), after subsection (5A), insert—

“(5B) Subject to the provisions of this Part, any person, being the owner or concerned in the management of any area of land, who causes or permits to be done an act on that land which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”.>

Section 6

John Scott
Supported by: Alasdair Morgan
24  In section 6, page 7, line 31, leave out <March> and insert <April>

John Scott
Supported by: Alasdair Morgan
25  In section 6, page 7, line 33, leave out <February> and insert <March>

Roseanna Cunningham
5  In section 6, page 9, line 6, at end insert—

<(7)  Nothing in section 10A makes unlawful—

(a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or

(b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.>

Section 7

Roseanna Cunningham
6  In section 7, page 9, line 21, leave out <11D> and insert <11DA>

Roseanna Cunningham
7  In section 7, page 9, line 39, at end insert—

<(3)  Nothing in section 11E makes unlawful—

(a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or

(b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.>
Section 12

Elaine Murray

52 In section 12, page 11, leave out lines 24 to 31 and insert—

(a) an offence under section 1(1);
(b) an offence under subsections 5(1)(a) to 5(1)(e);
(c) an offence under section 9(1);
(d) an offence under section 10A(1);
(e) an offence under subsections 11(1)(a) to 11(1)(c) or 11(2)(a) to 11(2)(e);
(f) an offence under sections 11B(3), 11C or 11E(1);
(g) an offence under section 13(1);
(h) an offence under sections 14(1), or 14(2)”.

Section 13

Marilyn Livingstone

26 In section 13, page 11, line 36, leave out from beginning to end of line 9 on page 15 and insert—

( ) in subsection (1), for paragraphs (a) and (aa), substitute—

“(a) sets in position or otherwise uses any snare;”,

( ) subsections (3) to (3B) are repealed,

( ) in subsection (3C)—

(i) in paragraph (b), at the beginning insert “manufactures,,”,

(ii) the words “which is capable of operating as a self-locking snare or a snare of any other type specified in an order under subsection (1)(a)” are repealed,

( ) subsections (3D) and (3E) are repealed.

( ) In section 16 (power to grant licences)—

(a) in subsection (3), for “11(1), (2) and (3C)(a)” substitute “11(1)(b) and (c), (1)(d) (except in so far as it relates to section 11(1)(a)) and (2)”,

(b) after subsection (4A), insert—

“(4B) Sections 11(1)(a), (1)(d) (in so far as it relates to section 11(1)(a)) and (3C)(a) do not apply to anything done for scientific or research purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.

(4C) Section 11(3C)(a) does not apply to anything done for educational purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.”.

Liam McArthur

27 In section 13, page 12, line 24, after <number> insert <, and
( ) a unique identification number (“the snare number”) for each snare that the person intends to set.

Liam McArthur

28 In section 13, page 12, line 25, after <numbers> insert <, snare numbers>

Liam McArthur

29 In section 13, page 12, line 32, after <position> insert <and a snare number>

Liam McArthur

30 In section 13, page 12, line 39, leave out <is the identification number> and insert <and the snare number are the numbers>

Liam McArthur

31 In section 13, page 13, line 2, after <number> insert <and snare numbers>

Elaine Murray

8 In section 13, page 13, line 5, at end insert <; and

( ) on being satisfied that the applicant has found such other methods for the capture and control of wild animals, as the Scottish Ministers may determine, to be ineffective.

Liam McArthur

32 In section 13, page 13, line 7, at end insert <and the number of snare numbers the person applied for.>

Liam McArthur

33 In section 13, page 13, line 14, leave out <has> and insert <and a snare number have>

Liam McArthur

34 In section 13, page 13, line 15, leave out <it is> and insert <they are>

Liam McArthur

35 In section 13, page 13, line 16, leave out <it> and insert <them>

Liam McArthur

36 In section 13, page 13, line 19, after <number> insert <and snare number>

Liam McArthur

37 In section 13, page 13, line 23, after <number> insert <and snare number>
Elaine Murray

9 In section 13, page 13, line 23, at end insert—

< ( ) what other methods for the control and capture of wild animals an applicant for an identification number must find to be ineffective before making such an application;

( ) how a chief constable is to be satisfied that an applicant for an identification number has found other methods for the control and capture of wild animals to be ineffective;>

Liam McArthur

38 In section 13, page 13, line 26, after <number> insert <and snare number>

Liam McArthur

39 In section 13, page 13, line 30, at end insert <and snare number or, as the case may be, snare numbers;>

Liam McArthur

40 In section 13, page 13, line 34, after <numbers> insert <and snare numbers>

Liam McArthur

41 In section 13, page 13, line 35, after <numbers> insert <and snare numbers>

Liam McArthur

42 In section 13, page 13, line 37, leave out <or identification> and insert <, identification numbers or snare>

Liam McArthur

43 In section 13, page 13, line 39, after <number> and insert <and snare numbers>

Liam McArthur

44 In section 13, page 13, line 39, at end insert—

< ( ) Provision made under subsection (8)(a) must require that the person has been trained to set a snare in position only if such training included instruction on animal welfare in relation to the setting of a snare.>

John Scott

53 In section 13, page 13, line 39, at end insert—

<(8A) The Scottish Ministers must take such steps as are reasonably practicable to ensure that, during the period of 2 years beginning with the day on which this section comes into force, sufficient opportunities to access training exist to secure the result mentioned in subsection (8B).>
(8B) That result is that all persons who would be required, by virtue of the coming into force of subsections (1) and (5), to cease setting snares in position until issued with an identification number are enabled to receive training within that period of 2 years.

(8C) In subsections (8A) and (8B), “training” means such training as is required in order for an application for an identification number under subsection (4)(a) to be granted.

Roseanna Cunningham

10 In section 13, page 15, line 4, at end insert—

<11DA Snaring: review and report to the Scottish Parliament

(1) The Scottish Ministers must carry out, or secure the carrying out by another person of, a review of the operation and effect of—

(a) section 11 and any orders made under that section (in so far as the section and the orders make provision as regards snaring);

(b) sections 11A, 11B, 11C and 11D and any orders made under those sections.

(2) The review must be carried out no later than 31st December 2016.

(3) In carrying out the review, the matters that must be considered include whether in the opinion of the Ministers (or, if the review is being carried out by another person, that person) amendment of this Act or enactment of other legislation is appropriate.

(4) In carrying out the review, the Scottish Ministers (or, if the review is being carried out by another person, that person) must consult such persons and organisations as they consider (or, as the case may be, the other person considers) have an interest in it.

(5) The Scottish Ministers must, as soon as practicable after 31st December 2016, lay a report of the review before the Scottish Parliament.”.

Elaine Murray

11 In section 13, page 15, line 4, at end insert—

<11DA Duty to review snaring regime

(1) The Scottish Ministers must review and publish a report on the operation of the snaring regime—

(a) within 2 years of section 13 (snares) of the Wildlife and Natural Environment (Scotland) Act 2010 (asp 00) coming into force; and

(b) within each subsequent period of 2 years beginning with the publication of a report.

(2) When carrying out a review, the Scottish Ministers must—

(a) have regard to the incidence of offences under section 11(1A);

(b) have regard to the extent to which snares are catching types of animal which they are not intended to catch; and
(c) consult chief constables and any other such person as they consider appropriate.

(3) The Scottish Ministers must have regard to their most recent report when performing functions under the snaring regime.

(4) In this section, “snaring regime” means the provisions of this Part relating to snaring.

Elaine Murray

12 In section 13, page 15, line 4, at end insert—

<11DA Duty to review snaring regime

(1) The Scottish Ministers must review and publish a report on the operation of the snaring regime—
(a) within 5 years of section 13 (snares) of the Wildlife and Natural Environment (Scotland) Act 2010 (asp 00) coming into force; and
(b) within each subsequent period of 5 years beginning with the publication of a report.

(2) When carrying out a review, the Scottish Ministers must—
(a) have regard to the incidence of offences under section 11(1A);
(b) have regard to the extent to which snares are catching types of animal which they are not intended to catch; and
(c) consult chief constables and any other such person as they consider appropriate.

(3) The Scottish Ministers must have regard to their most recent report when performing functions under the snaring regime.

(4) In this section, “snaring regime” means the provisions of this Part relating to snaring.

Elaine Murray

13 In section 13, page 15, line 4, at end insert—

<11DB Snares: Scottish Ministers powers to ban use of snares

(1) The Scottish Ministers may by order ban the use, sale, offer for sale or exposure for sale of any snares by any person whether or not that person is authorised to do so under the provisions of this Part.

(2) An order under subsection (1) must—
(a) specify the term of the ban;
(b) define the understanding of snares;
(c) define the understanding of use, sale, offer for sale and exposure for sale; and
(d) make provision for the monitoring of the ban.
(3) An order under subsection (1) must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by resolution of, the Scottish Parliament.

(4) Before laying a draft instrument before the Parliament under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

(5) For the purposes of such a consultation, the Scottish Ministers must—
   (a) lay a copy of the proposed draft instrument before the Parliament,
   (b) send a copy of the proposed draft instrument to any person to be consulted under subsection (4), and
   (c) have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament.

(6) In calculating any period of 60 days for the purposes of subsection (5)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(7) When laying a draft instrument before the Parliament under subsection (1), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
   (a) the consultation carried out under subsection (4),
   (b) any representations received as a result of the consultation, and
   (c) the changes (if any) made to the proposed draft instrument as a result of those representations.

After section 17

Liam McArthur

54* After section 17, insert—

<Offence of being concerned in the supply or use of prescribed ingredients

Offence of being concerned in the supply or use of prescribed ingredients

(1) The 1981 Act is amended as follows.

(2) In section 15A (possession of pesticides)—
   (a) in subsection (1), after “possession of” insert “, or concerned in the supply or use of, “,
   (b) in subsection (2), after “possession” insert “, supply or use”.

Section 18

Peter Peacock

55 In section 18, page 27, leave out line 8 and insert—

<(i) for other imperative reasons of overriding public interest including those of significant social or economic nature and beneficial consequences of primary importance for the environment,“,>
In section 18, page 27, leave out lines 9 to 15 and insert—

“(4A) The appropriate authority shall not grant a licence under subsections (3) or (4) unless it is satisfied—

(a) that there is no other satisfactory solution; and

(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status.”.

After section 19

After section 19, insert—

<Offence of knowingly causing or permitting certain offences

Offence of knowingly causing or permitting certain offences under the 1981 Act

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsections (1)(b) and 2(b)) shall be guilty of an offence.”.

(3) In section 15A of the 1981 Act (possession of pesticides), after subsection (1), insert—

“(1A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (1) shall be guilty of an offence.”.

(4) In section 18 of the 1981 Act (attempts to commit offences etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (2) shall be guilty of an offence.”.

After section 20

After section 20, insert—

<Functions of conservation bodies

Functions of conservation bodies

In section 24 of the 1981 Act (functions of GB conservation bodies), in subsection (1)—

(a) for the word “5” substitute “A1, 1, 1A, 2, 3, 4, 5, 5A, 6, 6A”,

(b) after “opinion” insert—
“(za) any bird should be added to, or removed from, Schedule A1;
(zb) any bird should be added to, or removed from, Schedule 1;
(zc) any bird should be added to, or removed from Schedule 1A;
(zd) any bird should be added to, or removed from, Schedule 2;
(ze) any bird should be added to, or removed from, Schedule 3;
(zf) any bird should be added to, or removed from, Schedule 4;”,
(c) after paragraph (a) insert—
“(aa) any animal should be added to, or removed from Schedule 5A;
(ab) any animal should be added to, or removed from Schedule 6;
(ac) any animal should be added to, or removed from Schedule 6A;”.

Peter Peacock

58  After section 20, insert—

<Reporting

Annual report on wildlife crimes

After section 26A of the 1981 Act (enforcement of wildlife legislation), insert—

“26B  Annual report on wildlife crimes

(1) The Scottish Ministers must as soon as practicable after the end of each
calendar year lay before the Parliament a report on the incidence of wildlife
offences under this Act in the reporting year.

(2) In preparing a report under subsection (1), the Scottish Ministers may require
wildlife inspectors to provide them with such information as they consider
necessary to fulfil the requirements of that subsection.”.

Section 21

Roseanna Cunningham

15  In section 21, page 29, line 33, at end insert—

<( ) The modifications in Part 1 of the schedule have effect.>

Roseanna Cunningham

16  In section 21, page 29, line 34, after <of> insert <Part 2 of>

Schedule

Roseanna Cunningham

17  In the schedule, page 50, line 3, at end insert—
<PART 1

MODIFICATIONS

In section 39(2) of the Agriculture (Scotland) Act 1948 (c.45), in the proviso, for the words from “game” to the end substitute “—

(a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or

(b) brown hare or mountain hare in close season for that hare (within the meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the right to comply with a requirement falling within this proviso by reason only that, apart from the proviso, compliance with the requirement would constitute an offence under section 1 or (as the case may be) 10A(1) of that Act”.>

After section 27

Elaine Murray

18 After section 27, insert—

<Biodiversity

Duty to further the conservation of biodiversity

In section 1 (duty to further the conservation of biodiversity) of the 2004 Act, in subsection (2)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) in paragraph (b), after “Convention)”, insert “and

(c) the ecological coherence and connectivity of features of value to biodiversity.”.>
Wildlife and Natural Environment (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Causing or permitting certain offences under the 1981 Act**
45, 51, 57

**Catching up for breeding purposes: species covered and period allowed**
1, 2, 19, 3, 22, 49, 50

**Removal of game birds from list of birds allowed to be killed or taken outside close season: consultation and procedure**
4, 20

**Point at which game birds cease to be livestock**
46

**Recording of information on number of wild birds lawfully killed or taken**
21, 47

**Protection of wild birds: intervention by the Scottish Ministers**
48

**Reports on illegal killing of wild birds and wildlife offences generally**
23, 58

**Protection of wild hares etc.**
24, 25, 5, 7, 15, 16, 17
Snares
6, 26, 27, 28, 29, 30, 31, 8, 32, 33, 34, 35, 36, 37, 9, 38, 39, 40, 41, 42, 43, 44, 53, 10, 11, 12, 13

Notes on amendments in this group
Amendment 26 pre-empts amendments 27, 28, 29, 30, 31, 8, 32, 33, 34, 35, 36, 37, 9, 38, 39, 40, 41, 42, 43, 44, 53, 10, 11, 12 and 13

Single witness evidence
52

Offence of being concerned in the use or supply of certain pesticides
54

Grounds etc. on which certain licences under the 1981 Act may be granted
55, 56

Reviewing of birds and animals included in certain Schedules to the 1981 Act
14

Duty to further the conservation of biodiversity
18
Present:

Karen Gillon          Liam McArthur
Elaine Murray        Peter Peacock
John Scott (Deputy Convener) Maureen Watt (Convener)
Sandra White (Committee Substitute) Bill Wilson

Apologies were received from Aileen Campbell

**Wildlife and Natural Environment (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 1, 2, 4 and 5.

Amendment 3 was agreed to (by division: For 4, Against 2, Abstentions 1)

Amendment 25 was disagreed to (by division: For 0, Against 7, Abstentions 1)

The following amendments were moved and, with the agreement of the Committee, withdrawn: 45, 46, 21, 48, 23 and 24.

The following amendments were not moved: 19, 20, 47, 22, 49, 50 and 51.

Sections 1, 2, 4 and 5 were agreed to without amendment.

Sections 3 and 6 were agreed to as amended.

The Committee ended consideration of the Bill for the day, section 6 having been agreed to.

John Scott declared an interest as a farmer and a landowner.
On resuming—

Wildlife and Natural Environment (Scotland) Bill: Stage 2

The Convener: We come to our next item of business, which is consideration of amendments at stage 2 of the Wildlife and Natural Environment (Scotland) Bill. Members should have with them their copies of the bill, the marshalled list of amendments and the groupings.

The Minister for Environment and Climate Change will remain with us for this item, and I welcome the officials who have joined her for this part of the meeting. I remind members that officials cannot participate in the debate.

Sections 1 and 2 agreed to.

Section 3—Protection of game birds etc and prevention of poaching

The Convener: The first group concerns causing or permitting certain offences under the Wildlife and Countryside Act 1981. Amendment 45, in the name of Peter Peacock, is grouped with amendments 51 and 57.

Peter Peacock: Amendment 45 arises from concerns that the police expressed in evidence that there is a gap in the provisions that would help to secure convictions against people who persecute raptors. The amendment is an attempt to help to secure such convictions even if those concerned do not actually handle poisons, traps or guns but sit behind the people who do the dirty work and give tacit approval to it. It is designed in part to create a pressure in the estate management system to ensure that it is explicit that persecution of birds is unacceptable, and to communicate that fact to the people who work on the ground.

One such person is the gamekeeper who was convicted in Karen Gillon’s constituency last month. He made it clear that he persecuted birds because he thought that he was pleasing the landowner or manager concerned. Amendment 45 would help to put pressure on the system to make it clear to such people that that was not the case and that those above the gamekeeper—as it was in that instance—could be held liable in certain circumstances.

In thinking through amendment 45, it has become clear to me that the vicarious liability amendment that the minister intends to bring forward might cover the same ground; I hope that the minister can clarify that. I also understand that the Government might believe that the terms of my amendment are already covered in other enactments. If that is the case, it would be good to have that on the record, to ensure that that is understood by a wider audience.

Amendment 51 is consequential on amendment 45. I am more than happy to support amendment 57, in the name of Liam McArthur, which covers a separate point.

I move amendment 45.

Liam McArthur: Before I speak to amendment 57, I want to register a little disappointment about the late publication of the Government’s response to our stage 1 report. In the stage 1 debate, I welcomed the approach that ministers and officials have taken with regard to the bill, but the delay in publication of the response to the report was a little unhelpful when we were lodging amendments.

Peter Peacock has set out the background to the amendments in the group. I believe that he has correctly anticipated the minister’s response to his amendments but not, perhaps, to mine.

Amendment 57 would extend the offence of knowingly causing or permitting certain offences to the offences in sections 6, 15A and 18 of the Wildlife and Countryside Act 1981. As members might be aware, those sections do not have such a provision attached, and my amendment seeks to address that inconsistency to the approach to different offences.

I am aware that the Game and Wildlife Conservation Trust has concerns about the potential impact of the sale of dead wild game birds that are taken outside the season, and it might be that amendment 57 needs some refinement. However, there seems to be a case for ensuring that there is consistency and that, as Peter Peacock said, all appropriate deterrents are in place.

Roseanna Cunningham: I will deal with Peter Peacock’s amendments 45 and 51 first. I am not sure that they would add to the current provisions in the 1981 act, because the sections to which Peter Peacock is proposing to add already contain offences of knowingly causing or permitting certain offences. The mention of the landowner or the land manager, and the requirement for the offence to have happened on the land that is owned by that owner or managed by that manager, might send the message that Peter Peacock is seeking to convey, but I do not believe that it will do anything to increase prosecutions or improve clarity in this area of law.

The effect of leaving out “knowingly” from the cause and permit offences is hard to understand, because it suggests some kind of strict liability, which is a specific legal notion. However, how that
would work is not clear enough for this to be the right way forward. Perhaps the aim was to create something similar to the vicarious liability proposal.

However, there are important differences between the two concepts. Even unknowingly causing or permitting certain offences suggests that there must be some evidence of an act or an omission on the part of the accused. Vicarious liability does not need that. It is based on the proposition that employers and managers must take responsibility for the actions of their employers and contractors. Our proposals for vicarious liability will also give the person who is accused a chance to show that he was unaware of the offence and had carried out all reasonable steps to prevent it from happening. There is no such defence in Mr Peacock's amendments 45 and 51, which is another important difference. A similar problem arises when the offences are compared with the more usual "knowingly" cause and permit offence.

The offences in Liam McArthur's amendment 57 are comparable with other offences in the 1981 act. I would therefore be happy to discuss his proposals with him in more detail—we have to be sure about all new offences that we create. For example, the offence that is proposed for section 18 of the 1981 act might be wider than we would agree is fair. We therefore have some issues with amendment 57 in its current form. However, in principle, it merits discussion for stage 3.

I oppose all three amendments in the group but, as I have indicated, I would consider working with Liam McArthur at stage 3. Peter Peacock may be content with what I have said about vicarious liability.

Peter Peacock: I think that everybody knows the intention here: it is to get at the informal pressures that may exist. They certainly do exist on certain estates, and they are causing problems. I accept the difficulty over the word "knowingly"—if one knowingly does something, one is obviously committing an offence. Managers may officially say, "I don't want you to do this," but they may also create an informal pressure to do it. In my opening remarks, I referred to a situation involving a gamekeeper, and that situation represents a problem that actually exists.

I take the point that the provisions on vicarious liability are probably stronger. I will therefore seek to withdraw amendment 45, and I will wait and see what the provisions on vicarious liability actually say before we get to stage 3. I am grateful for what the minister said about other provisions in other acts, which has helped to clarify matters.

Amendment 45, by agreement, withdrawn.

The Convener: We move to a group of amendments on catching up for breeding purposes: species covered and period allowed. Amendment 1, in the name of the minister, is grouped with amendments 2, 19, 3, 22, 49 and 50.

Roseanna Cunningham: I will deal first with Government amendments 1, 2 and 3. Gamekeepers are currently permitted to catch up game birds for breeding purposes in the open season. We are aware that the practice is useful and that, at times, an extension to the period in which it is allowed would be helpful. We therefore propose that catching up be legal for the first 14 days of the close season. Following the committee’s recommendation, I have lodged an amendment to add black grouse to the list of birds that may be caught up and, following the proposed repeal of the game acts, I have also lodged a minor amendment to ensure that cages, traps and nets can continue to be used to catch up grouse, mallard, partridge and pheasant.

I am not in favour of the amendments that have been lodged by Karen Gillon and supported by John Scott—amendments 19, 22, 49 and 50. I acknowledge that the impetus is to ensure flexibility and practicality for sporting management, and that the catching-up period is a busy time for gamekeepers. However, we are already proposing to extend the period by 14 days to provide greater opportunity. I think that that is a reasonable extension for what is the first change in law to allow such a practice outwith the open season.

I move amendment 1.

The Convener: Karen Gillon will speak to amendment 19 and the other amendments in the group.

Karen Gillon (Clydesdale) (Lab): Members will be aware that this issue was raised with us when we undertook a visit to Langholm. The fear was expressed to us that 14 days was unnecessarily restrictive in relation to catching up. I feel that 28 days—as specified in my four amendments—would allow the necessary flexibility, and I am disappointed that the minister is not prepared to accept that.

On the minister's amendments, RSPB Scotland has raised concerns over the inclusion of mallards in the provisions. Mallards begin breeding in February, and their inclusion in the provisions may lead to their being caught up within the breeding season. RSPB Scotland has expressed similar concerns about the inclusion of black grouse, which is a red-listed species. The minister could perhaps come back to that in her summing up.

11:45

John Scott: I support Karen Gillon's amendment 19, which seeks to extend the catching-up period from 14 days to 28 days. Given
that the minister has graciously accepted the concept of an extension, I suggest that for practicality, a longer period would help. Just as the current weather is unseasonal, we can have snow in the close season too, which makes it virtually impossible in early spring to operate many of the traps for catching-up purposes. There is no hidden agenda; the amendment simply seeks to facilitate the process. The minister might even consider extending the period to 21 days as a compromise at stage 3.

**Liam McArthur:** As Karen Gillon and John Scott have indicated, the committee heard evidence at stage 1 to suggest that although the 14-day period appears to address a degree of ambiguity in the current circumstances, it is perhaps not sufficient. The committee felt that 28 days was a fairer compromise.

Latterly, RSPB Scotland has raised concerns with us that the period would in some sense be an informal extension of the hunting season. There is a principle that must be addressed. Any period that we set is likely to be arbitrary, but there is a concern that an extension to 14 days may not go far enough.

John Scott has indicated a potential compromise, and I hope that we can return to the issue between now and stage 3 to reach some sort of agreement.

**Roseanna Cunningham:** My reaction is simply that the period is currently zero, and we are talking about the number of days by which to extend it. We thought that 14 days was a sufficient extension from what is effectively no days at present, as that would allow some leeway with regard to the current situation.

We can certainly have a look at how many days it might be useful to have, although I caution members against getting into a situation in which they are upping the ante. If we extend the period to 28 days, people may come back and say that it should be even longer. We have to decide clearly on the most appropriate period, rather than any of us just plucking numbers out of the air. Perhaps we need to discuss what is realistic set against the current position, which is effectively zero.

On black grouse, our amendment follows the committee’s recommendation; we were doing what we understood the committee wanted us to do. It would be useful to know whether that recommendation is changing or has changed, and what is behind it. I am not clear about whether there is a specific issue that needs to be re-examined that changes the committee’s recommendation.

**Karen Gillon:** Very late yesterday we received more information from RSPB Scotland, in which it raised concerns. It would be useful if we could come back to the issue at stage 3. I would be happy to discuss the matter with the minister ahead of stage 3.

**Roseanna Cunningham:** Right. I have not seen that information.

**Karen Gillon:** No—I got it very late yesterday as, I think, Liam McArthur did.

**Roseanna Cunningham:** At present the amendment on black grouse complies with the committee’s recommendation.

**Amendment 1 agreed to.**

**Amendment 2 moved—[Roseanna Cunningham]—and agreed to.**

**Amendment 19 not moved.**

**Amendment 3 moved—[Roseanna Cunningham].**

**The Convener:** The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

**The Convener:** There will be a division.

**For**
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)

**Against**
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)

**Abstentions**
Murray, Elaine (Dumfries) (Lab)

**The Convener:** The result of the division is: For 4, Against 2, Abstentions 1.

**Amendment 3 agreed to.**

**The Convener:** The next group is on removal of game birds from list of birds allowed to be killed or taken outside close season: consultation and procedure. Amendment 4, in the name of the minister, is grouped with amendment 20.

**Roseanna Cunningham:** Amendment 1 seeks to follow the committee’s recommendation in its stage 1 report and change from negative to affirmative the procedure for orders to remove game birds from schedule 2 of the 1981 act. Although I accept the intention behind John Scott’s amendment 20—the Government would, of course, consult before removing a game bird from schedule 2—I have to point out that the 1981 act contains a similar provision relating to such a removal. Section 26(4) of the 1981 act already provides for “any ... person affected” to be given
“an opportunity to submit objections or representations”.

That seems to me to cover everything that is needed; indeed, it is, if anything, wider than John Scott’s proposal. Given that there are also provisions for consulting advisory bodies and causing a public inquiry to be held, I do not think that amendment 20 is required.

I move amendment 4.

**John Scott:** I thank the minister for considering my amendment and accepting the intention behind it.

I suppose that I am raising concerns that have been expressed by the shooting industry, which would also wish to be consulted. I am not saying that a sin of omission has necessarily been committed but, if it has, it could be rectified by ensuring that the industry is consulted before game birds are taken out of schedule 2.

**Roseanna Cunningham:** I see no difficulty with that. After all, as relevant persons, the shooting bodies would be caught by the provisions in the 1981 act and would therefore be consulted.

Amendment 4 agreed to.

Amendment 20 not moved.

**The Convener:** The next group is on the point at which game birds cease to be livestock. Amendment 46, in the name of Peter Peacock, is the only amendment in the group.

**Peter Peacock:** I have lodged amendment 46 to clarify the circumstances in which a licence to kill, for example, a buzzard might or might not be granted. I have been concerned by the growing pressure in some quarters to grant licences to kill protected species on the basis of a potential ambiguity surrounding what can happen in the vicinity of a containment pen when a bird is not contained but is still regarded as livestock. It is argued that such a move is to protect birds that are raised in their thousands for shooting. Although that is perfectly legitimate, I do not find it legitimate to argue that raptors that are, quite naturally, attracted to the new feed source should be killed. Indeed, I find the arguments for killing protected species in order to protect unprotected species faintly ridiculous, and amendment 46 seeks to exclude from the definition of livestock the reared species that are mentioned in the amendment once they are no longer in secure pens.

I know that the Government is considering guidance to tighten up or make clearer the circumstances in which licences may or may not be granted. Although I have been concerned that as a result of the pressure to relax the current rules such a relaxation was being signalled, I have been somewhat reassured by the minister’s acknowledgement in evidence of the need to retain a very high hurdle with regard to the issuing of such licences.

However, amendment 46 would put it beyond doubt that a licence would never be granted in certain circumstances. If people who are rearing birds want to protect them fully, the option of getting a licence to kill a raptor in the circumstances that I have described would not be open to them. I guess that the implication of that is that pens would have to be enclosed to protect reared birds because no licence would be available to kill a raptor. Alternatively, some losses among the thousands of reared birds would have to be accepted.

I move amendment 46.

**John Scott:** I regret to say that I fundamentally disagree with Peter Peacock; I do not think that he is right. The Wildlife and Countryside Act 1981 neatly deals with the problem in that after game birds leave rearing pens, they become livestock on a particular date: for example, pheasants become livestock on 1 October. Prior to that they are obviously utterly dependent on the same environment, and whether they are on one side of the wire or the other is irrelevant. They are dependent and therefore should not be treated in the way that Peter Peacock suggests until the appropriate date, which is currently dealt with under the 1981 act.

**Elaine Murray:** I disagree with John Scott but agree with Peter Peacock. If someone is going to introduce large numbers of a prey species into an environment, predators will come—that is just part of how things work. It is therefore not acceptable to be prepared to slaughter protected species because they happen to be predators. Unfortunately, the shooting industry will have to accept that there will be losses associated with large numbers of prey species being released at certain times—that is just how it is. Obviously, it would be different if we got to the stage at which millions of buzzards were around, but that is not the case. The buzzard population of Scotland is only beginning to recover after the slaughter of those animals over many decades. I am certainly of the opinion that they should continue to be protected and that there should not be the possibility of allowing them to be killed because they are behaving as predators behave.

**Liam McArthur:** I certainly sympathise with the sentiment behind amendment 46. As Peter Peacock indicated, the committee thought long and hard about whether the hurdle needs to be raised further. I think that we gained reassurance on that from what the minister said in her evidence. I am bound to say that I can see the wording of amendment 46 creating more serious difficulties in trying to address a very legitimate
concern. However, Peter Peacock may well have lodged the amendment in order to get on record the sort of assurances that the committee has sought throughout, and to give a further airing to the issue.

Karen Gillon: I have always come at this issue with a fairly open mind. However, having seen photos that have been sent to me by constituents in recent weeks of some of the activities that have been taking place in my constituency, I am simply appalled. People have no right just to go about poisoning birds because they do not fit with their business. That is not acceptable and it cannot be allowed to continue. If, as part of your business, you release small birds into the bird population and other big birds come and kill them, then that is life—that is what big birds such as buzzards do. You just have to accept that and manage your business accordingly, but that does not give you the right to poison, shoot or otherwise destroy other birds.

We as a Parliament have said that that is unacceptable. If we have evidence that that is continuing to happen and that the legislation that is in place is not working, we must do something about it; otherwise, we just have to say, “It’s okay. Just continue to kill these birds. We don’t really care.” However, right now the laws that we have are not working; people are simply ignoring them or the police are unable to enforce them. The current situation is not acceptable. It is not acceptable to me, and I am not one of the most hard-line animal-rights members of this committee. If I have come round to this position, things are really in a bad way. We need to get things moving quickly because the current situation is not acceptable.

12:00

Bill Wilson: The arguments have been laid out fairly clearly, so I will not rehash them. I simply put on record my sympathy for Peter Peacock’s argument, although I accept Liam McArthur’s point that the wording may require some alteration.

Roseanna Cunningham: The whole issue arises because the provision in the 1981 act was simply a provision to issue a licence. There was no subsequent guidance or subordinate legislation on the issue—nothing went along with the power to issue a licence.

On the one hand, there are groups of people who say, “You can issue licences. What are the criteria?”, and on the other, there are groups of people who do not want any licence to be issued, even though their issuing is statutorily provided for. We are in a situation in which such debate takes place.

Although poisoning, to which Karen Gillon referred, is not central to consideration of amendment 46, it provides the background to why the debate takes the turn that it does. Many will see the issuing of licences before poisoning has been dealt with as a reward for bad behaviour. Others will argue that the issuing of licences will end the poisoning of birds. The two discussions intermingle but, arguably, the present debate is not about poisoning. It is about a request for a legitimate licence—it is legitimate in that its issuing is provided for by legislation that is on the statute book.

Amendment 46 addresses a highly controversial and difficult issue. As yet, the Government has not issued any licences for that purpose, nor did any previous Scottish Government. I am not conscious that any Westminster Government has issued such a licence either, notwithstanding the fact that such provision remains on the statute book.

A number of discussions have been held with interested parties on both sides of the argument, and it is clear that there are strongly held views on both sides. On the one hand, the shooting sector points to the huge input to the economy that its work makes. According to that sector, predation is a cost burden that is similar to the burden on any farmer who loses stock. Poults are not worth a great deal, but poults that reach maturity are worth quite a lot of money—£30 to £40 each. Given the number of people who go out shooting and the size of the bags, it is evident how much income is derived from that. Some groups argue that they can lose 50 per cent or more of their stock through repeated attacks. A little more work needs to be done, because we are not talking about the loss of just one or two birds. That is one side of the argument.

The other side of the argument, as most people recognise, is that the shooting industry is not doing enough in the way of deterrence and protection measures, and that it is simply not right to contemplate killing native species to protect a non-native species, hundreds of thousands of which are reared and released into the environment. Those arguments have been rehearsed by the committee.

The difficulty with amendment 46 is that, in attempting to find a way through those arguments, it risks creating a bigger problem, because it has some flaws in it. Liam McArthur identified that. Most keepers would argue than an open-topped pen is an absolute necessity for encouraging the young birds to fly while still giving them the safety of a place to return to.

Another point that needs to be kept on board is that a lot of pheasant release pens are pretty big—they might be half an acre or more in size. It is clear that there will be practical difficulties in
covering pens of that size. Many of the pens contain trees, because that provides cover and roosts. It is hard to see how such an area could be roofed. It is also impractical to require mallards to be in some form of secure housing because, as might be expected, they are reared in ponds.

There are practical difficulties with what is being proposed, but I will be interested in hearing the committee’s views on the subject. I am not sure that amendment 46 would help because, if it is agreed to, it would not be possible for licensing authorities to take any balanced view of different interests in the future if people felt that the existing statute should remain. The amendment is also wider than necessary if the aim is to give birds more protection when a licence is being considered. It would also affect animal licence and bird and animal offences.

On those grounds, I oppose amendment 46, but I acknowledge that we need to have a wider debate, which might be better held in the chamber.

John Scott: My understanding is that discussions have taken place between the Government and the RSPB about defining when animals, particularly birds, are livestock, and that an agreement has been reached.

Roseanna Cunningham: Those discussions were not specifically with the RSPB. We consult and discuss with all stakeholders.

John Scott: Yes; the RSPB and others.

Roseanna Cunningham: No final conclusion or definition has arisen from those discussions. I am not quite sure what you have heard.

I oppose amendment 46 on the specific ground that it contains some flaws, but I acknowledge that there is a wider discussion to be had. A statutory provision exists that allows us to grant licences and, in those circumstances, it is not unreasonable for people to ask in what other circumstances a licence would be granted. That is why we have the discussions that we have.

Peter Peacock: The discussion has been useful and I am grateful for the support that colleagues have expressed. I disagree with John Scott in principle, so we will just have to take a different view about it.

I accept that there are limitations with the amendment’s wording and that it could have unintended consequences. I am happy to withdraw the amendment, with the committee’s leave, and I will consider it and have further discussion and communication with the minister and her office before stage 3.

Amendment 46, by agreement, withdrawn

Section 3, as amended, agreed to.

After section 3

The Convener: The next group is on the recording of information about the number of wild birds that are lawfully killed or taken. Amendment 21, in the name of Liam McArthur, is grouped with amendment 47.

Liam McArthur: I am happy to speak to amendment 21, but I confess that amendment 47, in Bill Wilson’s name, is perhaps more a reflection of what I wanted to achieve, not least in that it acknowledges the fact that wild birds might be taken or killed and not simply shot.

The amendments are a response to the stage 1 evidence that suggested that better record keeping was necessary to establish what is happening with various wild bird species and to provide a rebuttal to some of the wilder claims about practices on shooting estates. I am aware that the Game and Wildlife Conservation Trust has expressed concerns about the amendments, but they seem to be based on the fact that accurate records are already kept, that any figures would need to be set in the context of the overall populations of respective wild birds, and that compulsory record keeping would be costly. I have no problem with the case for contextualising any figures, but I cannot see how the first and last of those arguments are compatible. I will therefore listen with interest to what the minister says, but the principle of what Bill Wilson and I seek to achieve is sound and should be pursued.

I move amendment 21.

Bill Wilson: It seems to me to be good conservation practice to know the size of a yield that is taken from a population. I do not imagine that any of our species will go the way of the passenger-pigeon, but we should nonetheless know the yield. That is ultimately to the benefit of estates. If we want to keep a sustainable yield and secure the economic future of estates, we need to know what size of the population has been shot and whether it can maintain that level of shooting.

I find it hard to imagine that keeping records would be difficult. I am sure that all estates keep game bag records. Surely that is how they convince people to come to them to shoot—they can say how many birds people will have a chance of shooting. Gathering the data cannot be too difficult, albeit that we should have the data anonymised so that individual estates cannot be identified.

John Scott: When we discussed the matter previously in the committee, I supported in principle what has been proposed but I am now rather more taken with the GWCT’s position. It has pointed out that what has been proposed would add an extra burden on Scottish Natural Heritage and estates. If I am in favour of one principle, it is
that of not increasing the burden of regulation through the bill, given the burdens of regulation that already exist on almost all estates and landowners. Therefore, I think that the proposals are unnecessary.

In addition, under the voluntary wildlife estates scheme that was launched by the estates management group and others, what has been proposed will be done voluntarily. My position is that legislating in the area is not necessary. We should avoid further regulation.

Karen Gillon: I find it bizarre that we are arguing against something that is, it has been argued, already happening. If it is already happening, what is the problem with its being regulated? It does not seem to me that there would be a huge burden, and we would have records to prove what was happening. We could then monitor. Therefore, I would be happy to support either amendment. Bill Wilson’s amendment 47 is probably more comprehensive, so I urge members to support it.

Roseanna Cunningham: There are two issues: the principle and the amendments. I think that I said during stage 1 that, in principle, we support the idea of developing a bag return system to gather data on mortality rates for quarry species. However, the amendments apply to more than just game or quarry species, although they may do so inadvertently. Therefore, they go further than is desirable.

Data relating to quarry species are an important element in developing adaptive management arrangements, particularly for birds such as geese—I think that Bill Wilson made that point. There are concerns about the conservation status of some species, such as the Greenland white-fronted goose, although other goose species such as greylags are present in growing numbers and can be a real problem for farmers in some areas. Liam McArthur probably has direct experience of that.

The concern about monitoring geese points to one of the main defects in both amendments. The approach of placing a duty on landowners, lessees or occupiers of land would not capture the significant numbers of wildfowl, including geese, that are shot on the foreshore, in which the Crown has an interest. It would not fall within the scope of the amendments. If we consider the principle, we will realise that the amendments would not quite do what was intended.

Both amendments are a bit vague about whom a duty would be placed on. It is not entirely clear whether the owner, the lessee, the occupier or all three would be required to submit a return. That lack of clarity is a bigger concern with respect to Bill Wilson’s amendment 47, which would create a new criminal offence. If we are talking about potential prosecutions, we must be absolutely clear about what is required of people. It is not clear how people could find out about the system that it appears is being proposed. The normal way in which to do such things is for the details to be set out in subordinate legislation. I appreciate that there may have been an unwitting omission in the drafting of the amendment, but I am advised that there would be problems in prosecuting any such offence under amendment 47 as drafted.

12:15
I note that the offence is set out as a strict liability offence. I am not sure whether that is what was intended. I would have expected a reasonable excuse defence; that is the appropriate defence for this kind of offence, given the due diligence or reasonable justification aspects of imposing such a criminal offence.

Our preferred approach would be to look for a scheme that places some sort of obligation on individual shooters to submit a bag return for birds that they take throughout the season. We would plan to open discussions with organisations such as the British Association for Shooting and Conservation and the Scottish Association of Country Sports with a view to developing a scheme. For example, with their co-operation, we could perhaps develop a non-statutory scheme.

The amendments in the group pursue a worthwhile cause, but they are the wrong approach at the wrong time. We oppose them.

Liam McArthur: I welcome the comments of colleagues and of the minister in accepting the principle. The recent conversion of John Scott apart, the committee felt the provision to be a commonsense one. I accept that there may be a need to broaden the scope of Bill Wilson’s amendment and mine to tighten up on where responsibility lies and to address other shortcomings. I hope that that can be done ahead of stage 3. The importance of keeping records and having the available data kept are essential to the adaptive management to which the minister referred. As I said, the data are also necessary for rebutting some of the wilder claims that are bandied about on what happens on shooting estates and elsewhere. I have some misgivings about the notion of a non-statutory scheme. Perhaps we can pick up on the idea between now and stage 3.

I seek leave to withdraw amendment 21.

Amendment 21, by agreement, withdrawn

Amendment 47 not moved.

Section 4 agreed to.
After section 4

The Convener: The next group is on protection of wild birds: intervention by the Scottish ministers. Amendment 48, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock: I promise not to read out the amendment in its entirety—[Laughter.]

Roseanna Cunningham: It would take ages.

Peter Peacock: Indeed.

My commitment and that of many other committee members throughout the passage of the bill has been to try to find provisions to bear down on and eliminate as far as possible the unacceptable practice of bird persecution—Karen Gillon referred to that—and in that regard I welcome the moves that the Government has offered to make on vicarious liability. It is a major step in the right direction. However, I am under no illusion about the difficulty of securing convictions—even with the new law. I hope that the new provision adds considerably to the system and thereby ensures that the practice that we all deplore comes to an end, but if we invest all our future hopes in it—I repeat that I welcome it and attempts at prosecution show that conviction is difficult to secure, the new bit of the armoury that we have been trying to design will have gone from us. That is why I think there is a need for further provisions, which have the potential to affect the economic interests of those who may, in a pretty real way, be behind some of the practices that we all deplore.

I lodged amendment 48 to advance the debate on these policy issues and to set out a possible way forward. I want to make it clear that I do not regard amendment 48 as the final word on the matter. I have already noted a number of technical flaws in the drafting; I intended to delete two of them, but they remain. Members understand the time pressures at stage 2. Thankfully, Christmas will provide more opportunity to think and refine the amendment.

There is plenty of room in the drafting for the negotiation and refinement of what I am proposing today. My thinking on the matter has moved forward quite a lot over the past few weeks. I have listened carefully to what has been said about the concerns that I expressed a few weeks ago. I started with a belief that all estates should come under a licensing system, but I have heard arguments that that would be unnecessary and disproportionate as it would capture everybody—even those who are behaving in an exemplary fashion. Furthermore, it would inevitably imply more bureaucracy than might be necessary.

I have listened to concerns about the new scheme that the Scottish Rural Property and Business Association has been promoting with regard to estate management. I warmly welcome that scheme—it represents a significant step in the right direction—although there was concern that the potential to use it as a statutory code of practice might bring about the opposite effect to that which was desired. I have listened to those concerns, too.

Amendment 48 seeks to avoid the issues and concerns and tries to focus on where there might be a problem rather than propose a general licensing system. It is a lengthy and complex amendment, but the principles behind it seem entirely straightforward. It provides for a form of staged intervention. In essence, when a minister has reasonable cause to believe that the practices that are set out in the amendment are inimical to the intentions of the bill and of previous acts of Parliaments, and if those practices continue to occur—the minister having perhaps set out guidance as to how they might come to such a judgment—they will have to notify those who are involved with the management of the land of their concerns. The minister would have to set out the activity that they may potentially regulate and invite those concerned with the management of the land to say what actions they propose to take to satisfy the minister that their concerns can be addressed. If the minister is satisfied that the proposed actions are satisfactory, the matter could end there and no further action need necessarily be taken; if the minister is not convinced about the proposed actions, they can make a regulation of activity order, which would require a management plan for how the landowners are to respond.

I propose that SNH be given responsibility for monitoring the implementation of the management plan. If the management plan is implemented satisfactorily and in such a way as to remove the original issues that ministers had reasonable cause to be concerned about, the order could be revoked and no further action would ensue. However, if the monitoring of the management plan resulted in the concerns continuing and in the sought outcomes not being achieved, the minister could revoke the rights of owners in certain respects. That, to all intents and purposes, would mean sporting rights on the land. I envisage that an appeal regarding any such decision, which would be significant, could be made to the Scottish Land Court.

Amendment 48 is not about creating another offence—we are coming close to having enough of those. The approach is different from one that would end up with a criminal offence. In principle, it mirrors the provisions relating to deer management, in the sense that there is a staged intervention in deer management involving SNH, albeit in a different way from what I envisage under amendment 48.
I believe that the approach that I have set out could provide a way forward. I do not think that any landowner or estate that is behaving entirely properly would have anything to fear from the proposals, which seek to isolate those cases where we understand that there could be a continuing problem and to set in place safeguards to ensure that there is a staged process that allows matters to be addressed satisfactorily.

I will listen carefully to what the minister has to say about the amendment. In view of its flaws, which I have spotted myself, I do not intend to push it to a vote today; I seek to refine it in the light of the debate and discussion that I hope the committee will now have.

I move amendment 48.

**Liam McArthur:** I had concerns about the notion of a licensing scheme—that is partly in keeping with evidence that we received from SNH at stage 1. More crucial was the scheme’s appearing not to distinguish between estates, whatever their track record, principally in relation to wildlife crime. This lengthy amendment heeds some of those concerns and seeks to adopt a different approach. Although the wording needs modifying—I can testify to Peter Peacock’s attempts to amend the wording at the 11th hour—I hope that the minister will acknowledge that amendment 48 anticipates the concerns that were expressed in the Government’s response, which I shared, and seeks to find a more workable and proportionate approach to introducing a further sanction, which will help to drive down the raptor persecution that we all abhor and find all too common.

**Bill Wilson:** It is probably fair to say that an overwhelming majority of estates behave responsibly, but it is clear that some estates consistently break the law. My worry about a voluntary code is that estates that behave well will obey it because they would behave well anyway and estates that act illegally will continue to do so. I therefore have much sympathy for the principle behind amendment 48, albeit that it has wording problems. I look forward to hearing what the minister says. It is clear that action such as the proposed amendment on vicarious liability will move things forward, but an approach such as Peter Peacock suggests will be helpful, if it is practicable.

**John Scott:** I declare an interest as a farmer and landowner. Members will not be surprised to hear that I am not in favour of amendment 48, which would introduce a further unnecessary burden of regulation.

I categorically share the view of Liam McArthur and other members that raptor persecution should be brought to an end. We are in no dispute about that. I understand that the minister intends to lodge an amendment on vicarious liability. Estate licensing such as is proposed is not necessary, given the voluntary scheme that we have. I accept Bill Wilson’s point about honest men being honest anyway and the need to deal with the people whom we want to stop misbehaving. Perhaps—although I will not be in favour of it—the minister’s amendment will address that.

Amendment 48 must be the longest probing amendment in history, and Peter Peacock’s own demolition of its value precludes further comment in that regard. Suffice it to say that several interested bodies have put it to me that the proposed approach would significantly discourage investment in land, particularly sporting estates, in Scotland because the sheer burden of regulation would be so onerous. Trust me; I am a farmer and landowner and I am only too well aware of the burden of regulation. It is not sensible or necessary to introduce an additional burden.

**Karen Gillon:** When four of my constituents died in a gas explosion in Larkhall 10 years ago, people told me that we could not change the law on corporate culpable homicide because the burden of regulation would discourage companies from investing in Scotland. We changed the law on corporate manslaughter and companies still come to Scotland and invest here.

If we change the law on the protection of wild birds, as is proposed, companies will still want to invest in Scotland, because this is a good place in which to invest. Good companies will still want to bring their business to Scotland, to get the benefits of the Scottish landscape, climate and weather and of our grouse moors, shooting estates and gamekeepers. Only Scotland can bring those benefits. Good companies will want what we have, regardless of the regulation. People talk a lot of nonsense when they do not want us to do something. We need to have the courage to do the right thing.

12:30

**Roseanna Cunningham:** I will take a few moments to deal with some of the issues that have been raised, because they are important and I do not want to gloss over everything.

I acknowledge that Peter Peacock has attempted to address one of our principal objections to the proposal that was discussed during stage 1, in so far as amendment 48 would not impact on all shooting businesses and is more tightly focused on estates in relation to which there is suspicion of wrongdoing. We are, nevertheless, still of the view that the proposal does not represent the right approach, and we would prefer to go forward with the robust legal framework that
will be in place if our amendments on vicarious criminal liability are agreed to. Although some of those who have commented on our plans said that vicarious criminal liability is a novel concept, it is, in fact, well established in law. It has been in existence for quite a few years; it was reinstated in the Criminal Justice and Licensing (Scotland) Act 2010 earlier in the year and it is well understood, certainly in civil law. By contrast, Peter Peacock’s proposal contains brand new concepts that might be made to work in due course, but only after a number of protracted legal challenges are overcome. In a sense, this is an example of how much care we have to take to get things right.

It is clear that, in some cases, the proposed scheme would lead to a serious interference with property rights. In effect, it is designed to do that. Serious interference in property rights can be justified—we do it all the time under planning law—but any interference must be proportionate and the necessary safeguards must be in place. Whether the proposed scheme represents such a proportionate response to the problem of raptor persecution is an open question. Ultimately, it would be one for the courts, and I am 100 per cent certain that that is where it would end up. I suspect that Peter Peacock agrees with that.

I also notice that, under the proposal, there is no right of appeal until the very end of the process. I do not know whether Peter Peacock has considered that. The scheme also proposes the revocation of rights as a sanction. Presumably that refers to the right to take game. I think he mentioned that it relates to the shooting rights as a whole, but I do not know whether it would have to be the whole of the shooting rights or whether it could be part of them. There is a lack of specification. Does the revocation apply to the area of land or to the landowner? Would it be possible for the rights to be taken back by a purchaser of the land or someone who inherited it? When such a big change in the law is proposed, we have to work hard to see how it would operate in practice.

We believe that vicarious liability will be more straightforward to prosecute than what is suggested in the amendment. An important difference is that at the centre of the vicarious liability concept will be the need for the Crown to prove beyond reasonable doubt that an offence has taken place. Under the scheme in the amendment, proceedings that might lead to a severe restriction could begin solely on the basis of concerns on the part of Government officials. I have scribbled on my notes that it would be a sort of sus law for estates. I am not sure whether that is what Peter Peacock intended, but, in effect, that is what the amendment delivers.

We can identify a number of other difficulties with the proposal. Landowners would claim that they are vulnerable to mischief making. A dead bird thrown on to their land could trigger the process. At present, under criminal prosecution, the investigation is rather more rigorous than that. They would also claim that activities for which they are not responsible on an area of their land could trigger the process—for example, if a paying guest misbehaves and shoots a protected species. That is a different relationship to the one that is envisaged under vicarious liability.

It is also likely to be difficult to identify everyone with an interest in any given area of land. Peter Peacock will acknowledge that, in some areas of Scotland, the sheer issue of land ownership can be a big question mark. Our experience suggests that, as well as the difficulties with identifying owners, there can be complex relationships of management and tenants, all of whom have an interest.

SNH told us that the role that is envisaged for it would place a difficult and heavy burden on the organisation when it is hard pressed. We are also dubious about subsection (9), which appears to compel ministers on the financing and resourcing of SNH. We could not accept that approach.

I have gone through a lot of detailed reasons why I oppose amendment 48 and I expect that Peter Peacock might have picked up some of them already, although he might not have thought about others. His suggestion is quite far reaching and would mean a significant change in how we do things at present. Both I and the Government think that if we are going to make such a far-reaching change, it deserves a different kind of scrutiny from that which we can give it as an amendment to another piece of legislation. That is why we prefer to proceed with the strong legal framework that is in place with the addition of vicarious liability and give initiatives such as the wildlife estate scheme a chance to succeed. That is not to say that we might not end up having this debate at some future point, but it would need to be undertaken in the full understanding of the complexity of what is proposed because of its far-reaching nature.

The Convener: I invite Peter Peacock to wind up, and, although I suspect I know his answer, to say whether he will press or withdraw his amendment.

Peter Peacock: Amendment 48 was lodged in a spirit of setting out a new proposition and beginning to get a feel for where people believe they stand. As I said, I accept that it is not the final word on the matter. Indeed, I anticipated a number of the minister’s points. It is helpful to get them on the record because I can now think about them a good deal more deeply—and I shall do so. It is my
intention to keep pursuing the point, although I accept that there are different points of view.

I will pick up on some of the points that have been made in the debate. I am grateful for the support in principle that Liam McArthur indicated in that the proposal is more proportionate than that which we have sought before. Bill Wilson made a good point about the voluntary code, which I welcome, as I know he does. By definition, it is only those who know that they can or want to comply with the code who will volunteer. Therefore, there are still issues that the code does not cover.

I understand that John Scott is not in favour of amendment 48. I do not accept his point about the burden of regulation because it would apply only to those whom SNH has strong reason to believe are not obeying either the spirit or the letter of the law. It seems entirely right to place a burden on those people at that time, and SNH would be the appropriate agency to do it.

John Scott: There are many honest people in Scotland—I include myself as one of them—who, notwithstanding that they are honest, are burdened by excessive regulation. Your proposal seems unnecessarily complicated and, as the minister said, the implications would be far reaching in this case.

Peter Peacock: With respect, it would become a burden on you only when you became dishonest, although I am not suggesting that you would.

John Scott: No, you miss the point, which is that it becomes a burden when you have to think about it and factor it into everything you do. All regulation comes at a cost.

Peter Peacock: Again, with respect, I know that amendment 48 is long but if John Scott had read it to its conclusion he would have realised that it does not propose to create a burden on anybody until such point that there is real concern in the public interest that a burden requires to be placed on that person to try to sort out a situation unacceptable to us all. I do not accept John Scott’s point about the burden.

I explicitly reject the point about investment. Every time we talk about any regulation to protect the public interest, people say, “It will stop people investing in estates.” Frankly, if you want to invest in an estate in order not to obey the law I would rather not have you in Scotland. If you do obey the law there is absolutely nothing to fear from my proposal. So I do not accept that point.

John Scott: I do not accept yours.

Peter Peacock: I understand that you do not accept it; we will just have to disagree. There is nothing new in that.

I listened carefully to what the minister said. I want to pursue my proposal and think about it a bit more. I had thought about her point about there being more appeals in the system. There is an old trick that old ministers used to perform—you create the perfect bill then you take things out so that you can put them back in when under pressure at a later stage. Members might detect that there is a similar approach to my amendment.

Given that the procedure would be used only in rare circumstances, I have thought about whether there may be a case for requiring parliamentary approval for some of the steps, to make the process clearer, more democratic and, therefore, more accountable in a variety of ways. The minister described how vicarious liability applies pressure to the system. By the same token, the very fact that a process exists means that no estate will want to get caught up in it. There will be strong incentives to avoid that. Indeed, the public opprobrium of getting to stage 1 of the process might be sufficient to deter people from many of the practices about which we are concerned.

Although I strongly support the concept of vicarious liability, I am under no illusions about how difficult it may be to secure prosecutions. It is worth having it on the statute book even if legal challenges occur, because the informal pressure that it applies will contribute to eliminating the problem that we face.

I will reflect seriously on the issue. However, for all the reasons that the minister and I have set out, I seek leave to withdraw the amendment.

Amendment 48, by agreement, withdrawn.

Section 5—Sale of live or dead wild birds, their eggs etc

Amendments 22, 49 and 50 not moved.

Section 5 agreed to.

After section 5

The Convener: The next group is on reports on illegal killing of wild birds and wildlife offences generally. Amendment 23, in the name of Liam McArthur, is grouped with amendment 58.

Liam McArthur: Given my earlier sin of omission, I will start by moving amendment 23.

As was the case with amendment 21, I find myself speaking to my amendment while being strangely attracted by the allure of the other amendment in the group, which may reflect more accurately what I am seeking to achieve.

At stage 1, the committee agreed that it would be helpful, not least to raise the profile of wildlife crime and to increase efforts to bear down on it, were ministers to report regularly to Parliament on
the extent of the problem and the measures that are being taken to combat it. Having read the Government’s response, I am pleased that the minister has been able to accept the principle. I look forward to hearing her comments on how it may be made to work in practice. Depending on what is said, I may seek leave to withdraw my amendment in favour of amendment 58, in the name of Peter Peacock.

I move amendment 23.

Peter Peacock: Given that Liam McArthur and I did not talk about the issue before stage 2, there is a remarkable coincidence in drafting between the two amendments, with the exception of about three words. My amendment refers to wildlife crime more generally, whereas Liam McArthur’s focuses on birds in particular. The amendments support the Government’s policy intention. If the minister is able to accept one of them, I am happy to go with either formulation. If not, I hope that she will consider the matter and come back with an amendment at stage 3.

Bill Wilson: I want to make two points. First, if the minister does not report, perhaps SNH should. That may be a matter for discussion. Secondly, the committee heard evidence that there is some inconsistency in the statistics that are gathered on wildlife crime. I invite you to comment on that and on the suggestion that it may become a recordable offence.

Roseanna Cunningham: I am perfectly happy to provide an annual report on wildlife crime, if that is required. As a sidebar to the discussion, I note that questions may be raised about why wildlife crime, as opposed to many of the other aspects of criminal behaviour that could be subject to the same procedure, is being singled out for an annual report. Providing for an annual report suggests that more than just statistics are required, so there is a little uncertainty about what format the report would take. However, I am perfectly happy to go there if the committee wishes.

12:45

Amendment 23 is limited to the persecution of wild birds, which may give a clue as to who had a hand in drafting it. There is a flaw in it, however. If we are going to do this, it must be about more than just birds, so the amendment would need to be broader. I oppose amendment 23 on that ground if nothing else.

Both amendments appear to misunderstand the role of wildlife inspectors, who have certain functions that are limited to certain offences. They do not get involved in the investigation of unlawful killing of wild birds or any other protected species. It may be that the amendments were intended to refer to wildlife crime officers—I am not quite sure—but wildlife inspectors are slightly different.

If it is the committee’s will that there should be an annual report I am prepared to come back with a new proposal at stage 3. The Association of Chief Police Officers in Scotland advises that wildlife crime is recordable, but that change has been made only in the past year or so, so it is probably not feeding through into the published statistics yet. That may deal with the point that Bill Wilson raised. We can discuss at stage 3 what the annual report might look like and what it should capture, if members are amenable to that.

Liam McArthur: I am grateful to the minister for her response. I recognise the flaws in amendment 23 and acknowledge her concerns about amendment 51. She questioned why wildlife crime is being singled out for a report. We regularly discuss other aspects of crime in Parliament; a report would reflect the importance that we attach to the issue and the attempts by the Parliament and successive Governments to bear down on it. It may well be that the reporting structure will change over time, if—as we all hope—we achieve some success, but wildlife crime is central at present and that is the sentiment behind both amendments.

I am happy with the minister’s response and seek to withdraw my amendment on that basis.

Amendment 23, by agreement, withdrawn.

Amendment 51 not moved.

The Convener: I think that we should finish after section 6. The subsequent sections are quite hefty, so we will keep them for another day.

Section 6—Protection of wild hares etc

The Convener: The next group is on the protection of wild hares. Amendment 24, in the name of John Scott, is grouped with amendments 25, 5, 7 and 15 to 17.

John Scott: The introduction of close seasons for mountain and brown hare, as proposed in the bill, creates a welfare and conservation measure where there was none before. I welcome it, but the close season dates need to balance concerns about the timings of practical measures to mitigate crop and tree damage and the control of diseases such as louping ill. The later starts to the close seasons that my amendment proposes would provide a short window to allow such work to be carried out in the early spring, after the winter months. Amendment 24 would mean that the close season for mountain—or blue—hare will run from 1 April to 31 July, and for brown hare from 1 March to 30 September. That would give a close period of four months for the mountain hare to allow for breeding, and seven months for the
brown hare. I hope that that will find support with the committee and the Government.

I move amendment 24.

Roseanna Cunningham: The Government amendments in this group are intended to ensure that a person who is authorised under other enactments to take or kill hares for specific purposes is not committing an offence. The amendments bring the new hare and rabbit offences into line with the existing bird and animal offences in the 1981 act.

We have introduced close seasons for hares to provide greater protection at times of greatest welfare concern. That will replace the current limited protection that focuses on the sale of hares at certain times of the year.

The committee heard evidence from SNH about the effect a change in the proposed close season dates would have on the welfare of hares. Nearly half of all females are pregnant in February, so the change to the close season dates that John Scott proposes would impact on the actively breeding population and harm dependent young.

I understand that land managers have raised concerns about flexibility in carrying out control. Research commissioned by SNH on mountain hares showed that on let, commercial and formal shooting areas, only around 10 per cent of hares were shot between March and August. For unlet and informal shooting areas, the figure drops to 2 per cent. I therefore do not think that the proposed close season dates will cause the predicted difficulty to land managers that John Scott envisages and that has led to his lodging amendment 24.

We should also remember that land managers will be able to apply for licences to take action during the close season, if that is required. For those reasons, I oppose amendment 24 and commend amendment 5 to the committee.

John Scott: I thank the minister for her statement. I am interested to hear that land managers can apply for licences, if they are required for control purposes. I hope that the burden of proof will be easier than it perhaps is for buzzards; I assume that in that regard it will be a different position. I therefore will not press amendment 24.

Amendment 24, by agreement, withdrawn.

Amendment 25 moved—[Roseanna Cunningham]—and agreed to.

Section 6, as amended, agreed to.

The Convener: That ends today's consideration of the bill. We will continue our stage 2 consideration at our next meeting, on 12 January, when the target will be up to and including section 21, which is the end of part 2. I thank the minister, her officials and everyone else for their attendance. I wish you all a happy Christmas and a healthy and happy new year.

I suspend the meeting briefly to give members a comfort break.

12:54

Meeting suspended.
Wildlife and Natural Environment (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 21 Schedule
Sections 22 to 35 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 7

Roseanna Cunningham

6 In section 7, page 9, line 21, leave out <11D> and insert <11DA>

Roseanna Cunningham

7 In section 7, page 9, line 39, at end insert—

<3) Nothing in section 11E makes unlawful—

(a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or

(b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.

Section 12

Elaine Murray

52 In section 12, page 11, leave out lines 24 to 31 and insert—

<a) an offence under section 1(1);

(b) an offence under subsections 5(1)(a) to 5(1)(e);

(c) an offence under section 9(1);

(d) an offence under section 10A(1);

(e) an offence under subsections 11(1)(a) to 11(1)(c) or 11(2)(a) to 11(2)(e);

(f) an offence under sections 11B(3), 11C or 11E(1);

(g) an offence under section 13(1);

(h) an offence under sections 14(1) or 14(2)”.

>
Section 13

Marilyn Livingstone

26 In section 13, page 11, line 36, leave out from beginning to end of line 9 on page 15 and insert—

<(  ) in subsection (1), for paragraphs (a) and (aa), substitute—

“(a) sets in position or otherwise uses any snare;”,

(  ) subsections (3) to (3B) are repealed,

(  ) in subsection (3C)—

(i) in paragraph (b), at the beginning insert “manufactures,”,

(ii) the words “which is capable of operating as a self-locking snare or a snare of any other type specified in an order under subsection (1)(a)” are repealed,

(  ) subsections (3D) and (3E) are repealed.

(  ) In section 16 (power to grant licences)—

(a) in subsection (3), for “11(1), (2) and (3C)(a)” substitute “11(1)(b) and (c), (1)(d) (except in so far as it relates to section 11(1)(a)) and (2)”,

(b) after subsection (4A), insert—

“(4B) Sections 11(1)(a), (1)(d) (in so far as it relates to section 11(1)(a)) and (3C)(a) do not apply to anything done for scientific or research purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.

(4C) Section 11(3C)(a) does not apply to anything done for educational purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.”.>

Liam McArthur

27 In section 13, page 12, line 24, after <number> insert <, and

(  ) a unique identification number (“the snare number”) for each snare that the person intends to set.>

Liam McArthur

28 In section 13, page 12, line 25, after <numbers> insert <, snare numbers>

Liam McArthur

29 In section 13, page 12, line 32, after <position> insert <and a snare number>

Liam McArthur

30 In section 13, page 12, line 39, leave out <is the identification number> and insert <and the snare number are the numbers>
Liam McArthur

31 In section 13, page 13, line 2, after <number> insert <and snare numbers>

Elaine Murray

8 In section 13, page 13, line 5, at end insert <; and

( ) on being satisfied that the applicant has found such other methods for the capture and control of wild animals, as the Scottish Ministers may determine, to be ineffective,>

Liam McArthur

32 In section 13, page 13, line 7, at end insert <and the number of snare numbers the person applied for.>

Liam McArthur

33 In section 13, page 13, line 14, leave out <has> and insert <and a snare number have>

Liam McArthur

34 In section 13, page 13, line 15, leave out <it is> and insert <they are>

Liam McArthur

35 In section 13, page 13, line 16, leave out <it> and insert <them>

Liam McArthur

36 In section 13, page 13, line 19, after <number> insert <and snare number>

Liam McArthur

37 In section 13, page 13, line 23, after <number> insert <and snare number>

Elaine Murray

9 In section 13, page 13, line 23, at end insert—

<( ) what other methods for the control and capture of wild animals an applicant for an identification number must find to be ineffective before making such an application;

( ) how a chief constable is to be satisfied that an applicant for an identification number has found other methods for the control and capture of wild animals to be ineffective;>

Liam McArthur

38 In section 13, page 13, line 26, after <number> insert <and snare number>
Liam McArthur
39 In section 13, page 13, line 30, at end insert <and snare number or, as the case may be, snare numbers;>

Liam McArthur
40 In section 13, page 13, line 34, after <numbers> insert <and snare numbers>

Liam McArthur
41 In section 13, page 13, line 35, after <numbers> insert <and snare numbers>

Liam McArthur
42 In section 13, page 13, line 37, leave out <or identification> and insert <, identification numbers or snare>

Liam McArthur
43 In section 13, page 13, line 39, after <number> and insert <and snare numbers>

Liam McArthur
44 In section 13, page 13, line 39, at end insert—

<( ) Provision made under subsection (8)(a) must require that the person has been trained to set a snare in position only if such training included instruction on animal welfare in relation to the setting of a snare.>

John Scott
53 In section 13, page 13, line 39, at end insert—

<(8A) The Scottish Ministers must take such steps as are reasonably practicable to ensure that, during the period of 2 years beginning with the day on which this section comes into force, sufficient opportunities to access training exist to secure the result mentioned in subsection (8B).

(8B) That result is that all persons who would be required, by virtue of the coming into force of subsections (1) and (5), to cease setting snares in position until issued with an identification number are enabled to receive training within that period of 2 years.

(8C) In subsections (8A) and (8B), “training” means such training as is required in order for an application for an identification number under subsection (4)(a) to be granted.>

Roseanna Cunningham
10 In section 13, page 15, line 4, at end insert—

<11DA Snaring: review and report to the Scottish Parliament

(1) The Scottish Ministers must carry out, or secure the carrying out by another person of, a review of the operation and effect of—
(a) section 11 and any orders made under that section (in so far as the section and the orders make provision as regards snaring);  
(b) sections 11A, 11B, 11C and 11D and any orders made under those sections.

(2) The review must be carried out no later than 31st December 2016.

(3) In carrying out the review, the matters that must be considered include whether in the opinion of the Ministers (or, if the review is being carried out by another person, that person) amendment of this Act or enactment of other legislation is appropriate.

(4) In carrying out the review, the Scottish Ministers (or, if the review is being carried out by another person, that person) must consult such persons and organisations as they consider (or, as the case may be, the other person considers) have an interest in it.

(5) The Scottish Ministers must, as soon as practicable after 31st December 2016, lay a report of the review before the Scottish Parliament.”.>

Elaine Murray

11 In section 13, page 15, line 4, at end insert—

<11DA Duty to review snaring regime

(1) The Scottish Ministers must review and publish a report on the operation of the snaring regime—

(a) within 2 years of section 13 (snares) of the Wildlife and Natural Environment (Scotland) Act 2010 (asp 00) coming into force; and

(b) within each subsequent period of 2 years beginning with the publication of a report.

(2) When carrying out a review, the Scottish Ministers must—

(a) have regard to the incidence of offences under section 11(1A);  
(b) have regard to the extent to which snares are catching types of animal which they are not intended to catch; and  
(c) consult chief constables and any other such person as they consider appropriate.

(3) The Scottish Ministers must have regard to their most recent report when performing functions under the snaring regime.

(4) In this section, “snaring regime” means the provisions of this Part relating to snaring.>

Elaine Murray

12 In section 13, page 15, line 4, at end insert—

<11DA Duty to review snaring regime

(1) The Scottish Ministers must review and publish a report on the operation of the snaring regime—
(a) within 5 years of section 13 (snares) of the Wildlife and Natural Environment (Scotland) Act 2010 (asp 00) coming into force; and
(b) within each subsequent period of 5 years beginning with the publication of a report.

(2) When carrying out a review, the Scottish Ministers must—
(a) have regard to the incidence of offences under section 11(1A);
(b) have regard to the extent to which snares are catching types of animal which they are not intended to catch; and
(c) consult chief constables and any other such person as they consider appropriate.

(3) The Scottish Ministers must have regard to their most recent report when performing functions under the snaring regime.

(4) In this section, “snaring regime” means the provisions of this Part relating to snaring.

Elaine Murray

13 In section 13, page 15, line 4, at end insert—

<11DB Snares: Scottish Ministers powers to ban use of snares

(1) The Scottish Ministers may by order ban the use, sale, offer for sale or exposure for sale of any snare by any person whether or not that person is authorised to do so under the provisions of this Part.

(2) An order under subsection (1) must—
(a) specify the term of the ban;
(b) define the understanding of snare;
(c) define the understanding of use, sale, offer for sale and exposure for sale; and
(d) make provision for the monitoring of the ban.

(3) An order under subsection (1) must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by resolution of, the Scottish Parliament.

(4) Before laying a draft instrument before the Parliament under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

(5) For the purposes of such a consultation, the Scottish Ministers must—
(a) lay a copy of the proposed draft instrument before the Parliament,
(b) send a copy of the proposed draft instrument to any person to be consulted under subsection (4), and
(c) have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament.

(6) In calculating any period of 60 days for the purposes of subsection (5)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
(7) When laying a draft instrument before the Parliament under subsection (1), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
   (a) the consultation carried out under subsection (4),
   (b) any representations received as a result of the consultation, and
   (c) the changes (if any) made to the proposed draft instrument as a result of those representations.”.

After section 13

Peter Peacock

80 After section 13, insert—

<Bees

Protection of certain species of bees

(1) The 1981 Act is amended as follows.

(2) After section 12YA (inserted by section 11(2)), insert—

“12YB  Bee protection areas

(1) The Scottish Ministers may, by order, designate an area as a bee protection area.

(2) An order under subsection (1) may only be made if the Scottish Ministers are satisfied that the health or genetic integrity of colonies of black bees (Apis mellifera mellifera) in an area could be placed at risk if the area was not designated as a bee protection area.

(3) A person who imports bees of a species other than that mentioned in subsection (2) into a bee protection area without being licensed to do so by the Scottish Ministers is guilty of an offence.

(4) The Scottish Ministers may by regulations make provision in relation to the procedure to be followed and the criteria to be applied in relation to the granting of licences for the purpose mentioned in subsection (3).”.

(3) In section 26 (regulations, orders, notices etc.), after subsection (4) insert—

“(4ZA)Subsection (4) does not apply in relation to an order under section 12YB(1) where the Scottish Ministers consider it necessary to make the order urgently.”.

Section 14

Peter Peacock

81 In section 14, page 15, line 29, at end insert <;

but this subsection is subject to subsection (2AA).

<(2AA)The Scottish Ministers may, by order, specify areas in relation to which subsections (2AD) and (2AF) apply.
(2AB) The Scottish Ministers may specify an area in an order under subsection (2AA) only if they are satisfied that, in that area, animals of the types mentioned in subsection (2A) have been, or are being, released or allowed to escape from captivity for the purpose of being subsequently killed by shooting in such numbers that the flora or fauna or any other aspect of the natural environment of the area has been, is being or is at risk of being seriously damaged.

(2AC) An order under subsection (2AA) must specify, in relation to each area specified in the order, the period for which subsections (2AD) and (2AF) are to apply (“the relevant period”).

(2AD) The Scottish Ministers must determine, in relation to each relevant person, the maximum number of animals of each type mentioned in subsection (2A) that person may, in an area specified in an order under subsection (2AA) and during the relevant period, release or allow to escape from captivity for the purpose of being subsequently killed by shooting.

(2AE) A person who fails to comply with a determination under subsection (2AD) in relation to that person is guilty of an offence.

(2AF) Where the Scottish Ministers are considering specifying an area in an order under subsection (2AA), they may require a person who would, if the area was so specified, be a relevant person to provide them with information on the number of animals of each type mentioned in subsection (2A) that person, in the area being so considered and in such period as is specified in the requirement, released or allowed to escape from captivity for the purpose of being subsequently killed by shooting.

(2AG) A person who fails to comply with a requirement under subsection (2AF) is guilty of an offence.

(2AH) In subsections (2AD) and (2AF), “relevant person” means a person who, in an area specified in an order under subsection (2AA), releases or allows to escape from captivity for the purpose of subsequently being killed by shooting animals of the types mentioned in subsection (2A).

Roseanna Cunningham

59 In section 14, page 15, line 33, at end insert—

<(2BA) The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—

(a) any person specified in the order;
(b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or
(c) any conduct authorised by, under or in pursuance of any such enactment.>

Roseanna Cunningham

60 In section 14, page 15, line 34, leave out <or (2B)> and insert <, (2B) or (2BA)>
Roseanna Cunningham

61 In section 14, page 17, line 23, at end insert—

<( ) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.>

Section 15

Roseanna Cunningham

62 In section 15, page 18, line 2, leave out <issue> and insert <make>

John Scott

92 In section 15, page 18, line 5, after <sections;> insert—

<( ) species control agreements;>

Roseanna Cunningham

63 In section 15, page 18, line 5, leave out <or> and insert—

<( ) species control orders;>

Roseanna Cunningham

64 In section 15, page 18, line 7, leave out <issued under this section>

Roseanna Cunningham

65 In section 15, page 18, line 8, at end insert—

<( ) how Scottish Natural Heritage, the Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way in which they exercise their respective functions in relation to animals or plants which are outwith their native range;>

Roseanna Cunningham

66 In section 15, page 18, line 14, at end insert—

<( ) species control orders;>

John Scott

93 In section 15, page 18, line 30, leave out <best practice (where permitted) for> and insert <compliance with the provisions of this Part in relation to>

Roseanna Cunningham

67 In section 15, page 18, line 31, leave out from <or> to <range;> in line 32 and insert <of any type which are invasive or which are kept at a place from which they may not be put outwith the control of any person;
keeping plants of any type which are invasive or which are kept at a place outwith their native range;>

Roseanna Cunningham

68 In section 15, page 18, line 35, at end insert—

<( ) best practice for—

(i) containing, capturing or killing animals of any type which are outwith the control of any person and which are—

(A) at a place outwith their native range; or

(B) animals of a type specified in an order made under section 14(1)(a)(ii);

(ii) containing, uprooting or destroying plants of any type which are growing in the wild outwith their native range; and

(iii) transferring animals or plants of any type which are not permitted to be kept by virtue of section 14ZC into the custody of Scottish Natural Heritage or any other person (and for keeping such animals or plants prior to the transfer);>

Roseanna Cunningham

69 In section 15, page 18, line 35, at end insert—

<( ) the making, content of and enforcement of species control orders.>

John Scott

94 In section 15, page 18, line 35, at end insert—

<( ) the making and content of species control agreements;>

Roseanna Cunningham

70 In section 15, page 18, line 36, leave out <issued under this section>

Roseanna Cunningham

71* In section 15, page 18, leave out lines 38 to 40 and insert—

<( ) The first code of practice, and any replacement code of practice, made under this section—

(a) requires to be laid before, and approved by resolution of, the Scottish Parliament; and

(b) comes into effect on such date after approval under paragraph (a) as is specified in the code.

( ) Any revision to a code of practice (or revocation of a code of practice which is not being replaced) must—

(a) be laid before the Scottish Parliament; and
(b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).

( ) The Scottish Parliament may, before any such revision or revocation comes into effect, resolve that it is not to come into effect.

( ) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.

Section 16

John Scott
96 In section 16, page 19, line 33, after <failed> insert <, without reasonable excuse,>

John Scott
97 In section 16, page 21, line 8, at end insert—

< ( ) A species control order may make the provision mentioned in subsection (2)(b) only where it appears to the relevant body making the order that the presence of the invasive animal or plant in question is attributable to the actions of the owner or occupier of the premises to which the order relates.>

John Scott
98 In section 16, page 21, line 12, leave out <, or as the case may be,> and insert <and any>
John Scott

99 In section 16, page 25, line 7, after <indigenous> insert <and includes reference to any locality where the animal or plant is naturally present only from time to time>

John Scott

100 In section 16, page 25, line 17, at end insert—

<( ) The expression “in the wild” encompasses both natural and semi-natural habitats and consists of land under no (or only extensive) management that retains its natural or semi-natural character and is not subject to cropping.>

Section 17

Peter Peacock

82 In section 17, page 25, line 37, after <insert> insert <“, 14(2AE) or (2AG)>

Peter Peacock

83 In section 17, page 26, line 1, after <insert> insert <“(other than under subsections (2AE) or (2AG) of that section)>

After section 17

Liam McArthur

101 After section 17, insert—

<Offence of being concerned in the supply or use of prescribed ingredients

Offence of being concerned in the supply or use of prescribed ingredients

(1) The 1981 Act is amended as follows.

(2) In section 15A (possession of pesticides)—

(a) in subsection (1), after “possession of” insert “, or concerned in the supply or use of,”,

(b) in subsection (2), after “possession” insert “, supply or use”,

(c) after subsection (2), insert—

“(2A) Conviction under subsection (1) shall, for the purposes of sections 5 and 11, be presumed to be the equivalent of setting in position or use unless the contrary is proved.”.>

Liam McArthur

102 After section 17, insert—

<Pesticides: amnesty scheme

Power to establish a pesticides amnesty scheme

After section 15A of the 1981 Act (possession of pesticides), insert—
“15B Power to establish a pesticides amnesty scheme

(1) The Scottish Ministers may establish a scheme ("a pesticides amnesty scheme") whereby any person who is in possession of any pesticide containing one or more specified prescribed active ingredient will not be charged with an offence under section 15A if such person voluntarily surrenders such pesticide to a police constable during a time period to be determined by the Scottish Ministers.

(2) Before establishing a pesticides amnesty scheme, the Scottish Ministers may consult—
(a) the procurator fiscal service;
(b) chief constables; and
(c) such other persons as they consider appropriate.

(3) Before any such pesticides amnesty scheme is implemented, the Scottish Ministers may publish the terms of the scheme.

Section 18

John Scott

103 In section 18, page 27, line 4, at end insert—

<( ) in subsection (1), after paragraph (e), insert—

“(ea) for the purpose of the other judicious use of such birds as the Scottish Ministers may, by order, specify;”,”>

John Scott

104 In section 18, page 27, line 4, at end insert—

<( ) after subsection (1A) insert—

“(1B) The appropriate authority shall take account of all relevant economic, recreational and environmental factors before granting a licence for any purpose mentioned in subsection (1).”,”>

Peter Peacock

55 In section 18, page 27, leave out line 8 and insert—

<(i) for other imperative reasons of overriding public interest including those of significant social or economic nature and beneficial consequences of primary importance for the environment,”,”>

Peter Peacock

56 In section 18, page 27, leave out lines 9 to 15 and insert—

<( ) for subsection (4A) substitute—

“(4A) The appropriate authority shall not grant a licence under subsections (3) or (4) unless it is satisfied—

(a) that there is no other satisfactory solution; and
(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status."

Elaine Murray

84 In section 18, page 27, line 32, leave out <or> to end of line 33

Roseanna Cunningham

77 In section 18, page 27, line 36, leave out <specific species> and insert <a particular type>

Elaine Murray

85 In section 18, page 28, leave out line 7

Elaine Murray

86 In section 18, page 28, leave out lines 8 and 9

Elaine Murray

87 In section 18, page 28, line 12, leave out <or order>

Elaine Murray

88 In section 18, page 28, line 13, leave out <or order>

Elaine Murray

89 In section 18, page 28, line 14, leave out <or order>

Elaine Murray

90 In section 18, page 28, line 15, leave out subsection (4)

After section 19

Liam McArthur

57 After section 19, insert—

<Offence of knowingly causing or permitting certain offences

Offence of knowingly causing or permitting certain offences under the 1981 Act

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsections (1)(b) and 2(b)) shall be guilty of an offence.”.

(3) In section 15A (possession of pesticides), after subsection (1), insert—
“(1A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (1) shall be guilty of an offence.”.

(4) In section 18 (attempts to commit offences etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (2) shall be guilty of an offence.”.

Liam McArthur

105 After section 19, insert—

<Management of geese

Management of geese

After section 12 of the 1981 Act (protection of certain mammals), insert—

“12A Management of geese

(1) The Scottish Ministers must prepare and publish a national policy framework for geese management.

(2) In preparing a national policy framework under subsection (1), the Scottish Ministers must—

(a) consider—

(i) their nature conservation obligations in relation to Directive 79/409/EEC of the European Parliament and the Council on the conservation of wild birds; and

(ii) the impact of geese on agricultural systems and businesses;

(b) consult such persons as they consider appropriate.

(3) Any reference to geese in this section, is a reference to any goose included in schedules 1 and 2.”.

Before section 20

Peter Peacock

91* Before section 20, insert—

<Enforcement: power to confer certain functions on persons other than constables

(1) The 1981 Act is amended as follows.

(2) In section 19 (enforcement), after subsection (8) insert—

“(9) The Scottish Ministers may, by order, provide that the functions conferred on a constable by this section (except the power conferred by subsection (1)(c)) and section 19ZD are also exercisable by a person authorised by them for the purposes of this subsection.

(10) An order under subsection (9) may include such incidental, supplementary or consequential provision (including provision amending this Act) as the Scottish Ministers consider appropriate for the purposes of, in connection with, or for the purpose of giving full effect to subsection (9).
(11) An authorisation under subsection (9)—
   (a) shall be in writing;
   (b) is subject to any conditions or limitations specified in it;
   (c) may be revoked by the Scottish Ministers.”.

(3) In section 26 (regulations, orders, notices etc.)—
   (a) in subsection (2), for “and 11(4)” substitute “, 11(4) and 19(9)”;
   (b) in subsection (3), for “or 11(4)” substitute “, 11(4) or 19(9)”;
   (c) in subsection (4), after “14D” (as inserted by section 17(6)(b)(i)) insert “or 19(9)”;
   (d) in subsection (5), after “16A(4)(b)” (as inserted by section 18(4)(b)) insert “or 19(9)”;
   (e) after subsection (5), insert—
   “(5A) Before laying a draft statutory instrument containing an order under section 19(9) before the Parliament, the Scottish Ministers must consult—
   (a) chief constables;
   (b) any organisation employees of which the Scottish Ministers would intend, in the event of the order being made, to authorise under section 19(9); and
   (c) such other persons (if any) as they consider appropriate.
   (5B) For the purposes of such a consultation, the Scottish Ministers must—
   (a) lay a copy of the proposed draft order before the Parliament;
   (b) send of copy of the proposed draft order to any person to be consulted under subsection (5A); and
   (c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament.
   (5C) In calculating any period of 60 days for the purposes of subsection (5B)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
   (5D) When laying a draft statutory instrument containing an order under section 19(9) under subsection (3), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
   (a) the consultation carried out under subsection (5A);
   (b) any representations received as a result of the consultation; and
   (c) the changes (if any) made to the proposed draft order as a result of those representations.”.>

After section 20

Roseanna Cunningham

78 After section 20, insert—
<Offences by Scottish partnerships etc.

After section 69 of the 1981 Act (offences by bodies corporate etc.), insert—

“69A Offences by Scottish partnerships etc.

Where a Scottish partnership or other unincorporated association is guilty of an offence under Part 1 of this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who is concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

Roseanna Cunningham

79 After section 20, insert—

<Liability in relation to certain offences by others

Liability in relation to certain offences by others

After section 18 of the 1981 Act insert—

“18A Vicarious liability for certain offences by employee or agent

(1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—

(a) has a legal right to kill or take a wild bird on or over that land; or

(b) manages or controls the exercise of any such right.

(2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In any proceedings under subsection (2), it is a defence for B to show—

(a) that B did not know that the offence was being committed by A; and

(b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.

(5) For the purposes of subsection (1)(b), management or control of the exercise of a right to kill or take any wild bird on or over land includes in particular management or control of any of the following—

(a) the operation or activity of killing or taking any such birds on or over that land;

(b) the habitat of any such birds on that land;
(c) the presence on or over that land of predators of any such birds;
(d) the release of birds from captivity for the purpose of their being killed or taken on or over that land.

(6) In this section and section 18B, “a relevant offence” is—
(a) an offence under—
   (i) section 1(1), (5) or (5B);
   (ii) section 5(1)(a) or (b); or
   (iii) section 15A(1); and
(b) an offence under section 18 committed in relation to any of the offences mentioned in paragraph (a).

18B Liability where securing services through another

(1) This subsection applies where, on or in relation to any land—
   (a) a person (A) commits a relevant offence;
   (b) at the time the offence is committed, A is providing relevant services for B; and
   (c) B—
      (i) has a legal right to kill or take a wild bird on or over that land; or
      (ii) manages or controls the exercise of any such right.

(2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In any proceedings under subsection (2), it is a defence for B to show—
   (a) that B did not know that the offence was being committed by A; and
   (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.

(5) For the purposes of subsection (1)(b), A is providing “relevant services” for B—
   (a) if A manages or controls any of the following—
      (i) the operation or activity of killing or taking any wild birds on or over that land;
      (ii) the habitat of any such birds on that land;
      (iii) the presence on or over that land of predators of any such birds;
      (iv) the release of birds from captivity for the purpose of their being killed or taken on or over that land; and
   (b) whether A is providing the services—
      (i) by arrangement between A and B; or
(ii) by arrangement with or as employee or agent of any other person (C) who is providing or securing the provision of relevant services for B.

(6) For the purposes of subsection (5)(b)(ii), C is providing or securing the provision of relevant services for B if C manages or controls any of the things mentioned in sub-paragraphs (i) to (iv) of subsection (5)(a).”.

Elaine Murray

14 After section 20, insert—

<Functions of conservation bodies

Functions of conservation bodies
In section 24 of the 1981 Act (functions of GB conservation bodies), in subsection (1)—
(a) for the word “5” substitute “A1, 1, 1A, 2, 3, 4, 5, 5A, 6, 6A”,
(b) after “opinion” insert—
“(za) any bird should be added to, or removed from, Schedule A1;
(zb) any bird should be added to, or removed from, Schedule 1;
(zc) any bird should be added to, or removed from Schedule 1A;
(zd) any bird should be added to, or removed from, Schedule 2;
(ze) any bird should be added to, or removed from, Schedule 3;
(zf) any bird should be added to, or removed from, Schedule 4;”,
(c) after paragraph (a) insert—
“(aa) any animal should be added to, or removed from Schedule 5A;
(ab) any animal should be added to, or removed from Schedule 6;
(ac) any animal should be added to, or removed from Schedule 6A;”.

Peter Peacock

58 After section 20, insert—

<Reporting

Annual report on wildlife crimes
After section 26A of the 1981 Act (enforcement of wildlife legislation), insert—

“26B Annual report on wildlife crimes
(1) The Scottish Ministers must as soon as practicable after the end of each calendar year lay before the Parliament a report on the incidence of wildlife offences under this Act in the reporting year.

(2) In preparing a report under subsection (1), the Scottish Ministers may require wildlife inspectors to provide them with such information as they consider necessary to fulfil the requirements of that subsection.”.

Liam McArthur

106 After section 20, insert—
Reporting on and responding to wildlife crime

After section 19ZD of the 1981 Act (power to take samples: Scotland), insert—

“19ZDA Reporting on and responding to wildlife crime

(1) Scottish Ministers must ensure that every police force applies the definition of wildlife crime under subsection (2) for the purposes of reporting on and responding to such wildlife crimes.

(2) In this section, “wildlife crime” means any unlawful act or omission, which affects any wild bird or animal, plant or habitat.”.

Section 21

Roseanna Cunningham

15 In section 21, page 29, line 33, at end insert—

<( ) The modifications in Part 1 of the schedule have effect.>

Schedule

Roseanna Cunningham

16 In section 21, page 29, line 34, after <of> insert <Part 2 of>

After section 27

Elaine Murray

18 After section 27, insert—
Duty to further the conservation of biodiversity

In section 1 (duty to further the conservation of biodiversity) of the 2004 Act, in subsection (2)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) in paragraph (b), after “Convention)”, insert “and

(c) the ecological coherence and connectivity of features of value to biodiversity.”.
Wildlife and Natural Environment (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Snares**
6, 26, 27, 28, 29, 30, 31, 8, 32, 33, 34, 35, 36, 37, 9, 38, 39, 40, 41, 42, 43, 44, 53, 10, 11, 12, 13

*Notes on amendments in this group*
Amendment 26 pre-empts amendments 27, 28, 29, 30, 31, 8, 32, 33, 34, 35, 36, 37, 9, 38, 39, 40, 41, 42, 43, 44, 53, 10, 11, 12 and 13

**Single witness evidence**
52

**Protection of certain species of bees**
80

**Exemption of pheasant and red-legged partridge from ban on releasing non-native species etc.: power to disapply exemption**
81, 82, 83

**Power to exempt specified persons and certain types of conduct from ban on releasing non-native species etc.**
59, 60

**Duty to notify presence of invasive plants or animals**
61
Code of practice on non-native species etc.
62, 92, 63, 64, 65, 66, 93, 67, 68, 69, 94, 70, 71, 72, 73, 95, 74, 75, 76

Notes on amendments in this group
Amendment 95 pre-empts amendments 74, 75 and 76

Species control orders
96, 97, 98

Non-native species etc.: interpretation of “native range” and “in the wild”
99, 100

Pesticides: offences etc. and amnesty scheme
101, 102

Granting of licences under the 1981 Act
103, 104, 55, 56

Delegation by Scottish Ministers of licensing function under the 1981 Act
84, 77, 85, 86, 87, 88, 89, 90

Management of geese
105

Power to confer certain functions of constables under the 1981 Act on other persons
91

Liability of certain persons for offences committed by others
78, 79

Reviewing of birds and animals included in certain Schedules to the 1981 Act
14

Definition of wildlife crime for reporting purposes etc.
106

Duty to further the conservation of biodiversity
18

Amendments already debated

Causing or permitting certain offences under the 1981 Act
With 45 – 57

Reports on illegal killing of wild birds and wildlife offences generally
With 23 – 58

Protection of wild hares etc.
With 24 – 7, 15, 16, 17
Present:

Karen Gillon           Liam McArthur
Elaine Murray          Peter Peacock
John Scott (Deputy Convener)   Stewart Stevenson
Maureen Watt (Convener) Bill Wilson

Wildlife and Natural Environment (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 6, 7, 10, 59, 60, 61, 62, 92, 63, 64, 65, 66, 67, 68, 69, 94, 70, 71, 72, 73, 74, 75, 76, 98 and 77.

The following amendments were agreed to (by division):

78 (For 7, Against 1, Abstentions 0).
79 (For 7, Against 1, Abstentions 0).

The following amendments were disagreed to (by division):

93 (For 1, Against 7, Abstentions 0).
103 (For 1, Against 7, Abstentions 0).
104 (For 1, Against 7, Abstentions 0).

The following amendments were moved and, with the agreement of the Committee, withdrawn: 52, 80, 81, 96, 99, 101, 84, 105 and 91.

The following amendments were not moved: 26, 27, 28, 29, 30, 31, 8, 32, 33, 34, 35, 36, 37, 9, 38, 39, 40, 41, 42, 43, 44, 53, 11, 12, 13, 95, 97, 100, 82, 83, 102, 55, 56, 85, 86, 87, 88, 89, 90 and 57.

Sections 8, 9, 10, 11, 12, 17, 19 and 20 were agreed to without amendment.

Sections 7, 13, 14, 15, 16 and 18 were agreed to as amended.
The Committee ended consideration of the Bill for the day, amendment 79 having been disposed of.

Peter Peacock declared an interest as a member of the Royal Society for the Protection of Birds, Scottish Ornithological Club, and the Bumblebee Conservation Trust.
had we finished one review than we would be the painters on the Forth rail bridge, no sooner that it would appear to all those involved that, like that two years is much too short an interval and and, of course, the stakeholders. My judgment is time and resources on the part of the Government review process involves a significant investment in years. We need to bear it in mind that any serious Murray, propose a review process every two years. It meets the Government’s objectives.

Section 7—Prevention of poaching: wild hares, rabbits etc

The Convener: We begin with amendments on snares. Amendment 6, in the name of the minister, is grouped with amendments 26 to 31, 8, 32 to 37, 9, 38 to 44, 53 and 10 to 13.

The Minister for Environment and Climate Change (Roseanna Cunningham): Good morning and happy new year to everybody. I will open by speaking to Government amendments 6 and 10, both of which are in response to the committee’s recommendation that the Government take stock of the snaring provisions in five years’ time. Amendment 6 is a purely technical amendment to pave the way for amendment 10, which is the substantive amendment proposing that the review be carried out no later than 31 December 2016, with a report of the review being laid before Parliament soon after. Amendment 6 also ensures that the review must consider whether further legislation is required. Those are clear parameters for a future Administration to work within. The review that amendment 10 introduces is an important safeguard and will be a health check on whether the legislative regime meets the Government’s objectives.

Amendments 11 and 12, in the name of Elaine Murray, propose a review process every two years. We need to bear it in mind that any serious review process involves a significant investment in time and resources on the part of the Government and, of course, the stakeholders. My judgment is that two years is much too short an interval and that it would appear to all those involved that, like the painters on the Forth rail bridge, no sooner had we finished one review than we would be back to the beginning to start again—I am mindful of the fact that we no longer paint the Forth bridge, but people will understand the point. What is proposed might suit some folk but, in my view, it would not be the best use of scarce resources. I therefore urge the committee to support amendments 6 and 10, which will enable a review of the snaring provisions to be carried out in a more meaningful timeframe, in accordance with the committee’s recommendation.

Amendment 26, in the name of Marilyn Livingstone, would introduce an outright ban on snaring. As committee members know, I do not support an immediate ban, for the reasons that they identified in their stage 1 report, so I oppose the amendment. I do not believe that anyone who has looked closely at the issue believes that snaring is something to actively like or enjoy, but many people will conclude that it nevertheless remains a necessary part of a land manager’s toolkit. Land managers and farmers need to protect crops and livestock from pests and predators. If we ban snaring, control of predators will continue, but it may need to be by less effective and even less humane methods, which in many cases will be more resource intensive. For example, shooting in less than ideal situations could simply lead to many more wounded animals. Therefore, on the ground that snaring may well be the least bad option in some cases, we support its retention.

Amendment 13, in the name of Elaine Murray, would provide for an enabling power to ban the use of snares. For several reasons, I am not in favour of the approach of taking a reserve power to ban the use of snares. First, as was mentioned in our response to the stage 1 report, there are already negative procedure powers in sections 11(3E) and 11(4A)(b) of the Wildlife and Countryside (Scotland) Act 1981. Section 11(3E) states that it is an offence for any person to use a snare “otherwise than in accordance with such requirements as may be specified in an order made by the Scottish Ministers”.

Section 11(4A)(b) enables the Scottish ministers to specify circumstances in which a snare has “been set or used in a manner which constitutes an offence”.

Those measures might not provide the power to ban snaring completely, but they allow us to take quick action to deal with particular problems that come to light in relation to snaring. Those powers were used to introduce the Snares (Scotland) Order 2010, which contained a package of improvements on snare construction and further regulation on where and how snares can be set. The powers might be used to react to other technical improvements, such as innovations that
are under development. An example of that is breakaway snares, which would allow some non-target species to escape.

09:45

A second point is that including such a reserve power would appear to pre-empt the idea of a review of snaring at some future point. I would prefer the approach of holding a genuine review without any preconceptions and, if the conclusion was to ban snaring, then legislating in the normal way. Finally, I hope that there might be a period during which we can allow the reforms to snaring that we have proposed to have time to bed in and to become established practice.

I turn to Liam McArthur’s proposal on individual snare numbers. I might be wrong, but I understand that the intention behind amendments 27 to 43 inclusive is to provide more control over the snares that are set by each operator. I have sympathy with the intention behind the amendments but, on balance, I think that the proposal to number each snare is not the right approach. The individual number on each snare would not provide anything more useful for enforcement or the prosecution of offences than the information that will be available through the operator’s identification number.

The downside of having unique numbers for each snare set would be the massive increase in administration that would be required on the part of the police. The police have confirmed to us that they are already at the limits of what they can do in administering a system of unique numbers for each operator. If they had to provide numbers for each snare, it is easy to see how that would in effect tie up wildlife crime officers in inputting and managing data on spreadsheets, when they should be out enforcing the law. We are clear that the proposal would be a burden on police resources at this difficult time, and the police have indicated to us their serious concerns about it.

It has been suggested that some keepers are asked to look after more land than they can reasonably manage and that the temptation must be to set snares in greater numbers than can be properly monitored. If the intention behind Liam McArthur’s amendments is to provide a sort of overall limit on the number of snares that a keeper can set, I can agree with the sentiment, but the proposed scheme would not achieve that objective. In any event, a better approach is to rely on the requirement that an operator must check each of his snares every 24 hours. In practice, that requirement acts as a limit on the number of snares that can be set.

There are further amendments that can loosely be grouped under the headings of snaring as a last resort and snaring training. They include amendments that have been lodged by Elaine Murray, Liam McArthur and John Scott. I understand the intention behind amendments 8 and 9, in the name of Elaine Murray. In seeking to make snaring a last-resort option for pest or predator control, the amendments follow the line that was taken in relation to the control of wild birds under the 1981 act, under which a licence can be granted only when there is no satisfactory alternative to a proposed operation. However, there are fundamental and crucial differences between the two types of operation. Operations that are carried out under a licence relate to protected species and would be unlawful without the licence. However, snaring is a lawful operation and is targeted at species that are not protected by law.

Turning to the practicalities, I note that most land managers will use a wide range of pest and predator control measures depending on the circumstances. Different techniques will be ineffective at different times. Shooting is the main alternative to snaring. On a given piece of ground, it might be generally effective except, for example, in an area where public safety is compromised or where high vegetation has grown up and obscured the target. It would simply not be practical to require an operator to seek clearance from the police for snaring in such circumstances either in advance, as proposed, or each time there is a particular issue. It is also not a practical proposal to ask the police to take a view on that sort of question, even with guidance in subordinate legislation. The expertise of the police does not lie in deciding which methods of controlling predators are effective or ineffective; it lies in dealing with illegal methods of controlling predators.

We very much support the idea behind amendment 44, in the name of Liam McArthur, which seeks to ensure that training on snaring contains an animal welfare element. We have made it clear that our policy objective is to improve animal welfare in relation to snaring. However, we have also made it clear that we intend to issue an order specifying certain matters in relation to the training course. One of those matters would be the inclusion of an animal welfare element. We think that that is the better approach, as we can be more detailed in an order than we would wish to be in the act. I therefore ask Liam McArthur not to move amendment 44.

We also have some sympathy for the objective of amendment 53, although I am a little nonplussed that John Scott should think it the Government’s responsibility to ensure that sufficient training opportunities are in place. We feel that it is the responsibility of the land management industry, which is making good progress in that direction, helped by some finance
from the Government through the partnership for action against wildlife crime in Scotland. Of course, we will bear in mind progress with training when it comes to commencing the provisions. We think that our approach is the right one, rather than having a provision in the bill, so we ask John Scott to reconsider amendment 53.

I move amendment 6.

The Convener: Before I call Marilyn Livingstone, I draw members’ attention to the information on pre-emption that is given in the paper showing the groupings of amendments.

Marilyn Livingstone (Kirkcaldy) (Lab): I will concentrate my comments on amendment 26, which calls for the replacement of section 13, which regulates snaring, with an outright ban on the manufacture, sale, possession and use of all snares. The amendment allows limited exceptions to the ban for reasonable purposes such as law enforcement, education or scientific use under licence.

The committee has already considered the issue of snaring in Scotland in detail. Our stage 1 report, and amendments lodged by committee members and by the Scottish Government, all include recommendations that are intended to strengthen the original proposals. Indeed, the Government included the provisions on snaring in the bill because of widespread public concern over the harm that is caused to animals by snares. I remain convinced, however, that the measures in the bill cannot ensure that snares will operate humanely.

The committee has heard some veterinary evidence on the effects of snares on animals, but I believe that it would be helpful for us to hear more evidence. It must be stressed that the British Veterinary Association does not have a settled view on the matter and that most vets in Scotland—75 per cent—believe that snares should be banned. Recently, the veterinary pathologist Professor Ranald Munro stated that snares are primitive and indiscriminate traps, which are recognised as causing widespread suffering to a range of animals. He described effects ranging from abrasion and splitting of the skin to strangulation and choking, often preceded by extreme distress and vigorous attempts to escape. Gamekeepers tells us that snared animals eventually stop struggling and lie quietly; but Professor Munro’s views are the views of an expert who has carried out many post-mortem examinations on snared animals.

William Swann, the senior vice-chairman of the Animal Welfare Science, Ethics and Law Veterinary Association, stated in a report that the use of snares should be banned, unless the use was under ministerial licence when it could be ensured that they were humane and did not cause any suffering. He also said that the only way in which a snare could be humane in practice was to have it under constant surveillance.

We have all had the opportunity of seeing film footage of badgers and foxes in legal snares in Scotland, showing animals in great mental and physical distress. Snares can lodge around the chest, abdomen or legs, rather than the neck. Even on a stopped snare, the wire can cut through muscle and bone. Evisceration and amputations are well documented. Researchers at the University of Cambridge concluded that, on any cost-benefit approach that weighs up the adverse effects of pests against the poor welfare caused by control methods, the use of snares can never be justified.

Some of the measures in section 13 are already in force, yet numerous examples of snares that are set in defiance of the law continue to be found, including drag snares and snares that have clearly not been inspected within the required period. As long as snaring is permitted, people will take chances in that way and the public will not know enough about complicated regulations to know whether to make a complaint. A simple ban is much easier to understand.

Finally, snares are said to be essential to the shooting industry and in agriculture, but no one has told the committee what the economic impact of a ban on snares would be. Research that was put before the committee pointed to a supposed need for predator and pest control rather than for that to be done specifically by snaring.

All MSPs have been shown evidence of animal suffering and there is overwhelming public support for a ban on these outmoded traps. If members support amendment 26, they will show their humanity and reflect the views of the vast majority of people in Scotland. I cannot agree with the minister that snaring is a necessary part of land management. It is cruel, indiscriminate and not supported by scientific evidence. Importantly, it does not have public support.

Liam McArthur (Orkney) (LD): I apologise to committee members for my late arrival and to the minister for missing the early part of her remarks. As we began the scrutiny process, I think that we all accepted that the provisions on snaring were likely to be the most controversial part of the bill. The issue is not necessarily divisive along political lines but is certainly so among those from whom we took evidence at stage 1. Raptor persecution and wildlife crime may have given snaring a run for its money, but it is clear that the issue continues to arouse strong emotions and to divide opinion.
On balance, the committee accepted at stage 1 that snaring remains a necessary tool to deal with pests and predators, albeit that by no means should it be used in all circumstances and its use should have stringent conditions attached. The minister covered those in some detail. For that reason, although I respect entirely Marilyn Livingstone’s reasons for lodging amendment 26, I do not feel able to support it.

Like committee colleagues, although I recognise that the regulations that govern the use of snaring have been strengthened through the recent order, we cannot allow the bill to pass without first testing robustly whether sufficient regulation is in place or whether further improvements can be made. I think that more can be done and, to that end, all but one of my amendments in the group seeks to explore the scope for making individual snares more readily and individually identifiable as belonging to particular land managers.

At stage 1, the committee heard conflicting evidence on the scale of snaring on estates and by farmers and crofters in Scotland. If some of the numbers are to be believed, it is hard to imagine how such a multitude of snares could be checked, as required, over a 24-hour period. The minister acknowledged that to some extent in her remarks. It therefore seems to be in the wider interest to establish more accurately the number of snares that are issued and deployed. The identification numbers that are allocated to each person who is permitted to snare will help to a large extent, but the number does not distinguish between individual snares. The committee felt that that could give rise to problems, not least in instances where snares have been tampered with. Some form of sequential numbering or bar coding might help in that regard, as well as improving accurate record keeping, which is another area that the committee expressed concern about at stage 1. I appreciate that the practicalities may prove difficult, possibly prohibitively so, as the minister may be able to confirm, but, in lodging the amendments in my name, I was keen to pursue the issue further with her.

Amendment 44 picks up on another concern that the committee raised: training for those who use and set snares. We want to ensure that training fully covers all aspects of animal welfare, as that would help to address some of the problems that have arisen in the past. I am also sympathetic to amendment 53, in the name of John Scott, which makes provision more widely in that regard. I note what the minister said on more detailed guidance and, on that basis, I am minded not to move amendment 44.

I voice my support for the principle that lies behind amendments 11 and 12, in the name of Elaine Murray, and amendment 10, in the name of the minister. I think that the committee recognises that continued improvements in the design and use of snares will absolutely need to take place in future. Unless we can find a means of assessing practice and progress periodically, the risk is that some of the welcome innovation that we have seen over recent times will be slower to come forward in the years ahead. However, it would go too far to have a reserve power in the bill to ban snaring by secondary legislation. If nothing else, that risks denying the chance for Parliament to give this complex and emotive issue the sort of scrutiny that it deserves. That is not a recipe for ensuring that our law commands confidence and support.

10:00

Elaine Murray (Dumfries) (Lab): There is no doubt that many members of the public find snaring unacceptable. A recent survey suggested that around three quarters of the Scottish population want a complete ban on snaring. There is also no doubt that restraining an animal for up to 24 hours without food or water and possibly exposing it to extremes of temperature—members need only think about the recent weather that we have had in Scotland—will cause it to suffer. A snare itself may not cause injury, but we know from evidence that has been presented by vets and organisations such as the Scottish Society for the Prevention of Cruelty to Animals that they often do. Marilyn Livingstone has already described the types of injuries that animals suffer from being subjected to snaring.

The only reason why I am not arguing for an outright ban on snaring is that we were presented with evidence that suggested that there are circumstances in which and types of terrain on which there is no alternative effective method of controlling pest species. When we visited the Langholm moor demonstration project, for example, we were advised that methods such as lamping are not effective on such terrain, as it can be very difficult to see a fox in heather moorland. We have also received conflicting evidence on the amount of predation of lambs by foxes on hill farming terrain. I was not convinced by either side of the argument.

Amendment 8, in my name, would require the chief constable issuing the identification number for the snare to be satisfied that other methods of control would be ineffective before they agreed to the application. The minister made a comparison with species licensing. When I was thinking about amendment 8, I was thinking about our approach to the control of seals in the Marine (Scotland) Act 2010, which is that seals are to be taken only as a last resort. I would not envisage a chief constable having to sit and determine whether an individual
snare should be set in a particular location. It is about ministers providing the guidance that would enable chief constables to make a judgment on whether the use of snares on terrain such as hill farms and heather moorlands should be permitted.

Amendment 9 would enable the Scottish ministers to make provisions on other methods of control that might be suitable and on the steps that a chief constable should take to assure herself or himself that they could not be used in the circumstances in which the snare was being applied. Amendments 8 and 9 therefore act together.

As others have said, it is a question of balance. I am not convinced that the provisions in the bill are sufficiently rigorous. I would prefer snaring not be used at all but, if it has to be used, it must be the exception rather than the rule. I do not think that the bill as it stands makes snaring the exception rather than the rule.

I turn to the other amendments in my name in the group. The committee agreed that the snaring regime should be reviewed every five years. Amendment 12 does not refer to two years; rather, it refers to five years. Amendment 12 is a direct alternative to amendment 10, in the name of the minister. In her summing up, could the minister explain the difference between our amendments? I would be quite happy to support her amendment if it is worded better. We could talk about whether the period should be five or two years at stage 3, when there will be another opportunity to lodge amendments. OneKind, which was formerly known as Advocates for Animals, has argued that a period of five years is too long and that it would in effect put review beyond the next parliamentary session. It would mean that snaring would be unlikely to be reconsidered until after 2016. OneKind suggested that two years would be more appropriate.

Amendment 11 is almost identical to amendment 12, but it would bring the period of review forward to two years, which would enable MSPs in the next session to consider whether the bill’s provisions on snaring have been effective and whether the technical developments in snare design, which we were advised on during evidence taking, have resulted in a reduction in suffering and have prevented the taking of non-target species. Like OneKind, I would prefer amendment 11 to be agreed to, but I am prepared to accept a period of five years if that is the committee’s will and the minister’s amendment is more suitably written to achieve what we want to achieve.

Amendment 13, as others have said, would enable Scottish ministers to instigate an outright ban on snaring after consultation and by using the super-affirmative procedure. I believe that the amendment would add clout to whichever of amendments 10, 11 and 12 is passed, as it would give ministers powers to act to ban snaring should the review suggest that the measures in the bill have not been effective in reducing suffering and the capture of non-target species. I hear what the minister says about existing provisions, but they do not enable ministers to instigate a complete ban, as amendment 13 would do.

I am very sympathetic to Liam McArthur’s amendments. What they propose is not about individual policemen having to spend all their time checking individual snares and looking at the tag numbers; it is to allow gamekeepers to record where their snares are set, which would also provide some protection for them. What the amendments propose would strengthen the regulations on how snares are used.

John Scott (Ayr) (Con): Amendment 53 follows on from the stage 1 report, which states in paragraph 434:

“The Committee recommends that the Scottish Government works closely with those delivering the relevant training courses on snaring to ensure that everyone who requires the training receives it no later than two years following the commencement of the provision.”

That recommendation follows on from the minister’s assertion that it will take up to two years to train all relevant individuals. It is my firm belief that policy makers have an on-going obligation to ensure that the legitimate and necessary practice of snaring is made as humane and effective as possible. That is why the training is so essential in maintaining public confidence in the practice.

I note the minister’s comments on amendment 53, but I did not intend that what it proposes on training should be a burden on and expense for the minister. As such training takes place at the moment, I intended that the industry would carry out the training and that the Government would merely ensure that it is carried out. I take it from what she said that she might support a stage 3 amendment being lodged on this issue. I expect that she will address that point in a moment.

Although I do not expect to agree with the minister all day, I support her views on snaring and support its retention, although I respect what I know are the strongly held views of Marilyn Livingstone and others on the issue. I, too, believe that snaring is necessary as part of the toolkit and, with regard to what Elaine Murray has said, I would welcome and expect further work on the development of snares so that they become more sophisticated in future and ultimately become a tethering device.

With regard to Liam McArthur’s amendments for the unique numbering of snares, I supported the proposal in principle at the committee, but I now
believe that the bureaucracy that would be involved for all concerned would simply make it impractical. I will therefore not be able to support his amendments, notwithstanding the fact that I sympathise with the concept behind them.

**Bill Wilson (West of Scotland) (SNP):** Snaring is clearly a complex and emotive issue and one that I believe should be subject to a conscience vote. I hope that the code of practice works and I am delighted that the minister has accepted the need for a review, because otherwise I could not have voted to support the Government today. The review will need to address both the specificity of catch and the nature of injuries to the caught animals. If the review shows that the code is not working, I believe that, logically, a ban must follow. I would also like to see a commitment to reviews beyond the five years, because I believe that snaring is an issue that should be reviewed on a fairly regular basis.

**Roseanna Cunningham:** I have a few disparate comments. I will address amendment 53 first. The reason why we are resisting the amendment is simply that it does not seem necessary. Training is already taking place with the financial support of the Government, so in effect industry and Government are already working together to do exactly what I presume John Scott wants to see happen. I do not really see what is achieved by restating that in legislation.

**John Scott:** My understanding is that training is taking place at the moment on a voluntary basis and I want to make certain in the bill that it takes place.

**Roseanna Cunningham:** A significant number of people are already being trained on a voluntary basis. That process is working through. The order will set out training in more detail, but it is already happening. If it was not happening, I would have more sympathy with the position that John Scott is taking. However, it is already happening so, at the moment, I do not see any great reason to do overtly what John Scott wants.

We listened to the points that Marilyn Livingstone made. A lot of discussions were had in the committee at stage 1, which is shown in the committee’s stage 1 report. I should say one or two things in response to her comments. She talked about the illegal snaring that currently takes place. We recognise that that is happening, which is why we are trying to professionalise those who are conducting snaring. Indeed, there is already evidence that they bring to bear peer pressure on those who are continuing to snare illegally.

If people are prepared to set illegal snares now, I do not see why that will change if there is an outright ban on snaring. My guess is that the likely illegal setting of snares would, at a minimum, continue and would possibly even increase after an outright ban. In a sense, the current illegal snaring is rather by the by in the context of an outright ban on snaring.

Marilyn Livingstone referenced the Cambridge research. However, our understanding is that that was only a partial literature review; it was not basic research. In those circumstances, it does not add anything; it simply goes over the bits of literature that already exist on this issue. In our view, it is not a particularly substantive piece of research. There are vets who say one thing and wildlife pathologists who say something completely different—I think that the committee heard from one of those. There is certainly a lot of conflicting discussion and evidence. In our view, the evidence is not of enough weight and preponderance to mandate an outright ban.

On the issue of the review, I should perhaps point out to Elaine Murray that the Government amendment is better for three distinct reasons. First, it expressly refers to considering further legislation, which is an important aspect. Secondly, it is not reliant on the timescale of the commencement of provisions, as the date is not tied to commencement. Thirdly, the report that emanates must be laid before Parliament. Those three things are more than is contained within Elaine Murray’s amendments. I accept from her comments that we are not a million miles apart on the review, but I ask her not to move the amendments in her name. We can have a conversation if there are any small things that we can do to tweak what we are doing with respect to the review.

On Bill Wilson’s comments about on-going reviews after five years, I am certainly prepared to think about how we might build that into legislation. It would require a separate stage 3 amendment, which I am happy to consider.

Liam McArthur is clearly concerned about the checks and balances that are out there. I am willing to have a conversation with him to ensure that we think about how we might increase that capacity, although keeping in mind that we do not want to overload existing resources unreasonably. We can perhaps have a conversation on that.

**Amendment 6 agreed to.**

**Amendment 7 moved—[Roseanna Cunningham]—and agreed to.**

**Section 7, as amended, agreed to.**

**Sections 8 to 11 agreed to.**
Section 12—Single witness evidence in certain proceedings under the 1981 Act

10:15

The Convener: The next group is on single witness evidence. Amendment 52, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: The committee has considered whether it is appropriate to retain single witness evidence in relation to poaching and whether that provision should be extended to other wildlife crimes that take place in remote rural places where it might be difficult or impossible for more than one witness to observe the crime. Amendment 52 would extend the use of single witness evidence to a range of other wildlife crimes that are contained in the 1981 act. It seeks to achieve greater consistency. The view of the majority of members of the committee was that consistency should be sought, either by extending single witness evidence or by getting rid of it altogether.

Other provisions outwith the bill and the 1981 act allow single witness evidence to be used, such as the Environmental Protection Act 1990, in relation to littering, and the dog fouling legislation that the Parliament passed in 2003. Dog fouling is an irritating crime for many members of the public, but if single witness evidence is suitable for that it should also be available for crimes such as the poaching of eggs and the killing of raptors, which are serious crimes and possibly more serious than dog fouling. If single witness evidence is sufficient for dog fouling, I do not see why it cannot be extended to wildlife crimes.

There has been confusion during our evidence sessions regarding corroboration and additional witnesses. In principle, single witness evidence could mean that there would be no need for corroboration, but conviction by a court would be unlikely on the basis of one person’s word against another. I imagine that some other form of evidence, such as forensic evidence, would always be required to back up the evidence of a single human witness and therefore that cases based on vexatious claims would be unlikely to get very far.

I move amendment 52.

Bill Wilson: I support Elaine Murray’s point that we need consistency. If single witness evidence is needed because poaching crimes take place far out of sight and only one witness might see them, logically, the provision should apply to any form of wildlife crime. On the other hand, although I originally thought that we should extend single witness evidence, now, having heard that no corroboration would be needed, I am concerned about the human rights issues. I have therefore moved, and I am now more inclined to think that the consistency should be that we do not have single witness evidence. Either way, we should have consistency.

Stewart Stevenson: Elaine Murray talked about the use of single witnesses under the dog fouling legislation, and then talked about other evidence. In the case of dog fouling, it is clearly possible to identify which dog fouled, so the single witness provision in that case can perhaps be justified.

I speak from a basis of some limited experience, as one of my summer jobs was as a water bailiff, covering 25 miles of the Tay. When we made an arrest, it was perfectly possible to ensure that two people were there to provide the dual witness evidence that is normally required in Scots law.

My concern about addressing the issue in a piecemeal way is that that is unlikely to create a stable environment for the provision of evidence in the legal system generally. I suspect that the issue should be dealt with on a much more systematic basis elsewhere, looking at the whole of the legal system, rather than on the piecemeal basis that is proposed in amendment 52.

Liam McArthur: Like Bill Wilson, I subscribe to the notion that we need to achieve consistency. However, I have misgivings about extending the provision to other types of crime, when the most compelling evidence that we heard at stage 1 from legal experts in the field was that achieving a conviction or even taking a case to court on the basis of single witness evidence was so unlikely as to be, to all intents and purposes, impossible.

In that regard, it seems to make more sense to remove the provision in relation to, for example, poaching and egg stealing, where presumably it is having no tangible legal effect, rather than to invite others to get all dressed up in the Emperor’s clothes. The fact that there may be anomalies in other legislation is not a persuasive argument for making the situation more confusing and, importantly, creating unrealistic expectations about what the bill will achieve. For that reason, while I am sympathetic to some of what Elaine Murray said in support of her amendment 52, I am unable to support it.

John Scott: I am afraid that I, too, am unable to support amendment 52. That said, the use of single witness evidence is so rare that applying it to a wider range of offences would not have a massive impact. If there was to be change, I would rather that the provision was restricted, not expanded. In general, being able to convict without corroboration is not a sound principle and it leaves scope for mischief making by unscrupulous individuals and organisations.
Roseanna Cunningham: The committee is of course aware that the bill effectively preserves the status quo in relation to what offences can be convicted on the basis of single witness evidence. I have considerable sympathy with a number of the comments that committee members have made, including those of Elaine Murray. We are in the position of having anomalies all over the place, because previously we proceeded on a piecemeal basis without giving much consideration to the efficacy of single witness evidence and its impact on and implications for our criminal justice system.

I note that in its stage 1 report the committee was in favour of consistency in the application of single witness evidence. However, amendment 52 would not give us that consistency. It would allow single witness evidence for some offences but not for others—for example for offences relating to the nests of wild birds but not for offences relating to the shelters of wild animals—so what is proposed would be just as inconsistent, which is the opposite of what the committee is seeking.

I am also conscious of the fact, as you might expect me to be, that corroboration is a fundamental principle of Scots law. I am reluctant to be responsible for making further changes to the law in relation to that principle on a piecemeal basis. Simply because that is how we have gone about it in the past does not mean that we should continue to go about it in the same way in the bill, whatever the good intentions. I personally would much prefer that the issue was looked at in a wider context.

I think that I said before to members that Lord Carloway is undertaking a review in respect of the criminal law of evidence, and the requirement for corroboration would be within the scope of his review. My position is that we should hold off on making any further changes in the area of wildlife crime until we can consider the outcome of that review and how it could be applied in respect of wildlife crime. That is a much more sensible way of proceeding. Looking at corroboration in such a principled way is far more in keeping with the history of Scots law than what is proposed by amendment 52 and, indeed, what we have been doing for almost the past 15 years in a piecemeal fashion.

I therefore oppose amendment 52, not because I oppose the concerns and worries about the issue, but because continuing to do what we have said was the wrong thing to do in the past would simply compound the error.

Elaine Murray: It was useful to have the debate about consistency, because there were differences of opinion about it within the committee, although there was an overall desire to see consistency. May I say that it was a pleasure to hear Stewart Stevenson reminisce about being a water bailiff.

On dog fouling, obviously DNA evidence could be used for dog identification, but there is unlikely to be that type of evidence for littering, unless it involves chewing gum, so there is a lot of inconsistency in the law at the moment. I accept that taking the approach that amendment 52 proposes might not help to achieve a more consistent overall view. I will not press the amendment, but it was worth while to concentrate our minds on the fact that there are still inconsistencies that need to be resolved and that we may need to return to the issue from the opposite direction at stage 3. I seek the committee’s agreement to withdraw amendment 52.

Amendment 52, by agreement, withdrawn.

Section 12 agreed to.

Section 13—Snares

The Convener: I remind members that if amendment 26 is agreed to, I cannot call amendments 27 to 31, 8, 32 to 37, 9, 38 to 44, 53 and 10 to 13 because of pre-emption.

Marilyn Livingstone: I listened to what the committee and the minister said, but I still believe that, against what John Scott—

The Convener: I ask you to be brief.

Marilyn Livingstone: Okay.

I do not believe that snares are tethering devices. They are cruel and indiscriminate, and it is important that we have a debate on them. Because of that, I am prepared not to move amendment 26, but I reserve the right to bring the matter back at stage 3. There is enough public concern to warrant that.

Amendment 26 not moved.

Liam McArthur: On amendment 27, in light of what the minister has said, I welcome her invitation to explore ways of providing further safeguards. On that basis, I will not move amendment 27 or its related amendments.

Amendments 27 to 31 not moved.

Elaine Murray: I will not move amendment 8. I still feel quite strongly about the need to ensure that snaring is a last resort and would like to revisit the issues that are raised in amendments 8 and 9 to see whether I can make it clearer that it is not about chief constables having to look at individual applications for individual snares. As I say, I will not move amendment 8, but I intend to consider the matter further.
Amendments 8, 32 to 37, 9, 38 to 44 and 53 not moved.

Amendment 10 moved—[Roseanna Cunningham]—and agreed to.

Elaine Murray: I am happy to accept the minister's assurances on why amendment 10 is better than amendment 11, so I will not move amendment 11.

Amendments 11 to 13 not moved.

Section 13, as amended, agreed to.

After section 13

The Convener: The next group is on the protection of certain species of bees. Amendment 80, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock (Highlands and Islands) (Lab): As this is the first time that I have spoken in the meeting, I should declare that I am a member of the Royal Society for the Protection of Birds and the Scottish Ornithologists Club. I am also a member of the Bumblebee Conservation Trust. That does not technically relate to amendment 80, but it is worth people knowing that for their interest.

Amendment 80 seeks to allow the minister in certain circumstances to designate bee protection areas by order if the minister is concerned that the health or genetic integrity of colonies of black bees is under threat. Because of the scope of the bill, the amendment is limited to black bees—or Apis mellifera mellifera, for those who are technically minded—which I understand are found on the island of Colonsay, but which might also be found in other remote and isolated areas. I know from past correspondence, parliamentary questions and the like that ministers share the objective. However, hitherto we had not found a satisfactory conclusion, partly because it appeared that there might be a limit on ministerial powers. Amendment 80 is designed to create a mechanism for ministers to use.

I am interested to hear what the minister has to say about amendment 80, which has been lodged for the purpose of debate. If the minister has found another way of achieving the same objective, I will be perfectly happy to hear what she has to say about it, particularly if she can commit to using such a mechanism. Alternatively, if she wants to take away the amendment and bring back a better version at stage 3, I will be equally happy. My concern is simply to provide better protection for colonies of bees in places such as Colonsay, which are currently free from disease, with the aim of ensuring that that continues.

I move amendment 80.

10:30

Liam McArthur: Unlike Peter Peacock, I am coming close to exhausting my time allocation for the meeting already, and I am not a member of the Bumblebee Conservation Trust. However, I support the intention behind his amendment 80. I do not doubt the difficulties in arriving at a means of achieving what Peter Peacock and I suspect most committee members want on the protection of key bee species, but I hope that the minister will respond positively to the proposals. The recent news that scientists might have found an antidote to the destructive varroa mite was greeted with rejoicing in my constituency, albeit perhaps confined solely to the local beekeeping fraternity. Even with the energetic stretch of water that separates Orkney from the mainland and the parasitic terrors for bees there, the islands have not yet been afforded the protection that many of us feel we should have. I look forward to hearing what the minister has to say.

John Scott: I, too, am happy to support the ideas behind Peter Peacock's amendment 80 and I am interested to hear what the minister has to say.

Bill Wilson: I add my support, at least for the principles behind Peter Peacock's amendment.

Roseanna Cunningham: I understand that black bees are believed to be on Orkney, which possibly is the source of Liam McArthur's concerns.

I am grateful to Peter Peacock for lodging amendment 80, as it gives us an opportunity to put some things on the record in respect of the impact of the bill. We believe that the provisions in the bill are fit to address the issue. Section 14 proposes a new no-release offence that will cover the threat that is posed by non-native types of bee. If necessary, we could extend that ban to other native types of bee to protect the black bee.

In addition, a keeping order under proposed new section 14C of the 1981 act could be made. Such an order would allow us to regulate or prohibit the keeping of bees that are a threat to the genetic integrity of native black bees. So although I agree that it is important to arm ourselves with the powers that are needed to protect vulnerable native species, I am not sure that it is necessary to introduce a species-specific regime that replicates what will be achieved elsewhere in the bill.

I therefore ask the committee not to support amendment 80, although not because we do not support the sentiments, which we do. I am happy to discuss in more detail with Peter Peacock the options for protecting our native bees and to undertake to consider that as a priority following the passage of the bill.
Peter Peacock: I am grateful to the minister for her comments and I note what she says about the powers that will exist under section 14 and the keeping orders. I take the point that if there is a way of dealing with the issue that applies more widely than to a single species, that is probably desirable. In light of that, I seek to withdraw amendment 80 and I will take up the minister’s offer to discuss the details.

Amendment 80, by agreement, withdrawn.

Section 14—Non-native species etc

The Convener: The next group is on the exemption of pheasant and red-legged partridge from the ban on releasing non-native species etc, and the power to disapply the exemption. Amendment 81, in the name of Peter Peacock, is grouped with amendments 82 and 83.

Peter Peacock: The amendments arise because of evidence that we had at stage 1 that the releases of pheasant and red-legged partridge have been increasing over the decades and, if they got to a very high, intense level, damage to the local ecology around the release sites could follow.

I am content that the practice of growing birds for shooting and releasing them should continue. It is an active and important part of the scene in rural Scotland. However, it would be wise to ensure that, if the releases ever became too great, ministers would have the powers to intervene to take some regulatory action. It would be unfortunate to say the least if, having become aware of the issue during the passage of the bill, ministers subsequently found that they had no power to act and were concerned that circumstances were changing significantly enough to cause local ecological damage.

I am interested to hear what the minister has to say and, if there is a better way to achieve what I am trying to do, or if it is covered in some other way, I would be happy to listen to arguments about that.

Meanwhile, I move amendment 81.

Bill Wilson: The conservation benefits of shooting are fairly widely recognised and not particularly disputed, but I share Peter Peacock’s concern that, if very unusually high-density releases of pheasant and red-legged partridge took place, they might cause local damage. Therefore, I am also interested to hear what the minister will say.

John Scott: I do not believe that there is any evidence of there being a problem in Scotland with the release of birds in such quantities as to risk serious damage to the environment. Scottish Natural Heritage is quite capable of using existing mechanisms to deal with any localised issues that might occur. Therefore, amendment 81 seems unnecessary to me and I will not support it.

Elaine Murray: I disagree with John Scott. The fact that there is not a problem at the moment is not the point under discussion—indeed, Peter Peacock did not argue that there was a problem at the moment. Amendment 81 is about providing a backstop power should there be a problem with releases causing serious environmental damage. It is helpful for ministers to have that power and I support the amendment.

Roseanna Cunningham: I appreciate that Peter Peacock seeks to future proof section 14 with amendments 81 to 83, but I question whether that is necessary or indeed appropriate.

I ask the committee to remember that section 14 is about invasive non-native species. Although pheasants and red-legged partridges are non-native, they are not invasive.

The other difficulty is that I am not aware of any evidence that suggests that pheasants or red-legged partridges are regularly released in Scotland in such high densities as to cause significant damage to habitat or biodiversity, nor of any indication that that is likely to happen.

Peter Peacock may be in possession of information beyond that, in which case I am perfectly happy to discuss it with him. However, in the absence of any evidence that the practice is taking place and given the fact that we have legislative tools to safeguard protected sites under the Nature Conservation (Scotland) Act 2004, amendment 81 is of little value. Its effect would be limited to providing a further layer of potential regulation to the rural sector for no particular practical purpose.

I indicated that, if Peter Peacock could provide evidence of an issue or point to areas where it looks like there will be one, I would be prepared to have a conversation with him about amendment 81. However, so far, the occasional circumstances in which a specific concern has been raised have been resolved within the currently available mechanisms.

On those grounds, I ask the committee not to support amendments 81 to 83.

Peter Peacock: I hear what the minister has to say. As she said, amendment 81 is an attempt to future proof the bill. It was lodged on the basis of evidence that we received that the intensity of releases has been increasing. It is not yet at a problematic level but, if the trend were to continue, it might become an issue. I was simply trying to provide some reserve powers.

I will reflect on what the minister said about section 14 and species that are non-native but not...
invasive; and I will consider further the points that she made about the Nature Conservation (Scotland) Act 2004 in relation to protected sites. In light of that, I will not press amendment 81 or move the other amendments in the group.

Amendment 81, by agreement, withdrawn.

The Convener: The next group is on the power to exempt specified persons and certain types of conduct from the ban on releasing non-native species etc. Amendment 59, in the name of the minister, is grouped with amendment 60.

Roseanna Cunningham: The bill bans the release of an animal outwith its native range, or the growing of a plant in the wild outwith its native range. As the committee is aware, that general no-release approach is considered to be a much more effective way to prevent the introduction and spread of invasive non-native species, compared with what has been the case hitherto.

To provide flexibility, the bill contains an order-making power under new section 14(2B) of the 1981 act, which section 14 of the bill introduces, to allow the release of beneficial non-natives, when that is considered appropriate. Such an order can be made only for specific animals or plants.

Amendments 59 and 60 would introduce greater flexibility by providing that the order-making power can relate to release by specified persons, or to release that takes place under the authority of an enactment. The power may, for instance, be used to exempt activities that are carried out to achieve the Scottish forestry strategy, which is underpinned by a regulatory regime for which the Scottish ministers already have responsibility. Planting as part of that strategy may, in some circumstances, be in the wild.

As things stand, we would only be able to make an order to allow such planting on a species-by-species basis, which would not be feasible. That issue was raised with the committee in the course of its evidence gathering at stage 1. The better option, as is now proposed, would be for ministers to be able to exempt activities that are already regulated for the purposes of the forestry strategy. The amendments in this group would allow legitimate activities to take place without frustrating the need for restrictions on the release of non-native animals and plants into the wider environment.

I move amendment 59.

Amendment 59 agreed to.

Amendment 60 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on the duty to notify the presence of invasive plants or animals.

Amendment 61, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: As the committee will be aware, when invasive non-native species take hold, a rapid response is important for increasing the likelihood of successful control action and for minimising the impact of the invasive animal or plant. That is why, as part of our approach to dealing with invasive non-native species, we have included notification requirements in the bill. The sooner we know about the presence of an invasive non-native, the sooner we can decide how best to deal with it.

For high-risk invasive non-native species, ministers can make an order requiring certain persons to notify the authorities if they encounter a particular species. In the policy memorandum, we have set out when we expect that orders may be made. The provisions would be limited to those with knowledge of the species concerned, such as people who work in a professional capacity.

The Subordinate Legislation Committee considered the order-making power to be too broad for our stated intention and recommended amendment. Amendment 61 is in response to that recommendation. It makes it clear that an order will be made only for people who are likely to have knowledge of the animal or plant concerned, for example as they will come into contact with the species in a professional or official capacity.

I move amendment 61.

Amendment 61 agreed to.

Section 14, as amended, agreed to.

Section 15—Non-native animals and plants: code of practice

10:45

The Convener: The next group is on the code of practice on non-native species etc. Amendment 62, in the name of the minister, is grouped with amendments 92, 63 to 66, 93, 67 to 69, 94, 70 to 73, 95 and 74 to 76. I draw members’ attention to the pre-emption information on the groupings document.

Roseanna Cunningham: I will speak to Government amendments 62 to 76 and John Scott’s amendments 92 to 95.

Amendments 62, 64, 70 to 73 and 75 respond directly to the committee’s recommendation that the codes that the bill establishes should be subject to parliamentary scrutiny. The committee recommended that I should seriously consider affirmative procedure, so amendment 71 will make the first code of practice subject to that procedure. Any revisions to or revocations of the code will be
subject to negative procedure. That strikes the right balance in recognising the code’s importance while ensuring that we can be responsive and flexible. After all, the code will be a living document and might need to be revised as new circumstances develop.

John Scott’s amendment 95 would mean that no particular weight was given to compliance with the code of practice in court proceedings. The code is intended to provide more detailed guidance on complex issues and further practical explanation of the terms that are included in the bill. Invasive non-native species are a significant threat to environmental interests and the economy and it is right that the courts should be able to use the code to assist them in establishing liability. Those who follow the best practice in the code should have the comfort of knowing that doing so will count in their favour in any court proceedings.

At the same time, if no offence is underlying, a person will not be criminalised for failing to follow best practice. I hope that the additional scrutiny in the Government amendments will suffice to convince John Scott not to pursue amendment 95, which I ask the committee not to support.

Government amendments 63, 66, 69 and 74 provide that guidance on species control orders can be included in the code of practice. The amendments respond to a committee recommendation at stage 1.

John Scott’s amendments 92 and 94 relate to species control agreements. If the Government amendments were agreed to, guidance on species control agreements could be included in the code as part of guidance on species control orders. It would be helpful to make that clear in the bill, so I ask the committee to agree to John Scott’s amendments 92 and 94.

Government amendment 65 provides that the code of practice can set out how the relevant bodies, which include SNH, the Scottish Environment Protection Agency, the Forestry Commission Scotland and the Scottish ministers, should co-ordinate how they exercise their relevant functions in relation to non-native animals and plants. The amendment follows—and, I believe, goes further than—the committee’s suggestion that SNH should be the lead co-ordinating body for such matters.

John Scott’s amendment 93 would amend the provision that relates to guidance on keeping invasive animals or plants. The amendment could be confusing, as it relates to species that are permitted to be kept. For example, best practice guidance might be provided on the permitted keeping of animals outwith their native range, to help to prevent escape. The term “compliance” in the amendment is not very helpful when it relates to lawful activity. For that reason, I ask the committee not to support the amendment.

Government amendment 67 ensures that guidance on keeping animals can also relate to invasive species that are within their native range. That might be important for species that are being kept close to areas, such as islands, to which they are non-native and where they might cause problems should they escape.

Government amendment 68 ensures that the code of practice can include best practice for containing, capturing or killing non-native or invasive animals; containing, uprooting or destroying plants; and transferring to safe custody animals or plants that are not permitted to be kept. Guidance on all those issues may be important as new situations develop.

Amendment 76 is a technical tidying-up amendment that removes the term “such” from new section 14C(7)(b) of the 1981 act, so that it will refer to “a code of practice” and not “such a code of practice”.

I move amendment 62.

John Scott: The purpose of amendments 92 and 94 is to clarify that the INNS code of practice can include guidance on species control agreements, which are the first step in the process of making a species control order. Dealing with issues such as whether the owner or the occupier should be party to the agreement would be useful, as the bill is vague on that—it refers simply to entering

“into an agreement with the owner or, as the case may be, occupier”.

The amendments would simply allow for guidance to be provided. I welcome the minister’s comments on that and her intention to support the amendments.

Amendment 93 picks up on concerns that a number of witnesses raised during stage 1 about the status of codes of practice that give guidance on legislation. New section 14C(6) of the 1981 act states that failure to comply with a code of practice “may be taken into account”

in any proceedings against an individual. As I understand it, best practice goes above and beyond the legal requirement. If compliance with the code can be looked at by the courts in establishing criminal liability, the code should stick to explaining the law. Standards of best practice would be best developed separately by Government in consultation with stakeholders and practitioners, and adherence to best practice should be an entirely voluntary matter. Individuals should be encouraged to adopt best practice, but they cannot be forced to do so. Best practice will
also change and evolve over time—in line with technological advances, for example. Therefore, it is not appropriate for statutory guidance to set out best practice. I appreciate that that is essentially a point of law, and I will reflect on the minister’s remarks on the matter.

Amendment 95 would remove section 14C(7) of the 1981 act. That relates to the previous concerns about the status and use of codes of practice. The bill already states that failure to comply with a code of practice can be taken into account by the courts in any proceedings. As it stands, the bill says that failure to comply with a code of practice “may be relied upon as tending to establish liability”. Surely it is for the courts to make decisions about liability and the provision is unnecessary in light of section 14C(6) of the 1981 act.

Roseanna Cunningham: There is nothing that I particularly want to add, other than to make a point about John Scott’s comments. Most of what has been proposed will come into play only if somebody is being taken to court for an underlying offence. Best practice is voluntary, of course, but if an offence results in court action, the court should be able to look directly at the code and consider it as part and parcel of the evidence in which it would be interested. Therefore, I would not necessarily agree with John Scott’s comments in that regard. Courts look at codes of practice all the time, and it is perfectly reasonable for them to do that when they are assessing the evidence that is before them.

Amendment 62 agreed to.

Amendment 92 moved—[John Scott]—and agreed to.

Amendments 63 to 66 moved—[Roseanna Cunningham]—and agreed to.

Amendment 93 moved—[John Scott].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Scott, John (Ayr) (Con)

Against
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 93 disagreed to.

Amendments 67 to 69 moved—[Roseanna Cunningham]—and agreed to.

Amendment 94 moved—[John Scott]—and agreed to.

Amendments 70 to 73 moved—[Roseanna Cunningham]—and agreed to.

Amendment 95 not moved.

Amendments 74 to 76 moved—[Roseanna Cunningham]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Species control orders etc

The Convener: The next group is on species control orders. Amendment 96, in the name of John Scott, is grouped with amendments 97 and 98.

John Scott: The bill allows only 42 days, or six weeks, for a party to sign up to a species control agreement after receiving an offer from the relevant body. I do not dispute that there is a good rationale for having a time limit to avoid unreasonable delays, but in my view six weeks is possibly not long enough. For example, it is foreseeable that a person could be out of the country or indisposed or ill for a substantial portion of that time. Amendment 96 would simply allow flexibility if there is good reason why the agreement has not been entered into within 42 days.

I move amendment 96.

Roseanna Cunningham: John Scott’s amendment 96, 97 and 98 propose changes to the system of species control orders. We envisage that in most cases voluntary species control agreements will be established with no need for recourse to species control orders. It is within such a voluntary framework that agencies achieve the control action that is presently possible. The purpose of the species control provisions in the bill is to control invasive non-native species where that is necessary. The bill’s provisions specify clear procedures that would provide an owner or occupier with a fair opportunity to appeal any order to the courts. My concern is that amendment 96 will result in unnecessary and harmful delays in taking control measures. The bill’s approach is the right one where there is a strong public interest in securing control. John Scott’s approach may mean that a vital window of opportunity could be missed. I therefore ask the committee not to support amendment 96.

John Scott’s amendment 97 relates to the ability of relevant bodies to require payments from the owner or occupier in relation to control work. While
I agree with the principle of the amendment—we have previously said that it is our intention that costs will be recovered only where it is fair and proportionate to do so, in accordance with the polluter pays principle—I am concerned that it is too restrictive. My concern is that situations may be more complex than is envisaged in the amendment. For example, while an owner or an occupier may not be responsible for the presence of an invasive plant, they may have caused the spread to be much worse by their actions, such as spreading contaminated soil or strimming Japanese knotweed. I believe that the code of practice is the best place to deal with the issues raised by the amendment in the way that they merit. I therefore ask the committee not to support amendment 97.

I accept, however, the rationale of John Scott’s amendment 98, which changes the notification requirements for species control orders so that both the owner and any occupier of the premises to which the order relates must be given notice. I therefore ask that the committee support amendment 98.

John Scott: The current definition of “native range” makes no reference to time, but in reality native ranges for many species are an evolving concept, given factors such as climate change. Amendment 99 seeks to address that concern by adding a time reference to allow the legal framework to adapt if necessary.

Amendment 100 deals with a concern about the role of codes of practice, which often tend to blur the line between law and guidance. The amendment would include in the bill a definition of “in the wild”. That is a core element of the sections of the bill that deal with non-native and invasive species, and it is therefore appropriate that it be defined in the legislation rather than left to the code of practice.

The issue has been much debated in committee. The definition in amendment 100 is very similar to that which is set out in the Government’s draft code, but it differs in that it would change the emphasis slightly by referring to “no (or only extensive) management” and does not make any reference to urban environments. Even open green spaces in urban environments are usually managed and could not be considered “in the wild”. Furthermore, the definition does not refer to commercial cropping, so it is clear that if land is cropped, even if not commercially, it is not and would not be “in the wild”.

I move amendment 99.

Roseanna Cunningham: John Scott has made it clear that amendment 99 is specifically about the impact of climate change, but he perhaps misunderstands the nature of the definition that is already in the bill. The species that are likely to have their native range changed by climate change are already included in the definition in the bill, so no amendment is required.

When species move as a result of climate change, by definition their native range will change, so they will, therefore, be covered by the definition in the bill. What John Scott is trying to do in amendment 99 is wholly unnecessary because the circumstances are already dealt with in the bill. I hope that my putting that on the record is sufficient to satisfy John Scott.

John Scott’s amendment 100 provides a definition for the term “in the wild”. The issue was considered at length before the bill was drafted. Our position, and that of the Scottish working group on invasive non-natives, is that the concept of “in the wild” is complex and that putting a definition into the 1981 act is not the right way forward. The better approach is to describe it in detail in the code of practice and to allow the courts to take that into account in proceedings.
Amendment 100 may replicate some of the information that is contained in the code, but that is at the expense of the remaining information and guidance that the code contains. As such, it would be of very limited assistance and would, in my view, do more harm than good because we would have partial information in the bill and other information in the code of practice, which—looking at the issue as a lawyer would look at it—would raise certain aspects into a different category, compared with the rest of the code of practice. The potential for harm is too high for amendment 100 to be an acceptable way forward. I therefore ask the committee not to support it.

John Scott: I thank the minister for her remarks. I note her view that amendment 99 is not necessary. I also note the complicating element of amendment 100, which I had not envisaged—although it would not be exceptional for there to be complications and a misunderstanding between legislation and guidance.

The minister has said definitely that the amendments are not necessary and would complicate matters, which is not my intention. I will therefore not press amendment 99 or move amendment 100.

Amendment 99, by agreement, withdrawn.
Amendment 100 not moved.

Section 16, as amended, agreed to.

Section 17—Non-native species etc: further provision
Amendments 82 and 83 not moved.

Section 17 agreed to.

After section 17

The Convener: The next group is on “Pesticides: offences etc and amnesty scheme”. Amendment 101, in the name of Liam McArthur, is grouped with amendment 102.

Liam McArthur: After clearly becoming a little confused during my brief vow of monastic silence over recent groupings, it is a relief to be called to speak again.

We will come shortly to the Government’s amendment on vicarious liability, which I think the majority of the committee and, I hope, the Parliament will support. Vicarious liability provisions are by no means a magic bullet, nor will it be straightforward to achieve successful prosecutions, but the provisions will provide another useful weapon in the armoury of those who are tasked with tackling the scourge of illegal raptor persecution. In that spirit, and based on the evidence that we heard during stage 1 from Sheriff Drummond, the police and others, I believe that there is more that we can do to bolster the vicarious liability provisions.

11:15

My amendment 101 seeks to extend the range of offences for the illegal possession and/or use of poisons. It would do that through small but significant amendments to the current provisions in the 1981 act. They would be useful additions; they are not fully covered elsewhere in statute and would add to the tools that are available to both the police and prosecutors in the fight against raptor persecution.

There may, of course, be people who find that they have in their possession pesticides and biocides that they no longer need, which are out of date or which are perhaps even illegal. It is only fair that an opportunity be provided to allow for disposal of such pesticides without penalties being applied. That is the basis for amendment 102. I know that the Government has expressed sympathy for such an amnesty in its response to the committee’s stage 1 report, although I am also aware that the minister is concerned that, given the way in which carbofuran and other substances are often sourced, the effectiveness of an amnesty may be more limited than we would wish.

Nevertheless, I would welcome the minister’s comments, not least on the extent to which the current pesticides amnesty that has been arranged by the security in the operational environment initiative and is administered by Killgerm Chemicals Ltd may be expected to work in Scotland. As I understand it, the amnesty is open to pest controllers, gamekeepers, farmers and growers in England, Wales and Scotland and is due to run until 14 March. Is that scheme currently running in Scotland? If so, what publicity is the Government and its agencies giving to it? Does the minister feel that once the details of the bill are finalised there may be a case for running a similar scheme in the future, perhaps to sweep up those who may be waiting to see what Parliament does in the bill before deciding whether to act?

I move amendment 101.

Peter Peacock: I support in principle what Liam McArthur has set out. We should try to support anything that strengthens, or seeks to strengthen, provisions to bear down on abhorrent and illegal practices. Like Liam, I am interested to hear what the minister has to say about the principles of his amendments, but I would be happy to support them if they are likely to be a way forward.

Karen Gillon (Clydesdale) (Lab): Like Peter Peacock and Liam McArthur, I support the principle of an amnesty. There may well be people who have such substances. We should not be offering anybody any excuse and we should send
a clear message that there is no excuse for having such materials on one’s premises. We should be wanting to get them out of the system. A date should be set after which a person will be prosecuted if they are found with the substances. If the substances are used, a person will be clearly liable for their use if they are found on that person’s premises.

We need to be clear that there are no excuses for having these materials. We may have been too lax until now, so we need to be much clearer. Amendments 101 and 102 might not be exactly how the provisions should be written, but we need to find a way forward and set the timeframe. We need to do this and do it properly.

John Scott: I am prepared to support Liam McArthur’s amendment 102 on an amnesty, which should be available for those who have such substances on their premises. However, I have a problem with amendment 101, because it seems to transfer the onus of proof. It appears to be disproportionate to provide that conviction of one crime—in the context of the bill—should mean that a person is guilty of another and different crime. Simply by the fact of possession of or being concerned in the use of a pesticide, one would also be guilty of “setting in position ... unless the contrary is proved.”

I do not think that that was Sheriff Drummond’s recommendation. I will oppose amendment 101. I am sympathetic towards amendment 102, although I will wait to hear what the minister has to say about it.

Elaine Murray: I will respond briefly to John Scott’s comments, because I am sympathetic to both amendments. First, the point of an amnesty is to tighten up the law and to encourage people to get rid of the relevant substances, with the idea being that if they still have them after the amnesty, the law will apply.

The other point about amendment 101 is that we already have legislation of this nature in respect of illegal drugs. If we can do it for drugs, I think that we can do it for pesticides and other materials that are being used illegally to poison birds of prey and other species.

Roseanna Cunningham: I will speak to amendments 101 and 102. As Liam McArthur has outlined, there has been some support for considering offences of this type in order to strengthen the legal framework. It will not surprise members to hear that the possibilities have been under consideration, as part of a range of options, for some considerable time.

However, it transpires that the more one looks at such proposals—I am talking about the generality rather than Liam McArthur’s amendments specifically—the more difficult it appears that they would be to use in practice. We need to be sure that any offences that we add to the bill will make a practical difference to enforcement against wildlife crime. We must keep it in mind that an improvement in rates of wildlife crime will not follow from new offences that do not, in practice, add anything to the array of offences that are currently available to the police and prosecutors.

First, amendment 101 is on a “concerned in the supply” offence. I understand that Liam McArthur’s aim is a good one, and I understand the attraction of using the model that is in the Misuse of Drugs Act 1971, but the situation for which that act caters and which involves extremely complex chains of supply, does not, as I understand it, replicate the situation in respect of use of poisons for wildlife crime. The 1971 act is designed to catch people who are far removed from the supply of drugs but who in some way support it financially or operationally. The evidence that Liam McArthur envisages could be gathered to support such an offence would in practice support charges under existing offences, such as possession charges.

Secondly, amendment 101 is on a “concerned in the ... use” offence. I take Liam McArthur’s point that there was support for that proposition during stage 1, but an amendment that will introduce vicarious liability is on the table. The vicarious liability offence will catch people who tacitly or explicitly support illegal use of pesticides. Art and part covers us for situations in which there is knowledge of an offence—it is an integral part of existing Scots law that can be applied to wildlife crime in the same way that it can be applied to any other crime. Those two routes would cover the situations that the proposed offence is designed to deal with, so I urge the committee—

Karen Gillon: May I intervene, minister?

Roseanna Cunningham: Yes.

Karen Gillon: In other situations, however, there will be underlying crimes. Vicarious liability will be very difficult to prove—it is a very high-level offence. For example, with corporate manslaughter, there would be a corporate manslaughter offence, but underneath it there would be offences under the Health and Safety at Work etc Act 1974. It might be possible to prove those lesser offences but not the main offence. It might be possible to prove a “concerned in the supply” offence: it might be desirable to have offences underlying the main offence of vicarious liability, which it might not be possible to prove beyond reasonable doubt.

Roseanna Cunningham: I understand that point, but my point is that such underlying offences already exist under the common law in Scotland.
Art and part is a common-law offence—there is no legislative provision that one can point to, any more than there is a legislative provision on breach of the peace. Those are common-law offences that are available in respect of all crimes. The necessity to prove beyond reasonable doubt applies in all criminal cases, regardless of what someone is charged with. As Karen Gillon knows, most complaints and/or indictments in the criminal courts in Scotland carry with them a number of different offences, some of which are, in theory, lesser offences but which in practice, because they are common-law offences, might attract far greater punishments.

Karen Gillon: That begs the question why no one has been charged with an art and part offence in relation to an act of persecution.

Roseanna Cunningham: Introducing new offences will not necessarily change that situation, because the problem is the gathering of evidence. It does not matter what we call the offence; the difficulty lies in whether sufficient evidence can be reported to the procurator fiscal to give the fiscal or the Crown Office the confidence that, if the case is taken to court, there will be a reasonable chance of success. In a sense, that is about the available evidence, not about what the charge is called. All attempts to tackle wildlife crime have been bedevilled by the capacity to gather a sufficiency of evidence rather than by what the crime itself has been called. Although the vicarious liability measure—which we will come to, so I do not want to go into it in any great detail now—will widen the scope of the people who are chargeable, it does not depart from the necessity of having the evidence required to achieve a successful prosecution.

The danger is that we will mix up two issues: the evidence gathering that is necessary and required and which must be achieved before any criminal charges can stick, and the nature of the charges. As I said, it does not matter what we call what people are charged with, because without supporting evidence, a charge will not be successful either under the common law or under a statutory offence. We are in danger of straying far into another committee’s area of expertise, so I merely point out that we have to be very careful when we talk about such matters because we are, after all, talking about the criminal law.

That is our position with regard to amendment 101. I should add that I am, in any case, concerned about a number of technical issues with the drafting, but I ask members not to support the amendment on the grounds that I have already set out. Moreover, we have discussed these offences with the Association of Chief Police Officers in Scotland, which endorses the Government’s position.

Liam McArthur’s amendment 102 is interesting. Previous examples of immunity from prosecution on the face of legislation are few and far between; however, there are some major ones—one huge exception is decommissioning in Northern Ireland—and it is clear that it is not something that cannot be done. However, as far as the Government understands it, providing immunity from prosecution is unheard of in Scottish legislation. Of course, that is no accident. Prosecution decisions are for the Lord Advocate. We have an effective and independent prosecution system that allows for minor amnesties when appropriate—as we know, there have been knife amnesties or so on—and Government ministers should not cut across that. For those reasons, I oppose amendment 102.

On the specific issue of pesticides, my preference has always been to look at more workable measures such as the kind of disposal scheme that I can confirm is now running on a UK-wide basis and is applicable in Scotland. Once that scheme is complete, we will assess its success or otherwise, and the level of uptake in Scotland, and we will gauge whether any future schemes should be considered.

As part of that, we must, in the context of our current discussion on wildlife crime, assess the impact of any scheme on illegal poisoning disposal. Leaving aside the stand-alone issue of the substantial merits of removing dangerous chemicals from the countryside, I point out that the pattern of poison use suggests that the possession of substances does not arise from the inability to dispose of them since they were made illegal—in other words, it is not, as the situation is often painted, that they were kept in a rusty tin that has been left over from that time. Far from it—many substances are actually being imported for the purpose of illegally poisoning wildlife. We should not lose sight of the fact that people doing that should be brought to account.

I oppose amendments 101 and 102, not because I disagree with the sentiments behind them but simply because I do not believe that they will add to the aspects of wildlife crime with which we are concerned anything that we are not already able to do.

11:30

Liam McArthur: I am grateful to members who have expressed their support, at least in principle, for either amendment 101 or 102 or for both of them. Karen Gillon’s point about effectively clearing the slate so that there can be no ambiguity or dispute in the future about the law and the consequences for those who fall foul of it is a good one. I listened with interest to John Scott’s concerns in relation to amendment 101,
about shifting the burden of proof. Elaine Murray made a useful and helpful response to part of that, although I should say that anyone who is caught in possession of carbofuran, which is currently illegal, cannot have much claim to provisions around the burden of proof.

The minister’s point about the sufficiency of evidence is something that the committee has wrestled with throughout stage 1, and I think that it is a point well made in terms of managing expectations about what the bill will do.

The suggestion that the provisions in amendment 101 are already covered in common law is interesting, and almost certainly correct. However, as Karen Gillon said, we have not seen much evidence of that biting. Now that we have sight of the detail of the vicarious liability provisions, we have an opportunity, between now and stage 3, to decide whether there are gaps that need to be plugged, in that respect.

On that basis, I seek leave to withdraw amendment 101 and will not move amendment 102. The point about there being in Scots law no immunity from prosecution at all is interesting, although I note that this is not a Government that has shied away from historic firsts in other areas and, as the minister pointed out, other amnesties have been undertaken in the past. The disposal scheme might be the appropriate route. I will take time between now and stage 3 to reflect on that.

Amendment 101, by agreement, withdrawn.
Amendment 102 not moved.

Section 18—Licences under the 1981 Act

The Convener: The next group is on granting of licences under the 1981 act. Amendment 103, in the name of John Scott, is grouped with amendments 104, 55 and 56.

John Scott: Amendments 103 and 104 incorporate two unadopted parts of the birds directive. I believe that they will assist SNH when it considers how and whether to grant licences to protect the direct and indirect public benefits of game management. Those benefits include rural employment, the provision of winter food and nesting cover, and reduced predation pressure for birds, mammals and insects across Scotland.

Specifically, amendment 103 would increase the legal options for management of species by incorporating article 9.1(c) of the birds directive, which deals with the judicious use of species, accommodating recent European case law.

At present, Scots law recognises only four specific applications of the term “judicious use”: falconry or aviculture; public exhibition or competition; taxidermy; and photography. However, the European Court has recognised a wider range of activities that can constitute judicious use, so Scotland is being unnecessarily restrictive in its transposition of the directive. I urge the minister to think about that.

Amendment 103 would not automatically allow new licences to be granted in circumstances in which they are currently not permitted but would give ministers flexibility to adapt the regime in future, in appropriate circumstances.

Amendment 104 would offer guidance to SNH with regard to what criteria to assess when licensing to prevent undue pressure on bird populations and thus on investment in their management. The amendment reflects the aims of article 2 of the birds directive, which places the protection of bird species in the context of other environmentally and economically beneficial activities.

Amendment 104 would not change the requirement for those seeking licences to provide evidence of the impact on the species to be controlled or the need for consideration to be given to a range of alternative management strategies to reduce the predation pressure before the granting of a licence could be considered.

I move amendment 103.

Peter Peacock: The bill introduces a wide-ranging category of licensing, authorising activities “for any other social, economic or environmental purpose” in respect of non-avian animals and plants that would otherwise be protected. That ostensibly addresses a problem with licences for such species not hitherto being available. I agree that it is desirable and important to address that problem, but it could be argued that the bill fails to provide adequate checks and balances to safeguard biodiversity, certainly to the same extent that species are safeguarded under other European Union directives.

My amendments 55 and 56 seek to rectify the situation and bring the provisions for such licences into line with EU habitat regulations for European protected species. Even if my amendments are agreed to, there will still be scope for licensing the wide-ranging development activity that the bill introduces. However, my amendments would apply additional safeguards that closely parallel those in the habitats regulations and provide some balance in favour of biodiversity, including rephrasing the licence category to restrict it to objectives in the “overriding public interest”, as set out in amendment 55.

Amendment 56 would require the licensing authority to assess the impact of the licence on the species concerned. Species such as water vole and red squirrel are species of concern, and one
would hope that they would benefit from any greater protection that might be afforded.

I am interested to hear the minister’s view on the issues and whether there might be a way forward if the solution that I have suggested is not appropriate. I would be happy to consider that for stage 3 if appropriate.

Liam McArthur: John Scott has helpfully set out some of the background to amendment 103. On first reading, it looked rather open-ended. As he alluded to in his comments, the “judicious use” of some birds is permitted under the birds directive, and he cited some examples. However, the licences are to be granted under strictly supervised conditions, on a selective basis and in small numbers. Although it has been helpful to hear the motivation behind what John Scott is seeking to achieve with amendment 103, I am still slightly concerned that it might be a little bit open-ended.

On amendments 55 and 56, the committee wrestled with the issue at stage 1. There were those who argued that species licensing ought to be relaxed and those who felt that it ought to be tightened up further. In practice, it appears that licences are granted infrequently. I am not sure that there is necessarily a compelling case to tighten up the wording still further, but I am interested to hear what the minister has to say.

Roseanna Cunningham: I turn first to John Scott’s amendments 103 and 104. The issues that they raise are in no way straightforward. He will accept that he had time to touch on only some of them, as I will do.

I put on the table what I suspect is really behind the amendments. The intended effect of amendment 103 would be to allow a derogation from the birds directive to control some wild predator species for the purpose of maintaining a shootable surplus of other wild birds. The purpose of such a derogation would be to prevent damage to property, but there is already a derogation for that purpose. It is clear from the directive and supporting guidance from the European Commission that it does not cover shooting rights. Our initial analysis is therefore that to grant such a derogation would raise a high risk of legal challenge.

Amendment 104 is loosely based on article 2 of the birds directive. Licences are currently granted under section 16 of the 1981 act in a way that is compatible with our obligations under that directive, so amendment 104 is not required. In addition, it could cause difficulty. It does not expressly follow the directive’s terms, and it is widely applied to section 16.

The wider issues that amendments 103 and 104 raise may be worthy of further consideration, but they deserve a proper consultation process and should not be pursued in the bill. For that reason, I do not support them.

On the face of it, amendments 55 and 56, in the name of Peter Peacock, would provide for the same tests to be used for domestic protected species as are included in the habitats directive for European protected species. We considered the terms of the directive, but those are European law tests and we are dealing with domestic legislation. We need to be careful that what we do does not create unnecessary burdens for business and environmental bodies. However, I do not accept that the provisions in the bill fail to recognise the importance of biodiversity.

I consider the “no other satisfactory solution” arm of the provision in the bill to be of considerable importance, as it restricts greatly what would otherwise be a wide provision. Having said that, I could have further conversations with Peter Peacock about significant scenarios in which he fears that our current formulation will not be up to scratch. If those fears prove to have substance, I will be happy to look again at the wording of the provision in the bill for stage 3.

I oppose all amendments in the group for the reasons that I have set out.

John Scott: I note the minister’s comments and am heartened by the fact that she says that amendments 103 and 104 are worthy of further consideration. However, I note that she is not inclined to support them at the moment, so I will not press either amendment. I will reflect on what she has said and note her interesting interpretation of article 2.

The Convener: John Scott is seeking leave to withdraw amendment 103. Does anyone object?

Karen Gillon: Yes.

The Convener: There is an objection to the amendment being withdrawn, so I must put the question on it. The question is, that amendment 103 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Scott, John (Ayr) (Con)

Against
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.
Amendment 103 disagreed to.

Amendment 104 moved—[Karen Gillon].

The Convener: The question is, that amendment 104 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Scott, John (Ayr) (Con)

Against
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 104 disagreed to.

The Convener: I call amendment 55, in the name of Peter Peacock.

Peter Peacock: In view of the minister’s helpful offer to discuss amendments 55 and 56 further, I will not move either amendment.

Amendments 55 and 56 not moved.

The Convener: The next group is on delegation by ministers of licensing function under the 1981 act. Amendment 84, in the name of Elaine Murray, is grouped with amendments 77 and 85 to 90.

Elaine Murray: Section 18 allows ministers to delegate their species licensing functions to SNH or to local authorities. Amendments 84 to 90 remove from the bill delegation to local authorities. Those councils that responded on the provision did not seem to want the delegated powers and had no enthusiasm for them. In those circumstances, they might not need to apply for them. However, if powers were devolved to that level, inconsistencies could develop with regard to the circumstances in which a species licence could be issued. For example, a local authority might come under pressure to issue licences for the control and taking of buzzards, peregrine falcons or other birds of prey in circumstances in which ministers or SNH would not be inclined to issue such licences. Delegation to SNH will not be problematic, as ministers take advice from SNH before issuing species licences. Removal from the bill of delegation to local authorities is desirable to ensure a national overview and consistency in the issuing of species licences.

I move amendment 84.

Roseanna Cunningham: I will speak to amendments 84 to 90, in the name of Elaine Murray, and Government amendment 77. I recognise some of the concerns that Elaine Murray has expressed, which have also been raised by some stakeholders.

I make it crystal clear that it is our intention to delegate this function to local authorities only in relation to development planning. In exercising their planning functions, local authorities are in no way strangers to the legal protection of species. Where a development site contains European protected species, the local authority must consider the tests that are set out in the habitats directive. The future flexibility to allow delegation of the function to local authorities is intended to deliver a more efficient and streamlined process. Local authorities have well-established guidance in place where the potential for conflict of interest arises, if that is a concern. A good example of that is in the planning regime, where councils are often both developer and planning authority at the same time. For those reasons, I oppose Elaine Murray’s amendments.

Amendment 77 is a technical amendment that ensures that the licensing provisions in the 1981 act are consistent with other sections in referring to “type” instead of “species”. That will allow the flexibility to include or exclude subspecies and hybrids, as necessary.

Elaine Murray: I am reassured by the minister’s statement that delegation will relate only to planning issues, which removes some of my concerns about the provision. I am happy to seek to withdraw amendment 84 and not to move the other amendments, and to reflect further on whether concerns remain.

Amendment 84, by agreement, withdrawn.

Amendment 77 moved—[Roseanna Cunningham]—and agreed to.

Amendments 85 to 90 not moved.

Section 18, as amended, agreed to.

Section 19 agreed to.

After section 19

Amendment 57 not moved.

The Convener: The next group is on management of geese. Amendment 105, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: My mind was on this amendment when I was considering whether to move an earlier one.
The longest ministerial response that I have yet received as an MSP was to an inquiry that I made on behalf of constituents in relation to the management and control of geese, so I am under no illusions about the complexity of reaching a solution to a problem that is growing ever more serious in a number of parts of the country, not least in Orkney. I am also aware of and support the work that is on-going under the auspices of the ministerial advisory group on the issue.

Amendment 105 seeks to provide an avenue to allow any relevant recommendations by the group to be brought forward on a timely basis and, if necessary, with the force of statute behind them. I appreciate that the wording of the amendment may need improvement, possibly by being more tightly focused, but I would welcome any comments and reassurances that the minister can offer at this stage.

The damage that is caused, often to prime agricultural land, by some goose populations cannot be overstated. Some of those populations were once predominantly migratory but they are becoming increasingly indigenous to the affected areas. I appreciate that that may have much to do with improvements in farming practices that have made more readily available a source of food for the geese, but it is recognised that a solution now needs to be found.

I am also conscious that the taking of geese would almost certainly be controversial and that individual farmers may be reluctant to undertake such an exercise for that reason, and I know from experience in my constituency that inviting others in to carry out a shoot on one’s land can often create more serious problems.

I look forward to hearing what the minister has to say.

I move amendment 105.

John Scott: Having discussed the matter at length in committee, I understand that the national goose management review group has recently undertaken a review, the conclusions of which I largely support. There is a desire for policy to address the consequences of increasing populations of most species, with associated increases in damage costs and escalating expenditure throughout Scotland. Questions about the longer-term effectiveness of the existing framework, its delivery and the associated legislation need to be addressed. I support the principle behind amendment 105, although the minister may have a view on whether its wording is appropriate.

Peter Peacock: Like John Scott, I support the principle behind what Liam McArthur says. Whether or not the minister believes that the amendment is technically correct, it raises an important matter. One of the most amazing sights and sounds of the oncoming winter is the geese arriving back in Scotland, as they have been doing for millennia. It is a hugely significant part of Scottish life and, for many people, it is a wondrous scene.

However, in recent years, the geese have been thriving and have been arriving in greater numbers than ever before, causing—as Liam McArthur and John Scott have described—significant damage to the interests not only of farmers, but of crofters. I am thinking particularly of the islanders of the Uists, who have been severely affected by that in recent years and are anxious to find the right balance between protecting the species and allowing their livelihoods to continue. They are not the only island populations that are affected—many other islands on our west coast, as well as inland areas, are increasingly affected. It is important that people are able to take the actions that Liam McArthur suggests. I hope that the minister will give that due consideration.

Roseanna Cunningham: I in no way deny the importance of the Scottish Government’s national policy for goose management nor Liam McArthur’s concerns for his constituency, which I suspect are reflected in the concerns of other constituency members. Goose management is an area in which we have a high level of collaboration from stakeholders. I recognise the contribution of those who participate in local goose management schemes and the national goose management review group.

Nevertheless, the effect of amendment 105 would be that Scottish ministers would be required to prepare and publish a national framework for goose management, which has already been done. The policy framework has been reviewed every five years since 2000, and the reports and Government response have been published on each occasion. A comprehensive review was carried out last year and the report that is currently being considered is due to be published shortly. Therefore, the amendment is not necessary, as the Scottish Government is fully committed to regular review of goose policy in collaboration with interested parties. Indeed, in many ways, the amendment suggests that less be done than is currently going on.

A slightly different point is that the current, non-statutory approach provides us with far greater flexibility than would be provided by having such a provision in the bill. I ask Liam McArthur to think about that. I appreciate what he is trying to do through the amendment, but I genuinely believe that it would serve no practical purpose. On that basis, I oppose it.

I am perfectly happy to talk to Liam McArthur about goose management issues more generally.
However, I do not believe that amendment 105 would do what he thinks it would do; in fact, I believe that it would do far less.

Liam McArthur: The minister may come to regret that offer to discuss the matter in more detail if the response that I got from her predecessor is anything to go by. I welcome the comments from Peter Peacock and John Scott in support of the general principle behind the amendment, but I recognise some of the flaws in the amendment and the wider problems that the minister has identified. On the basis of her offer, I seek to withdraw the amendment.

Amendment 105, by agreement, withdrawn.

Before section 20

The Convener: The next group is on the power to confer certain functions of constables under the 1981 act on other persons. Amendment 91, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock: Amendment 91 relates to the possibility of ministers authorising the SSPCA to take action against the wildlife crime that we have been debating endlessly in the committee and which we are all very concerned about. It would potentially widen the powers of SSPCA officers to act in ways similar to those in which they are currently authorised to act in relation to animal welfare matters. It would give SSPCA officers, in certain defined circumstances, powers that are similar to those of constables and analogous to similar powers already granted in relation to animal welfare. As such, the amendment does not raise any new issues of principle, in my view. The safeguard is that such powers could not be given without there first being a full consultation; thereafter they could be implemented only by order made under the super-affirmative procedure.

The alternative would be for us to wait for another opportunity for primary legislation, but why would we do that when the opportunity is available now to give SSPCA officers those powers, albeit subject to the safeguards that I have outlined? The matter was debated by the committee at stage 1. The committee is broadly sympathetic to the potential extension of the powers, subject to consultation, and the minister has an open mind on the principle of doing so, although she has hitherto been concerned about the procedure.

During stage 1, we received evidence that the resources that the police who deal with wildlife crime can deploy are very stretched. We heard lots of evidence about why, in many circumstances, the police are unable to devote sufficient time to such crime. The fact that the resources that are available to police forces are likely to shrink over the coming period makes the challenge of giving wildlife crime more priority even more difficult. The SSPCA could make available some 60 officers, which is a considerable resource, to help to combat an issue that we all want to see combated.

I will give an example of SSPCA officers being called out to deal with a bird that is caught in an illegal trap. If the bird is still alive when they get there, not only can they deal with the bird but they have powers to start the necessary formal evidence gathering under animal welfare and cruelty legislation, which may result in prosecutions. However, they cannot go beyond that in relation to wider wildlife crime. If, in the same example, the officers arrived two minutes later and the bird was dead, they could not act in the same way. That seems to be an anomaly that it would be nice to address. The impact of the amendment would be to make more resources available to enable more successful prosecutions, which one would hope would result in less wildlife crime in the long term.

I am interested in hearing what the minister has to say. If there are ways of improving the amendment for stage 3, I am happy for her to take that on or I would be happy to do so myself. I just hope that we can all find a sensible way forward on the issue. We are not far apart on the principles of the matter and this seems to be an opportunity not to be missed, subject to the safeguards that I have mentioned.

I move amendment 91.

Bill Wilson: In discussing amendments 101 and 102, the minister referred to the problems of gathering evidence, which are clearly substantial. The evidence is often located in very remote areas and there is a manpower problem. Therefore, there are good arguments for extension of the SSPCA’s powers. Peter Peacock made a good point about the strange anomaly that if SSPCA officers find a bird in a trap that is still alive they can deal with it, whereas they cannot deal with it if it is dead.

I am very sympathetic to the proposal to extend the SSPCA’s powers. I appreciate that the minister may not feel that the amendment is the way to go, but I feel that we should advance the issue and begin consultation on it as quickly as possible.

John Scott: I do not support extending the powers of the officers of private bodies such as animal welfare charities. Some in the legal profession raised concerns about the idea in principle at stage 1, and I agree with them. I appreciate that Peter Peacock has tried to work into his amendment the potential for consultation, but the measure is still too wide and would leave land managers open to targeting by single-interest groups that might have little or no accountability.
The alternative is for special constables to be enrolled to deal with wildlife crime, and I support that position.

12:00

Elaine Murray: I am sympathetic to the amendment. As Peter Peacock said, the SSPCA already has powers in relation to animal welfare, and the amendment proposes an extension of those powers to other areas. John Scott said that he would like to see greater recruitment of special constables, but the proposal does not preclude that—it could be done in parallel with anything else that comes in under the bill.

There is an argument that we should deal with the matter in the bill rather than putting it off until a future bill comes along, which is what the minister has argued for. That argument is about the amount of pressure on police boards. We are seeing financial restrictions now, and if the police are under a lot of pressure both to protect communities from crime and to investigate wildlife crime, I suspect that the investigation of wildlife crime will be the thing that suffers. The police will be under pressure to deal with disorder on the streets rather than sorting out wildlife crime. I would like progress to be made to ensure that wildlife crime does not fall off the agenda as police forces come under further financial pressures.

Roseanna Cunningham: Huge issues are raised by the deceptively simple suggestion in amendment 91, so we really have to canny on this one.

At stage 1, I said that I was open to the idea of the SSPCA playing a greater role in enforcement in relation to wildlife crime, and I am not departing from that position. It was a generous offer from the SSPCA, but let us be clear that it was about redeploying some of its resource to help in the investigation of wildlife crime. The talk about 60 officers does not mean that 60 officers will be doing that full time. SSPCA officers will still be doing their primary, original work as well.

During stage 1, I said that we would need to be absolutely certain that there was widespread stakeholder support and that we would need to consult the police, at the very least. ACPOS is not in favour of the approach in the amendment, which raises significant issues of accountability. The SSPCA is not a neutral organisation. It is a campaigning organisation with a particular campaigning role that, in my view, would sit somewhat at odds with an enforcement role. It is not publicly accountable in the same way that the police are. If we were to go down any road such as the one that is proposed in the amendment, we would have seriously to consider the huge issues of public accountability.

As I understand it, the amendment goes further than what the SSPCA has said—certainly in the recent past—that it wants. It would allow the powers of constables to be given to any person whom the Scottish ministers chose. The most significant power that we are talking about here is a stop-and-search power. I have some practical questions to ask about how that would work in management terms, because without effective training we could be putting people in a dangerous situation. After all, a stop-and-search power involves the officer potentially having to restrain an individual. It is not the simple, easy and straightforward thing that it might at first be thought to be.

As I understand it, the stop-and-search power was deliberately excluded by the SSPCA. I suspect for precisely the reason that I have mentioned—because of the implications of allowing the power. In those circumstances, unless the SSPCA has changed its position, the amendment goes infinitely further than the SSPCA has indicated it wants to go.

While I accept that Peter Peacock has attempted to build safeguards into this extremely broad ministerial power, that does not persuade me that his approach is the right way to legislate on the issue. We are talking about powers such as stop and search. Amendment 91 represents a major step change. It is worth noting the amount of training that SSPCA employees would have to undertake. It should not be left to an enabling power to determine who could exercise those powers. Therefore, I do not support amendment 91.

The proper way to proceed is for the issue to be considered fully and in detail, following public consultation and further discussions with the police and other relevant bodies. Parliament need not wait for another bill relating to wildlife. I fully accept that wildlife bills do not come along every five minutes in the life of a Parliament. However, criminal justice bills tend to come along far more frequently. In my view, a criminal justice bill would be the correct vehicle for any consideration of what is being proposed in amendment 91, because it raises such big issues in relation to criminal justice. In those circumstances, the right way to conduct consultations and to take the issue forward is not through the mechanism of the bill but through the normal process of primary legislation.

I ask the committee to oppose amendment 91.

Peter Peacock: I am grateful for the debate, the purpose of which is to discuss how we can deal with the issues that concern us all. I am also grateful for the support of Bill Wilson and Elaine Murray.
The minister was right to say that the SSPCA made a generous offer. It did not do so lightly—it understands the implications for its resources. Equally, the fact that the SSPCA is prepared to contribute to addressing the issue reflects how much it sees it as a high priority.

On the use of the SSPCA’s resources, its officers are often at the scene of wildlife crime anyway but feel frustrated at their inability to act. As the minister said, serious implications arise from amendment 91 in respect of the potential powers that would be extended to the SSPCA or others that were identified as able to perform a similar role. Nonetheless, we must remember that similar powers have already been granted to the SSPCA in the public interest and that the public widely accept that the SSPCA is, in a sense, the police for the purposes of animal welfare. It is not beyond the SSPCA’s capacity to train its officers adequately or to support them in that task.

I acknowledge the minister’s point about the specifics of stop and search. I had envisaged that in authorising persons other than constables, limits could be placed on that authorisation, but I would need to revisit the matter to ensure that that was the case. I understand that to be the case in relation to other powers.

I note what the minister says about consultation and other opportunities to legislate. Perhaps before stage 3, the minister could reflect on whether the Government would be able to commit to such a consultation in the immediate future, which might provide reassurance that the debate would be advanced in the public way that she has described. However, in order to reflect further on what the minister has said and to allow her to reflect on whether it would be possible to move to such a commitment by the time we get to stage 3, I seek to withdraw amendment 91.

Amendment 91, by agreement, withdrawn.

Section 20 agreed to.

After section 20

The Convener: The next group is on the liability of certain persons for offences committed by others. I am mindful of the time, so this is the last grouping that I will take today. Amendment 78, in the name of the minister, is grouped with amendment 79.

Roseanna Cunningham: Amendment 78 will ensure that the partners or managers can be prosecuted where the relevant partnership or unincorporated association has committed an offence. Similar provisions can be found in other legislation such as the Nature Conservation (Scotland) Act 2004.

Amendment 79 is of course the more significant amendment. I announced that I would bring forward these changes when I appeared before the committee in early November. I took into account that we agreed that now was the time to strengthen the law to address the continuing problem of raptor persecution in Scotland.

We have worked together with colleagues in the Crown Office, police and SNH to develop these important new offences. Amendment 79 aims to make those that benefit from these crimes liable for them. It provides for two new offence provisions in the Wildlife and Countryside Act 1981. Both provisions will apply where working relationships provide for the killing or taking of wild birds on behalf of owners or managers of land, for example where a person employs a gamekeeper to carry out predator control to protect game birds.

New section 18A of the 1981 act will make employers liable for certain wild bird and pesticides offences committed by their employees and agents. The defence for any employer will be that he or she did not know that the offence was being committed and that they took all reasonable steps and exercised all due diligence to ensure that offences were not committed. That is fair.

It is important to note that amendment 79 does not create a situation in which landowners become vulnerable to mischief, such as bird carcasses being planted on an estate, which I know is a concern in some quarters.

Depending on the circumstances, the Crown could choose whether to pursue the employee, the employer or both. However, even if only the employer was charged, evidence would still have to be led to prove beyond reasonable doubt that an underlying offence was committed by the employee.

New section 18B of the 1981 act will make the person liable for the same offences when carried out by contractors and other persons who do work on their behalf—described as “relevant services”. The offences here are in my view an essential anti-avoidance measure.

I have included the section 18B offences as all those involved felt that relying entirely on employer-employee relationships would not have the desired effect. It would be far too easy for someone to demand that all their employees become self-employed or for someone to set up a company to sit between themselves and the people whom they would originally have employed. Leaving loopholes for such manoeuvres is clearly unacceptable. The second part of the amendment is therefore intended to close those and ensure that we can indeed make those that benefit from these crimes liable for them.
The concept of vicarious liability is well established but it is not currently applied to wildlife crimes. In proposing this amendment, I feel that I am proposing a proportionate but strong response to the continuing problem of wild bird persecution.

I remind people that we do not believe that this is a silver bullet that will solve all problems in the countryside, but the amount of work that has gone into this amendment means that, within the context in which it is drafted, it is absolutely the strongest and the most-likely-to-be-effective way forward, given the difficulties that we are currently experiencing, continue to experience and, it looks like, would continue to experience without these changes. An enormous amount of work has gone into this, which has included the Crown Office and all those whom one would expect to be consulted.

I move amendment 78.

12:15

John Scott: The minister's motivation for bringing forward criminal vicarious liability for wildlife offences is appreciated—indeed, I share it—but its introduction into nature conservation law by way of a stage 2 amendment is inappropriate and, in my view, a disproportionate response. Such a measure deserves full consultation with the legal profession and industry representatives. The manner of its introduction is liable to alienate the very people whom we need to work with to tackle illegal poisoning. The minister said that she has consulted the Crown Office, but that is not enough.

The minister has in the past cited liquor licensing law as a precedent for criminal vicarious liability in Scotland, but that is not entirely comparable. To hold a pub licence holder liable for breaches of the licence conditions to which he has signed up is one thing, but to hold an employer liable for the crimes of another person who commits a criminal offence without his knowledge or consent is entirely different.

The minister has said that law-abiding employers have nothing to worry about, but the wording of the new offences, and particularly the defences, does not give me comfort that that is the case. In my view, the committee really needed an opportunity to take further evidence before voting on the amendments with the confidence that we had scrutinised them properly and that we were fully aware of all the consequences.

The minister alluded to planting evidence and making mischief. A major concern is that there seems to be a reversal of the usual burden of proof, in that an employer will be assumed to be guilty for the crimes of another person until he can prove otherwise. Many rural employers, particularly the smaller and less well-resourced ones, will not be able to meet the thresholds that are set for the defence, even if they are entirely innocent. To require all due diligence to be taken to prevent the offence raises the bar unreasonably high. At the very least, there should be a reasonableness test in deciding what due diligence might be expected. The phrase “all due diligence” suggests that an employer must do everything possible and leave no stone unturned no matter how impractical or unaffordable. That surely places too great a burden on them and many will need to consider whether the risks of being involved in land and habitat management in Scotland are worth it.

That must be bad for rural Scotland. Private land ownership is a controversial topic, and there are differing views in the committee, but it is undeniable that Scotland's modern estates generate enormous public benefits, economically, socially and environmentally. Whatever we do to tackle bird poisoning should not prejudice the vast majority of the land management sector who equally condemn it, but I am afraid that the amendments will do just that. The existing legislation would perhaps be adequate if it were more rigorously enforced.

Stewart Stevenson: The overwhelming majority of land managers and owners behave in a responsible way that serves the interests of conservation. Of course, that has not always been the case. In the past, the relationship between owners and their employees has often been one in which the employee has had little option but to do what the owner suggests. It is somewhat bizarre to suggest that owners should not be expected to take every possible step to prevent offending behaviour by their employees, which I think is the thrust of John Scott's comments. Owners should certainly be in that position.

The amendments will provide cover and defence for employees. Employees in rural areas are often relatively isolated from contact with others, apart from with the manager or owner of an estate. The bill will give employees the cover to be able to say, "No, this is not legal activity and I will not undertake it." They will know that the owner or manager can be held to account. I very much support the proposals as a way of providing cover for many people who are employed on rural estates and for improving the bill's conservation objectives.

Liam McArthur: I very much echo what Stewart Stevenson said about the extent of the issue, the good practice that the vast majority of estates and land managers follow and the complexity of the relationship between those managers and their employees. The purpose of the amendments is, as he indicated, to provide some cover for those...
employees as well as to reinforce our expectation of the duties that land managers are under.

Much of what I wanted to say on raptor persecution I was able to say on earlier amendments on the use of certain pesticides.

I welcome sight of the detail of what the minister proposes. Between now and stage 3, there is an opportunity to consider how and where more clarity can be brought to amendments 78 and 79, including definitions of “reasonable steps” and “due diligence”, and how the provisions might be expected to apply in practice. We might even pick up some of the concerns that John Scott identified, although he went way over the top in his expression of those concerns and the implications that he felt would result from them.

I would be interested to hear whether the minister believes that there is an argument for extending the liability provisions across all wildlife crime rather than staying with the limited list of relevant offences. I may have the opportunity to return to that when we discuss amendment 106 at a future meeting. For the moment, I am happy to indicate my support for what the minister described rightly as strong but proportionate proposals.

**Bill Wilson:** I think that we all accept that most landowners are responsible, but there is clearly a collection of irresponsible landowners who are regular lawbreakers and will continue to break the law until they believe that they can be caught. Vicarious liability is a method of saying to them that we have another way of attempting to catch them.

One of the problems for many of the employees who work the estates of such landowners is that they may be in tied houses. They are extremely vulnerable to pressure from unscrupulous landowners who are determined to break the law. Vicarious liability will help, as Stewart Stevenson pointed out, not only to tackle wildlife crime but, as the minister said, to protect those employees from the vulnerable position that they are in if an unscrupulous landlord is determined to continue breaking the law.

On health and safety issues, we can hold companies liable if they fail to take proper action to ensure that their employees protect the health of the public and other members of the organisation, so I cannot see why we should not do the same in wildlife crime.

I strongly welcome amendment 79.

**Peter Peacock:** I equally strongly welcome amendment 79. As Bill Wilson indicated, it appears that there is a section of persistent offenders. The introduction of vicarious liability is a clear signal that the net is tightening around them and that there is a clear parliamentary intention that they should not be allowed to continue knowingly to permit actions that we all find unacceptable to happen within their management purview.

As the minister said, vicarious liability is not a silver bullet. It will be difficult to secure convictions under the new provisions. Nonetheless, they are well worth having. Even if they secure one conviction, that—or the threat of that alone—may be sufficient to help to bear down on the practices that we are all trying to eliminate.

Stewart Stevenson made a good point about the vulnerability of employees and the fact that vicarious liability also gives them some grounds upon which to be able to stand up to their employers—to the extent that they ever could—and make it clear that what they are being expected to do explicitly or implicitly is not acceptable under the law and that they would be threatening others by taking part in such activities.

It is difficult to get into the detail of such a complex amendment at such short notice, and areas of its structure may require further clarity. The minister explained why amendment 79 includes proposed new section 18B of the 1981 act, but it was not entirely clear to me why that provision has to be separate from proposed new section 18A. That may just be a drafting point, but it may be worth thinking about it. Also, the points that Liam McArthur made about the phrases “all reasonable steps” and “due diligence” in proposed new sections 18A and 18B and the point that John Scott made about the phrase “all due diligence” perhaps require to be probed and thought about a bit more before stage 3.

Nevertheless, I think that this is a major and significant step in the right direction; I warmly welcome it and am very happy to support it. I reserve the right to examine the details to see whether they can be improved and tightened up in any way before we get to stage 3.

**Karen Gillon:** Like others, I welcome the comments that have been made and the provisions in the amendments. I have to say, though, that I am disappointed but not surprised by John Scott’s comments.

As other members have said, the vast majority of land managers abhor the idea of raptor persecution. However, that is not always the case; indeed, members will be aware of a recent prosecution in my constituency in which the gamekeeper involved said that he was only trying to please his employer. This offence would allow us to test whether that had indeed been the case and whether the gamekeeper’s employer was pleased with and, indeed, was encouraging him to do what he was doing. Certainly my constituents
would want that kind of prosecution to take place if the land manager had been pushing a gamekeeper in such a direction.

Clearly, it is not a silver bullet; the offence will be difficult to prosecute. I feel, like others, that we need to examine the detail and to ensure that the provisions comply with the Scotland Act 1998, particularly with regard to partnerships and companies and, like John Scott, I want to look at some of the detail of what is involved in all this. However, it will not be any more difficult to comply with these particular tests than it is to comply with tests under the Health and Safety at Work etc Act 1974 or tests required for other kinds of offences that people might be liable for.

I do not think that the provision will lead to the mass exodus that John Scott referred to. Every time that a new law is introduced, there are people who say, “We'll all have to leave the countryside” or “We'll all have to leave Scotland.” The threat never materialises but I believe that, if there are companies that are scared of this provision, I do not want them in Scotland anyway and they are welcome to leave.

Elaine Murray: John Scott drew an important parallel with vicarious liability offences in pub licensing. With regard to pub licensing, an unscrupulous landlord could put pressure on an employee to break the law by selling liquor to an underage or intoxicated person knowing that, as they were not liable, they could get away with it and the poor employee would get prosecuted.

A direct comparison can be made with this type of wildlife crime. The gamekeeper, the guy in the tied house or someone on the minimum wage can be left to carry the can because of pressure that is put on them not necessarily by the landowner, but by the person running the estate—and we all know the name of one person who runs some of these sporting estates and is, I understand, pretty unscrupulous in some of his dealing. Young gamekeepers such as the individual whom Karen Gillon mentioned can be made to feel that their job is on the line unless they take this type of action and please their employer. As I say, big landowners might well not know what is happening on their estates; it could be the people running the estate for them who get prosecuted.

John Scott: Is it a matter of regret to you that we have not taken any evidence on this issue? It certainly is to me. Every time that we have discussed the matter, Karen Gillon has told us(442,16),(557,31) the same story, but we have heard no other evidence of that treatment of an employee by an employer. Do you agree that it would have been reasonable to have taken evidence at least before we had proceeded to this stage?

Elaine Murray: I am not sure that I necessarily agree that we have not heard evidence on this issue—we have taken evidence both in committee and in private. What we are talking about is not happening on all estates but, unfortunately, certain land managers on some estates are doing it and we need to send the message that it is unacceptable for gamekeepers to be put under such pressure and for anyone else to think that they can get off scot free.

I welcome the minister’s introduction of the provisions—she has been brave in doing so. I know the sort of representations that she will have received, as her constituency is not dissimilar to mine. Before stage 3, we have a number of weeks in which the detail of the amendments can be examined and we will then have the opportunity of amendment at stage 3 if aspects of the detail still need to be addressed. In general and in principle, I am pleased that the minister has lodged the amendments in the group.

12:30

Roseanna Cunningham: A number of points have been raised, and I wish to respond to them. John Scott made some comments relating to due diligence and the use of the word “reasonable”. He was concerned that somebody might be prosecuted because of something that had happened without their knowledge or consent. The point of the exercise is that, if an owner genuinely has no knowledge and has not consented, and he can show that he has taken all reasonable steps to prevent the action from happening, he will not be prosecuted.

The issue is one of criminal behaviour. It is not about the whole of the rural sector; it is about that element of rural land ownership or land management that indulges in criminality. We know that it is happening, because we find the evidence of it in the poisoned birds that are picked up depressingly often.

I say to various members, including Peter Peacock, that due diligence is a long-standing, well-established concept in Scots law. I understand that some organisations want some standard of due diligence to be set out in the bill, in statutory guidance or wherever, but because due diligence is a well-established legal concept, doing that would be most ill advised. We can work with the industry to give it guidance on due diligence, but I will not link that directly to the provisions of the bill. That concept in law in Scotland is far too wide ranging just to be connected to one particular offence. The reason that we use the concept is simply because it is so well known in Scotland—as, indeed, is the phrase “taking all reasonable steps”. The word “reasonable” is very well understood in Scots law.
To try and define those things would be extremely ill advised. The minute that we begin to try to do that, it would almost implicitly exclude from consideration certain other things that we would not wish to exclude. It is important to keep that in mind.

John Scott: It is the combination, or juxtaposition, of the words “all” and “reasonable” that concerns some members when it comes to due diligence—the problem lies with “all reasonable steps” in terms of due diligence. Where does “all” stop and start?

Roseanna Cunningham: With the greatest respect, I point out that due diligence includes the concept of reasonableness. It is in use in the Scottish courts—I hesitate to say “on a daily basis”, but it is so frequently part and parcel of the discussion that, from the point of view of any proceedings in the courts, there will be no confusion, difficulty or concern in applying the concept. I repeat that due diligence includes within it the whole notion of reasonableness. From the perspective of prosecuting crime, I do not think that these are difficult concepts to apply. We need to ensure that the provisions are strong enough for the employers whom we are talking about to be able to rely on them.

I commend a number of committee members for flagging up and explicitly recognising one very important point: the criminal offence that we are discussing gives a huge measure of protection to employees who might hitherto have been in a vulnerable position when they were explicitly told or given to understand that part and parcel of what they were expected to do was to perform behaviour that was criminal. They now have a basis on which they can legitimately dig in their heels—from here on in, it is not simply the employee who will be prodded out to the end of the gangplank. Unfortunately, that has been happening in a number of situations. It is important to view the matter in that context.

Like Elaine Murray, I recall that the committee took a certain amount of evidence on vicarious liability at stage 1 before there was any indication that we would take the matter forward. Therefore, I am not of the view that this has been suddenly sprung on an unsuspecting populace. In particular, it has not been sprung on the stakeholders. I have been saying to the stakeholders for well over a year that, if improvements had been made over the past year. I am very disappointed that I am unable to make that defence. I really am sorry that I have had to lodge the amendment, as I wanted the improvements to be made on a voluntary basis. I am disappointed for all those landowners and land managers who are working incredibly hard to ensure that raptor poisoning does not happen on their land. I recognise all the efforts that they have made. Unfortunately, there continues to be a minority of land managers and landowners who are basically laughing in our faces. If we do not take these steps now, the situation will only get worse.

Roseanna Cunningham: I reassure the committee that the issue was flagged up to various stakeholders more than a year ago. They were told that this would be the likely outcome of their failure to improve the position in rural Scotland. The committee has also taken evidence on the matter during the bill process. We have been in close consultation with the Crown Office to ensure that what we are doing will not cause difficulty in terms of criminal law. The Crown Office was the first place to which I went, to ensure that that will not happen—that is extraordinarily important.

I regret the fact that we are where we are with this. I would far rather have been able to tell members that we did not need the amendment because improvements had been made over the past year. I am very disappointed that I am unable to make that defence. I really am sorry that I have had to lodge the amendment, as I wanted the improvements to be made on a voluntary basis. I am disappointed for all those landowners and land managers who are working incredibly hard to ensure that raptor poisoning does not happen on their land. I recognise all the efforts that they have made. Unfortunately, there continues to be a minority of land managers and landowners who are basically laughing in our faces. If we do not take these steps now, the situation will only get worse.

Karen Gillon: Hear, hear.

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

Members: No.

The Convener: There will be a division.

For
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)
The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 78 agreed to.

Amendment 79 moved—[Roseanna Cunningham].

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

Members: No.

The Convener: There will be a division.

For
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Against
Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 79 agreed to.

The Convener: That ends today's consideration of the bill. We aim to complete our stage 2 consideration of the bill at our next meeting, on 19 January. I thank the minister, her officials and everyone else for their attendance. That concludes the public part of today's meeting.

12:39

Meeting continued in private until 13:02.
Wildlife and Natural Environment (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 21
- Schedule
- Sections 22 to 35
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 20

Elaine Murray

14 After section 20, insert—

<Functions of conservation bodies

Functions of conservation bodies

In section 24 of the 1981 Act (functions of GB conservation bodies), in subsection (1)—

(a) for the word “5” substitute “A1, 1, 1A, 2, 3, 4, 5, 5A, 6, 6A”;
(b) after “opinion” insert—

“(za) any bird should be added to, or removed from, Schedule A1;
(zb) any bird should be added to, or removed from, Schedule 1;
(zc) any bird should be added to, or removed from Schedule 1A;
(zd) any bird should be added to, or removed from, Schedule 2;
(ze) any bird should be added to, or removed from, Schedule 3;
(zf) any bird should be added to, or removed from, Schedule 4;”,
(c) after paragraph (a) insert—

“(aa) any animal should be added to, or removed from Schedule 5A;
(ab) any animal should be added to, or removed from Schedule 6;
(ac) any animal should be added to, or removed from Schedule 6A;”.

Peter Peacock

58 After section 20, insert—

<Reporting

Annual report on wildlife crimes

After section 26A of the 1981 Act (enforcement of wildlife legislation), insert—
“26B Annual report on wildlife crimes

(1) The Scottish Ministers must as soon as practicable after the end of each calendar year lay before the Parliament a report on the incidence of wildlife offences under this Act in the reporting year.

(2) In preparing a report under subsection (1), the Scottish Ministers may require wildlife inspectors to provide them with such information as they consider necessary to fulfil the requirements of that subsection.”

Liam McArthur

106 After section 20, insert—

<Reporting on and responding to wildlife crime

Reporting on and responding to wildlife crime

After section 19ZD of the 1981 Act (power to take samples: Scotland), insert—

“19ZDA Reporting on and responding to wildlife crime

(1) Scottish Ministers must ensure that every police force applies the definition of wildlife crime under subsection (2) for the purposes of reporting on and responding to such wildlife crimes.

(2) In this section, “wildlife crime” means any unlawful act or omission, which affects any wild bird or animal, plant or habitat.”

Section 21

Roseanna Cunningham

15 In section 21, page 29, line 33, at end insert—

<( ) The modifications in Part 1 of the schedule have effect.>

Roseanna Cunningham

16 In section 21, page 29, line 34, after <of> insert <Part 2 of>

Schedule

Roseanna Cunningham

17 In the schedule, page 50, line 3, at end insert—

<Part 1

Modifications

In section 39(2) of the Agriculture (Scotland) Act 1948 (c.45), in the proviso, for the words from “game” to the end substitute “—

(a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or
(b) brown hare or mountain hare in close season for that hare (within the
meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the
right to comply with a requirement falling within this proviso by reason only
that, apart from the proviso, compliance with the requirement would
constitute an offence under section 1 or (as the case may be) 10A(1) of that
Act”.>

Before section 22

Robin Harper

151 Before section 22, insert—

<

Duty of sustainable deer management

Before section 1 of the 1996 Act insert—

“PART A1

SUSTAINABLE DEER MANAGEMENT

A1 Duty of sustainable deer management

It is the duty of—

(a) a public body or office-holder owning, occupying or otherwise
controlling land on which deer are found;

(b) an owner or occupier of land on which deer are found,

to further the sustainable management of deer on that land by complying with a
code of practice drawn up under section 5A of this Act.”.

Section 22

Roseanna Cunningham

107 In section 22, page 30, line 7, leave out <; and>

Roseanna Cunningham

108 In section 22, page 30, line 20, at end insert—

<( ) In section 18(2) (taking or killing at night), for paragraph (a) substitute—

“(a) the taking or killing is necessary—

(i) to prevent damage to crops, pasture, human or animal foodstuffs,
or to woodland; or

(ii) in the interests of public safety;”.

Section 23

Liam McArthur

109 In section 23, page 30, line 27, leave out <may, in particular> and insert <must>
Liam McArthur

110 In section 23, page 30, line 32, at beginning insert—

<(  ) The code of practice may>

Liam McArthur

111 In section 23, page 30, line 33, at end insert—

<(  ) The recommendations referred to in subsection (2)(a) must cover arrangements for the setting and implementation of culling targets to achieve sustainable deer population levels.>

Liam McArthur

152 In section 23, page 30, line 33, at end insert—

<(  ) The recommendations and provisions referred to in subsection (2)(a) and (b) must cover arrangements for collaboration on deer management planning between the owners and occupiers of land within deer natural ranges.>

Liam McArthur

112 In section 23, page 30, line 34, at end insert—

<(  ) Without prejudice to subsection (3), SNH must review the contents and operation of the code of practice at least once every 5 years and, as appropriate, propose revisions to, or replacement of, the code.>

Roseanna Cunningham

113 In section 23, page 30, line 35, leave out <revising or replacing> and insert <replacing or revising>

Roseanna Cunningham

114 In section 23, page 30, line 37, after second <proposed> insert <replacement or>

Roseanna Cunningham

115 In section 23, page 31, line 3, after second <proposed> insert <replacement or>

Roseanna Cunningham

116 In section 23, page 31, line 5, after first <or> insert <replacement or>

Roseanna Cunningham

117 In section 23, page 31, line 5, after third <or> insert <replacement or>

John Scott

158 In section 23, page 31, leave out lines 7 to 11 and insert—

<(  ) The first code of practice, and any replacement code of practice, made under this section must—>
(a) be laid before, and approved by resolution of, the Scottish Parliament; and

(b) come into effect on such date after approval under paragraph (a) as is specified in the code.

( ) Any revision to a code of practice must—

(a) be laid before the Scottish Parliament; and

(b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).

( ) The Scottish Parliament may, before such revision comes into effect, resolve that it is not to come into effect.

( ) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.

Roseanna Cunningham

118 In section 23, page 31, line 7, after <any> insert <replacement or>

Roseanna Cunningham

119 In section 23, page 31, line 8, leave out from <be> to end of line 9 and insert—

<(  ) be laid by the Scottish Ministers before the Scottish Parliament; and

(  ) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).

( ) The Scottish Parliament may, before any such code of practice (or any replacement or revision) comes into effect, resolve that it is not to come into effect.

( ) The Scottish Ministers must publish a code of practice (or any replacement or revision) no later than the day before the code (or replacement or revision) is to come into effect.

Roseanna Cunningham

120 In section 23, page 31, leave out lines 10 and 11

Liam McArthur

121 In section 23, page 31, line 13, after <section;> insert—

<(  ) publish a report on at least an annual basis relating to—

   (i) the extent of compliance,

   (ii) the extent of non-compliance,

   (iii) actions taken to address instances of non-compliance,

   with such a code;>
Deer management planning by SNH

5B Deer management planning by SNH

(1) Where SNH is satisfied that the conditions in subsection (2) have been met in relation to a particular area, it may make an order requiring the owners and occupiers of that particular area to draw up a deer management plan.

(2) The conditions are that—
   (a) having had regard to the code of practice, SNH is satisfied that a deer management plan is required for that particular area; and
   (b) no such plan has been drawn up by the owners and occupiers of that particular area.

(3) An order under subsection (1) must—
   (a) specify the particular area of land to which it applies; and
   (b) be served on all of the owners and occupiers of that particular area of land.

(4) The owners and occupiers to whom the order under subsection (1) applies must work together to draw up a deer management plan.

(5) Where SNH is satisfied that the conditions in subsection (6) have been met, SNH may itself prepare and publish a deer management plan for that particular area of land.

(6) The conditions are that—
   (a) a period of at least 12 months has elapsed since the serving of an order under subsection (1); and
   (b) a deer management plan has not been drawn up by the owners and occupiers of the particular area of land to which the order relates.

(7) Where SNH has published a deer management plan under subsection (5)—
   (a) it shall send a copy of the plan to all owner and occupiers on whom the order under subsection (1) was served; and
   (b) those owners and occupiers, so notified, must take such deer management measures as are specified in the plan.

(8) Where SNH make an order under subsection (1), this must be considered as non-compliance with the code of conduct on the part of those owners and occupiers on whom the order is served.
(9) Section 9 of this Act (recovery of expenses) applies to expenses incurred by SNH in the performance of its duties under this section as it applies in relation to section 8(8)."

(2) In section 13(1) (offences in relation to Part II) of the 1996 Act, after “a control scheme”, insert “, or section 5B(7)(b),”.

Section 24

Liam McArthur

124 In section 24, page 31, line 26, at end insert—

< ( ) after “is satisfied that” insert “a case of non-compliance with the code requires addressing by means of measures under this section or section 8, or that”,>

John Scott

159 In section 24, page 31, line 40, at end insert—

< ( ) before “taking” insert “exclusion of or the”,>

John Scott

160 In section 24, page 32, line 2, at end insert—

< ( ) after “be” insert “excluded,”,>

Liam McArthur

125 In section 24, page 32, line 40, after <repealed,> insert—

< ( ) for subsection (6) substitute—

“(6) A control scheme under this section shall be treated as a land management order under Chapter 3 of the Nature Conservation (Scotland) Act 2004 (asp 6), insofar as the procedures (schedule 3 to that Act) and appeals (section 34 (appeals in connection with land management orders and related orders) of that Act) are concerned, and schedule 3 and section 34 of the 2004 Act shall apply to control schemes as they do to land management orders.”,>

Roseanna Cunningham

126 In section 24, page 33, line 6, leave out <or>

John Scott

161 In section 24, page 33, line 10, at end insert <,

( ) in paragraph (a), after “land” insert “, but only if SNH is satisfied that situation cannot be remedied by exclusion”,>

Roseanna Cunningham

127 In section 24, page 33, line 10, at end insert—
In schedule 2 (provisions as to control schemes)—

(a) in paragraph 1(b)—
   (i) for the words from “two” to “situated” substitute “such manner as SNH thinks fit”,
   (ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,
(b) in paragraph 3, for the words from “shall” to “may” substitute “—
   (a) must consider the objection, and
   (b) may”,
(c) in paragraph 4—
   (i) the word “either” where it first occurs is repealed,
   (ii) the words from “; or” to the end are repealed,
(d) in paragraph 6(b)—
   (i) for the words from “two” to “situated” substitute “such manner as the Scottish Ministers think fit”,
   (ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,
(e) in paragraph 8, for the words from “shall” to “may” where it second occurs substitute “—
   (a) must consider the objection, and
   (b) may”,
(f) in paragraph 9—
   (i) the word “either” where it first occurs is repealed,
   (ii) the words from “; or” to the end are repealed,
(g) paragraph 11 is repealed,
(h) in paragraph 12(b)—
   (i) for the words from “the” where it first occurs to “situated” substitute “such manner as the Scottish Ministers think fit”,
   (ii) in sub-sub-paragraph (ii), the words “within the district” are repealed,
(i) in paragraph 13—
   (i) in sub-paragraph (1), for “and (3)” substitute “to (4)”,
   (ii) for sub-paragraphs (2) and (3) substitute—

“(2) Any owner or occupier of land who is aggrieved by—
   (a) a decision of the Scottish Ministers to—
      (i) confirm a control scheme,
      (ii) make a scheme varying a control scheme, or
      (iii) revoke a control scheme, or
   (b) the terms or conditions of such a scheme,
may appeal to the Scottish Land Court.
(3) An appeal under sub-paragraph (2) must be lodged not later than 28 days after
the date of publication of the notice referred to in paragraph 12(b).

(4) The Scottish Land Court must determine an appeal under sub-paragraph (2) on
the merits rather than by way of review and may do so by—
(a) affirming the control scheme,
(b) directing the Scottish Ministers to revoke the scheme,
(c) making such other order as it thinks fit.”.

Liam McArthur
128 In section 24, page 33, line 10, at end insert—
<( ) Schedule 2 (provisions as to control schemes) is repealed.>

Section 25

John Scott
162 In section 25, page 33, line 15, at end insert—
<( ) after “them” insert “to exclude or”,>

John Scott
163 In section 25, page 33, line 17, after <the> insert <exclusion,>

Roseanna Cunningham
129 In section 25, page 33, line 36, at end insert—
<( ) in the title, the word “serious” is repealed,>

Roseanna Cunningham
130 In section 25, page 33, line 37, at end insert—
<( ) the word “serious” is repealed,>

John Scott
164 In section 25, page 33, line 37, at end insert—
<( ) before “take” insert “exclude or to”,>

Section 26

John Scott
165 In section 26, page 35, line 33, at end insert—
<( ) Before making regulations under subsection (1), the Scottish Ministers must
consult any person appearing to them to have an interest in the regulations.>
After section 26

**Roseanna Cunningham**

131 After section 26, insert—

<**Offences by bodies corporate, Scottish partnerships etc. under the 1996 Act**

(1) The 1996 Act is amended as follows.

(2) In section 29 (offences by bodies corporate)—

(a) the existing text becomes subsection (1),

(b) after that subsection, insert—

“(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.

(3) After that section, insert—

“**29A Offences by Scottish partnerships etc.**

Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who was concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.>

**John Scott**

166 After section 26, insert—

<**Action intended to prevent suffering**

(1) The 1996 Act is amended as follows.

(2) In section 25 (action intended to prevent suffering)—

(a) before paragraph (a), insert—

“(za) a deer which is starving and which has no reasonable chance of recovering;”,

(b) in paragraph (b), the word “by” is repealed.”>
After section 27

Elaine Murray

18* After section 27, insert—

<Biodiversity>

Duty to further the conservation of biodiversity

In section 1 (duty to further the conservation of biodiversity) of the 2004 Act, in subsection (2)—

(a) the word “and” immediately following paragraph (a) is repealed,
(b) after paragraph (b), insert “, and
(c) the ecological coherence and connectivity of features of value to biodiversity.”.

Peter Peacock

153* After section 27, insert—

<Biodiversity>

Scottish Biodiversity Strategy: content of reports to Scottish Parliament

In section 2 (Scottish Biodiversity Strategy) of the 2004 Act, after subsection (7), insert—

“(8) A report laid before the Scottish Parliament under subsection (7) must—

(a) include such a list of public bodies as determined by the Scottish Ministers, and
(b) for each listed body, a record of actions taken in the three years covered by the report to implement the strategy and fulfil the duty under section 1.”.

Bill Wilson

154* After section 27, insert—

<Biodiversity>

Scottish Biodiversity Strategy: specification of actions and persons responsible for actions

In section 2 (Scottish Biodiversity Strategy) of the 2004 Act, after subsection (3), insert—

“(3A) Any strategy so designated must specify—

(a) those actions which the Scottish Ministers consider will contribute materially to the conservation of biodiversity, and
(b) those persons, or categories of person, whom the Scottish Ministers consider are or should be responsible for the carrying out of those actions.”.
After section 27, insert—

**Scottish Biodiversity Strategy: objectives**

In section 2 (Scottish Biodiversity Strategy) of the 2004 Act, after subsection (3), insert—

“(3B) A strategy designated under subsection (1) must set out the Scottish Ministers’ objectives in relation to the conservation of biodiversity, together with how—

(a) an ecologically coherent network of protected areas,
(b) species and habitat conservation measures,
(c) land use policies,
(d) town and country planning policies,
(e) marine planning policies, and
(f) such other policies as they consider relevant,

will contribute to the achievement of those objectives.”.

Section 28

In section 28, page 40, line 28, leave out <, reduce or vary> and insert <or reduce>

In section 28, page 41, line 7, at end insert—

**Extension of muirburn season under section 23A(1): further regulation**

(1) Where the standard muirburn season or the extended muirburn season is extended for any land by an order under section 23A(1), the Scottish Ministers may by order make provision regulating the making of muirburn during the additional period.

(2) Any provision so made applies in addition to the regulation by the provisions of this Act of the making of muirburn during the standard muirburn season or the extended muirburn season.

(3) An order under subsection (1) may make provision—

(a) as to the giving of notice;
(b) as to the making, to the Scottish Ministers or a specified person, of representations or objections;
(c) as to the consideration by the Ministers or a specified person of any such representations or objections;
(d) requiring the approval of the Ministers or a specified person for the making of muirburn;
(e) as to such approval being able to be subject to conditions;
(f) as to the making of muirburn being subject to conditions specified in the order;

(g) creating offences;

(h) providing that any offence created is triable only summarily;

(i) providing for any offence created to be punishable by a fine not exceeding level 3 on the standard scale;

(j) as to such other regulation of the making of muirburn as the Scottish Ministers consider appropriate.

(4) Conditions specified in pursuance of subsection (3)(f) may refer to matters specified elsewhere.

(5) In—

(a) subsection (1), “the additional period” means the period for which the standard muirburn season or, as the case may be, the extended muirburn season is extended for the time being for any land by an order under section 23A(1);

(b) subsection (3), “specified person” means a person specified in the order.

(6) The power conferred by subsection (1) is exercisable by statutory instrument.

(7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Roseanna Cunningham

134 In section 28, page 42, line 4, at end insert—

<  ) In section 24 (right of tenant to make muirburn notwithstanding terms of lease), after subsection (2) insert—

“(2A) Notice by a tenant to a proprietor of land under subsection (2)—

(a) must be in writing; and

(b) may be given to any person purporting to be authorised by the proprietor to receive the notice.”.

Roseanna Cunningham

135 In section 28, page 42, line 12, after <muirburn> insert—

<  ) for the title, substitute “Notice as to muirburn: general requirement”,

(  )>

Roseanna Cunningham

136 In section 28, page 42, line 13, leave out from beginning to <given> in line 15 and insert—

<  ) A person who intends to make muirburn during the muirburn season must give notice in writing under this section>

Roseanna Cunningham

137 In section 28, page 42, leave out line 20 and insert—
(An order under section 23AA(1) may make provision as to other notice to be given in relation to certain periods; and section 24(2) makes provision as to other notice to be given by a tenant.)

Roseanna Cunningham

138 In section 28, page 42, line 21, leave out <under subsection (2) if the person> and insert <(“A”) under this section if A>

Roseanna Cunningham

139 In section 28, page 42, line 22, leave out <that the person> and insert <to the person intending to make muirburn that A>

Roseanna Cunningham

140 In section 28, page 42, line 26, after <notice> insert <under this section>

Roseanna Cunningham

141 In section 28, page 42, line 29, leave out <The notice> and insert <Notice under this section>

Roseanna Cunningham

142 In section 28, page 42, leave out lines 40 and 41

Roseanna Cunningham

143 In section 28, page 43, leave out lines 6 and 7

Roseanna Cunningham

144 In section 28, page 43, line 8, leave out <or section 24(2)>

Roseanna Cunningham

145 In section 28, page 43, line 14, at end insert <under section 24(2) or 26>

Roseanna Cunningham

146 In section 28, page 43, line 16, leave out <24> and insert <24(2)>

Roseanna Cunningham

147 In section 28, page 43, line 39, after <muirburn)> insert—

  <(  ) in the title, for “Offences” substitute “Penalties etc. for offences”,
   (  )>
After section 28

Roseanna Cunningham

148  After section 28, insert—

"Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act

After section 34 of the 1946 Act, insert—

"34A  Offences by bodies corporate etc.

(1) Where an offence under this Act has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body; or

(b) a person who purported to act in any such capacity,

he (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who was concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.".

Bill Wilson

156  After section 28, insert—

"Tree conservation areas

The Town and Country Planning (Scotland) Act 1997 (c.8) is amended as follows.

After section 171, insert—

"171A  Tree conservation areas

A planning authority may, if they consider it desirable to preserve or protect a tree, group of trees or woodland in their district, designate the area in which the tree, group of trees or woodland is situated as a tree conservation area."."
(3) In section 172 (preservation of trees in conservation areas), in subsection (2), after “area” insert “or a tree conservation area”.

**After section 31**

**Robin Harper**

157* After section 31, insert—

<SSSI: planning applications with adverse effect on natural features>

In the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432), after regulation 25, insert—

“25A Applications adversely affecting a site of special scientific interest (SSSI)

(1) This regulation applies where the conditions in paragraph (2) are met.

(2) Those conditions are that—

(a) in relation to a development proposal, Scottish Natural Heritage (SNH) has been consulted in accordance with Regulation 25 and paragraph 2 of Schedule 5; and

(b) SNH has advised that the development proposal, referred to in paragraph (a), would, if approved and proceeded with, lead to the destruction or damage to a natural feature specified in an SSSI notification.

(3) Before determining any application to which this regulation applies, a planning authority must consult SNH on the measures that may be taken to mitigate or compensate for, as far as practicable, the destruction or damage to a natural feature specified in an SSSI notification.

(4) Any decision to approve an application to which this regulation applies must be subject to conditions that ensure that the measures, advised by SNH under paragraph (3), are taken.

(5) The conditions referred to in paragraph (4) may require actions by the applicant or by any other person or body but, in the case of such other person or body, approval of the condition must be subject to the consent of that person or body who may require the applicant to fund their actions.”.

**Section 32**

**Roseanna Cunningham**

149 In section 32, page 48, line 6, at end insert—

<In section 8B(1) (protection afforded to spent alternatives) of the Rehabilitation of Offenders Act 1974 (c.53), after paragraph (c) insert—

“(ca) has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section.”.>
In section 33, page 49, line 5, at end insert—

“27A Crown application: sections 23 to 27

(1) Sections 23 to 27 (including orders made under section 23AA) of this Act bind the Crown.

(2) No contravention by the Crown of any provision made by or under sections 23 to 27 of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing those provisions, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), sections 23 to 27 (including orders made under section 23AA) apply to persons in the public service of the Crown as they apply to other person.”.

After section 66A of the 1981 Act, insert—

“66B Application of Part 1 to Crown: Scotland

(1) Subject to subsections (2) to (5), Part 1 (including regulations and orders made under it) bind the Crown.

(2) No contravention by the Crown of any provision made by or under Part 1 makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), any provision made by or under Part 1 applies to persons in the public service of the Crown as it applies to other persons.

(4) A species control order may be made under section 14D in relation to Crown land only with the consent of the appropriate authority.

(5) The powers conferred by sections 14M and 19ZC are exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this section, “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;

(b) belongs to Her Majesty in right of Her private estates;

(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or

(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

(7) In this section, the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;

(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;

(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;

(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.

(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

( ) After section 13 of the 1992 Act, insert—

“13A Crown application: Scotland

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.”.

( ) In section 44 of the 1996 Act—

(a) for subsection (1), substitute—

“(1) This Act binds the Crown, subject to such modifications as may be prescribed.”,

(b) after subsection (2), insert—

“(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (3), this Act applies to persons in the public service of the Crown as it applies to other persons.

(5) The power conferred by section 15 of this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5), “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;
(b) belongs to Her Majesty in right of Her private estates;
(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department”.

(7) In subsection (5), the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;
(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;
(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;
(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.

(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”
3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Reviewing of birds and animals included in certain Schedules to the 1981 Act
14

Definition of wildlife crime for reporting purposes etc.
106

Sustainable deer management (including content of and compliance with code of practice)
151, 109, 110, 111, 152, 121, 123, 124

Deer: minor amendments
107, 126

Conditions for taking or killing deer in certain circumstances
108, 129, 130

Code of practice: review etc. and procedure
112, 113, 114, 115, 116, 117, 158, 118, 119, 120, 122

Notes of amendments in this group
Amendment 158 pre-empts amendments 118, 119 and 120

Exclusion of deer from land in circumstances where taking or killing allowed
159, 160, 161, 162, 163, 164

Deer control schemes: procedure
125, 127, 128
Register of persons competent to shoot deer: consultation
165

Offences by bodies corporate etc. under the 1946 and 1996 Acts
131, 148

Action intended to prevent suffering of deer
166

Duty to further the conservation of biodiversity and Scottish biodiversity strategy
18, 153, 154, 155

Muirburn
132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147

Tree conservation areas
156

Planning applications adversely affecting SSSIs
157

SSSIs: effect of notice of intention to comply with restoration notice
149

Crown application
150

Amendments already debated

Reports on illegal killing of wild birds and wildlife offences generally
With 23 – 58

Protection of wild hares etc.
With 24 – 15, 16, 17
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

EXTRACT FROM THE MINUTES

2nd Meeting, 2011 (Session 3)

Wednesday 19 January 2011

Present:

Karen Gillon  Liam McArthur
Elaine Murray  Peter Peacock
John Scott (Deputy Convener)  Stewart Stevenson
Maureen Watt (Convener)  Bill Wilson

Wildlife and Natural Environment (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).


Amendment 158 was agreed to (by division: For 5, Against 3, Abstentions 0).

The following amendments were disagreed to (by division):

159 (For 1, Against 7, Abstentions 0)
160 (For 1, Against 7, Abstentions 0)
161 (For 1, Against 7, Abstentions 0)
162 (For 1, Against 7, Abstentions 0)
163 (For 1, Against 7, Abstentions 0)
164 (For 1, Against 7, Abstentions 0).

The following amendments were moved and, with the agreement of the Committee, withdrawn: 14, 106, 151, 112, 125, 165, 18, 156 and 157.

The following amendments were pre-empted 118, 119 and 120.

The following amendments were not moved: 58, 109, 110, 111, 152, 121, 123, 124, 128, 153, 154 and 155.
Sections 26, 27, 29, 30, 31, 34 and 35, and the long title were agreed to without amendment.

Section 21, the schedule, and sections 22, 23, 24, 25, 28, 32 and 33 were agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Rural Affairs and Environment Committee

Wednesday 19 January 2011

[The Convener opened the meeting at 09:31]

Wildlife and Natural Environment (Scotland) Bill: Stage 2

The Convener (Maureen Watt): Good morning. I welcome everyone to the Rural Affairs and Environment Committee’s second meeting of 2011. I remind you all to switch off mobile phones and BlackBerrys, as they impact on the broadcasting system.

Our first item of business is consideration of amendments at stage 2 of the Wildlife and Natural Environment (Scotland) Bill. Members should have in front of them their copies of the bill, the third marshalled list of amendments and the third set of groupings. I remind members that we must complete our stage 2 consideration of the bill today.

I welcome Roseanna Cunningham, the Minister for Environment and Climate Change, and her officials. I remind members that officials cannot participate in the debate.

After section 20

The Convener: Group 1 is on the reviewing of birds and animals included in certain schedules to the Wildlife and Countryside Act 1981. Amendment 14, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray (Dumfries) (Lab): I am so far down the table today that I feel as if I have joined the bill team. My position often feels a wee bit like the naughty step, but I am even further down now.

Our first item of business is consideration of amendments at stage 2 of the Wildlife and Natural Environment (Scotland) Bill. Members should have in front of them their copies of the bill, the third marshalled list of amendments and the third set of groupings. I remind members that we must complete our stage 2 consideration of the bill today.

I welcome Roseanna Cunningham, the Minister for Environment and Climate Change, and her officials. I remind members that officials cannot participate in the debate.

Amendment 14, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray (Dumfries) (Lab): I am so far down the table today that I feel as if I have joined the bill team. My position often feels a wee bit like the naughty step, but I am even further down now.

The current arrangements require only some of the schedules of the 1981 act to be reviewed periodically. Schedules 5 and 8 are subject to five-yearly review by statute, and the others are reviewed on an ad hoc basis by ministers or Scottish Natural Heritage and the Joint Nature Conservation Committee. Schedule 1 has apparently never been reviewed.

Since my amendment was drafted, it has been pointed out to me that there has been an amendment to the 1981 act that means that the word “jointly” is included in section 24 on the review of schedules 5 and 8. That may be an issue, because there is no parallel change in the United Kingdom legislation.

If there is a technical problem with amendment 14, I invite the minister to advise us on whether she agrees with the sentiment of it and whether we could withdraw it today and rewrite it for stage 3 or make the amendment and amend it appropriately at stage 3.

I move amendment 14.

The Minister for Environment and Climate Change (Roseanna Cunningham): I fear that I will disappoint Elaine Murray. We will consult on the upcoming quinquennial review of schedules 5 and 8 of the 1981 act shortly. Reviewing those schedules is resource intensive, and to force a quinquennial review of a further nine schedules would result in a huge amount of resource being expended without any clear corresponding gain.

Amendment 14 makes changes to section 24 of the 1981 act, which provides for Great Britain-wide reviews by a range of conservation bodies. It can therefore be read as putting new duties on Natural England and the Countryside Council for Wales to carry out reviews, and we cannot really do that through our legislation without the agreement of those bodies, which has not been obtained.

We already have the power to vary schedules under section 22 of the 1981 act, which can be used where, for example, SNH advises that a change to a schedule should be considered. We would then proceed with that change and the accompanying consultation in the normal way. In my view, that is a far better use of scarce resources than bringing in an obligation for automatic reviews regardless of need. That is why I cannot support amendment 14.

The current quinquennial review is being carried out separately in Scotland and England and Wales, with two separate consultations. Previously, the Department for Environment, Food and Rural Affairs carried out the review on a Great Britain basis, so there has been a change in the way that it is done.

Elaine Murray: Given that there is a technical issue with the amendment anyway, I seek leave to withdraw it.

Amendment 14, by agreement, withdrawn.
Amendment 58 not moved.

The Convener: Group 2 is on the definition of wildlife crime for reporting purposes. Amendment 106, in the name of Liam McArthur, is the only amendment in the group.
Liam McArthur (Orkney) (LD): In the discussion on the various amendments on vicarious liability and related issues last week, we heard the committee’s concerns about the inconsistent approach by various police forces throughout Scotland to wildlife crime in general and to raptor persecution specifically. Last week, we also saw the Cabinet Secretary for Justice come as close as he felt able to nailing his colours to the mast in relation to a single nationwide police force. Although that may address any problems of inconsistency, I suspect that only a supreme optimist would assume that there would be a levelling up of the standards set by Grampian Police, for example, in the policing of wildlife crime, rather than a levelling down.

In his evidence to us, Constable David McKinnon confirmed that all eight forces submit monthly returns to the national wildlife crime unit, which collates returns for the UK. However, Constable McKinnon also said that whether incidents were properly recorded as crimes and therefore recognised in crime statistics was another matter entirely.

Amendment 106 will, I hope, address that point. The minister may argue that the situation has already improved through the work of the partnership for action against wildlife crime Scotland. There may be a strong case for that, but it does not entirely square with the evidence that we have taken in recent weeks and months.

Amendment 106 may need to be refined, but I hope that the minister will acknowledge that inconsistency in enforcement is a problem. While budget constraints will make improving the situation more difficult than ever, it should be borne in mind that inconsistency of approach between the forces predates any budgetary squeeze.

On that basis, I move amendment 106 and look forward to what the minister has to say.

Peter Peacock (Highlands and Islands) (Lab): I support the principle that Liam McArthur has outlined. We often ask how we can get the attention of people out in the field in all sorts of areas of public policy, and the answer is to collect statistics. One element that lies behind the issue is the need for better reporting on wildlife crime. That would, one hopes, attract more policy attention and effort on the matter.

Roseanna Cunningham: I have considerable sympathy with the sentiments behind Liam McArthur’s amendment 106. In a spooky coincidence, the definition that he is talking about was developed by PAW Scotland. It was deliberately broad, because it was designed to be used by the partnership to provide an overarching direction to which all partners could sign up. It was never intended to be focused enough to be used in law enforcement or as a recording standard by any statutory bodies.

The report “Natural Justice: A Joint Thematic Inspection of the Arrangements in Scotland for Preventing, Investigating and Prosecuting Wildlife Crime” recommended that a national minimum standard of investigation should be developed, and that is currently being progressed by the national wildlife crime unit. It will not be binding on forces, but we hope that it will be ratified by the Association of Chief Police Officers in Scotland and will go some way towards setting a minimum standard for the police response to which amendment 106 refers.

I am not sure that imposing the provisions of amendment 106 would actually achieve the benefits that Liam McArthur is seeking. There are issues around the relationship between the definition and police response services, although the amendment allows further discussion of some of the issues that arose at stage 1.

Wildlife crime is currently a recordable crime, and a Scottish crime recording standard has been in place for some time. That means that all crimes are recordable, and the standard that has been set for recording them is suitably high. The independent police forces—currently there are eight of them, although who knows how many of them there will be in the future—will apply the same high standard to recording wildlife crime that they apply to recording all other crimes. They also report incident data to the national wildlife crime unit, following guidelines set by that unit.

There are other changes on the horizon that might address some of Liam McArthur’s concerns. First, the issue of reporting to Parliament on wildlife crime was debated at the committee’s first day of stage 2 consideration, and we will return to that matter at stage 3. Secondly, as I indicated earlier, the national wildlife crime unit is developing a national minimum standard of investigation for wildlife crime. I am opposing amendment 106 not because I think that it is not a good subject for debate and discussion, but because a considerable amount of work is already going on in the area, so the amendment is unnecessary.

Liam McArthur: I thank Peter Peacock for his supportive comments, and I welcome the constructive tone and content of the minister’s remarks. I will reflect further on the issue, and I accept the points that she has made in relation to how developments might address the committee’s concern about inconsistency. On that basis, I will not press my amendment.

Amendment 106, by agreement, withdrawn.
Section 21—Repeals relating to Part 2 and game licensing

Amendments 15 and 16 moved—[Roseanna Cunningham]—and agreed to.

Section 21, as amended, agreed to.

Schedule—Repeals relating to Part 2 and game licensing

Amendment 17 moved—[Roseanna Cunningham]—and agreed to.

Schedule, as amended, agreed to.

Before section 22

The Convener: The next group is on sustainable deer management, including the content of and compliance with the code of practice. Amendment 151, in the name of Robin Harper, is grouped with amendments 109 to 111, 152, 121, 123 and 124.

Robin Harper (Lothians) (Green): It is clear that, despite efforts in the right direction, there has been a history of deer management being carried out without always according the best interests of the natural environment their proper place. One of the key recommendations of the Deer Commission for Scotland, which the Government supported in its first consultation, is missing: that there should be a general duty on all public bodies and land managers to manage deer sustainably.

Amendment 151 seeks to rectify that omission. By placing sustainability at the forefront of the Deer (Scotland) Act 1996, it sends a strong message to deer managers and to those who have been drafting and agreeing the code of practice that Parliament expects them to act with sustainability at the forefront of their minds, not just as a desirable afterthought. That view is shared by all the non-governmental organisations that are involved in deer management, I am assured, both in relation to their own land and for wider environmental reasons. Those organisations include RSPB Scotland, the National Trust for Scotland and the John Muir Trust.

That was also the view of the Government’s previous advisers on deer, the Deer Commission, and I believe that it is the view of the Government’s current advisers, whose chief executive recently wrote:

“We maintain the view that a duty on individual land managers to comply with a code of sustainable deer management would be beneficial in encouraging collaborative deer management.”

In my view, such a duty should also be welcomed by responsible land managers who want to do the right thing—collaborating with neighbours, for example, and managing deer numbers down to more sustainable levels—but who feel frustrated by less responsible neighbours. I will want to hear the Government’s response and responses from committee members before I make up my mind whether to press amendment 151.

I move amendment 151.

09:45

Liam McArthur: We are pressed for time, so I should say that the majority of my remarks on the amendments will come under this section.

At stage 1, the committee was made well aware of the strongly held views about the need for a general duty on sustainable deer management and of the calls from a number of those with an interest and involvement in the sector for the bill to compel compliance, as Robin Harper has suggested. On balance, we emerged from stage 1 satisfied that, with its backstop powers, the Government had probably taken the right approach, therefore I am reluctant to support amendment 151. That said, there was general agreement on the need for further safeguards to ensure that the code has real teeth, that any failure to act to address problems where and when they arise will have consequences, and that there is absolute clarity about how, when and what sanctions will apply.

Amendments 109 and 110 seek to bolster the code of practice by requiring the practice of sustainable deer management and collaboration on deer management to be included. The very possibility that such aspects might be absent from any code could undermine confidence in its ability to achieve its objectives. I hope that my amendments address that in ensuring that action is not simply an option and I hope that I can convince Robin Harper that his own objectives can be met by other means.

Amendment 111 seeks to ensure that arrangements for implementing cull targets are included in the code recommendations. As colleagues will recall from the evidence that we took, the most serious implication of poor and unsustainable deer management is overgrazing, and amendment 111 seeks to deal with that by making action possible where it is necessary. Given that the natural range of deer means that managing them sustainably requires a high degree of collaborative action between different estates, landowners and managers, amendment 152 requires, rather than permits or recommends, such a collaborative approach, with the provision of advice on how that could operate.

On collaboration, I repeat my earlier comment that the backstop powers that ministers have chosen to use in this bill are, on balance, the right approach, but I point out that the committee heard repeatedly of the failure of deer management
groups to meet. Indeed, many groups do not have management plans and most do not have a formalised process for setting and monitoring cull targets. Although one would hope that deer managers would opt to follow the proposed voluntary approach—the majority almost certainly will—I think that where such an approach does not work there is a case for empowering SNH to intervene and produce a plan that must be complied with. I repeat that that course of action would be taken only when no voluntary action was taken and where it could help to address the problems created by those who persistently fail to cooperate with their neighbours and SNH. In that regard, it should have no adverse effect on responsible deer managers; indeed, it could even help to avoid the waste of time, energy and resources that they suffer as a result of certain land managers’ refusal to play ball.

On a number of issues related to the bill, the committee felt that there was a case for on-going parliamentary oversight, partly to reflect an expectation that circumstances will change in future and partly as an attempt to keep minds focused on the objectives behind the measures that are being put in place. Amendment 121 follows that theme by seeking to require compliance with the deer code to be monitored with regular reports to Parliament, which would include information on action that had been taken to deal with non-compliance. As the information needed for such a report will already have been compiled by SNH, I do not imagine that the additional work load will be onerous.

Finally, on amendment 124, I think that the code’s application can be improved by strengthening the link with provisions under sections 7 and 8 of the 1996 act.

I look forward to hearing what the minister and other colleagues have to say.

**Stewart Stevenson (Banff and Buchan) (SNP):** I wonder whether, in his summing up, Robin Harper will indicate the number of people who will be caught by the inclusion of a duty on owners or occupiers of land on which deer are found. I ask that question because of my own domestic circumstances: my one-acre plot is a regular haunt of deer, and this winter there were at one point double figures within the curtilage of our house. It is clear that, although the proposal is well intentioned, it might place a duty on people who are incapable in the practical world of discharging it meaningfully. I am interested to hear Robin Harper’s comments.

**Peter Peacock:** I have considerable sympathy with Robin Harper’s proposal. On the face of it, it has a simple attraction—it is a clear requirement to act in a way that is consistent with many other policies. I think that the Government’s preferred opening position was to have such a measure in legislation to strengthen arrangements, which many bodies—including the former Deer Commission for Scotland—and many NGOs argued were not working effectively.

I have sympathy with the principle. However, I understand from earlier debates that the idea is problematic under the European convention on human rights. It would help if the minister set out clearly why that might be a problem and, if so, whether it is insurmountable. If that is a genuine obstacle—which I concede it could be—Liam McArthur’s amendments become important, as they would strengthen the policy that the Government has adopted in lieu of pursuing its original position as set out in the consultation document.

For the reasons that Liam McArthur properly set out, progressive intervention would allow and encourage people to reconcile matters if they could. I think that he used the term “persistent failure”. If that occurred, SNH would have a way of intervening and requiring action to be taken. That would in itself be difficult, but the provisions would have an important set of safeguards.

I am happy to support Liam McArthur’s amendments. I support in principle Robin Harper’s sensible objective, but it might not work in the circumstances. I am interested to hear what the minister has to say.

**John Scott (Ayr) (Con):** Like Liam McArthur, I support the backstop provisions in the bill as the right approach, but that is as far as I go. It is highly unlikely that the deer code would not make recommendations for sustainable deer management, but saying that it “must cover arrangements for ... culling targets” is going too far, as that implies that sustainable management always means a reduction in deer numbers. The bill will amend section 7 of the Deer (Scotland) Act 1996 to repeal a reference to a reduction in numbers, so the implication that I described is contrary to that. If what is proposed were to be in the code, we should also say that the code must set out how, in appropriate circumstances, deer numbers could be increased in the interests of sustainable deer management. Therefore, I am on balance inclined to vote against amendments 109 to 111.

The code may make provision on collaboration, but I understand that amendment 152 would oblige SNH to “cover arrangements for collaboration”. The amendment should be resisted, because many landowners will collaborate more effectively on a voluntary basis.

**Liam McArthur:** Does John Scott concede that, in the evidence that we heard—not least on our
visit to Abernethy and the Alvie estate—plenty of examples were given of the voluntary approach not working? That was not through a lack of willingness among the majority of land managers but through the repeated failure of some individuals or estates to engage with the process.

**John Scott:** I will deal with that point in my comments on amendment 123. SNH should retain discretion to leave landowners to get on with collaboration themselves.

Amendment 123 attempts to introduce mandatory deer management planning by SNH. It would allow SNH to make an order to require owners and occupiers of an area of land to draw up a deer management plan when none was in place. The amendment should be resisted, primarily because the new arrangements for control agreements and control schemes render it unnecessary—that relates to Liam McArthur’s point.

The threat of SNH being more able and willing to use its step-in rights should be enough to encourage voluntary deer management planning. In those cases in which it is not enough, the Association of Deer Management Groups could play a role in brokering a deal.

Like other members, although I agree with the sentiments of Robin Harper’s amendment 151, I do not feel able to support it, and I believe that Liam McArthur’s amendment 121 would impose another reporting requirement, which would be a further unnecessary burden, so I cannot support it.

**Elaine Murray:** I support Liam McArthur’s amendments, which I think are in line with the evidence that we heard at stage 1. He mentioned our visit to the Alvie estate, where it was clear that some landowners work extremely hard on a voluntary basis to make deer management work, whereas others are not interested and do not come to the table. In such cases, there is little that the deer management group or SNH can do to force those people to comply with what is in the best interests of the environment.

I believe that the bill needs to be strengthened a bit. I understand why the Government moved away from its initial position in the consultation, which is the position that Robin Harper is trying to reinstate through amendment 151. Difficulties were associated with that position, which is why the Government felt that it needed to move away from it, and was probably correct to do so. However, at present, the bill’s provisions are too weak and need to be strengthened along the lines that Liam McArthur has proposed in his amendments.

**Bill Wilson (West of Scotland) (SNP):** I think that it is fair to say that a constant theme throughout our evidence gathering was what we should do with people who refuse to co-operate with sustainable deer management objectives, which brings me to a question for Robin Harper. For people who do not carry out the proposed duty, there does not seem to be any penalty, so his proposal would not provide enforcement any more than anything else that has been proposed. I would appreciate it if he addressed that point in his summing up, and I look forward to hearing the minister’s remarks on how we can deal with the limited number of individuals who just do not co-operate.

**The Convener:** Over to you, minister.

**Roseanna Cunningham:** My comments will be more lengthy than they might have been. I will start by addressing amendment 151, which I have numerous concerns about.

First, it does not seem to me to be entirely reasonable to expect to be able to impose such a wide-ranging duty that is entirely reliant on an embryonic code of practice. I am concerned that that would frustrate the progress that SNH is making in getting stakeholders together to aid development of the code, and I do not want that to happen. The code is being developed as a practical guide for deer managers, and I understand that SNH’s intention is that it will contain a variety of musts, shoulds and coulds.

I agree that deer management is a significant issue in many areas of Scotland, but we should not allow ourselves to be sidetracked into thinking, as amendment 151 might imply, that it is such a major concern throughout the country as a whole that every owner or occupier of land on which a deer appears should have the duty of complying with an as-yet-unseen code of practice. I think that that point was well made by Stewart Stevenson. Particularly over recent weeks in Scotland, we will all have seen deer in slightly odd places. If amendment 151 were agreed to, there would be the danger that it would trigger a requirement on the owners of those fields to comply with a deer management code of practice that they had probably not given a single thought to. That is a huge issue.

I am not sure what Robin Harper expects to happen in the event that amendment 151 is agreed to, because it proposes no sanctions for non-compliance. Without sanctions, it would take us no further forward. It falls into the category of visionary provisions, which we discussed earlier in proceedings and about which I raised my concerns with the committee at stage 1.

10:00

The bill is meant to be practical—much of it will happen by way of regulation, codes of practice or, indeed, the criminal court—and we want to be
careful not to create difficulties by being vague. What amendment 151 proposes does not sit well with all the practical and substantial things that have been strengthened in the statutory framework for deer management and the accompanying powers of SNH.

This is not a pejorative comment—we all do it—but when Robin Harper quoted SNH's advice at length he carefully missed out the next bit of its advice, which was to recognise the legal and practical difficulties of doing what he proposes. He is smiling—I am absolutely sure because he saw that bit of the advice as well. We cannot ignore those legal and practical difficulties, no matter how much we might wish to do so. I accept that Robin Harper might be trying to find a way round the legal difficulties that have been highlighted in the duty for sustainable deer management, but I think that we have already found an adequate solution.

The bill provides SNH with sharpened powers of intervention that will ensure that action can be taken when deer are not being managed in the public interest. Those for whom deer management is a relevant and real concern—not people who wake up one morning to discover a family of deer feasting in one of their fields, as I saw next to the A85 just a few days ago—will be able to call on the code to guide their management practices and provide direction on how to ensure they deliver in the public interest. The consequences of failing to deliver are clear, fair and proportionate, so we do not support amendment 151.

I remain unclear, despite Liam McArthur's comments, how amendment 123 would improve the perceived weaknesses in deer management. What he proposes is already available by the operation of sections 7 and 8 of the Deer (Scotland) Act 1996. The drawing up of a deer management plan is an obvious early step in the preparation of a control agreement under section 7, and failure to develop a plan under section 7 would lead to section 8 procedures, which could include production of a plan by SNH. SNH already has the facility to recover expenses for the section 8 procedures.

I recognise Liam McArthur's aim, which is an attempt to further collaboration, but there is little to be gained from compelling neighbours to get on and agree. Some of this is analogous to the difficulties that are experienced in mediation services. Mediation works best or, rather, works only when there are willing partners. The compulsion that could be imposed by amendment 123 could be counterproductive for the work of local deer officers. There are also problems with the drafting and approach of amendment 123. For example, the bill introduces important minimum timeframes for intervention powers, but the corresponding timeframes in the amendment are twice as long. I am not sure whether Liam McArthur intended that; it may not be something that he really appreciated.

Amendment 124 would introduce non-compliance with the code, rather than an assessment of damage, injury or public safety, as a trigger for intervention action. As I said earlier, the code will contain advice and examples on best practice and cover a wide range of circumstances and scenarios. We therefore need to be clear that what we are really concerned about is impacts.

The trigger for intervention should not be whether the code is being followed in every last—and possibly irrelevant, because quite a lot in the code might not be of particular moment—detail; rather, the trigger should be whether deer are causing an adverse impact that needs to be managed. I appreciate that there is a debate about that, but that—rather than compliance or otherwise with the code—should be the trigger. My view on the best approach that SNH can take is that it should have discretion to intervene, guided by parts of the code, of course, rather than that it should attempt to adopt a one-size-fits-all approach, which would, I think, be unworkable. I recognise Liam McArthur's best intentions, but I ask committee members not to support amendments 123 and 124.

Peter Peacock: I hear what you are saying and what you are urging the committee to do, and I have picked up some of the technical arguments, but notwithstanding that, do you accept that the committee has a strong desire to strengthen the bill? Before you conclude your remarks, can you say whether there are things that you might be prepared to do to work with members to try to achieve that before stage 3?

Roseanna Cunningham: Our view at the moment is that what is in the bill will achieve what people want it to achieve. I appreciate that there is an honest difference of opinion about whether it will have the effect that is desired, but our view is that what we have proposed will deliver the benefits that we are saying will be delivered.

I reiterate the point that the concern is the outcome. We should not be too prescriptive about the process by which that outcome is achieved. I acknowledge that the intervention powers have not been used as often as they might, but I think that the bill will help to change that. If existing powers are not being used, the issue is whether we should attempt to ensure that they are used and strengthen them rather than introduce yet more powers. I understand the debate about that, but our opinion is that the provisions will achieve that result.

Peter Peacock: In practice, how can we encourage the use of the powers that will be
provided in the bill, given that previous powers have not been used?

Roseanna Cunningham: I will come on to that, but first I want to deal with the remainder of the amendments in the group.

Amendments 109 to 111 and 152 set out in a more prescriptive manner what the code of practice should address. The code may well cover all those points but, as committee members are aware, it is being developed by SNH with the support of a wide range of stakeholders. I am keen that the code should be completed and laid before Parliament as soon as possible. It is likely that the amendments would delay the process for formulating the code and add to the complexity of the issues that the code would have to address. We would therefore lose the benefits of having it in place sooner. I do not want the development of the code to be impeded by a focus in the bill on certain compulsory or advisory areas for inclusion, with the risk that they might be included at the expense of other potentially significant matters. Members will have to accept that I am not in day-to-day conversation with SNH officials about the day-to-day process of developing the code.

Liam McArthur: I appreciate that that work is under way. None of us wants it to be delayed. The minister said that she expects that what I seek to require through the amendments will be in the code of practice and went on to suggest that the inclusion of those requirements could delay the process. I am struggling to see how the two correlate, or how they can co-exist.

Roseanna Cunningham: The code is being developed in discussion with a wide range of people on the basis that there should be voluntary development of it by agreement.

If we start imposing things from the outside we are in danger of losing a lot of the good will that is building up around the development of the code. I am a little bit concerned about that, because much of what we are talking about will depend on people continuing to have good will towards what we are trying to achieve. My biggest concern is that the focus on the code could become a focus about compulsion rather than on what the code is developed to do. That is a potential problem.

Committee members will know that a lot of stakeholders are involved and that a lot of people have views. I appreciate that we will never get unanimous agreement, but we are trying to bring together as many people as we possibly can. My concern is that if we start talking about compulsion we will lose them from the process, and I do not want that to happen.

Deer management is about much more than culling deer. We are trying to encourage the use of a range of deer management solutions, which will be suitable in different circumstances, at different times of the year or in different areas. Of course, that complicates matters because there is not a single focus for the discussion. For those reasons, I do not support amendments 109, 110, 111 and 152.

Amendment 121 would require SNH to issue an annual report on compliance with the code. I accept that Liam McArthur and other members will be looking for information on the operation of the code, but SNH publishes an annual report, which will contain information about action taken on deer management, just as the previous Deer Commission for Scotland annual reports did. The code will, of course, be kept under constant review, but I do not think that we will be able to publish lists of deer managers who may or may not be carrying out deer management in a sustainable manner. That would also jeopardise the collaborative approach that SNH is seeking to adopt whenever possible. I do not support amendment 121.

The merger of the Deer Commission for Scotland with SNH last summer has brought together the skills and experience of both in sustainable deer management. I am optimistic that the inevitable fresh thinking that will result from that, as well as the measures that we have introduced in the bill, will lead to a sound future for sustainable deer management. The key is cooperation between all the parties involved. It would be wrong to constrain that by introducing additional processes or detailed procedures that do nothing to deliver the improvements that committee members seek. That is why I do not support the amendments in the group.

The answer, in a sense, to Peter Peacock’s question is that I expect that we will see a significant change in the way things are done. That change will be brought about by the expertise of the Deer Commission for Scotland staff being added to SNH.

Robin Harper: To answer Stewart Stevenson’s question, I do not know how many garden owners would be affected, but amendment 151 states:

“It is the duty of—

(a) a public body or office-holder owning, occupying or otherwise controlling land on which deer are found;

(b) an owner or occupier of land on which deer are found”.

The phrase “deer are found” should be interpreted as meaning regularly found and as referring to land that is inhabited by deer. The provision would not apply to people’s gardens into which deer occasionally wander. If, legally, the amendment is not tight enough—
Roseanna Cunningham: Can I make an intervention?

Robin Harper: Yes.

Roseanna Cunningham: This is the problem with drafting provisions that will go into legislation. You may interpret the amendment as meaning “regularly” but that is not what it says, and if I were a clever lawyer—which I might have been at one time—I would act on that.

Robin Harper: Thank you. I was going to concede that point. Having listened to the responses, I am clear that amendment 151 needs to be given more thought, even if it is brought back at stage 3, so I will withdraw it.

Amendment 151, by agreement, withdrawn.

Section 22—Deer management etc

10:15

The Convener: The next group is on minor amendments on deer. Amendment 107, in the name of the minister, is grouped with amendment 126.

Roseanna Cunningham: Amendments 107 and 126 are minor technical amendments that amend the wording of changes that the bill makes to the Deer (Scotland) Act 1996.

Amendment 107 corrects the provision for additional issues that SNH will have a duty to take into account. They are public safety and the need to manage deer in urban and peri-urban areas. I refer to the discussion that we have just had on amendment 151, because deer are now appearing regularly in urban and peri-urban areas.

Amendment 126 corrects the provision that adds deer welfare as a trigger for SNH to take emergency measures. It removes an unnecessary word and is intended to make the bill as clear as possible.

I move amendment 107.

Amendment 107 agreed to.

The Convener: The next group concerns conditions for taking or killing deer in certain circumstances. Amendment 108, in the name of the minister, is grouped with amendments 129 and 130.

Roseanna Cunningham: As the committee is aware, the Deer (Scotland) Act 1996 sets out that damage or serious damage is the threshold at which action can be taken. Amendments 108, 129 and 130 would change “serious damage” to “damage” as the threshold for action. That is intended to prevent damage to crops, pasture, foodstuffs or woodland.

All the amendments in the group relate to sections under which some form of authorisation from SNH is required. They would provide consistency throughout the 1996 act and greater certainty for the operation of the various authorisation functions that SNH carries out.

The committee agreed the difficulty in establishing what serious damage, rather than damage, consists of and we heard evidence that the term may have inhibited the use of intervention powers that are provided for elsewhere in the legislation.

Amendment 108 also permits night shooting where it is done in the interests of public safety. It is most often done in relation to the lethal control of deer in the vicinity of roads. Occasions may arise in which it is safer to shoot at night. Such shooting would still require authorisation from SNH, which would need to be satisfied that the activity would be conducted safely and responsibly.

I move amendment 108.

John Scott: Amendment 108 would remove the requirement in the 1996 act to show that “no other means of control ... might reasonably be adopted” before an occupier can get an authorisation to take or kill deer at night and replaces it with a requirement that it be in the interest of public safety. For many farmers that will be acceptable, but occupiers’ rights can be used by some landowners to cull deer at night to the prejudice of sporting interests on neighbouring estates.

As I am sure the minister agrees, night shooting in general is fraught with potential dangers, even in apparently unoccupied woodlands. As much as possible should be done to avoid night shootings on safety and, indeed, deer welfare grounds. Night shooting necessitates the use of dogs to follow up wounded deer from around dawn and dusk, which itself implies less good-quality shooting and deer welfare issues.

Therefore, my preference would be to leave the requirement to show that “no other means ... might reasonably be adopted” and I am minded to oppose amendment 108.

Bill Wilson: I am happy to see the word “serious” removed. I am convinced that a clever lawyer would have used it to obviate any attempt at control measures.

Roseanna Cunningham: I should perhaps pick up on the comments that John Scott made. I remind the committee that any shooting will still require authorisation from SNH, which will need to be satisfied that the activity will be conducted in a safe and responsible manner. This is not about...
arbitrary decision making on the part of owners or occupiers; it is about properly authorised activity. The authorisation process will involve assessing safety and responsibility.

We do not believe that John Scott’s concerns are justified. We will have a conversation with John Scott to establish exactly where, in practical terms, what he is concerned about might happen. We do not believe that his concerns are justified, given the way the amendment is drafted.

Amendment 108 agreed to.

Section 22, as amended, agreed to.

Section 23—Deer management code of practice

The Convener: Amendment 109, in the name of Liam McArthur, has already been debated with amendment 151. Will you move amendment 109, Liam?

Liam McArthur: I will reflect further on the minister’s remarks. I might try to bring back some amendments at stage 3, but, for the time being, I will not move my amendments 109 to 111 or 152.

Amendments 109 to 111 and 152 not moved.

The Convener: The next group is on code of practice: review et cetera and procedure. Amendment 112, in the name of Liam McArthur, is grouped with amendments 113 to 117, 118 to 120 and 122. Amendment 158 pre-empts amendments 118 to 120.

Liam McArthur: The pre-emption information reiterates the point that I was going to make: my amendment 112, John Scott’s amendment 158 and the minister’s amendment 119 generally reflect a common purpose, which is to ensure that Parliament has an opportunity to consider the code of practice and that subsequent reviews of the code can and do take place. That was a firm recommendation of the committee at stage 1 and I am pleased that, however the votes fall in a few minutes’ time, we will have achieved the objective of ensuring that the code continues to reflect good practice and developing technologies. I have pleasure in moving my amendment 112, but I will wait to hear what the minister and John Scott have to say before I decide whether to press it.

I move amendment 112.

Roseanna Cunningham: I will comment first on amendment 112. I have no doubt that SNH will wish to review the code. We have already had a discussion about that. It will want to review the code as necessary to ensure that it remains relevant. I am not sure that the proposal that that be done at least every five years would necessarily help, because it would result in the mindset of having a quinquennial review, rather than the flexibility of conducting a review when appropriate, taking into account external developments. I do not support amendment 112. I ask Liam McArthur to withdraw it, so that we can have a further discussion with him, with a view to perhaps bringing something forward at stage 3 that would allow reviews to take place, which would be acknowledged in the bill but which would not necessarily get us into the danger of saying that reviews must happen every five years—the danger is that a review would happen only every five years, even on occasions when we might think that it was appropriate for that not to be the case.

Government amendment 113 is a simple reordering of words. Government amendments 114 to 118 will ensure that a replacement or revised code is subject to the same procedures for its development and approval as are required for the original code.

Government amendment 119 responds to a recommendation of the committee to make the code subject to parliamentary scrutiny. It proposes that the code be subject to negative procedure. In contrast, John Scott’s amendment 158 proposes a combination of affirmative and negative procedure. I accept that that is consistent with the procedure proposed at stage 2 for the invasive non-native species code of practice. However, as was acknowledged by the committee in its recommendation that we give serious consideration to the use of affirmative procedure for the invasive non-native species code of practice, the codes clearly have different aims. For example, the invasive non-native species code could be used by the courts to assist in establishing criminal liability; the deer management code will not be used in that way.

I realise that the committee acknowledges the importance of the deer management code of practice—I acknowledge it too—but I feel that the use of negative procedure is appropriate. Therefore, I ask the committee to support Government amendment 119 rather than John Scott’s amendment 158.

John Scott: Government amendment 119 introduces—as the minister said—a requirement for parliamentary approval of the deer management code of practice. That is welcome, but the amendment requires only the use of negative procedure and therefore minimal scrutiny. Amendment 158 would—again, as the minister said—require the use of affirmative procedure for the first version of the code and for any replacement thereof, and the use of negative procedure for revisions. That mirrors what has been done for the invasive non-native species code of practice.

Although the deer management code might be distinguished from the INNS code in that it is not,
at the moment, to be taken into account by a court in criminal proceedings, it is nevertheless important in terms of interference with property rights, because SNH will have regard to the code when deciding whether to intervene in a person’s property rights under sections 7 and 8 of the Deer (Scotland) Act 1996. Such intervention could result in a mass cull or slaughter of deer on a person’s land against the person’s wishes. That could have serious financial consequences, and could also have consequences for the business and the community, because the affected area might be dependent on the deer-stalking industry.

The requirement for affirmative procedure for the removal of the deer management code is therefore reasonable. I urge the minister and the committee at least to reflect on that. I look forward to hearing what the minister has to say in her winding-up speech.

The Convener: I think that you meant “approval” rather than “removal”.

John Scott: I beg your pardon.

Karen Gillon (Clydesdale) (Lab): I am naturally inclined to support any amendment that would require, for the first instance, the use of affirmative procedure and therefore detailed scrutiny by the Parliament. I will be interested to hear the minister’s explanation of why that would not be necessary in this case. I wait to be convinced why I should not vote for John Scott’s amendment 158.

Roseanna Cunningham: All I can say is that neither the Subordinate Legislation Committee nor this committee raised the issue when scrutinising the bill and making their reports. I understand the principle behind the position that Karen Gillon wishes to take. However, in practice, if the use of affirmative procedure is always required, the Parliament will have considerable difficulty in making progress. The level of detail in a deer management code of practice is best worked out by those who will be operating it.

Bill Wilson: Would SNH intervene on the basis of damage done or on the basis of the code of practice? John Scott seemed to think that it would intervene on the basis of the code of practice, but I thought that it would intervene on the basis of damage done.

Roseanna Cunningham: It is damage.

John Scott: If I could intervene on Bill Wilson before this debate ends—

The Convener: You may intervene when Liam McArthur is summing up. That would be the normal procedure.

Liam McArthur: Clearly, I will be happy to take any and all interventions.

John Scott: Amendment 158 would require the use of affirmative procedure only for the first version of the code and any replacement thereof. After that, negative procedure would be used. I hope that the committee will consider that that approach accommodates what Karen Gillon and I see as necessary, and meets the minister’s requirement that it should not necessarily impose a huge burden thereafter. It would also be consistent with other parts of the bill.

10:30

Liam McArthur: Like Karen Gillon, I have at least some sympathy with the proposal that we should perhaps subject the initial code of practice to more rigorous scrutiny and provide an opportunity for those with an interest to express their views. The minister made a valid point about every revision or amendment thereafter being relatively minor. Perhaps we risk gumming up the process by subjecting each and every revision to the affirmative procedure. I am therefore minded to be sympathetic to John Scott’s proposal.

I entirely accept the minister’s comments about amendment 112 and I welcome her offer of discussion on that ahead of stage 3. I am happy to take up that offer. Five years need not necessarily be the required timeframe, but I assume that no more than five years is a reasonable threshold to set for ensuring that the code of practice is constantly updated and kept under review. On that basis, I seek the committee’s leave to withdraw amendment 112.

Amendment 112, by agreement, withdrawn.

Amendments 113 to 117 moved—[Roseanna Cunningham]—and agreed to.

The Convener: I remind members that if amendment 158 is agreed to, I cannot call amendments 118 to 120 because of pre-emption.

Amendment 158 moved—[John Scott].

The Convener: The question is, that amendment 158 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)

Against
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0,
Amendment 158 agreed to.
Amendment 121 not moved.
Amendment 122 moved—[Roseanna Cunningham]—and agreed to.

Section 23, as amended, agreed to.

After section 23
Amendment 123 not moved.

Section 24—Control agreements and control schemes etc
Amendment 124 not moved.

The Convener: The next group is on exclusion of deer from land in circumstances in which taking or killing is allowed. Amendment 159, in the name of John Scott, is grouped with amendments 160 to 164.

John Scott: The purpose of the amendments is to clarify the range of management options in the Deer (Scotland) Act 1996 so that appropriate exclusion of deer by, for instance, fencing them out of key areas is recognised alongside and as an alternative to taking or killing. At the moment, the 1996 act focuses on take or kill options, which would appear to be out of step with the notion of long-term, sustainable deer management.

As I indicated, my amendments do not seek to enforce a requirement to exclude deer, but are intended to ensure that in certain circumstances, exclusion—for example, by way of appropriate fencing or repairs to existing gates and fences—is considered as a potential solution. Exclusion might occur in relation to vulnerable woodland or road accident black spots. Emergency measures might include circumstances in which repairing a hole in a fence or gate might achieve a suitable outcome for collaborative deer management and mean that there is no need to take or kill.

I move amendment 159.

Roseanna Cunningham: John Scott’s amendments raise the important point that deer management is about more than culling. The bill already addresses the issue, as John Scott recognised in our earlier discussion of the content of the deer management code of practice. The bill proposes that the focus on reduction in number is removed from section 7 of the 1996 act and removes the prohibition of fencing forming part of the control scheme in section 8 of the 1996 act. Therefore, amendments 159 and 160 are not required.

I am concerned about the proposal in amendment 161 that would require SNH to consider the option of deer fencing in the context of taking emergency measures. In such a situation, I would not wish to see extra time wasted in considering such issues and I doubt that there would be time to construct deer fencing if an emergency arose.

John Scott: It is a matter of half an hour or sometimes a morning’s work to mend a hole in a fence in an emergency—I have done it myself on many occasions.

Amendments 162 to 164 relate to close season authorisations. It is not appropriate for us to legislate to allow SNH to authorise occupiers to exclude deer in the close season. It is difficult to see why deer fencing should be tied specifically to close season authorisations. I recognise that the use of deer fencing is often controversial but that it has uses in certain situations. However, I do not support the amendments.

The Convener: I invite John Scott to say whether he intends to press or withdraw amendment 159.

John Scott: I wish to withdraw the amendment at this stage.

The Convener: John Scott seeks the agreement of the committee to withdraw his amendment. Does any member object?

Karen Gillon: Yes.

The Convener: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Scott, John (Ayr) (Con)

Against
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 159 disagreed to.

The Convener: Amendment 160, in the name of John Scott, was debated with amendment 159.

John Scott: Not moved.

Amendment 160 moved—[Karen Gillon.]

The Convener: The question is, that amendment 160 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

For
Scott, John (Ayr) (Con)

Against
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 160 disagreed to.

The Convener: The next group is on deer control schemes: procedure. Amendment 125, in the name of Liam McArthur, is grouped with amendments 127 and 128.

Liam McArthur: It strikes me that the purpose and intent of my amendments 125 and 128 are much the same as those of Government amendment 127. I also note with no little surprise and great satisfaction that my approach appears to enjoy the advantage of brevity over the minister’s. That said, as before, I will listen to what she has to say before deciding whether to press my amendments to a vote.

Amendments 125 and 128 seek to simplify the procedures under which a deer control scheme can be introduced by replicating what happened under the Nature Conservation (Scotland) Act 2004 in relation to land management orders. As colleagues will recall, the 2004 act allows management tasks to be imposed on a compulsory basis. Where there is a failure to carry them out, SNH can step in, carry out the tasks itself and recover costs. It seems logical for there to be a similar approval and appeals process for deer control schemes.

I acknowledge that the Scottish Rural Property and Business Association is concerned about the requirement to cross-reference different pieces of legislation, but there does not appear to be opposition to the principle. The question is therefore whether the minister’s approach meets the objective more satisfactorily than mine does. I will leave her to make the case and others to decide.

I move amendment 125.

Roseanna Cunningham: As Liam McArthur has identified, his amendments 125 and 128 and Government amendment 127 all seek to achieve the same thing. Amendment 127 would update schedule 2 to the Deer (Scotland) Act 1996, which sets out the detailed application of control schemes made under section 8 of that act. It will streamline the publicity requirements and remove the very prescriptive approach to publicising control schemes. That will afford ministers and SNH more discretion in how they go about arranging publicity for a proposed scheme and allow them to take advantage of electronic communication. As well as reducing cost, it is likely to be a good deal more effective.

Amendment 127 will also remove the current rather unusual provision to hold a local public inquiry where there is an objection to ministers confirming, varying or revoking a scheme. Although a control scheme has never been made under the 1996 act—we are amending SNH intervention powers elsewhere in the bill to make them more usable—our advice is that the potential cost and resource implications had the effect of inhibiting the former Deer Commission for Scotland from implementing a scheme. The provision is replaced with a rather more conventional right of appeal to the Scottish Land Court.

Liam McArthur’s amendments 125 and 128 replicate the land management order process that is set out in the Nature Conservation (Scotland) Act 2004 and share some of the same intentions as the Government amendments. However, amendments 125 and 128 go further than is appropriate or required. For example, under the 2004 act, three months are allowed for interested parties to make representations in relation to a land management order, with provision made for that period to be extended, whereas the Deer (Scotland) Act 1996 provides for a period of 28 days in which objections can be lodged. A land management order or its amendment or revocation would have to be recorded in the register of sasines or land register. That is why I cannot support Liam McArthur’s amendments.

I ask the committee to support Government amendment 127 and I hope that Liam McArthur decides to withdraw amendment 125.

Liam McArthur: I take genuine satisfaction from the fact that, for what is probably the only time in my parliamentary career, I have come up with a briefer way than the minister of achieving an objective.

I note the minister’s concerns about the shortcomings in amendments 125 and 128. I welcome her commitment to simplifying a process that, as she acknowledged, has perhaps inhibited action in the past. On the basis that there do not appear to be any substantive differences in our approaches, I seek leave to withdraw amendment 125.

Amendment 125, by agreement, withdrawn.
Amendment 126 moved—[Roseanna Cunningham]—and agreed to.

Amendment 161 moved—[Karen Gillon].

The Convener: The question is, that amendment 161 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Scott, John (Ayr) (Con)

Against
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 161 disagreed to.

Amendment 127 moved—[Roseanna Cunningham]—and agreed to.

Amendment 128 not moved.

Section 24, as amended, agreed to.

Section 25—Deer: close seasons etc

Amendment 162 moved—[Karen Gillon]

The Convener: The question is, that amendment 162 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Scott, John (Ayr) (Con)

Against
Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 162 disagreed to.

Section 25, as amended, agreed to.

Section 26—Register of persons competent to shoot deer etc

The Convener: The next group is on register of persons competent to shoot deer: consultation. Amendment 165, in the name of John Scott, is the only amendment in the group.

John Scott: There was consultation on the concept of mandatory deer shooting competency during the earlier stages of consultation on the bill. The concept was controversial and a deferred power to make regulations has been put forward as a compromise position. As with so many deferred powers, the devil will be in the detail. However, the support of and full buy-in by the industry will be crucial to the success of any such regulations. It therefore seems reasonable that there should be consultation on draft regulations if and when they are produced.
I move amendment 165.

Roseanna Cunningham: In practice, it is difficult to imagine ministers taking such a step without some form of consultation. However, it may be that ministers are not best placed to run the consultation process. It is possible that the consultation may be linked to the SNH review process. Therefore, although I do not support amendment 165, I agree with the sentiment behind it and would be open to consideration of a redrafted amendment at stage 3 that would allow flexibility in the consultation requirement. I therefore ask John Scott to withdraw his amendment.

Amendment 165, by agreement, withdrawn.

Section 26 agreed to.

After section 26

The Convener: The next group is on offences by bodies corporate et cetera under the Hill Farming Act 1946 and the Deer (Scotland) Act 1996. Amendment 131, in the name of the minister, is grouped with amendment 148.

Roseanna Cunningham: Amendments 131 and 148 ensure that partners or managers can be prosecuted when the relevant partnership or unincorporated association has committed an offence. I proposed a similar change to the Wildlife and Countryside (Scotland) Act 1981, which was agreed by the committee last week. The changes are intended to modernise the provisions in the acts and bring them into line with current enforcement policy.

I move amendment 131.

Amendment 131 agreed to.

The Convener: The next group is on action intended to prevent the suffering of deer. Amendment 166, in the name of John Scott, is the only amendment in the group.

John Scott: Section 25 of the Deer (Scotland) Act 1996 exempts persons from prosecution and sets out the reasons for which close seasons may be breached to prevent further suffering of affected deer. The terminology that is used suggests that an animal that is dying of starvation must be diseased or injured before its humane destruction out of season is acceptable and lawful. The reality is that it is impossible to determine whether an animal is diseased or injured without invasive inspection.

Amendment 166 therefore seeks to introduce the condition of starvation, with the caveat that the animal must be unlikely to survive, as a condition justifying a humane death. The purpose is to give practitioners a clearer interpretation in the circumstances of actions that are intended to prevent the suffering of deer.

Peter Peacock: What is the test for knowing when an animal is starving and beyond the point of reasonable recovery?

John Scott: I am sad to say that people who live and work with deer and, indeed, other animals will know when animals are near to death. It can often be the humane thing to dispatch them because they are self-evidently going to die in perhaps another hour or day, or, in some cases, even a week. However, it will be self-evident to the trained eye that death is unavoidable.

I move amendment 166.

Roseanna Cunningham: We are all aware that we have experienced severe weather this winter and, indeed, last winter. The wild deer population in particular experienced problems because of the weather, which were probably more evident last winter than this winter. I am sure that we are all agreed as to the importance of the section 25 exemptions.

Amendment 166 seeks to clarify the position in relation to deer that are suffering from starvation but may not necessarily be injured or diseased and, for that reason, I welcome it. To reassure Peter Peacock, I say that guidance and best practice exist that would cover his concerns about definitions. I have considered the issue over the past year, particularly in the light of the two severe winters that we have had. I am pleased to say that the advice that I received was that there was no problem on the ground with action being taken to prevent suffering. However, I recognise the level of concern over the issue and the fact that clarification would be appreciated. I therefore ask the committee to support amendment 166.

John Scott: I share Peter Peacock's concerns, of course, but, as the minister said, there are codes of practice, and condition scoring in particular is a recognised practice for dealing with all animals, including deer. I am grateful for the minister's support for amendment 166 and I hope that committee members, too, will support it.

Amendment 166 agreed to.

Section 27 agreed to.

After section 27

The Convener: The next group is on the duty to further the conservation of biodiversity in the Scottish biodiversity strategy. Amendment 18, in the name of Elaine Murray, is grouped with amendments 153 to 155.

Elaine Murray: I think that all the amendments in the group were prompted by concerns that Scotland, in common with the rest of the European
Union, has failed to meet the 2010 targets for the conservation of biodiversity. We discussed some of the issues at stage 1. I appreciate that there is a concern, which I think we accepted, that a bill of this type should have an overall vision. However, I think that all of us who are lodging amendments feel that we must concentrate minds on the need to conserve biodiversity and feel that the current situation is unacceptable.

The Nature Conservation (Scotland) Act 2004 places a duty on every public body and office-holder to further the conservation of biodiversity so far as is consistent with the proper exercise of their functions, and it defines what the public body or office-holder must have regard to in complying with that duty. Amendment 18 would add to the matters that the body or office-holder must have regard to "the ecological coherence ... of features of value to biodiversity."

The amendment would not impose duties that are additional to those that are imposed by the 2004 act, so the argument about its inclusion in a bill that creates criminal offences would not seem to apply. However, in line with our amendments to the Marine (Scotland) Act 2010, it would require consideration of the contribution of the interaction and relationship between sites that are of value to the conservation of biodiversity.

What the amendment proposes is not an overarching vision, but it could be a step towards achieving the aim of having a network of ecologically coherent sites that would sustain biodiversity and allow adaptation to climate change. The concepts of biodiversity and ecological coherence are well established and understood. Habitat fragmentation ranks alongside climate change as one of the most significant threats to global and domestic biodiversity. Enhancing connectivity is stated Government policy and is reflected in the habitats regulations. Ecological coherence was excluded from those regulations in 1994, but that does not mean that it must be excluded now.

Amendment 18 would clarify and add value to the existing biodiversity duty by making it of greater assistance to local authorities and others in meeting their public policy and legislative obligations. It would encourage SNH and others to think outside the boundaries of sites of special scientific interest and other designated areas and consider how they form a functional network, which is especially important given that there is a changing climate and nature does not respect lines on maps. If the UK faces infraction proceedings for failing to apply article 3 of the habitats directive on an ecologically coherent network of Natura 2000 sites, the Scottish Government, not the Department for Environment, Food and Rural Affairs, would bear the cost. I believe that the amendment would put Scotland in the vanguard of conservation policy in the UK ahead of the publication of the natural environment white paper down south.

The clarification that amendment 18 would provide would be both helpful and proportionate, as it would help local authority staff to interpret their duties, to focus their resources in the best way to achieve Scotland’s international biodiversity commitments and to manage our protected areas in the face of climate change. The amendment would be revenue neutral and it would enhance the value of existing conservation spend as well as guiding the development of the planning process. Giving consideration to coherence and connectivity would not be onerous on local authorities or others and it would increase the efficiency of Scotland’s environmental spend.

I move amendment 18.

Peter Peacock: As Elaine Murray has set out adequately, the failure to meet our biodiversity targets has become a matter of growing concern to a range of people. Amendment 153, in my name, seeks to add to the existing reporting arrangements a provision that the actions that are taken and by whom they are taken will be covered by the reporting process. That is designed to enable greater and closer scrutiny over time of whether we meet our targets and of the actions that are taken or the failure to act. I accept that the amendment could be regarded as introducing a slightly more onerous reporting system, but that is a price that one would have to pay to get greater scrutiny.

Although I have sympathy with all the amendments in the group, I can see that, taken together, they might be regarded as being onerous overall. Perhaps the minister can select one or two that would help to move matters forward without burdening the system unduly.

Bill Wilson: It is disappointing that we have missed our 2010 targets. The fact that every nation in the EU has missed its 2010 targets is not a reason not to take action. Clearly, the 2004 strategy is wanting. It was well intentioned, but there were few hard commitments in the strategy and the 2004 act did not appear to require any specific actions. In retrospect, I think that that was unfortunate. I know that the minister took the view at the time that there was a need for the 2004 act to specify a requirement with regard to actions. The wording of amendment 154, in my name, may seem strangely familiar to the minister, because it has, of course, been lodged before. I know that she was disappointed when the amendment was rejected then.
I accept Peter Peacock’s point that including all three amendments in the bill would be a little excessive, but I hope that the minister takes one of them as the mechanism to move matters forward.

On amendment 18, whether the matter is dealt with in the bill or in the land use strategy, I feel that the principle of ecological coherence is important and I await the minister’s comments on that with interest.

Robin Harper: Unfortunately, Scotland, in common with all other EU countries, failed to meet the Rio commitments on biodiversity for 2010. It is widely felt that part of the reason for that was foreseen in 2004 when, during stage 2 proceedings on the Nature Conservation (Scotland) Bill, Roseanna Cunningham said:

“I still have some concerns that the bill”—now the 2004 act—

“as drafted basically requires a strategy to be designated and requires some reporting, yet does not actually require any actions to be taken.”—[Official Report, Environment and Rural Development Committee, 28 January 2004; c 655.]

Following the failure to meet the 2010 target, I warmly welcome the developments at Nagoya and the Scottish Government’s adoption of the target that has been set. I hope that the minister will take the opportunity to put right the deficiency that she saw in the 2004 act and strengthen the statutory basis for Scotland’s biodiversity process. For the same reason, I also welcome and would support at stage 3, if necessary, the amendments lodged by Peter Peacock and Bill Wilson. The amendments seem to develop similar themes—requiring a strategy with clear actions and requiring those actions to be reported against. The latter would enable the committee’s successors to better scrutinise progress up until 2020 and require corrective action if it seemed that we might fail once again to meet our target.

11:00

John Scott: The amendments enhance the Government’s duty in relation to biodiversity. Although I acknowledge the sentiment behind them, public bodies have to balance the enhancement of biodiversity against other interests, such as economic development and growth. In my opinion, the value of yet more reporting is dubious. Peter Peacock tacitly acknowledged that in promoting the amendment in his name. As I said previously, it appears that the Government and SNH will spend a great deal of their time preparing reports if the amendments are accepted and I am far from certain that that is the best use of their time.

Roseanna Cunningham: This group of amendments seek to make changes to the biodiversity duty on public bodies and the duty on Scottish ministers to produce and report on the Scottish biodiversity strategy. They need to be judged, therefore, against whether they will, on balance, contribute to improving the delivery of an effective biodiversity strategy.

I am not claiming that the Scottish biodiversity processes and forums are perfect. They are probably not perfect in any country. Since 2004, the person who has had the role that I have now has had the benefit of chairing the Scottish biodiversity committee, as I have done in the past two years. In that position, I have seen some of the weaknesses as well as the strengths of the process. The great strength of the forums lies in the partnership between organisations, both in the public sector and in the NGO community. A lot of good work to improve habitats and hold back the decline of many species has been achieved.

The weakness of the process—I know that this concern is shared by others—is where it gets bogged down in endless lists and tracking of measures, rather than focusing on actions and policy shifts that can make a difference. I ask the committee to consider whether any of the amendments strengthens the partnership in delivering actions or whether they will merely lead to more process.

In lodging their amendments, I know that Elaine Murray, Peter Peacock, Bill Wilson and Robin Harper seek to safeguard the protection of biodiversity and, of course, I share that view. I note Bill Wilson’s comments but, given that everyone has got used to the ideas that are set out in the 2004 act, I fear that going down the road that he proposes would have the unintended consequence of counting against the partnership approach that I mentioned. The various partners, whether they are local authorities, public bodies or NGOs, all have their own planning cycles, which are influenced to a greater or lesser degree by ministers. The partners then bring forward actions in support of the strategy. On balance, that is probably the better way to continue. I cannot support the introduction of a more top-down approach to biodiversity action planning, so I will not support amendment 154.

Amendment 18, in the name of Elaine Murray, Peter Peacock, Bill Wilson and Robin Harper, seeks to make an addition to the existing biodiversity duty to require public bodies to consider specifically ecological coherence and connectivity. There are two issues here. The first is that singling out one aspect of the general duty will lead to undue weight being given to that issue and might detract from the many other important aspects. The second is that certain public bodies, such as planning authorities, will be more able
than others to influence ecological coherence and connectivity, so there is no good reason to place an express duty on them all. The committee will be aware that the national ecological network is an action in our national planning framework. The best approach is that we should give time for that action to be implemented before we judge that further measures are needed.

Amendment 155, in the name of Robin Harper, seems to be drafted on the premise that the current strategy is somehow deficient and seeks therefore to specify more precisely what the strategy should contain. I am not sure on what evidence that view is based. No doubt, the strategy could be improved but, in its current form, it already touches on all the issues that the amendment proposes to list in statute. If we adopt a new statutory specification for the content of the strategy, a good deal of effort will inevitably be required from public bodies and stakeholders to ensure that a new version is fully compliant with the new wording in the statute. I seriously question whether that is how we want to focus our efforts, as it would not deliver the kind of practical benefits that we all seek. In fact, I think that it would turn out to be a significant distraction from our attempts to focus on the actions and behaviours that can make a real difference to biodiversity. I therefore ask the committee not to support amendment 155.

Peter Peacock pleaded with me to accept one or two amendments. I can announce that the winner of the competition is amendment 153, in his name, which would add to the current requirement for ministers to lay a triennial report on the biodiversity strategy by including a list of actions taken by public bodies. Nevertheless, in line with my earlier comments, I fear that that would lead to whole new waves of list making and monitoring, which would not necessarily add to the quality or quantity of delivery. For example, I need to know that SNH is working to promote biodiversity through its range of activities and that it is actively leading the delivery of the Scottish biodiversity strategy. An exhaustive list of all the actions taken by SNH over three years to implement the strategy and fulfil its duty would be pretty impenetrable.

I am also concerned that the proposed reporting requirement would be placed on the Scottish ministers with no corresponding duty on the public bodies to supply the information. Extracting that information from bodies with their own reporting cycles, which suffer many requests for information, not least from the Government, could be an unwelcome burden. I acknowledge, however, that the lack of a reporting requirement has been identified as a weakness in the current duty, including by Audit Scotland, and I think that the matter might benefit from further consideration. In particular, I would be interested in an amendment that placed the duty to report directly on the public bodies covered by the duty. The reporting duty could allow them to report in a proportional fashion on the measures and strategies that they are following in fulfilment of the duty. The requirement could be framed in such a way as to allow the report, which might be brief, to form a part of whatever reporting regime they already follow.

Therefore, although I do not support amendment 153 in its current form, as members may infer from my comments, I would be happy to discuss with Peter Peacock how we can tweak it to make it more usable in our view.

Elaine Murray: I am not certain that I accept the minister’s arguments about amendments 18 and 155. To an extent, they are alternatives. If amendment 18 places too much emphasis on one part of the biodiversity duty, amendment 155 lists all of them, so I am not sure why one of those amendments is not acceptable.

Bill Wilson: Forgive my intervention, but I want to respond briefly to John Scott’s comment and this is my only chance. He cites his concern with economic growth as a reason not to take action, but I point out that biodiversity loss and environmental degradation have an impact on both economic growth and human health.

Elaine Murray: I agree very much with Bill Wilson. He is absolutely right.

I am not sure why one of amendments 18 and 55 is not acceptable. However, I am prepared not to press amendment 18 so that we can have a think about which of the approaches is most acceptable and appropriate. I do not accept the argument that neither is acceptable.

Amendment 18, by agreement, withdrawn.

Amendments 153 to 155 not moved.

Section 28—Muirburn

The Convener: The next group is on muirburn. Amendment 132, in the name of the minister, is grouped with amendments 133 to 147.

Roseanna Cunningham: Notwithstanding the number of amendments in the group, I can be relatively brief. The substantive amendment to the muirburn provisions is amendment 133. The bill broadens the purposes for which ministers may vary the dates of the muirburn season. Ministers may, in the future, wish to use this power to extend the beginning of the muirburn season into September. There is some concern that burning during September could occasionally disrupt the stock management practices of crofters and other tenant farmers. Amendment 133 will allow ministers to further regulate muirburn during any extension to the season—for example, by providing additional notification requirements or
procedures—if that is considered necessary to address any concerns. Amendments 132 and 134 to 147 are minor technical amendments and do not change the notification requirements.

I move amendment 132.

Amendment 132 agreed to.

Amendments 133 to 147 moved—[Roseanna Cunningham]—and agreed to.

Section 28, as amended, agreed to.

After section 28

Amendment 148 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on tree conservation areas. Amendment 156, in the name of Bill Wilson, is the only amendment in the group.

Bill Wilson: A recent petition to the Public Petitions Committee—PE1340—focused attention on the issue of inadequate protection for some of Scotland’s important trees. Tree preservation orders do of course exist at present, but they tend to be used for trees under threat and they also tend to be expensive to introduce. The Woodland Trust estimates that it costs between £5,000 and £10,000 per order. Trees can also be protected if they fall within a conservation area and are not specifically exempted.

Amendment 156 proposes to use the protection powers that are offered to trees within a conservation area and apply them to a new form of conservation area: a tree conservation area. That would allow local authorities, when preparing local plans, to designate, after public consultation, an area as a tree conservation area. The proposal is intended only to protect trees within the conservation area and is not intended to place any wider architectural restrictions or other burdens on land or property owners.

There is a variety of reasons why such protection might be considered necessary. The Woodland Trust makes the point that mature and ancient trees can be particularly valuable from a biodiversity perspective but are often unprotected; the ancient tree hunt campaign has identified 182 important yet unprotected trees. Stands of trees can be very important to communities, and I am sure that I do not have to remind the minister of the recent paper in The Lancet highlighting the value of green space to individuals’ health. The proposal in amendment 156 aims to give local authorities another means by which they can protect trees with a high biodiversity, cultural or historic interest.

I move amendment 156.

Roseanna Cunningham: I am, of course, aware of the recent petition on the apparent inadequate protection for special trees, particularly those that are ancient or veteran, or have high value. However, I am pleased to say that the recent commencement of parts of the Planning etc (Scotland) Act 2006—so ably put through Parliament by the then minister, Stewart Stevenson—will provide an opportunity to address the issues that amendment 156 raises. From 1 February 2011, it will be possible to serve a tree preservation order on the basis of a tree’s cultural or historic significance. Planning authorities will therefore be able to serve TPOs relating to ancient or veteran trees, or trees of high value.

Although the proposal for tree conservation areas would make it an offence to damage the trees that it protects, a TPO would still have to be served when the planning authority considered that proposed works would damage an area’s amenity value. We have no evidence to suggest that planning authorities desire or would use the power proposed by the amendment. It is open to debate whether it would result in a light-touch mechanism.

I consider the amendment to be unnecessary in the light of the changes to tree preservation orders that I have outlined. Therefore, I do not support amendment 156.

Bill Wilson: In the light of the minister’s comments, it is reasonable to give the TPOs an opportunity to work, so I will not press the amendment.

Amendment 156, by agreement, withdrawn.

Sections 29 to 31 agreed to.

After section 31

11:15

The Convener: The next group is on planning applications adversely affecting sites of special scientific interest. Amendment 157, in the name of Robin Harper, is the only amendment in the group.

Robin Harper: SSSIs are the crown jewels of our natural environment—a series of sites that are given special protection because of the special qualities of their wildlife. As such, they represent a very special part of Scotland’s natural capital, the environmental assets on which the quality of our environment and our sense of Scotland depend.

If we really want to make Scotland better and greener, as the Government’s objectives suggest, we must ensure that, to the greatest extent possible, that natural capital is not depleted. However, the 2004 act is deficient in one regard: it is completely overridden by any decision of a local authority or a minister under the town and country
planning system. It is probably appropriate that ministers should have that power, even if they make decisions with which it is possible to disagree strongly. Amendment 157 would ensure that, if ministers chose to use the power in a way that might damage the interest of an SSSI, the power would have to be used in a manner that seeks, at the same time, to maintain our natural capital. The amendment does that by requiring that any damaging planning permission must be conditional on whatever compensation works might be possible.

I do not want to give the impression that I approve of offers of compensation being used to justify the damage in the first place. The original decision-making processes should remain the same: a balancing of the economic and environmental factors. If, rightly or wrongly, the environmental factors lose out, it is only right that an attempt to compensate should be made. That is what the amendment seeks.

I move amendment 157.

Roseanna Cunningham: In considering amendment 157 we need to be aware of how the planning system operates. At present, planning authorities are required by law to consult SNH on applications where development may affect an SSSI. In responding, SNH may object and may recommend actions in order to safeguard the interests of the site. Should a planning authority wish to grant planning permission contrary to SNH's advice, or grant it without attaching the conditions that SNH has recommended, the planning authority must notify the application to the Scottish ministers, who can then consider whether to call in the application for their determination or require the authority to attach any conditions to the permission as ministers see fit, while taking account of all the material that has been put before them.

It should, therefore, be clear that when a decision on an application might conflict with SNH’s recommendations regarding SSSIs, there are already sound safeguards in place. It is right, nevertheless, that existing procedures should provide a degree of controlled flexibility to account for limited situations in which it may, for example, be in the national interest to make use of that flexibility. Amendment 157 would significantly diminish that. In addition, the amendment has the potential to unbalance the decision-making process by requiring compliance with one statutory consultee’s recommendations at the possible expense of others’. That may compromise the ability of planning authorities to come to a balanced view when weighing up the pros and cons of a proposal.

I therefore ask the committee not to support amendment 157.

Robin Harper: I listened very carefully to the minister and I will not press the amendment.

Amendment 157, by agreement, withdrawn.

Section 32—SSSI offences: civil enforcement

The Convener: The next group is on SSSI offences and the effect of a notice of intention to comply with a restoration notice. Amendment 149, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Amendment 149 is a technical amendment. The bill proposes that where there has been illegal damage to the natural features of an SSSI, restoration notices can be given by SNH. Those restoration notices will provide the person responsible for damage with an alternative to prosecution, the alternative being to restore the damaged natural features of the SSSI, as set out in the restoration notice. The amendment adds the acceptance of a restoration notice to a list of alternatives to prosecution that was inserted in the Rehabilitation of Offenders Act 1974 by the Criminal Justice and Licensing (Scotland) Act 2010.

I move amendment 149.

Amendment 149 agreed to.

Section 32, as amended, agreed to.

Section 33—Crown application

The Convener: The next group is on Crown application. Amendment 150, in the name of the minister, is the only amendment in the group. [Interruption.]

Roseanna Cunningham: I understand that, for some obscure reason, there is a considerable amount of amusement about and interest in amendment 150—I cannot possibly think why.


I move amendment 150.

The Convener: Do any other members wish to speak? Liam McArthur cannot resist.

Liam McArthur: For the record, I know how difficult it must have been for the minister to embrace the concept of Crown immunity in these areas. I thought that she did tremendously well in
moving the amendment. We all enjoyed the rich irony.

Peter Peacock: This is a serious point; when she sums up, I ask the minister to clarify the question of vicarious liability in relation to the Crown.

Roseanna Cunningham: The existing position is that the Crown is exempt from criminal liability.

Peter Peacock: No employee of the Crown is exempt in that sense.

Roseanna Cunningham: The vicarious liability issue is about the owner. Any employee of the Crown would still be subject to—[Interuption.] My official is reminding me that line management standards are very high on Crown estates. An individual, whether employed by the Crown or not, is subject to criminal law if they break it. The vicarious liability offence is a specific offence and cannot be extended to the Crown.

John Scott: In that regard, this obviously applies to the Queen’s sporting estates—

Roseanna Cunningham: I said that it does not.

John Scott: I am seeking clarification. With whom does the buck stop if there is an incident of poisoning—

Roseanna Cunningham: The buck will stop with the person who breaks the law in the first place.

John Scott: Under vicarious liability, that is the landowner—in this case, the Queen.

Roseanna Cunningham: I have just said that that is not the case. We cannot apply the provision in respect of the Crown.

John Scott: As long as that is absolutely clear.

Roseanna Cunningham: It is a matter for those who take a different view from mine.

Elaine Murray: Surely, in that particular case, the Queen does not directly line-manage the staff concerned, therefore it would be the land managers employed by the Crown who would be subject to vicarious liability.

Roseanna Cunningham: We ought to be careful about how far we go with this discussion about the operation of vicarious liability.

Amendment 150 agreed to.

Section 33, as amended, agreed to.

Sections 34 and 35 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister, her officials and everyone else for their attendance. We look forward to stage 3 proceedings of the bill.

11:25

Meeting suspended.
Wildlife and Natural Environment (Scotland) Bill
[AS AMENDED AT STAGE 2]

CONTENTS

Section

PART 1

DEFINED EXPRESSIONS

1 Defined expressions in this Act

PART 2

WILDLIFE UNDER THE 1981 ACT

Wild birds, their nests and eggs

2 Application of the 1981 Act to game birds
3 Protection of game birds etc. and prevention of poaching
4 Areas of special protection for wild birds
5 Sale of live or dead wild birds, their eggs etc.

Wild hares, rabbits etc.

6 Protection of wild hares etc.
7 Prevention of poaching: wild hares, rabbits etc.
8 Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully
9 Wild hares, rabbits etc.: licences
10 Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons
11 Wild hares and rabbits: miscellaneous

Wild birds, hares, rabbits etc.: single witness evidence

12 Single witness evidence in certain proceedings under the 1981 Act

Snares

13 Snares

Non-native species etc.

14 Non-native species etc.
15 Non-native species etc.: code of practice
16 Species control orders etc.
17 Non-native species etc.: further provision

Species licences

18 Licences under the 1981 Act
19 Amendment of Schedule 6 to the 1981 Act
Enforcement

20  Wildlife inspectors etc.
20A Offences by Scottish partnerships etc.

Liability in relation to certain offences by others

20B Liability in relation to certain offences by others

Modifications and repeals relating to Part 2 and game licensing

21 Modifications and repeals relating to Part 2 and game licensing

PART 3

DEER

22 Deer management etc.
23 Deer management code of practice
24 Control agreements and control schemes etc.
25 Deer: close seasons etc.
26 Register of persons competent to shoot deer etc.
26A Action intended to prevent suffering
26B Offences by bodies corporate, Scottish partnerships etc. under the 1996 Act

PART 4

OTHER WILDLIFE ETC.

Protection of badgers

27 Protection of badgers

Muirburn

28 Muirburn
28A Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act

PART 5

SITES OF SPECIAL SCIENTIFIC INTEREST

29 Combining sites of special scientific interest
30 Denotification of SSSIs: damage caused by authorised operations
31 SSSIs: operations requiring consent
32 SSSI offences: civil enforcement

PART 6

GENERAL

33 Crown application
34 Ancillary provision
35 Commencement and short title

Schedule—Modifications and repeals relating to Part 2 and game licensing
   Part 1—Modifications
   Part 2—Repeals
Wildlife and Natural Environment (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision in connection with wildlife and the natural environment; and for connected purposes.

PART 1

DEFINED EXPRESSIONS

1 Defined expressions in this Act

In this Act—
- “the 1946 Act” means the Hill Farming Act 1946 (c.73),
- “the 1981 Act” means the Wildlife and Countryside Act 1981 (c.69),
- “the 1992 Act” means the Protection of Badgers Act 1992 (c.51),
- “the 1996 Act” means the Deer (Scotland) Act 1996 (c.58),
- “the 2004 Act” means the Nature Conservation (Scotland) Act 2004 (asp 6).

PART 2

WILDLIFE UNDER THE 1981 ACT

Wild birds, their nests and eggs

2 Application of the 1981 Act to game birds

In section 27(1) of the 1981 Act (interpretation of Part I)—
(a) the definition of “game bird” is repealed,
(b) in the definition of “wild bird”, the words “or, except in sections 5 and 16, any game bird” are repealed.

3 Protection of game birds etc. and prevention of poaching

(1) The 1981 Act is amended as follows.
(2) In the italic heading before section 1 (protection of wild birds, their nests and eggs), at the end add “and prevention of poaching”.

(3) In that section, for subsection (6) (“wild birds” in section 1 does not include birds shown to have been bred in captivity), substitute—

“(6) For the purposes of this section, the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless—

(a) it has been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme; or

(b) it is a mallard, grey or red-legged partridge, common pheasant or red grouse which is no longer in captivity and is not in a place where it was reared.”.

(4) In section 2 (exceptions to section 1)—

(a) in the title, at the end add “: acts by certain persons outside close season”,

(b) in subsection (1), after “this section,” insert “where subsection (1A) applies”,

(c) after that subsection insert—

“(1A) This subsection applies where—

(a) the person who kills or injures had—

(i) a legal right to kill such a bird; or

(ii) permission, from a person who had a right to give permission, to kill such a bird; or

(b) the person who takes had—

(i) a legal right to take such a bird; or

(ii) permission, from a person who had a right to give permission, to take such a bird.”.

(d) in subsection (3), after “Christmas Day” insert “in relation to those birds included in Part I of Schedule 2 which are also included in Part IA of that Schedule”,

(e) after subsection (3), insert—

“(3A) Subject to the provisions of this section, where subsection (3B) applies a person does not commit an offence under section 1 by reason of the taking for the purposes of breeding of—

(a) a grouse, mallard, partridge or pheasant included in Part I of Schedule 2; or

(b) an egg of such a bird.

(3B) This subsection applies where—

(a) the person who takes does so during the period of 14 days commencing with the first day of the close season for the bird; and

(b) the person who takes had—

(i) a legal right to take such a bird; or

(ii) permission, from a person who had a right to give permission, to take such a bird.
(3C) Subsection (3A) does not apply to any such person who takes a mallard in or over any area below high-water mark of ordinary spring tides.”,

(f) in subsection (4)—
   (i) after paragraph (b) insert—
   “(ba) in the case of pheasant, the period in any year commencing with 2nd February and ending with 30th September;
   (bb) in the case of partridge, the period in any year commencing with 2nd February and ending with 31st August;”,
   (ii) after paragraph (c) insert—
   “(ca) in the case of black grouse, the period commencing with 11th December in any year and ending with 19th August in the following year;
   (cb) in the case of ptarmigan and red grouse, the period commencing with 11th December in any year and ending with 11th August in the following year;”,

(g) in subsection (7)—
   (i) for “a person” substitute “such persons”,
   (ii) at the end add “as he considers appropriate”.

(4A) In section 5(5) (use of cage traps or nets for breeding purposes), for “game bird” substitute “grouse, mallard, partridge or pheasant included in Part I of Schedule 2”.

(4B) In section 26 (regulations, orders, notices etc.)—
   (a) in subsection (2)—
      (i) after “than” insert “—
         (a) an order under any of”,
      (ii) for “and” substitute “or”,
      (iii) after “11(4)” insert “; and
         (b) an order under section 22(1)(a) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge”,
   (b) in subsection (3)—
      (i) after “No” insert “—
         (a)”,
      (ii) after “11(4)” insert “; or
         (b) order under section 22(1)(a) which removes from Part I of Schedule 2 any bird referred to in paragraph (b) of subsection (2),”.

(5) In Schedule 2, Part I (birds which may be killed or taken outside the close season)—
   (a) before the entries relating to the bird with the common name “Mallard” insert in columns 1 and 2 the following entries—
      “Grouse, Black Tetrao tetrix
      Grouse, Red Lagopus lagopus scoticus”,

(b) after the entries relating to the bird with the common name “Moorhen” insert in columns 1 and 2 the following entries—

“Partridge, Grey  Perdix perdix
Partridge, Red-legged  Alectoris rufa
Pheasant, Common  Phasianus colchicus”,

(c) after the entries relating to the bird with the common name “Pochard” insert in columns 1 and 2 the following entries—

“Ptarmigan  Lagopus mutus”.

(6) In Schedule 2, after Part I insert—

“PART IA

EXCEPTION: BIRDS INCLUDED IN PART I WHICH MAY NOT BE KILLED OR TAKEN ON SUNDAYS OR CHRISTMAS DAY

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coot</td>
<td>Fulica atra</td>
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<tr>
<td>Duck, Tufted</td>
<td>Aythya fuligula</td>
</tr>
<tr>
<td>Gadwall</td>
<td>Anas strepera</td>
</tr>
<tr>
<td>Goldeneye</td>
<td>Bucephala clangula</td>
</tr>
<tr>
<td>Goose, Canada</td>
<td>Branta canadensis</td>
</tr>
<tr>
<td>Goose, Greylag</td>
<td>Anser anser</td>
</tr>
<tr>
<td>Goose, Pink-footed</td>
<td>Anser brachyrhynchus</td>
</tr>
<tr>
<td>Mallard</td>
<td>Anas platyrhynchos</td>
</tr>
<tr>
<td>Moorhen</td>
<td>Gallinula chloropus</td>
</tr>
<tr>
<td>Pintail</td>
<td>Anas acuta</td>
</tr>
<tr>
<td>Plover, Golden</td>
<td>Pluvialis apricaria</td>
</tr>
<tr>
<td>Pochard</td>
<td>Aythya ferina</td>
</tr>
<tr>
<td>Shoveler</td>
<td>Anas clypeata</td>
</tr>
<tr>
<td>Snipe, Common</td>
<td>Gallinago gallinago</td>
</tr>
<tr>
<td>Teal</td>
<td>Anas crecca</td>
</tr>
<tr>
<td>Wigeon</td>
<td>Anas penelope</td>
</tr>
<tr>
<td>Woodcock</td>
<td>Scolopax rusticola</td>
</tr>
</tbody>
</table>

4 Areas of special protection for wild birds

(1) The 1981 Act is amended as follows.

(2) Section 3 (areas of special protection) is repealed.

(3) In section 4 (exceptions to sections 1 and 3)—

(a) for the title, substitute “Further exceptions to s. 1”,

(b) in subsection (1) the words “or in any order made under section 3” are repealed,
Wildlife and Natural Environment (Scotland) Bill

Part 2—Wildlife under the 1981 Act

(c) in subsections (2) and (3) the words “or any order made under section 3” are repealed.

(4) In section 16 (power to grant licences)—

(a) in subsection (1) the words “and orders under section 3” are repealed,

(b) in subsection (2) for “and orders under section 3 do” substitute “does”.

(5) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (2) “3,” is repealed,

(b) in subsection (4)(a) the words from “, except” to “3,” are repealed.

5 Sale of live or dead wild birds, their eggs etc.

(1) The 1981 Act is amended as follows.

(2) In section 2—

(a) in subsection (4) (close seasons), for “this section and section 1” substitute “section 1, this section and section 6”,

(b) in subsection (6) (period of special protection forms part of close season), for “this section and section 1” substitute “section 1, this section and section 6”.

(3) In section 6 (sale etc. of live or dead wild birds, eggs etc.)—

(a) in subsection (1)(a)—

(i) the words from “other” to “3” are repealed,

(ii) after “egg” where it second occurs insert “other than—

(i) a bird included in Part I of Schedule 3 (see also subsection (5));

(ii) a bird included in Part 1A of that Schedule to which subsection (1A) applies; or

(iii) an egg to which subsection (1B) applies or any part of such an egg”,

(b) after subsection (1) insert—

“(1A) This subsection applies to a bird which—

(a) was bred in captivity and remained in captivity or a place where it was reared; or

(b) was a wild bird for the purposes of section 1 (see section 1(6)) and was taken by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird—

(i) outside the close season for the bird; or

(ii) during the period of 14 days which commences with the first day of its close season.

(1B) This subsection applies to the following eggs—

(a) an egg of a bird included in Part 1A of Schedule 3 to which subsection (1A) applies; or
(b) an egg of a bird included in Part I of Schedule 3 to which that subsection does not apply if the egg was taken—

(i) outside the close season for the bird or during the period of 14 days commencing with the first day of its close season; and

(ii) by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird.”,

(c) in subsection (2)(a)—

(i) after “Part II” insert “, IIA”,

(ii) after “Schedule 3” insert “(see also subsections (5B) and (6))”,

(d) for subsection (5) substitute—

“(5) Any reference in this section to any bird included in Part I of Schedule 3 is a reference to any bird included in that Part which—

(a) was bred in captivity;

(b) has been ringed or marked in accordance with regulations made by the Scottish Ministers; and

(c) has not been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme.

(5A) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.”,

(e) after subsection (5A) (as inserted by paragraph (d)) insert—

“(5B) Any reference in this section to any bird included in Part IIA of Schedule 3 is a reference to any bird included in that Part which was killed outside the close season for the bird by a person who had a legal right to kill such a bird or permission, from a person who had a right to give permission, to kill such a bird.”,

(f) for subsection (6), substitute—

“(6) Any reference in this section to any bird included in Part III of Schedule 3 is a reference, during the period commencing with 1st September in any year and ending with 28th February of the following year, to any bird included in that Part.”.

(4) In Schedule 3 (birds which may be sold)—

(a) after Part I insert—

“PART IA

ALIVE IF TAKEN IN CAPTIVITY OR BY CERTAIN PERSONS OUTSIDE CLOSE SEASON OR DURING FIRST 14 DAYS OF CLOSE SEASON

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grouse, Red Lagopus lagopus scoticus</td>
<td></td>
</tr>
<tr>
<td>Mallard Anas platyrhynchos</td>
<td></td>
</tr>
<tr>
<td>Partridge, Grey Perdix perdix</td>
<td></td>
</tr>
<tr>
<td>Partridge, Red-legged Alectoris rufa</td>
<td></td>
</tr>
</tbody>
</table>
Wildlife and Natural Environment (Scotland) Bill
Part 2—Wildlife under the 1981 Act

(b) after Part II insert—

**“PART IIA**

**DEAD IF KILLED OUTSIDE CLOSE SEASON BY CERTAIN PERSONS**

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coot</td>
<td>Fulica atra</td>
</tr>
<tr>
<td>Duck, Tufted</td>
<td>Aythya fuligula</td>
</tr>
<tr>
<td>Grouse, Black</td>
<td>Tetrao tetrix</td>
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<tr>
<td>Grouse, Red</td>
<td>Lagopus lagopus scoticus</td>
</tr>
<tr>
<td>Mallard</td>
<td>Anas platyrhynchos</td>
</tr>
<tr>
<td>Partridge, Grey</td>
<td>Perdix perdix</td>
</tr>
<tr>
<td>Partridge, Red-legged</td>
<td>Alectoris rufa</td>
</tr>
<tr>
<td>Pheasant, Common</td>
<td>Phasianus colchicus</td>
</tr>
<tr>
<td>Pintail</td>
<td>Anas acuta</td>
</tr>
<tr>
<td>Plover, Golden</td>
<td>Pluvialis apricaria</td>
</tr>
<tr>
<td>Pochard</td>
<td>Aythya ferina</td>
</tr>
<tr>
<td>Ptarmigan</td>
<td>Lagopus mutus</td>
</tr>
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<td>Shoveler</td>
<td>Anas clypeata</td>
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<tr>
<td>Snipe, Common</td>
<td>Gallinago gallinago</td>
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<td>Teal</td>
<td>Anas crecca</td>
</tr>
<tr>
<td>Wigeon</td>
<td>Anas penelope</td>
</tr>
<tr>
<td>Woodcock</td>
<td>Scolopax rusticola</td>
</tr>
</tbody>
</table>

(c) in Part III (birds which may be sold dead from 1st September to 28th February), the entries relating to birds with the following common names are repealed—

| Coot                 |
| Duck, Tufted         |
| Mallard              |
| Pintail              |
| Plover, Golden       |
| Pochard              |
| Shoveler             |
| Snipe, Common        |
| Teal                 |
| Wigeon               |
| Woodcock             |
6 Protection of wild hares etc.

(1) The 1981 Act is amended as follows.

(2) After section 10, insert—

“10A Protection of wild hares etc.

(1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 5A in the close season for the animal is guilty of an offence.

(2) In this section, “close season” means—

(a) in the case of a mountain hare, the period in any year beginning with 1st March and ending with 31st July;

(b) in the case of a brown hare, the period in any year beginning with 1st February and ending with 30th September.

(3) The Scottish Ministers may by order vary the close season for any wild animal included in Schedule 5A which is specified in the order.

(4) If it appears to the Scottish Ministers expedient that any wild animals included in Schedule 5A should be protected during any period outside the close season for those animals, they may by order declare any period not exceeding 14 days as a period of special protection for those animals.

(5) Before making an order under subsection (4), the Scottish Ministers must consult such persons appearing to them to be representative of persons interested in the killing or taking of animals of the kind proposed to be protected by the order as they consider appropriate.

(6) Where an order is made under subsection (4), this section has effect as if any period of special protection declared by the order forms part of the close season for those animals.

(7) An order under subsection (3) or (4) may be made as respects the whole of Scotland or any part of Scotland specified in the order.

(8) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

10B Exceptions to s. 10A

(1) A person is not guilty of an offence under section 10A(1) by reason of the killing of an animal included in Schedule 5A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.

(2) A person is not guilty of an offence under section 10A(1) by reason of taking any such animal if he shows that—

(a) he had a legal right to take such an animal or permission, from a person who had a right to give permission, to take such an animal; and

(b) the animal—

(i) had been disabled otherwise than by his unlawful act; and
(ii) was taken solely for the purpose of tending it and releasing it when no longer disabled.

(3) An authorised person is not guilty of an offence under section 10A(1) by reason of the killing or injuring of an animal included in Schedule 5A if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

(4) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action if—

(a) it had become apparent, before the action was taken, that it would prove necessary for the purpose mentioned in that subsection; and

(b) either—

(i) a licence under section 16 authorising the action had not been applied for as soon as reasonably practicable after that fact had become apparent; or

(ii) an application for such a licence had been determined.

(5) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action unless he notified the appropriate authority as soon as reasonably practicable after the action was taken.

(6) In subsection (5), “the appropriate authority” has the same meaning as in section 16(9).

(7) Nothing in section 10A makes unlawful—

(a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or

(b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.

(3) In section 26(2) (regulations, orders, notices etc.), after “5” insert “, 10A(4)”.

(4) In the title of Schedule 5 (animals which are protected), at the end add “under section 9”.

(5) After that Schedule, insert—

“SCHEDULE 5A
(introduced by sections 10A and 22)

ANIMALS WHICH ARE PROTECTED UNDER SECTION 10A IN THEIR CLOSE SEASON

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hare, mountain</td>
<td>Lepus timidus</td>
</tr>
<tr>
<td>Hare, brown</td>
<td>Lepus europaeus</td>
</tr>
</tbody>
</table>

7 Prevention of poaching: wild hares, rabbits etc.

(1) The 1981 Act is amended as follows.

(2) In the italic heading before section 9 (protection of certain wild animals), at the end add “and prevention of poaching”.
(3) After section 11DA (inserted by section 13(3)), insert—

11E Prevention of poaching: wild hares, rabbits etc.

(1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 6A is guilty of an offence.

(2) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

11F Exceptions to s. 11E

(1) A person is not guilty of an offence under section 11E(1)—

(a) by reason of the killing of an animal included in Schedule 6A if he had a legal right, or permission from a person who had a right to give permission, to kill such an animal; or

(b) by reason of the taking of such an animal if he had a legal right, or permission from a person who had a right to give permission, to take such an animal.

(2) A person is not guilty of an offence under section 11E(1) by reason of the killing of an animal included in Schedule 6A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.

(3) Nothing in section 11E makes unlawful—

(a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or

(b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.

(4) After Schedule 6, insert—

“SCHEDULE 6A
(introduced by sections 11E and 22)

ANIMALS NOT TO BE POACHED

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hare, mountain</td>
<td>Lepus timidus</td>
</tr>
<tr>
<td>Hare, brown</td>
<td>Lepus europaeus</td>
</tr>
<tr>
<td>Rabbit</td>
<td>Oryctolagus cuniculus</td>
</tr>
</tbody>
</table>

8 Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

(1) The 1981 Act is amended as follows.

(2) After section 11F (inserted by section 7(3)), insert—

11G Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

(1) Any person who does any of the following is guilty of an offence—
(a) has in his possession or control any live or dead wild animal which has been killed or taken in contravention of section 10A or 11E, or any part of or anything derived from such an animal;

(b) sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale any such animal or any part of or anything derived from such an animal; or

(c) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells or intends to buy or sell any of those things.

(2) A person is not guilty of an offence under subsection (1) in relation to an activity mentioned in that subsection if he shows that he carried out the activity concerned with reasonable excuse.

(3) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.”.

9   Wild hares, rabbits etc.: licences

In section 16 of the 1981 Act (certain offences not committed if activity done in accordance with licence)—

(a) in subsection (3)—

(i) after “9(1), (2), (4) and (4A),” insert “10A(1),”;

(ii) after “11C” (inserted by section 13(4)) insert “, 11E(1),”;

(b) in subsection (4)(b) after “9(5)” insert “, 11G(1).”

10   Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons

In section 22 of the 1981 Act (power to vary schedules and prescribe close seasons)—

(a) in subsection (1)(b), for “or 6” substitute “, 5A, 6 or 6A”,

(b) after subsection (2), insert—

“(2ZA) An order under subsection (1) adding any animal to Schedule 5A may prescribe a close season in the case of that animal for the purposes of section 10A.”.

11   Wild hares and rabbits: miscellaneous

(1) The 1981 Act is amended as follows.

(2) Before section 12 (protection of certain mammals), insert—

“12YA   Relaxation of restriction on night shooting of hares and rabbits

Schedule 7, which amends certain Acts prohibiting night shooting of hares and rabbits by occupiers of land etc., has effect.”.

(3) Section 12 (protection of certain mammals) is repealed.

(4) In Schedule 7—

(a) for the title substitute “Amendment of Acts In Relation To Night Shooting of Hares and Rabbits”,

906
Wildlife and Natural Environment (Scotland) Bill
Part 2—Wildlife under the 1981 Act

12 Single witness evidence in certain proceedings under the 1981 Act

In section 19A of the 1981 Act (single witness evidence in Scotland as to taking or destruction of eggs)—

(a) in the section title for “as to taking or destruction of eggs” substitute “in certain proceedings”,
(b) for the words from “an” to “Act” substitute “any of the following offences”,
(c) at the end insert “—

(a) an offence under section 1(1)(a) in relation to a grouse, partridge, pheasant or ptarmigan included in Part I of Schedule 2;
(b) an offence under section 1(1)(c);
(c) an offence under section 6(1) in relation to a grouse, partridge or pheasant included in Part IA of Schedule 3;
(d) an offence under section 6(2) in relation to a grouse, partridge, pheasant or ptarmigan included in Part IIA of that Schedule;
(e) an offence under section 10A(1), 11E(1) or 11G(1)”.

13 Snares

(1) The 1981 Act is amended as follows.

(2) In section 11 (prohibition of certain methods of killing or taking wild animals)—

(a) after subsection (1), insert—

“(1A) For the purposes of subsection (1)(aa), a snare which is of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it includes—

(a) where the person who sets in position or otherwise uses the snare does so to catch any animal other than a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 13 centimetres;
(b) where the person who sets in position or otherwise uses the snare does so to catch a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 23 centimetres;
(c) a snare which is neither—

(i) staked to the ground; nor
(ii) attached to an object,
in a manner which will prevent the snare being dragged by an animal caught by it; and
(d) a snare which is set in a place where an animal caught by the snare is likely to—
   (i) become fully or partially suspended; or
   (ii) drown.

(b) subsections (3) to (3B) and (3D) are repealed.

(3) After that section, insert—

“11A Snares: training, identification numbers, tags etc.

(1) Any person who sets a snare in position must have an identification number (see also subsections (3), (4) and (7) in relation to identification numbers and training).

(2) Any person who sets in position or otherwise uses a snare must ensure—
   (a) that a tag is fitted on the snare in such a manner that it is not capable of being easily removed from the snare;
   (b) that there is displayed on the tag (in a manner in which it will remain readable) the identification number of the person who set the snare in position; and
   (c) where the snare is intended to catch the following types of animal—
      (i) brown hares or rabbits; or
      (ii) foxes,

that there is also displayed on the tag (in a manner in which it will remain readable) a statement that it is intended to catch the type of animal in question.

(3) The identification number of a person who sets a snare in position is the identification number issued to him by a chief constable.

(4) A chief constable—
   (a) on receipt of an appropriate application from any person for an identification number for the purpose of setting snares in position in the chief constable’s police area; and
   (b) on being satisfied that the applicant has been trained to set a snare in position,

must grant the application and issue the applicant with an identification number.

(5) Any person who fails to comply with subsection (1) is guilty of an offence.

(6) Any person who—
   (a) has an identification number and sets in position or otherwise uses a snare; but
   (b) fails to comply with subsection (2) in any respect,

is guilty of an offence.

(7) Where an identification number has been issued by a chief constable under subsection (4), the person to whom it is issued—
(a) may use it also for tags fitted on any snares which he sets in position in any other chief constable’s police area; and
(b) need not apply to any other chief constable for a separate identification number in relation to setting any such snare in position.

(8) The Scottish Ministers may by order make provision as regards—
(a) when a person has been trained to set a snare in position;
(b) how a chief constable is to be satisfied that an applicant for an identification number has been so trained;
(c) the manner in which a tag is to be fitted for the purposes of subsection (2)(a) (including the material from which a tag is to be made);
(d) the manner in which an identification number is to appear on a tag for the purposes of subsection (2)(b), and in which a statement is to be displayed on a tag for the purposes of subsection (2)(c);
(e) the form of and manner of making an application for an identification number;
(f) the determining by the Scottish Ministers, or by chief constables in accordance with the order, of any fee to accompany the application and the charging of any such fee;
(g) the issuing of identification numbers under subsection (4);
(h) the keeping of records of identification numbers issued, the persons to whom they are issued and the sharing of information from such records;
(i) such other matters in relation to training, tags or identification numbers (including the making of an application for, or the issuing of, an identification number) as they consider appropriate.

(9) In this section—
“appropriate application” means an application made in accordance with the provisions of an order under subsection (8);
“chief constable” means a chief constable of a police force appointed under section 4(1) of the Police (Scotland) Act 1967;
“chief constable’s police area” means the police area for which the police force of which the chief constable is such officer is maintained; and “police area” is to be construed in accordance with section 50 of that Act.

11B Snares: duty to inspect etc.

(1) Any person who sets a snare in position must while it remains in position inspect it or cause it to be inspected, at least once every day at intervals of no more than 24 hours, for the following purposes—
(a) to see whether any animal is caught by the snare; and
(b) to see whether the snare is free-running.

(2) Any person who while carrying out such an inspection—
(a) finds an animal caught by the snare must, during the course of the inspection, release or remove the animal (whether it is alive or dead); and

(b) finds that the snare is not free-running must remove the snare or restore it to a state in which it is free-running.

(3) Subject to the provisions of this Part, any person who—

(a) without reasonable excuse, contravenes subsection (1); or

(b) contravenes subsection (2),

is guilty of an offence.

(4) For the purposes of this section, a snare is “free-running” if—

(a) it is not self-locking;

(b) it is not capable (whether because of rust, damage or other condition or matter) of locking; and

(c) subject only to the restriction on such movement created by the stop fitted in accordance with section 11(1A)(a) to (c), the noose of the snare is able at all times freely to become wider or tighten (and is not prevented from doing so whether because of rust, damage or other condition or matter other than the stop).

11C Snares: authorisation from landowners etc.

Subject to the provisions of this Part, any person who without reasonable excuse—

(a) while on any land has in his possession any snare without the authorisation of the owner or occupier of the land; or

(b) sets any snare in position on any land without the authorisation of the owner or occupier of the land,

is guilty of an offence.

11D Snares: presumption arising from identification number

The identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position.

11DA Snaring: review and report to the Scottish Parliament

(1) The Scottish Ministers must carry out, or secure the carrying out by another person of, a review of the operation and effect of—

(a) section 11 and any orders made under that section (in so far as the section and the orders make provision as regards snaring);

(b) sections 11A, 11B, 11C and 11D and any orders made under those sections.

(2) The review must be carried out no later than 31st December 2016.
(3) In carrying out the review, the matters that must be considered include whether in the opinion of the Ministers (or, if the review is being carried out by another person, that person) amendment of this Act or enactment of other legislation is appropriate.

(4) In carrying out the review, the Scottish Ministers (or, if the review is being carried out by another person, that person) must consult such persons and organisations as they consider (or, as the case may be, the other person considers) have an interest in it.

(5) The Scottish Ministers must, as soon as practicable after 31st December 2016, lay a report of the review before the Scottish Parliament.”.

(4) In section 16(3) (certain offences not committed if activity done in accordance with licence), after “11(1), (2) and (3C)(a)” insert “, 11C”.

(5) In section 17 (false statements made for obtaining registration or licence etc.)—
(a) in the title, after “registration” insert “, identification number”,
(b) after “7(1)” insert “, an identification number under section 11A(4)”.

Non-native species etc.

(1) The 1981 Act is amended as follows.

(2) In section 14 (introduction of new species etc.)—
(a) for subsections (1) to (2) substitute—
“(1) Subject to the provisions of this Part, any person who—
(a) releases, or allows to escape from captivity, any animal—
(i) to a place outwith its native range; or
(ii) of a type the Scottish Ministers, by order, specify; or
(b) otherwise causes any animal outwith the control of any person to be at a place outwith its native range,
is guilty of an offence.

(2) Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.

(2A) Subsection (1) does not apply to the following animals where those animals are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting—
(a) common pheasant;
(b) red-legged partridge.

(2B) The Scottish Ministers may, by order, specify—
(a) other types of animals to which subsection (1)(a)(i) or (1)(b) does not apply; and
(b) types of plants to which subsection (2) does not apply.
(2BA) The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—

(a) any person specified in the order;

(b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or

(c) any conduct authorised by, under or in pursuance of any such enactment.

(2C) An order under subsection (1)(a)(ii), (2B) or (2BA) may make different provision for different cases and, in particular, for—

(a) different types of animal or plant;

(b) different circumstances or purposes;

(c) different persons;

(d) different times of the year; and

(e) different areas or places.”,

(b) in subsection (3), for “prove” substitute “show”,

(c) subsections (5) and (6) are repealed.

(3) After section 14ZB (codes of practice in connection with invasive non-native species: England and Wales) insert—

“14ZC Prohibition on keeping etc. of invasive animals or plants

(1) Subject to the provisions of this Part, any person who keeps, has in the person’s possession, or has under the person’s control—

(a) any invasive animal of a type which the Scottish Ministers, by order, specify; or

(b) any invasive plant of a type so specified,

is guilty of an offence.

(2) An order under subsection (1) may make different provision for different cases and, in particular, for—

(a) different types of invasive animal or invasive plant;

(b) different circumstances or purposes;

(c) different persons;

(d) different times of the year; and

(e) different areas or places.

(3) Subject to subsection (4), it is a defence to a charge of committing an offence under subsection (1) to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing, the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person’s possession.
(5) The Scottish Ministers may, in an order under subsection (1), make provision for or in connection with the compensation of persons who, at the time of the coming into force of the order, may no longer keep, have in their possession or have under their control, an animal or plant.”.

(4) In section 14A (prohibition on sale etc. of certain animals or plants)—

(a) in the title, for “certain” substitute “invasive”;

(b) for subsection (1) substitute—

“(1) This section applies to—

(a) any type of invasive animal; or

(b) any type of invasive plant,

the Scottish Ministers, by order, specify.”;

(c) for subsection (3) substitute—

“(3) An order under subsection (1) may make different provision for different cases and, in particular, for—

(a) different types of invasive animal or invasive plant;

(b) different circumstances or purposes;

(c) different persons;

(d) different times of the year; and

(e) different areas or places.”.

(5) For section 14B (guidance: non-native species) substitute—

“14B Notification of presence of invasive animals or plants etc.

(1) The Scottish Ministers may, by order, make provision about the notification of the presence of—

(a) invasive animals; or

(b) invasive plants,

at any specified place outwith their native range where persons are, or become, aware of the presence of such animals or plants.

(2) An order under subsection (1) may make provision for, or in connection with—

(a) the persons (or types of persons) who must make a notification;

(b) the circumstances in which a notification must be made;

(c) the times of the year when a notification must be made;

(d) the persons to whom a notification must be made;

(e) the form and method of any notification; and

(f) the period within which any notification must be made.

(2A) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.
(3) An order under subsection (1) may make different provision for different cases and, in particular, for—
   (a) different types of invasive animal or invasive plant;
   (b) different circumstances or purposes;
   (c) different persons;
   (d) different times of the year; and
   (e) different areas or places.

(4) A person who, without reasonable excuse, fails to make a notification in accordance with the requirements of an order made under subsection (1) is guilty of an offence.”.

15 **Non-native species etc.: code of practice**

After section 14B (notification of presence of non-native species etc.) of the 1981 Act insert—

“14C **Non-native species etc.: code of practice**

(1) The Scottish Ministers may make a code of practice for the purpose of providing practical guidance in respect of—
   (a) the application of any of sections 14, 14ZC, 14A and 14B;
   (b) the application of any order made under any of those sections;
   (ba) species control agreements;
   (bb) species control orders;
   (c) licences granted under section 16(4)(c).

(2) A code of practice may, in particular, provide guidance on—
   (za) how Scottish Natural Heritage, the Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way in which they exercise their respective functions in relation to animals or plants which are outwith their native range;
   (a) which species, sub-species, varieties or races of animal or plant, or hybrids of animals or plants, are considered to be particular types of animals or plants for the purposes of—
      (i) this section;
      (ii) section 14, 14ZC, 14A or 14B;
      (iii) any order made under any of those sections;
      (iiiia) species control orders;
      (iv) the code;
   (b) the native range of any type of animal or plant;
   (c) the circumstances in which any type of animal is considered to be—
      (i) in captivity; or
      (ii) under the control or otherwise of a person at a place outwith its native range;
(d) the circumstances in which a type of plant is considered to be growing in the wild outwith its native range, and conduct that would cause any type of plant to grow in the wild;

(e) the circumstances in which a type of invasive animal or plant is considered to be kept in a person’s possession or under a person’s control;

(f) which types of animals or plants are invasive and the circumstances (if any) in which any such type of animal or plant is not considered to be invasive;

(g) best practice (where permitted) for—
   (i) keeping animals of any type which are invasive or which are kept at a place from which they may not be put outwith the control of any person;
   (ia) keeping plants of any type which are invasive or which are kept at a place outwith their native range;
   (ii) releasing animals of any type from captivity; and
   (iii) planting, or otherwise causing to grow, any type of plant in the wild;

(h) best practice for—
   (i) containing, capturing or killing animals of any type which are outwith the control of any person and which are—
      (A) at a place outwith their native range; or
      (B) animals of a type specified in an order made under section 14(1)(a)(ii);
   (ii) containing, uprooting or destroying plants of any type which are growing in the wild outwith their native range; and
   (iii) transferring animals or plants of any type which are not permitted to be kept by virtue of section 14ZC into the custody of Scottish Natural Heritage or any other person (and for keeping such animals or plants prior to the transfer);
   (i) the making and content of species control agreements;
   (j) the making, content of and enforcement of species control orders.

(3) The Scottish Ministers may revoke, replace or revise a code of practice.

(4A) The first code of practice, and any replacement code of practice, made under this section—
   (a) requires to be laid before, and approved by resolution of, the Scottish Parliament; and
   (b) comes into effect on such date after approval under paragraph (a) as is specified in the code.

(4B) Any revision to a code of practice (or revocation of a code of practice which is not being replaced) must—
   (a) be laid before the Scottish Parliament; and
(b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).

(4C) The Scottish Parliament may, before any such revision or revocation comes into effect, resolve that it is not to come into effect.

(4D) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.

(5) Before making, revoking, replacing or revising a code of practice, the Scottish Ministers must consult—

(a) Scottish Natural Heritage; and
(b) any other person appearing to them to have an interest in the code.

(6) A person’s failure to comply with a provision of a code of practice—

(a) does not of itself render the person liable to proceedings of any sort; but
(b) may be taken into account in determining any question in any such proceedings.

(7) In any proceedings for an offence under section 14, 14ZC, 14A, 14B or 14K—

(a) failure to comply with a relevant provision of a code of practice may be relied upon as tending to establish liability;
(b) compliance with a relevant provision of a code of practice may be relied upon as tending to negative liability.”.

16 Species control orders etc.

After section 14C of the 1981 Act (non-native species etc.: code of practice) (inserted by section 15) insert—

“14D Power to make species control orders

(1) A relevant body may make an order (a “species control order”) in respect of premises where—

(a) it is satisfied of the presence on the premises of—

(i) an invasive animal at a place outwith its native range; or
(ii) an invasive plant at a place outwith its native range; and

(b) any of subsections (2) to (4) applies.

(2) This subsection applies where—

(a) the relevant body has offered to enter into an agreement with the owner or, as the case may be, occupier of the premises to control or eradicate—

(i) invasive animals outwith their native range; or
(ii) invasive plants outwith their native range,

on the premises (referred to in this section as a “species control agreement”);

(b) 42 days have elapsed since the date of the offer; and
(c) the owner or occupier has refused or otherwise failed to enter into the agreement.

(3) This subsection applies where—

(a) a person has entered into a species control agreement with the relevant body; and

(b) the person has failed to comply with the terms of the agreement.

(4) This subsection applies where the relevant body has failed to ascertain the name or address of any owner or occupier of the premises (having made reasonable efforts to do so) and accordingly has not been able to offer to enter into a species control agreement.

(5) Subsection (4) does not apply unless—

(a) the relevant body has given notice in accordance with subsection (6) stating that it wishes to offer to enter into a species control agreement;

(b) 48 hours have passed since the notice was given; and

(c) no owner or occupier of the premises has identified themselves to the relevant body.

(6) A notice under this subsection must be addressed to “The owners and any occupiers” of the premises (describing it) and a copy of it must be affixed to some conspicuous object on the premises (in so doing the relevant body is to be treated as having provided notice to each owner or occupier whose name and address is unknown).

**14E Emergency species control orders**

(1) Where a relevant body considers that the making of a species control order is urgently necessary, the relevant body may, despite section 14D(1)(b), make a species control order whether or not any of subsections (2) to (4) of section 14D apply (such an order is referred to in this Part as an “emergency species control order”).

(2) An emergency species control order expires 49 days after it is made.

**14F Content of species control orders**

(1) A species control order must—

(a) describe the premises to which it relates;

(b) be accompanied by a map on which the premises to which it relates are delineated;

(c) specify the type of invasive animal or plant in question;

(d) specify—

(i) any operations which are to be carried out on the premises for the purpose of controlling or eradicating the type of invasive animal or plant in question;

(ii) the person who is to carry out the operations; and

(iii) how and when the operations are to be carried out;
(e) specify any operations which must not be carried out on the premises (referred to in this Part as “excluded operations”);  
(f) specify the date on which the order is to come into effect and the period for which it is to have effect; and  
(g) set out the circumstances in which an appeal may be made under section 14H against either the decision to make the order or the terms of the order.

(2) A species control order—  
(a) may provide for the making of payments by the relevant body making the order;  
(b) other than an emergency species control order, may provide for the making of payments by the owner or occupier of the premises to which the order relates, to any person in respect of reasonable costs incurred by a person carrying out an operation under the order.

14G Notice of species control orders

(1) A relevant body making a species control order must give notice of the making of the order—  
(a) to the owner and any occupier of the premises to which the order relates; and  
(b) where the relevant body is a body other than the Scottish Ministers, to the Scottish Ministers.

(2) Notice must—  
(a) be in writing;  
(b) specify the relevant body’s reasons for making the order;  
(c) attach a copy of the order; and  
(d) where the order is an emergency species control order, state that fact.

14H Appeals in connection with species control orders

(1) Any owner or occupier of premises to which a species control order relates may appeal to the sheriff if aggrieved by—  
(a) a decision of a relevant body to make the species control order; or  
(b) the terms of such an order.

(2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the relevant body gave notice to the appellant of the decision being appealed.

(3) The sheriff may suspend any effect of an emergency species control order pending the determination of an appeal.

(4) The sheriff must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—  
(a) affirming the order in question;
(b) directing the relevant body to amend the order in such manner as the
sheriff may specify;
(c) directing the relevant body to revoke the order; or
(d) making such other order as the sheriff thinks fit.

(5) A decision of the sheriff on appeal is final except on a point of law.

14I Coming into effect of species control orders

Unless a species control order specifies a later date under section 14F(1)(f), such an order has effect from—

(a) in the case where an order is an emergency species control order, the
giving of notice in accordance with section 14G;
(b) in any other case—
   (i) the expiry of the time limit for appealing against the decision to
       make the order; or
   (ii) where such an appeal is made, its withdrawal or final
determination.

14J Review of species control orders

(1) A relevant body which has made a species control order may, when it thinks
fit, review the order prior to its expiry for the purposes of determining whether
it should make an order revoking the order.

(2) If, on completion of a review, the relevant body decides that the species control
order should be revoked, it may make an order to that effect.

(3) The making of an order to revoke a species control order does not prevent a
relevant body subsequently making a species control order in relation to the
same premises.

14K Offences in relation to species control orders

(1) Any person who, without reasonable excuse, fails to carry out, in the manner
required by a species control order, an operation which the person is required
by the order to carry out is guilty of an offence.

(2) Any person who intentionally obstructs any person from carrying out an
operation required to be carried out under a species control order is guilty of an
offence.

(3) Any person who, without reasonable excuse, carries out, or causes or permits
to be carried out, any excluded operation is guilty of an offence.

14L Enforcement of operations under species control orders

(1) This section applies where a relevant body considers—
   (a) that any operation required to be carried out by a species control order it
       has made has not been carried out within the period or by the date
       specified in it; or
(b) that any such operation has been carried out otherwise than in the manner required under the order.

(2) The relevant body—

(a) may carry out the operation, or such further work as is necessary to ensure that it is carried out, in the manner required under the order;

(b) is not required to make any payment (and may recover any payments made) in pursuance of the species control order in relation to the operation in question; and

(c) may recover from the person whom the species control order required to carry out the operation any expenses reasonably incurred by it in doing so (less any payment which the relevant body is required to make in relation to the carrying out of the operation under the order by virtue of section 14F(2)(a)).

### 14M Species control orders: powers of entry

(1) A person authorised in writing by a relevant body may enter any premises for any of the following purposes—

(a) to determine whether or not to offer to enter into a species control agreement with the owner or, as the case may be, occupier of the premises;

(b) to determine whether or not to make or revoke a species control order;

(c) to serve notice to an owner or occupier of premises in accordance with section 14D(5)(a) or 14G;

(d) to ascertain whether an offence under section 14K is being, or has been, committed in relation to an order made by the relevant body;

(e) to carry out an operation or other work in pursuance of section 14L(2)(a).

(2) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless—

(a) the entry is for a purpose mentioned in subsection (1)(a) or (b) and at least 24 hours’ notice of the intended entry has been given;

(b) the entry is for a purpose mentioned in subsection (1)(c) or (d); or

(c) the entry is for a purpose mentioned in subsection (1)(e) and at least 14 days’ notice of the intended entry has been given.

(3) Subsection (2) does not apply in relation to entry in connection with an emergency species control order.

(4) Nothing in this section authorises any person to break any lock barring access to premises which the person is authorised to enter.

### 14N Species control orders: entry by warrant etc.

(1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for a person authorised by a relevant body to enter premises for a purpose mentioned in section 14M(1) and that—
(a) admission to the premises has been refused;
(b) such refusal is reasonably apprehended;
(c) the premises are unoccupied;
(d) the occupier is temporarily absent from the premises;
(e) the giving of notice under section 14M(2) would defeat the object of the proposed entry; or
(f) the situation is one of urgency,

the sheriff or justice may grant a warrant authorising the person to enter premises (including lockfast places), if necessary using reasonable force.

(2) In the cases of a warrant under subsection (1)(a) to (d), a sheriff or justice must not grant a warrant unless satisfied that notice of the intended entry has been given in the manner described in section 14M.

(3) A warrant under this section—
(a) may be executed without notice; and
(b) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(4) Any person authorised by a warrant to enter any premises must, if required to do so by the owner or occupier or anyone acting on the owner or occupier’s behalf, show that person the warrant.

(5) Any person authorised by a warrant to use reasonable force—
(a) must be accompanied by a constable when doing so; and
(b) may not use force against an individual.

14O Species control orders: powers of entry: supplemental

(1) Any person who exercises a power of entry to premises in accordance with section 14M or 14N may—
(a) be accompanied by any other person; and
(b) take any machinery, other equipment or materials on to the premises, for the purpose of assisting the person in the exercise of that power.

(2) A power specified in subsection (1) which is exercisable under a warrant is subject to the terms of the warrant.

(3) Any person leaving any premises which have been entered in exercise of a power conferred by section 14M or a warrant granted under section 14N, being either unoccupied premises or premises from which the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as the person found the premises.

(4) A relevant body must compensate any person who has sustained damage by reason of—
(a) the exercise by a person authorised by the relevant body of any powers of entry conferred on the person by section 14M or a warrant granted under section 14N; or
(b) the failure of a person so authorised to perform the duty imposed by subsection (3),
unless the damage is attributable to the fault of the person who sustained it.

(5) Any dispute as to a person’s entitlement to compensation, or to the amount of such compensation, is to be determined by arbitration.

14P Interpretation of sections 14 to 14O

(1) This section applies to sections 14 to 14O only.

(2) Any reference to the native range of an animal or plant, or a type of animal or plant, is a reference to the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.

(3) The native range of a hybrid animal or plant is any locality within the native range of both parents of the hybrid animal or plant.

(4) Any reference to an invasive animal or invasive plant, or type of such an animal or plant, is a reference to an animal or plant of a type which if not under the control of any person, would be likely to have a significant adverse impact on—

(a) biodiversity;
(b) other environmental interests; or
(c) social or economic interests.

(5) Any reference to premises—

(a) includes reference to land (including lockfast places and other buildings), movable structures, vehicles, vessels, aircraft and other means of transport; but
(b) does not include reference to dwellings.

(6) Any reference to a relevant body is a reference to—

(a) the Scottish Ministers;
(b) Scottish Natural Heritage;
(c) the Scottish Environment Protection Agency; or
(d) the Forestry Commissioners.

(7) Any reference to an animal includes a reference to ova, semen and milt of the animal.

(8) “Plant” includes fungi and any reference to a plant includes a reference to—

(a) bulbs, corms and rhizomes of the plant; and
(b) notwithstanding section 27(3ZA), seeds and spores of the plant.”.

17 Non-native species etc.: further provision

(1) The 1981 Act is amended as follows.

(2) In section 16 (power to grant licences), in subsection (4)(c), after “14” insert “, 14ZC”.

Non-native species etc.: further provision

(1) The 1981 Act is amended as follows.

(2) In section 16 (power to grant licences), in subsection (4)(c), after “14” insert “, 14ZC”.

Wildlife and Natural Environment (Scotland) Bill
Part 2—Wildlife under the 1981 Act
(3) In section 21 (penalties, forfeitures etc.—
   (a) in subsection (1) after “13” insert “, 14B”,
   (b) in subsection (4)—
      (i) after “14” insert “, 14ZC”,
      (ii) in paragraph (a), for “six” substitute “12”,
   (c) after that subsection insert—
      “(4ZA) Any person guilty of an offence under section 14K is liable—
         (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £40,000, or to both;
         (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”,
   (d) in subsection (6)(b) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”.

(4) In section 22(1) (power to vary schedules)—
   (a) in paragraph (b) the words “or Part I of Schedule 9” are repealed,
   (b) in paragraph (c) the words “or Part II of Schedule 9” are repealed.

(5) In section 24 (functions of GB conservation bodies), after subsection (4) insert—
   “(4A) The functions of Scottish Natural Heritage include the power to advise or assist—
      (a) another relevant body exercising functions under section 14L(2)(a); and
      (b) a person authorised to enter premises under section 14M exercising functions under that section.”.

(6) In section 26 (regulations, orders, notices etc.)—
   (a) in subsection (1), for “this Part” substitute “a provision of this Part other than section 14D”,
   (b) in subsection (4)—
      (i) for “this Part” substitute “a provision of this Part other than section 14D”,
      (ii) in paragraph (a), after “2(6)” insert “, 14, 14ZC, 14A or 14B”,
      (iii) in paragraph (b), after “section” insert “14, 14ZC, 14A, 14B,”,
   (c) after that subsection, insert—
      “(4A) The Scottish Ministers may make an order under section 14, 14ZC or 14A only where they have consulted—
         (a) Scottish Natural Heritage; and
         (b) any other person appearing to them to have an interest in the making of the order.
      (4B) Subsection (4A) does not apply where the Scottish Ministers consider it necessary to make the order urgently and without consultation.”.

(7) In section 70A (service of notices), after subsection (2) insert—
   “(2A) Subsection (1)(cc) of the said section 271 shall not apply to a notice required to be served under section 14G.
(2B) Subsection (2) of the said section 271 shall not apply to a notice required to be served under section 14D(5)(a).”.

(8) Schedule 9 (animals and plants to which section 14 applies) is repealed.

Species licences

18 Licences under the 1981 Act

(1) The 1981 Act is amended as follows.

(2) In section 16 (power to grant licences)—

(a) in subsection (3)—

(i) the word “or” immediately after paragraph (g) is repealed,

(ii) after paragraph (h) insert “; or

(i) for any other social, economic or environmental purpose,”,

(b) after subsection (3) insert—

“(3A) The appropriate authority shall not grant a licence under subsection (3)(i) unless it is satisfied—

(a) that undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and

(b) that there is no other satisfactory solution.”,

(c) subsection (8B) is repealed,

(d) for subsections (9) to (9ZC) substitute—

“(9) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 16A.

(9ZA) The Scottish Ministers must consult Scottish Natural Heritage before granting or modifying a licence under any of subsections (1) to (5).

(9ZB) Subsection (9ZA) does not apply in relation to licences granted under—

(a) paragraph (i), (j) or (k) of subsection (1);

(b) paragraph (f), (g) or (h) of subsection (3); or

(c) paragraph (c) of subsection (4).”,

(e) subsection (13) is repealed.

(3) After that section insert—

“16A Delegation of licence-granting power: Scotland

(1) The Scottish Ministers may delegate their functions in relation to licences under section 16 to—

(a) Scottish Natural Heritage; or

(b) a local authority.

(2) A delegation may be, to any degree, general or specific and may in particular relate to—
(a) a particular type of bird, other animal or plant;
(b) a particular licence or type of licence;
(c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.

(4) A delegation to—
(a) Scottish Natural Heritage under subsection (1)(a) is to be made by written direction;
(b) a local authority under subsection (1)(b) is to be made by order.

(5) A local authority which is delegated a function under subsection (1)(b) must, before granting or modifying a licence, consult Scottish Natural Heritage.

(6) The Scottish Ministers may modify or revoke a direction under subsection (4)(a).

(7) Where a direction or order under subsection (4) is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).”.

(4) In section 26 (regulations, orders, notices etc.)—
(a) in subsection (4)—
(i) after paragraph (a) insert—
“(aa) in the case of an order under section 16A(4)(b), shall consult Scottish Natural Heritage;”;
(ii) in paragraph (b), after “14B,” (as inserted by section 17(6)(b)(iii)) insert “16A(4)(b) or”;
(iii) in paragraph (c) after “may,” insert “except in the case of an order under section 16A(4)(b),”;
(b) in subsection (5) after “Part” insert “, other than an order under section 16A(4)(b),”.

19 Amendment of Schedule 6 to the 1981 Act

In Schedule 6 to the 1981 Act (animals which may not be killed or taken by certain methods) the entries relating to the animals with the following common names are repealed—

Bats, Horseshoe (all species),
Bats, Typical (all species),
Cat, Wild,
Dolphin, Bottle-nosed,
Dolphin, Common,
Dormice (all species),
Marten, Pine,
Wildlife and Natural Environment (Scotland) Bill  
Part 2—Wildlife under the 1981 Act  

Otter, Common,  
Polecats,  
Porpoise, Harbour (otherwise known as Common Porpoise).

**Enforcement**

5 **Wildlife inspectors etc.**

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.) subsections (9) and (10) are repealed.

(3) In section 7 (registration etc. of certain captive birds) subsections (6) and (7) are repealed.

(4) In section 19ZC (wildlife inspectors: Scotland)—

   a) in subsection (3)—

      (i) in paragraph (a), after “9(5)” insert “, 11G(1)”;

      (ii) in paragraph (d) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”;

      (iii) in paragraph (e) for the words from “verifying” to the end substitute “—

      (i) verifying any statement or representation made, or document or information supplied, by an occupier in connection with an application for, or the holding of, a relevant registration or licence; or

      (ii) ascertaining whether a condition to which a relevant registration or licence was subject to has been complied with.”,

   b) in subsection (5) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC, 14A, 14B or 14K”;

   c) in subsection (9), in the definition of “relevant registration or licence” in paragraph (b) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC or 14A”.

(5) In section 19ZD (power to take samples: Scotland)—

   a) in subsections (3) and (4) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC, 14A, 14B or 14K”;

   b) in subsection (10) after paragraph (b) insert—

   “(c) “tissue” means any type of biological material other than blood.”.

(6) In section 24 (functions of GB conservation bodies), in subsection (4)—

   a) immediately after paragraph (a) insert “or”,

   b) the word “or” immediately after paragraph (b) is repealed, and

   c) paragraph (c) is repealed.

30A **Offences by Scottish partnerships etc.**

After section 69 of the 1981 Act (offences by bodies corporate etc.), insert—
“69A Offences by Scottish partnerships etc.

Where a Scottish partnership or other unincorporated association is guilty of an offence under Part 1 of this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who is concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

Liability in relation to certain offences by others

20B Liability in relation to certain offences by others

After section 18 of the 1981 Act insert—

“18A Vicarious liability for certain offences by employee or agent

(1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—

(a) has a legal right to kill or take a wild bird on or over that land; or

(b) manages or controls the exercise of any such right.

(2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In any proceedings under subsection (2), it is a defence for B to show—

(a) that B did not know that the offence was being committed by A; and

(b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.

(5) For the purposes of subsection (1)(b), management or control of the exercise of a right to kill or take any wild bird on or over land includes in particular management or control of any of the following—

(a) the operation or activity of killing or taking any such birds on or over that land;

(b) the habitat of any such birds on that land;

(c) the presence on or over that land of predators of any such birds;

(d) the release of birds from captivity for the purpose of their being killed or taken on or over that land.

(6) In this section and section 18B, “a relevant offence” is—
(a) an offence under—
   (i) section 1(1), (5) or (5B);  
   (ii) section 5(1)(a) or (b); or  
   (iii) section 15A(1); and
(b) an offence under section 18 committed in relation to any of the offences mentioned in paragraph (a).

18B Liability where securing services through another

(1) This subsection applies where, on or in relation to any land—
   (a) a person (A) commits a relevant offence;
   (b) at the time the offence is committed, A is providing relevant services for B; and
   (c) B—
      (i) has a legal right to kill or take a wild bird on or over that land; or
      (ii) manages or controls the exercise of any such right.

(2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In any proceedings under subsection (2), it is a defence for B to show—
   (a) that B did not know that the offence was being committed by A; and
   (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.

(5) For the purposes of subsection (1)(b), A is providing “relevant services” for B—
   (a) if A manages or controls any of the following—
      (i) the operation or activity of killing or taking any wild birds on or over that land;
      (ii) the habitat of any such birds on that land;
      (iii) the presence on or over that land of predators of any such birds;
      (iv) the release of birds from captivity for the purpose of their being killed or taken on or over that land; and
   (b) whether A is providing the services—
      (i) by arrangement between A and B; or
      (ii) by arrangement with or as employee or agent of any other person (C) who is providing or securing the provision of relevant services for B.

(6) For the purposes of subsection (5)(b)(ii), C is providing or securing the provision of relevant services for B if C manages or controls any of the things mentioned in sub-paragraphs (i) to (iv) of subsection (5)(a).
Modifications and repeals relating to Part 2 and game licensing

21  Modifications and repeals relating to Part 2 and game licensing

(1) The modifications in Part 1 of the schedule have effect.

(2) The enactments mentioned in the first column of Part 2 of the schedule are repealed to the extent specified in the second column.

PART 3

DEER

22  Deer management etc.

(1) The 1996 Act is amended as follows.

(2) In section 1(2) (SNH’s deer functions)—

(a) the word “and” immediately after paragraph (b) is repealed,

(b) after paragraph (c) insert—

“(d) the interests of public safety; and

(e) the need to manage the deer population in urban and peri-urban areas.”.

(3) In section 3 (power of SNH to facilitate exercise of functions)—

(a) in subsection (1)—

(i) the word “and” immediately after paragraph (a) is repealed,

(ii) after paragraph (b) insert “; and

(c) to assist any person or organisation in reaching agreements with third parties,”,

(b) after subsection (2) insert—

“(3) A public body or office-holder issued guidance or advice under subsection (1)(a) must have regard to such guidance or advice in exercising any functions to which the guidance relates.”.

(4) In section 4(1) (appointment of panels), the words “, not exceeding nine,” are repealed.

(5) In section 18(2) (taking or killing at night), for paragraph (a) substitute—

“(a) the taking or killing is necessary—

(i) to prevent damage to crops, pasture, human or animal foodstuffs, or to woodland; or

(ii) in the interests of public safety;”.

23  Deer management code of practice

(1) After section 5 of the 1996 Act insert—

“Code of practice on deer management

5A  Code of practice on deer management

(1) SNH must draw up a code of practice for the purpose of providing practical guidance in respect of deer management.
(2) The code of practice may, in particular—
   (a) recommend practice for sustainable deer management;
   (b) make provision about collaboration in deer management;
   (c) set out examples of circumstances in which SNH may seek to secure a control agreement or make a control scheme;
   (d) make different provision for different cases and, in particular, for different circumstances, different times of the year or different areas.

(3) SNH may replace or revise the code of practice.

(4) Before drawing up, replacing or revising the code, SNH must consult any person appearing to them to have an interest in the code.

(5) SNH must submit a proposed code of practice (or a proposed replacement or revision) to the Scottish Ministers and, on receiving it, the Scottish Ministers may—
   (a) approve it, with or without modifications; or
   (b) reject it.

(6) Where the Scottish Ministers reject a proposed code of practice (or a proposed replacement or revision) under subsection (5)(b) above they may either instruct SNH to submit a new code (or replacement or revision) or they may substitute a new code (or replacement or revision) of their own devising.

(7A) The first code of practice, and any replacement code of practice, made under this section must—
   (a) be laid before, and approved by resolution of, the Scottish Parliament; and
   (b) come into effect on such date after approval under paragraph (a) as is specified in the code.

(7B) Any revision to a code of practice must—
   (a) be laid before the Scottish Parliament; and
   (b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).

(7C) The Scottish Parliament may, before such revision comes into effect, resolve that it is not to come into effect.

(7D) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.

(9) SNH must—
   (a) monitor compliance with a code of practice drawn up under this section; and
   (b) have regard to such a code in exercising its functions under this Act.”.

(2) In section 45(1) (interpretation) of the 1996 Act, after the definition of “animal foodstuffs” insert—
““code of practice on deer management” means the code of practice currently in operation in pursuance of section 5A of this Act;”.

24 Control agreements and control schemes etc.

(1) The 1996 Act is amended as follows.

(2) In section 7 (control agreements)—

(a) in subsection (1)—

(i) after “SNH” insert “, having had regard to the code of practice on deer management,”,

(ii) the word “deer”, where first occurring, is repealed,

(iii) in paragraph (a)—

(A) at the beginning insert “deer or steps taken or not taken for the purposes of deer management”,

(B) in sub-paragraph (i), after “foodstuffs,” insert “to the welfare of deer”,

(C) the word “or” immediately after sub-paragraph (i) is repealed,

(D) after that sub-paragraph insert—

“(ia) damage to public interests of a social, economic or environmental nature; or”,

(iv) in paragraph (b), at the beginning insert “deer”,

(v) for the words “the deer in that locality should be reduced in number” substitute “or for the remedying of such damage, measures require to be taken in relation to the management of deer”,

(vi) the words “for that reduction in number” are repealed,

(b) in subsection (3) after “SNH” insert “, having had regard to the code of practice on deer management,”,

(c) in subsection (4)—

(i) after “After” insert “it has given notice to such owners and occupiers of land as it considers to be substantially interested that”,

(ii) for the words from first “such” to “interested” substitute “those owners or occupiers”,

(d) in subsection (5)—

(i) the word “and” immediately after paragraph (d) is repealed,

(ii) after paragraph (e) insert “; and

(f) set out measures, or steps towards taking such measures, which the owners or occupiers are to take during each 12 month period for which the agreement has effect;”,

(e) after subsection (6) insert—

“(7) SNH must, on at least an annual basis, review a control agreement for the purpose of assessing compliance with its provisions.”.

(3) In section 8 (control schemes)—
Part 3—Deer

(a) for subsection (1) substitute—

“(A1) This subsection applies where SNH has given notice under subsection (4) of section 7 of this Act and—

(a) either—

(i) SNH is satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out; or

(ii) 6 months have elapsed since SNH gave the notice and no agreement has been reached on the matters mentioned in that subsection; and

(b) SNH continues to have the view that required it to consult under that subsection.

(1) Where subsection (A1) above applies and SNH, having had regard to the code of practice on deer management, is satisfied that action is necessary for the purposes mentioned in subsection (1) or, as the case may be, subsection (3) of section 7 of this Act, it shall make a scheme (a “control scheme”) for the carrying out of such measures as it considers necessary for those purposes.”,

(b) in subsection (2)—

(i) for “Subsection (1) above does” substitute “Subsections (A1) and (1) above do”,

(ii) at the end insert “(except where a purpose of the control agreement is to remedy damage caused, directly or indirectly, by deer or by steps taken or not taken for the purposes of deer management).”,

(c) subsection (5) is repealed, and

(d) after subsection (7) insert—

“(7A) Where any control scheme has been confirmed, SNH must, on at least an annual basis, review it for the purpose of assessing compliance with its provisions.”.

(4) In section 10 (emergency measures)—

(a) in sub-paragraph (i) of subsection (1)(a) the word “serious” is repealed,

(b) after that sub-paragraph insert—

“(ia) are causing damage to their own welfare or the welfare of other deer;”.

(5) In section 11 (application of section 10 to natural heritage), the word “serious” is repealed.

(6) In schedule 2 (provisions as to control schemes)—

(a) in paragraph 1(b)—

(i) for the words from “two” to “situated” substitute “such manner as SNH thinks fit”,

(ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,

(b) in paragraph 3, for the words from “shall” to “may” substitute “—

(a) must consider the objection, and
(b) may”,

(c) in paragraph 4—

(i) the word “either” where it first occurs is repealed,

(ii) the words from “; or” to the end are repealed,

(d) in paragraph 6(b)—

(i) for the words from “two” to “situated” substitute “such manner as the Scottish Ministers think fit”,

(ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,

(e) in paragraph 8, for the words from “shall” to “may” where it second occurs substitute “—

(a) must consider the objection, and

(b) may”,

(f) in paragraph 9—

(i) the word “either” where it first occurs is repealed,

(ii) the words from “; or” to the end are repealed,

(g) paragraph 11 is repealed,

(h) in paragraph 12(b)—

(i) for the words from “the” where it first occurs to “situated” substitute “such manner as the Scottish Ministers think fit”,

(ii) in sub-sub-paragraph (ii), the words “within the district” are repealed,

(i) in paragraph 13—

(ii) in sub-paragraph (1), for “and (3)” substitute “to (4)”,

(ii) for sub-paragraphs (2) and (3) substitute—

“(2) Any owner or occupier of land who is aggrieved by—

(a) a decision of the Scottish Ministers to—

(i) confirm a control scheme,

(ii) make a scheme varying a control scheme, or

(iii) revoke a control scheme, or

(b) the terms or conditions of such a scheme,

may appeal to the Scottish Land Court.

(3) An appeal under sub-paragraph (2) must be lodged not later than 28 days after the date of publication of the notice referred to in paragraph 12(b).

(4) The Scottish Land Court must determine an appeal under sub-paragraph (2) on the merits rather than by way of review and may do so by—

(a) affirming the control scheme,

(b) directing the Scottish Ministers to revoke the scheme,

(c) making such other order as it thinks fit.”.
25    **Deer: close seasons etc.**

(1) The 1996 Act is amended as follows.

(2) In section 5 (close season authorisations)—

   (a) in subsection (6)—

      (i) the words from the beginning to “and” where it first occurs are repealed,

      (ii) for paragraphs (a) and (b) substitute—

         “(a) the taking or killing is necessary—

            (i) to prevent damage to any crops, pasture or human or animal foodstuffs on any agricultural land which forms part of that land; or

            (ii) to prevent damage to any enclosed woodland which forms part of that land; or

         (b) the taking or killing is necessary—

            (i) to prevent damage to any unenclosed woodland which forms part of that land; or

            (ii) to prevent damage, whether directly or indirectly, to the natural heritage generally; or

            (iii) in the interests of public safety,

         and no other means of control which might reasonably be adopted in the circumstances would be adequate.”;

   (b) after subsection (7), add—

      “(8) An authorisation under subsection (6) or (7) above—

         (a) may be, to any degree, general or specific (including as regards the land in relation to which it is granted);

         (b) may be granted to a particular person or to a category of persons.”.

(3) In section 26 (right of occupier in respect of deer causing serious damage)—

   (za) in the title, the word “serious” is repealed,

   (a) in subsection (1)—

      (i) the words from “Notwithstanding” to “Act,” are repealed,

      (ii) the word “serious” is repealed,

   (b) after that subsection insert—

      “(1A) Subsection (1) above does not apply during any period fixed by order under section 5(1) of this Act in relation to the sex and species of the deer concerned.”.

(4) In section 37 (restrictions on granting of certain authorisations)—

   (a) in subsection (1), at the beginning insert “Except as mentioned in subsection (1A) below,”;

   (b) after that subsection, insert—
“(1A) Subsection (1) above does not apply to an authorisation under section 5(6) of this Act to any of the following persons to take or kill, for the purpose of preventing any damage mentioned in section 5(6)(a), any deer found on land falling within section 26(1)(a) or (b) of this Act (“section 26 land”)—

(a) the occupier of the section 26 land; or

(b) if authorised by the occupier—

(i) the owner of the section 26 land;

(ii) an employee of the owner; or

(iii) an employee of the occupier, or any other person normally resident on, the section 26 land.”.

(5) In section 45 (interpretation), after subsection (2) insert—

“(3) References in this Act, however expressed, to a period fixed by order under section 5(1) of this Act are to be read, in relation to the deer to which paragraph 2 of Schedule 6 to this Act applies, as a reference to the periods fixed by that paragraph.”.

26 Register of persons competent to shoot deer etc.

(1) The 1996 Act is amended as follows.

(2) Before section 17, insert the following italic heading—

“Unlawful killing, taking and injuring of deer”.

(3) In section 17 (unlawful killing, taking and injuring of deer), subsection (4) is repealed.

(4) After that section, insert—

“Register of persons competent to shoot deer

17A Register of persons competent to shoot deer

(1) The Scottish Ministers may by regulations—

(a) make provision for the establishment and operation of a register of persons competent to shoot deer in Scotland;

(b) prohibit any person from shooting deer unless the person is—

(i) registered; or

(ii) supervised by a registered person;

(c) provide that being a registered person is sufficient to meet the requirements as to fitness and competence under sections 26(2)(d) and 37(1);

(d) require registered persons or owners or occupiers of land to submit cull returns to SNH.

(2) Regulations under subsection (1) above—

(a) may make such supplementary, incidental or consequential provision as the Scottish Ministers think fit and may, in particular, make provision (or allow SNH to make provision) in relation to—

(i) who is to keep and maintain the register;
(ii) applications for registration (or for amendment of, or removal from, the register);

(iii) the determination of applications for registration (including the criteria to be used to determine whether a person is competent to shoot deer);

(iv) the imposition of conditions on the granting of an application (including conditions about compliance with any requirement for a registered person to submit a cull return);

(v) the amendment of the register;

(vi) the removal of a person from the register (including by revocation of registration);

(vii) the charging of fees in connection with registration;

(viii) appeals against decisions to—

(A) refuse to register a person;

(B) impose conditions on the granting of an application;

(C) remove a person from the register;

(ix) circumstances in which a person shooting deer is to be regarded as being, or not being, supervised by a registered person;

(x) the information to be included in cull returns;

(xi) the periods in respect of, and within, which cull returns are to be submitted;

(xii) the form and manner in which cull returns are to be submitted;

(xiii) the repeal of section 40; and

(xiv) consequential modification of any of sections 5, 16, 18, 26 or 37 of, or Schedule 3 to, this Act; and

(b) may make different provision for different purposes.

(3) Any person who shoots a deer on any land in contravention of regulations made under subsection (1)(b) above is guilty of an offence.

(4) Subsection (3) above does not apply where a person shoots a deer for the purpose mentioned in section 25 of this Act.

(5) Any person who—

(a) fails without reasonable cause to submit a cull return in accordance with regulations made under subsection (1)(d) above; or

(b) knowingly or recklessly provides any information in a cull return so submitted which is, in a material particular, false or misleading,

is guilty of an offence.

(6) In this section, “cull return”—

(a) when required to be submitted by a registered person, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been killed; and
(b) when required to be submitted by an owner or occupier of land, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been taken or killed on the land.

17B Review of competence etc. by SNH

(1) SNH must carry out a review of the following matters if the power in section 17A(1) is not exercised by 1st April 2014—

(a) levels of competence among persons who shoot deer in Scotland;

(b) the effect of such levels of competence on deer welfare.

(2) In any such review, the matters SNH must consider include—

(a) the extent to which such persons have been trained to shoot deer and the availability and nature of such training;

(b) any available evidence as regards any effect of the absence of such training, or the nature of such training, on the welfare of deer which have been shot.

(3) If SNH carries out a review, it must—

(a) when doing so consult such persons and organisations as it considers have an interest in the review; and

(b) publish a report of the review.”.

(5) Before section 18, insert the following italic heading—

“Other offences and attempts to commit offences”.

(6) In section 30 (power to convict of alternative offence), after “17” insert “, 17A(3)”.

(7) In section 31(4) (forfeiture of deer), after “17(1), (2) or (3)” insert “, 17A(3)”.

(8) In section 45(1) (interpretation)—

(a) after the definition of “red deer” insert—

““registered person” means a person registered in accordance with regulations under section 17A(1);”,

(b) after the definition of “roe deer” insert—

““shoot” means discharge a firearm of a class prescribed in an order under section 21(1) of this Act; and “shooting” is to be construed accordingly;”.

(9) In Schedule 3 (penalties), after the entry for section 17(3) insert—

<table>
<thead>
<tr>
<th>“17A(3)”</th>
<th>Shooting deer when not registered or supervised</th>
<th>a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or 3 months imprisonment or both</th>
</tr>
</thead>
<tbody>
<tr>
<td>17A(5)</td>
<td>Failure to submit cull return or making false or misleading cull return</td>
<td>a fine of level 3 on the standard scale or 3 months imprisonment or both.</td>
</tr>
</tbody>
</table>
**Part 4—Other wildlife etc.**

**Protection of badgers**

(1) The 1992 Act is amended as follows.

(2) In section 1 (taking, killing or injuring badgers) after subsection (5) add—
“(6) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) or (3) above.”.

(3) In section 2 (cruelty) after subsection (2) add—

“(3) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(4) In section 4 (selling and possession of live badgers)—

(a) the existing text becomes subsection (1),

(b) after that subsection add—

“(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(5) In section 5 (marking and ringing)—

(a) the existing text becomes subsection (1),

(b) after that subsection add—

“(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(6) In section 10 (licences)—

(a) in subsection (1) for “conservation body” substitute “authority”,

(b) in subsection (2)—

(i) the words from the beginning to the second “licence” are repealed,

(ii) paragraphs (a) to (d) become paragraphs (g) to (j) of subsection (1),

(c) in subsection (3)—

(i) the words from the beginning to the second “licence” are repealed,

(ii) the remaining words becomes paragraph (k) of subsection (1),

(d) for subsection (4) substitute—

“(4) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 10A below.”,

(e) subsection (5) is repealed,

(f) for subsection (6) substitute—

“(6) The Scottish Ministers must consult Scottish Natural Heritage before granting a licence under subsection (1) above.”,

(g) subsection (7) is repealed,

(h) in subsection (8), after the word “be” insert “modified or”,

(i) in subsection (10), for “subsection (2)(a)” substitute “subsection (1)(g)”.

(7) After that section insert—
“10A Delegation of licence-granting power: Scotland

(1) The Scottish Ministers may delegate their functions in relation to licences under section 10 above to—
   (a) Scottish Natural Heritage; or
   (b) a local authority.

(2) A delegation may be, to any degree, general or specific and may in particular relate to—
   (a) a specific badger or badger sett;
   (b) a particular licence or type of licence;
   (c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.

(4) A delegation to—
   (a) Scottish Natural Heritage under subsection (1)(a) above is to be made by written direction;
   (b) a local authority under subsection (1)(b) above is to be made by order made by statutory instrument.

(5) A local authority which is delegated a function under subsection (1)(b) above must, before granting or modifying a licence, consult Scottish Natural Heritage.

(6) The Scottish Ministers may modify or revoke a direction under subsection (4)(a) above.

(7) Where a direction or order under subsection (4) above is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).

(8) A statutory instrument containing an order under subsection (4)(b) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(9) Before making an order under subsection (4)(b) above, the Scottish Ministers must consult—
   (a) the local authority to which functions are to be delegated under the order;
   (b) Scottish Natural Heritage; and
   (c) any other persons the Scottish Ministers consider are affected by the making of the order.

(10) The Scottish Ministers must give consideration to any proposals for the making by them of an order under subsection (4)(b) above with respect to any area which may be submitted to them by a local authority whose area includes that area.”.

(8) In section 11A (attempts), in subsection (3)—
   (a) after “above” insert “or section 1(6) above”,
   (b) after “consisting of” insert “or involving”,
(c) for “the accused” substitute “a person”.

(9) In section 12 (penalties and forfeiture)—
   (a) in subsection (1)—
      (i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1ZA) below”,
   (ii) after “section 5” insert “(1) or (2))”,
   (b) after that subsection insert—
      “(1ZA) The provisions referred to in subsection (1) above are—
      (a) section 2(1)(d) above or section 2(3) above (in relation to an act made unlawful by section 2(1)(d) above); and
      (b) section 3(1)(a) to (c) or (e) above or section 3(2) (in relation to an act made unlawful under section 3(1)(a) to (c) or (e) above).”,
   (c) in subsection (1A)—
      (i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1B) below”, and
   (ii) in paragraph (a)—
      (A) for “six” substitute “12”, and
      (B) for “level 5 on the standard scale” substitute “the statutory maximum”, and
   (d) after that subsection insert—
      “(1B) The provisions referred in subsection (1A) above are—
      (a) section 1(1), (3) and (6);
      (b) section 2(1)(a) to (c) above and section 2(3) above (in relation to an act made unlawful by section 2(1)(a) to (c) above);
      (c) section 3(1)(d) above or section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above); and
      (d) section 4(1) and (2) above.”.

(10) In section 12A (time limit for bringing summary proceedings), in subsection (1), for “section 1(1), 2, 3, 5” substitute “any of sections 1 to 5”.

(11) In section 13 (powers of court where dog used or present at commission of offence) after “1(1)” insert “or (6) (in relation to an act made unlawful by section 1(1))”.

Muirburn

(1) The 1946 Act is amended as follows.

(2) For section 23 (prohibition of muirburn at certain times) substitute—

“23 Muirburn season

(1) A person may make muirburn on land only during the muirburn season.

(2) The muirburn season consists of—
(a) the standard muirburn season; and
(b) the extended muirburn season.

(3) The standard muirburn season is the period of time from 1 October in any year to 15 April in the following year.

(4) The extended muirburn season is the period of time from 16 April to 30 April in any year.

(5) A person may make muirburn in the extended muirburn season only if the person is—
(a) the proprietor of the land; or
(b) authorised in writing by, or on behalf of, the proprietor of the land.”.

(3) In section 23A (power to vary permitted times for making muirburn)—
(a) in subsection (1), for the words from “subsection (1)” to the end substitute “subsection (3) or (4) of that section such other dates as they consider appropriate so as to extend or reduce the standard muirburn season or extended muirburn season”,
(b) after that subsection insert—
“(1A) An order under subsection (1) may make different provision for different purposes and, in particular, for—
(a) different land (for example, for land at different altitudes);
(b) standard muirburn seasons or extended muirburn seasons in different years.”,
(c) in subsection (2)—
(i) the words “in relation to climate change” become paragraph (a),
(ii) after that paragraph insert—
“(b) for the purposes of conserving, restoring, enhancing or managing the natural environment; or
(c) for the purposes of public safety.”,
(d) in subsection (3) from the word “immediately” to the end substitute “on the coming into force of section 28 of the Wildlife and Natural Environment (Scotland) Act 2010 (asp 00).”.

(4) After that section insert—
“23AA Extension of muirburn season under section 23A(1): further regulation

(1) Where the standard muirburn season or the extended muirburn season is extended for any land by an order under section 23A(1), the Scottish Ministers may by order make provision regulating the making of muirburn during the additional period.

(2) Any provision so made applies in addition to the regulation by the provisions of this Act of the making of muirburn during the standard muirburn season or the extended muirburn season.

(3) An order under subsection (1) may make provision—
(a) as to the giving of notice;
(b) as to the making, to the Scottish Ministers or a specified person, of representations or objections;

(c) as to the consideration by the Ministers or a specified person of any such representations or objections;

(d) requiring the approval of the Ministers or a specified person for the making of muirburn;

(e) as to such approval being able to be subject to conditions;

(f) as to the making of muirburn being subject to conditions specified in the order;

(g) creating offences;

(h) providing that any offence created is triable only summarily;

(i) providing for any offence created to be punishable by a fine not exceeding level 3 on the standard scale;

(j) as to such other regulation of the making of muirburn as the Scottish Ministers consider appropriate.

(4) Conditions specified in pursuance of subsection (3)(f) may refer to matters specified elsewhere.

(5) In—

(a) subsection (1), “the additional period” means the period for which the standard muirburn season or, as the case may be, the extended muirburn season is extended for the time being for any land by an order under section 23A(1);

(b) subsection (3), “specified person” means a person specified in the order.

(6) The power conferred by subsection (1) is exercisable by statutory instrument.

(7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

23B Muirburn licences

(1) The Scottish Ministers may grant a licence to a person to make muirburn (a “muirburn licence”) during any period, other than the muirburn season, specified in the licence.

(2) A muirburn licence may, in particular, make provision for—

(a) the land on which the muirburn may be made; and

(b) the persons or types of persons who may make the muirburn.

(3) A muirburn licence may—

(a) relate to only part of the land to which the application relates;

(b) be subject to any specified conditions (including conditions about the giving of notice).

(4) A muirburn licence may be granted only for the purposes of—

(a) conserving, restoring, enhancing or managing the natural environment;

(b) research; or
(c) public safety.

(5) The Scottish Ministers may modify or revoke a muirburn licence.

(6) The Scottish Ministers may delegate their power to grant, modify and revoke muirburn licences to Scottish Natural Heritage.

(7) A delegation—

(a) must be made by written direction; and

(b) may be, to any degree, general or specific and may in particular relate to—

(i) a particular licence or type of licence;

(ii) a particular area.

(8) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type which were granted before the delegation.

(9) The Scottish Ministers may modify or revoke a direction under subsection (7).

(10) Where a direction is revoked, any existing licence granted under the direction continues to have effect (unless the revoking direction provides otherwise).

(11) The Scottish Ministers may, by regulations, make further provision for, or in connection with, muirburn licences.

(12) The power conferred by subsection (11) must be exercised by statutory instrument.

(13) A statutory instrument containing regulations under subsection (11) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(4A) In section 24 (right of tenant to make muirburn notwithstanding terms of lease), after subsection (2) insert—

“(2A) Notice by a tenant to a proprietor of land under subsection (2)—

(a) must be in writing; and

(b) may be given to any person purporting to be authorised by the proprietor to receive the notice.”.

(5) In section 25 (regulation of muirburn)—

(a) before paragraph (a) insert—

“(za) makes muirburn or causes or procures the making of muirburn on any land otherwise than—

(i) during the muirburn season in accordance with section 23; or

(ii) in accordance with a licence granted under section 23B;”,

(b) paragraph (c) is repealed.

(6) In section 26 (notices as to muirburn)—

(a) for the title, substitute “Notice as to muirburn: general requirement”;

(b) for subsections (1) and (2) substitute—

“(1A) A person who intends to make muirburn during the muirburn season must give notice in writing under this section to—

...
(a) the proprietor of the proposed muirburn site (if different from the person making the muirburn); and
(b) any occupier of land situated within 1 kilometre of the proposed muirburn site.

(An order under section 23AA(1) may make provision as to other notice to be given in relation to certain periods; and section 24(2) makes provision as to other notice to be given by a tenant.)

(3) Notice need not be given to a person (“A”) under this section if A has given notice in writing to the person intending to make muirburn that A wishes not to be notified of any intention to make muirburn.

(4) Where there are 10 or more occupiers of land situated within 1 kilometre of the proposed muirburn site, the person making muirburn may, instead of giving notice under this section to each occupier separately in accordance with section 26A, notify those persons collectively by placing a notice in at least one newspaper circulating in the area which includes the proposed muirburn site.

(5) Notice under this section must—

(a) be given—

(i) after the expiry of the previous muirburn season; and
(ii) not less than 7 days before the muirburn is made;

(b) specify the land on which the muirburn is intended to be made;

(c) specify that the person being notified may, before the muirburn is made, require further information in relation to—

(i) the dates on or between which the muirburn is intended to be made;

(ii) the places at which the muirburn is intended to be made; and

(iii) the approximate extent of the proposed muirburn.

(7) Where either the proprietor of the land or an occupier of land situated within 1 kilometre of the proposed muirburn site requests any of the further information mentioned in subsection (5)(c), the person intending to make the muirburn must make reasonable efforts to comply with the request not later than the end of the day before the muirburn is made.

(9) Any notice required to be given to proprietors of land under this section may be given to any person purporting to be authorised by the proprietor to receive the notice.

(10) Any person who fails to comply with the requirements of this section is guilty of an offence.”.

(7) After that section insert—

“26A Giving of muirburn notices under section 24(2) or 26

(1) Subject to the provisions of this section, any written notice required to be given to a person under section 24(2) or 26 may be given—

(a) by delivering it to the person personally;
(b) by leaving it at, or posting it to, the usual or last known address of the person in the United Kingdom, or in a case where an address has been given by the person, at or to that address;

c) where the person is—

(i) a body corporate, by leaving it at or posting it to the address of the registered or principal office of the body in the United Kingdom;

(ii) a partnership, by leaving it at or posting it to the principal office of the partnership in the United Kingdom;

d) to the person by electronic communication of any particular form if—

(i) the person has agreed to be notified in that form;

(ii) the person has supplied the person who is to send the notice with the person’s electronic address or number; and

(iii) the electronic communication is capable of being accessed and understood by the person.

(2) Where, after reasonable inquiry, the identity of an occupier cannot be ascertained for the purposes of giving notice under section 26, notice may be given by—

(a) addressing the notice to “Any occupiers of the land” (describing it); and

(b) affixing it to some conspicuous object on the land.

(3) Unless the contrary is shown, a notice given in accordance with subsection (1)(d) is taken to have been received 48 hours after it is given.”.

(8) In section 27 (offences as to muirburn)—

(a) in the title, for “Offences” substitute “Penalties etc. for offences”,

(b) for the words “twenty-three or section twenty-five” substitute “25 or 26(10)”.

25  **28A Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act**

   After section 34 of the 1946 Act, insert—

   “34A **Offences by bodies corporate etc.**

   (1) Where an offence under this Act has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—

   (a) a director, manager, secretary or other similar officer of the body; or

   (b) a person who purported to act in any such capacity,

   he (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

   (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

   (3) Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—
(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;
(b) in relation to an unincorporated association other than a Scottish partnership, any person who was concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

PART 5
SITES OF SPECIAL SCIENTIFIC INTEREST

29 Combining sites of special scientific interest
(1) The 2004 Act is amended as follows.
(2) After section 5 insert—

“5A Combining sites of special scientific interest
(1) Where SNH considers that two or more sites of special scientific interest should be combined, it may notify that fact to the persons who are the interested parties in relation to the sites in question.
(2) Subsections (4) to (7) of section 3 apply in relation to a notification under subsection (1) as they apply to a notification under section 3(1), but as if—
(a) references in section 3(4)(a)(ii) and (iii) to a natural feature were references to the natural features by reason of which SNH considers the original sites to be of special interest, and
(b) section 3(4) required the notification to also be accompanied by a revised site management statement prepared in relation to the combined site of special scientific interest.
(3) Accordingly, from the date when notification is given under subsection (1)—
(a) that notification is an “SSSI notification” for the purposes of this Act,
(b) the combined site of special scientific interest is a single “site of special scientific interest” for the purposes of this Act, and
(c) the original SSSI notifications cease to have effect.
(4) SNH must give public notice describing the general effect of an SSSI notification given by virtue of subsection (1) in such manner (including on the internet or by other electronic means) as SNH thinks fit.
(5) Nothing in this section allows SNH to—
(a) include any land in a combined site of special scientific interest which was not included in at least one of the original sites of special scientific interest,
Wildlife and Natural Environment (Scotland) Bill
Part 5—Sites of special scientific interest

(b) add to the operations requiring consent specified in the original SSSI notifications (otherwise than by extending the original area to which any such operation requiring consent related so as to include any land in the combined site of special scientific interest).”.

(3) In section 48(11)(a) (notices etc.), after “5(1)” insert “5A(1)”.

(4) In section 58(1) (interpretation)—
(a) in the definition of “site of special scientific interest”, after “3(6)” insert “(read, where necessary, together with section 5A(3)(b))”,
(b) in the definition of “SSSI notification”, after “3(5)” insert “(read, where necessary, together with section 5A(3)(a))”.

30 Denotification of SSSIs: damage caused by authorised operations

In section 9 (denotification of SSSIs) of the 2004 Act, after subsection (4) insert—

“(5) This subsection applies where—

(a) a public body or office-holder (after consulting SNH in accordance with any enactment) permits the carrying out of an operation,
(b) the carrying out of the operation in pursuance of that permission damages a natural feature specified in an SSSI notification,
(c) SNH, because of that damage, gives notification under subsection (1) of its intention to revoke or modify the SSSI notification, and
(d) the explanation given by virtue of subsection (4)(a)(ii) in the document accompanying the notification under subsection (1)—

(i) states that SNH considers that all or part of the site of special scientific interest is no longer of special interest by reason of the damage caused by the carrying out of the permitted operation, and
(ii) explains the effect of subsection (6)(b).

(6) Where subsection (5) applies—

(a) section 11, and paragraphs 3 to 15 of schedule 1, do not apply in relation to the notification under subsection (1), and
(b) the relevant SSSI notification is revoked or, as the case may be, modified when the notification is given under subsection (1).”.

31 SSSIs: operations requiring consent

(1) The 2004 Act is amended as follows.

(2) In section 13(1) (SNH consent required for operations carried out by public bodies), after “out” insert “, or cause or permit to be carried out on land owned or occupied by the public body or office-holder,”.

(3) In section 14 (SNH consent not required for certain operations)—

(a) in subsection (1)—

(i) after paragraph (c) insert—

“(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,
(ii) the word “or” immediately following paragraph (d) is repealed,

(iii) after paragraph (e) insert “, or

(f) if that operation is of a type described by order made by the Scottish Ministers.”,

(b) in subsection (2), after second “out” insert “or cause or permit to be carried out”,

(c) in subsection (3)—

(i) in paragraph (a)(i), for “proposes to commence the operation” substitute “is proposed that the operation be commenced”;

(ii) in paragraph (b), after “way” insert “, or causes or permits the operation to be carried out only in such a way,”;

(iii) in paragraph (c), after “operation” insert “or, as the case may be, in causing or permitting the carrying out of the operation,”;

(d) in subsection (4)(a), for “an operation for” substitute “or causes or permits the carrying out of an operation in circumstances in”.

(4) In section 17 (SNH consent not required for certain operations)—

(a) in subsection (1)—

(i) after paragraph (c) insert—

“(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”;

(ii) the word “or” immediately following paragraph (d) is repealed,

(iii) after paragraph (e) insert “, or

(f) if that operation is of a type described by order made by the Scottish Ministers.”;

(b) in subsection (4), for the words from “owner” to “functions” substitute “operation in respect of which section 13 applies.”.

32 SSSI offences: civil enforcement

(1) The 2004 Act is amended as follows—

(a) after section 20 insert—

“Restoration notices

20A Restoration notices

(1) SNH may propose to give a restoration notice where it is satisfied that a person (the “responsible person”)—

(a) has committed an offence under section 19(1), or

(b) has committed an offence under section 19(3) in respect of an operation which has damaged a natural feature specified in an SSSI notification.

(2) A restoration notice is a notice which requires the responsible person to carry out such operations as may be specified in the notice, within such periods from the notice taking effect as may be so specified, for the purpose of restoring, so far as is reasonably practicable, the damaged natural feature to its former condition.
Wildlife and Natural Environment (Scotland) Bill
Part 5—Sites of special scientific interest

(3) A proposal under subsection (1) must be made to the responsible person and must—

(a) explain why SNH proposes to give the restoration notice,
(b) be accompanied by a draft of the proposed restoration notice,
(c) explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question,
(d) explain that the responsible person has the right to make representations to SNH about the proposal within the period of 28 days from the date on which the proposal is made,
(e) specify the manner in which such representations must be made.

(4) SNH may, after the period for making representations about a proposal has expired, give the restoration notice (with or without modifications) to the responsible person.

(5) A restoration notice has effect only if the responsible person gives SNH notice of intention to comply with it within 28 days of it being given.

(6) SNH may by giving notice to a responsible person in respect of whom a restoration notice has effect—

(a) extend the period specified in the restoration notice within which operations are to be carried out, or
(b) otherwise modify the restoration notice in such manner as SNH considers appropriate.

(7) A notice may be given under paragraph (b) of subsection (6) only where the responsible person has consented to the modification.

(8) SNH may withdraw a restoration notice (by giving notice to the responsible person) where it is satisfied on the basis of information subsequently obtained that the restoration notice should not have been given to the responsible person.

(9) Where a restoration notice is withdrawn, SNH must compensate the responsible person for any expenses reasonably incurred in complying with the restoration notice.

(10) Proceedings against the responsible person may not be commenced or continued for an offence in relation to which the restoration notice has effect (even if the restoration notice is subsequently withdrawn).

(11) If, within the period specified in a restoration notice, the responsible person to whom it is given fails, without reasonable excuse, to comply with it, the responsible person is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding £40,000,
(b) on conviction on indictment, to a fine.

(12) If, within the period specified in a restoration notice, any operations so specified have not been carried out in accordance with the restoration notice, SNH may—

(a) carry out those operations, and
(b) recover from the responsible person any expenses reasonably incurred by it in doing so.

(b) in section 14(1) (SNH consent not required for certain operations by public bodies), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”

(c) in section 17(1) (SNH consent not required for certain operations by owners or occupiers), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”

(d) in section 44(1) (powers of entry), after paragraph (b) insert—

“(ba) to ascertain whether an operation required to be carried out by a restoration notice given under section 20A(4) has been carried out in accordance with the notice,

(bb) to carry out operations in pursuance of section 20A(12),”

(e) in paragraph 1(1)(b) (duty to give notice before entering occupied premises) of schedule 4, for “(1)(h)” substitute “(1)(bb), (h)”.

(1A) In section 8B(1) (protection afforded to spent alternatives) of the Rehabilitation of Offenders Act 1974 (c.53), after paragraph (c) insert—

“(ca) has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section,”

(2) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows—

(a) in section 69(7) (notice of previous alternative disposals), after paragraph (b) insert “;

(c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,

(b) in section 101 (previous convictions)—

(i) in subsection (10), after paragraph (b) insert “;

(c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,

(ii) in subsection (11)—

(A) the word “or” immediately following paragraph (b) is repealed,

(B) after paragraph (c) insert “; or

(d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”,

(C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”,

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(c) in section 166 (previous convictions: summary proceedings)—

(i) in subsection (10), after paragraph (b) insert “;

(c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,

(ii) in subsection (11)—

(A) the word “or” immediately following paragraph (b) is repealed,

(B) after paragraph (c) insert “; or

(d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”,

(C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”.

PART 6

GENERAL

33 Crown application

(1) The modifications of enactments made by this Act bind the Crown to the extent the enactments bind the Crown.

(2) After section 27 of the 1946 Act, insert—

“27A Crown application: sections 23 to 27

(1) Sections 23 to 27 (including orders made under section 23AA) of this Act bind the Crown.

(2) No contravention by the Crown of any provision made by or under sections 23 to 27 of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing those provisions, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), sections 23 to 27 (including orders made under section 23AA) apply to persons in the public service of the Crown as they apply to other person.”.

(3) After section 66A of the 1981 Act, insert—

“66B Application of Part 1 to Crown: Scotland

(1) Subject to subsections (2) to (5), Part 1 (including regulations and orders made under it) bind the Crown.

(2) No contravention by the Crown of any provision made by or under Part 1 makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), any provision made by or under Part 1 applies to persons in the public service of the Crown as it applies to other persons.
(4) A species control order may be made under section 14D in relation to Crown land only with the consent of the appropriate authority.

(5) The powers conferred by sections 14M and 19ZC are exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this section, “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;

(b) belongs to Her Majesty in right of Her private estates;

(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or

(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

(7) In this section, the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;

(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;

(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;

(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;

(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.

(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

(4) After section 13 of the 1992 Act, insert—

“13A  Crown application: Scotland

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
(3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.”.

(5) In section 44 of the 1996 Act—

(a) for subsection (1), substitute—

“(1) This Act binds the Crown, subject to such modifications as may be prescribed.”,

(b) after subsection (2), insert—

“(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (3), this Act applies to persons in the public service of the Crown as it applies to other persons.

(5) The power conferred by section 15 of this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5), “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;

(b) belongs to Her Majesty in right of Her private estates;

(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or

(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department”.

(7) In subsection (5), the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;

(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;

(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;

(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;

(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.
(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

34 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) A statutory instrument containing an order under subsection (1) is (except where subsection (4) applies) subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

35 Commencement and short title

(1) The provisions of this Act (other than section 1 and this Part) come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) An order under subsection (1) may—

(a) make different provision for different purposes,

(b) make such transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

(3) This Act may be cited as the Wildlife and Natural Environment (Scotland) Act 2010.
SCHEDULE
(introduced by section 21)

MODIFICATIONS AND REPEALS RELATING TO PART 2 AND GAME LICENSING

PART 1

MODIFICATIONS

In section 39(2) of the Agriculture (Scotland) Act 1948 (c.45), in the proviso, for the words from “game” to the end substitute “—

(a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or

(b) brown hare or mountain hare in close season for that hare (within the meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the right to comply with a requirement falling within this proviso by reason only that, apart from the proviso, compliance with the requirement would constitute an offence under section 1 or (as the case may be) 10A(1) of that Act”.

PART 2

REPEALS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Game (Scotland) Act 1772 (c.54)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Night Poaching Act 1828 (c.69)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Act 1831 (c.32)</td>
<td>The provisions of the Act extended to Scotland by section 13 of the Game Licenses Act 1860 (c.90).</td>
</tr>
<tr>
<td>Game (Scotland) Act 1832 (c.68)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Night Poaching Act 1844 (c.29)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Hares (Scotland) Act 1848 (c.30)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Licences Act 1860 (c.90)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Poaching Prevention Act 1862 (c.114)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Laws Amendment (Scotland) Act 1877 (c.28)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Ground Game Act 1880 (c.47)</td>
<td>Section 4.</td>
</tr>
<tr>
<td>Customs and Inland Revenue Act</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Enactment</td>
<td>Extent of repeal</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------</td>
</tr>
<tr>
<td>1883 (c.10)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Hares Preservation Act 1892 (c.8)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Finance Act 1924 (c.21)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Destructive Imported Animals Act 1932 (c.12)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Finance Act 1937 (c.54)</td>
<td>Section 5.</td>
</tr>
<tr>
<td>Section 5.</td>
<td></td>
</tr>
<tr>
<td>Second Schedule.</td>
<td></td>
</tr>
<tr>
<td>Agriculture (Scotland) Act 1948 (c.45)</td>
<td>Section 53.</td>
</tr>
<tr>
<td>Local Government (Scotland) Act 1966 (c.51)</td>
<td>Section 44.</td>
</tr>
<tr>
<td>In Schedule 4, Part II, the entries relating to the Game Licences Act 1860 and the Customs and Inland Revenue Act 1883.</td>
<td></td>
</tr>
<tr>
<td>Game Act 1970 (c.13)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Import of Live Fish (Scotland) Act 1978 (c.35)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Deer (Scotland) Act 1996 (c.58)</td>
<td>Section 38.</td>
</tr>
<tr>
<td>Protection of Wild Mammals (Scotland) Act 2002 (asp 6)</td>
<td>In the schedule, paragraphs 1 and 2.</td>
</tr>
<tr>
<td>Marine (Scotland) Act 2010 (asp 5)</td>
<td>Section 104.</td>
</tr>
</tbody>
</table>
Wildlife and Natural Environment (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision in connection with wildlife and the natural environment; and for connected purposes.

Introduced by: Richard Lochhead
On: 9 June 2010
Supported by: Roseanna Cunningham
Bill type: Executive Bill
CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Wildlife and Natural Environment (Scotland) Bill (introduced in the Scottish Parliament on 9 June 2010) as amended at Stage 2. Text has been added or deleted as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – BACKGROUND AND OVERVIEW

4. The Bill makes a range of provision about wildlife and the natural environment. It consists of six Parts and a schedule, which make provision as explained below.

5. The following expressions are used throughout these Notes:
   “the 1946 Act” means the Hill Farming Act 1946;
   “the 1981 Act” means the Wildlife and Countryside Act 1981;
   “the 1992 Act” means the Protection of Badgers Act 1992;
   “the 1996 Act” means the Deer (Scotland) Act 1996;
   “the 2004 Act” means the Nature Conservation (Scotland) Act 2004;
   “DCS” means the Deer Commission for Scotland, established under the 1996 Act and to be dissolved and its functions transferred to SNH on the commencement of section 1 of the Public Sector Reform (Scotland) Act 2010; and
“SNH” means Scottish Natural Heritage, established under the Natural Heritage (Scotland) Act 1991.

**Part 1 – Defined expressions**

6. Part 1 contains defined expressions for the statutes amended by the Bill.

**Part 2 – Wildlife under the 1981 Act**

7. Part 2 of the Bill makes amendments to Part 1 of the Wildlife and Countryside Act 1981. Part 1 of that Act regulates the taking, killing, sale and possession of all wild birds and of the species of animals and plants which are specified in Schedules to the Act. Certain other species of animals and plants are protected separately under the Conservation (Natural Habitats & c.) Regulations 1994 (S.I.1994/2716). Part 1 of the 1981 Act also prohibits certain methods of taking and killing birds and animals and regulates the use of other methods (including snares). It also regulates the introduction of non-native species. Most activities prohibited under Part 1 are capable of being licensed for certain purposes under section 16 of that Act.

8. The amendments in Part 2 of the Bill add provisions about the protection and poaching of game species to the 1981 Act, abolish “areas of special protection” established under section 3 of that Act, impose restrictions on the use of snares to catch animals, replace the regime for controlling invasive species, amend and enable the delegation of, licensing functions under the Act and make consequential changes to the powers of wildlife inspectors.

**Part 3 – Deer**

9. Part 3 of the Bill amends the Deer (Scotland) Act 1996. Part I (sections 1 to 4) of the 1996 Act places a duty on DCS to further the conservation, control and sustainable management of deer. Part II of that Act (sections 5 to 16) provides for the setting of close seasons and creates mechanisms for DCS to work with landowners to manage deer numbers. Part III (sections 17 to 26) of that Act creates offences in relation to deer, including poaching offences which make it an offence to kill deer without the legal right to do so. Part IV (sections 27 to 48) regulates venison dealing and contains enforcement and other miscellaneous provisions.

10. The functions of DCS under the 1996 Act are to be transferred to SNH by section 1 of the Public Services Reform (Scotland) Act 2010. Schedule 1 to the 2010 Act makes a large number of consequential amendments to the 1996 Act. These have been taken into account in drafting the Bill, which refers to SNH throughout. The same approach has been taken in these Notes.

11. Part 3 of the Bill amends the 1996 Act to change the provisions which allow certain occupiers of land to shoot deer during close seasons. It requires SNH to prepare a code of practice in relation to deer management. It revises the purposes for and the circumstances in which SNH can exercise powers in relation to control agreements, control schemes and emergency measures to manage deer. It also enables Ministers to make provision by order to require persons who shoot deer to be registered as competent to do so. Such orders may also be used to make consequential changes to the arrangements for collecting data about numbers of deer killed (known as “cull returns”).
Part 4 – Other wildlife etc.

12. Section 27 of the Bill amends the Protection of Badgers Act 1992. The 1992 Act prohibits a range of activities in relation to badgers, including the killing, taking and sale of badgers and disturbance to their setts. Some of these activities can be licensed for certain purposes. The Bill creates a number of new offences under the 1992 Act and provides for certain offences to be triable on indictment as well as under summary procedure. It also makes provision for the delegation of licensing functions under the 1992 Act.

13. Section 28 of the Bill amends the Hill Farming Act 1946. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland, which is defined in section 39 of that Act as including “setting fire to or burning heath or muir”. The Bill replaces periods during which muirburn is prohibited with a positive season during which it is permitted. It also expands the power to amend muirburn seasons by order and provides for a new licensing regime in respect of out of season muirburn. Finally it reforms requirements to inform neighbours of intentions to make muirburn.

Part 5 – Sites of special scientific interest

14. Part 5 of the Bill amends the 2004 Act to make provision for the combination and denotification of sites of special scientific interest (“SSSIs”), operations which affect SSSIs and alternative procedure for securing reparation to SSSIs following illegal damage.

Part 6 – General

15. Part 6 of the Bill contains general provision on Crown application and commencement.

Schedule

16. The schedule contains repeals. These include the repeals of the 18th and 19th century statutes known as the Game Acts, which set close seasons for game birds, create poaching offences and establish requirements for game licences. The close seasons and poaching offences are replaced by provision under Part 2 of the Bill. The game licensing regime is repealed and not replaced, although it will be possible to grant licences in relation to game species for other purposes under the 1981 Act.

THE BILL – SECTION BY SECTION

PART 1 – DEFINITIONS

17. Part 1 consists of section 1, which contains defined expressions used throughout the Bill.

PART 2 – WILDLIFE UNDER THE 1981 ACT

Section 2 – Application of the 1981 Act to game birds

18. This section amends definitions in section 27(1) of the 1981 Act. Paragraph (b) amends the definition of “wild bird” to remove the exception in relation to game birds. This means that
game birds (pheasants, partridges, red and black grouse and ptarmigan) will be covered by the
offences in the 1981 Act which relate to wild birds. The amendment should be read with section
21 and the schedule, which repeal the older legislation which restricts the killing, taking and sale
of game birds. Paragraph (a) is consequential on the other amendments to the 1981 Act. It
repeals the definition of “game bird”, a term which is not used in the amended provisions in
relation to wild birds.

Section 3 – Protection of game birds etc. and prevention of poaching

19. This section amends sections 1 and 2 of and Schedule 2 to the 1981 Act. Section 1 of the
1981 Act creates offences of killing, taking and injuring any wild bird. Section 2 of that Act
creates exceptions to those offences, which allow certain species (those listed in Schedule 2) to
be taken and killed outside close seasons.

20. The amendment to section 1 ensures that the offences under that section will apply to
partridges, pheasants, mallards and red grouse which are bred in captivity and released for
shooting.

21. The amendments to section 2 and to Schedule 2 extend the exceptions to cover the game
birds which are brought within the 1981 Act by virtue of the amendment to the definition of
“wild bird” under section 2. The amendments set close seasons for those game birds. They also
amend the exceptions so that these may only be relied on by people with a legal right (at
common law or otherwise) to kill or take the birds. These amended exceptions replace the
poaching offences in older legislation which relates to game birds and which is repealed by
section 21 and the schedule.

22. Subsection (2) amends the italic heading of sections 1 to 8 of the 1981 Act (which relate
to birds) to add a reference to poaching. The new heading takes account of the inclusion of

23. Subsection (3) amends section 1(6) of the 1981 Act. Section 1(6) of that Act excludes
birds bred in captivity from the definition of “wild bird”. The amendment qualifies section 1(6)
in two respects. First, to ensure that birds bred in captivity and lawfully released for
conservation purposes are protected as wild birds after release. Second, to ensure that a captive
bred mallard, grey or red-legged partridge, common pheasant or red grouse will be treated as a
wild bird if it is no longer in captivity and not in a place in which it was reared. This subsection
ensures that the birds that are most often bred in captivity for sporting purposes are covered by
the offences under section 1 and the exceptions under section 2 of the 1981 Act when they are
released.

24. Subsection (4)(a) to (c) amends section 2 of the 1981 Act, which creates exceptions to
section 1 of the 1981 Act. The effect in the amendments is to provide that it is not an offence for
a person to kill or take a bird listed on Part 1 of Schedule 2 to that Act outside the close season
for that bird, provided that the person had the legal right to kill or take the bird, or had
permission to do so. A legal right to kill or take wild birds may arise automatically under the
common law (e.g. as a consequence of landownership), under a lease or another contract or
under statute. Whether a person with a legal right to kill or take the bird has the authority to
grant permission to someone else will depend on the nature of their legal right. The Bill does not alter legal rights to kill or take birds or confer new powers to grant permission to others. It remains an offence to take or kill any other wild bird which is not listed in Part 1 of Schedule 2, unless otherwise authorised by means of a licence issued under section 16 of the 1981 Act.

25. Subsections (4)(d) and (6) inserts a new Part 1A into Schedule 2 to the 1981 Act which lists the birds which are not to be killed or taken on Sundays or Christmas Day. The restriction in relation to Sundays and Christmas Day does not apply to game birds (pheasants, partridges, red and black grouse and ptarmigan).

26. Subsection (4)(e) inserts new subsections (3A) to (3C) into section 2 of the 1981 Act. Subsections (3A) and (3B) provide that it is not an offence to take live mallard, partridge, pheasant, black grouse or red grouse (all listed in Part I of Schedule 2 to the 1981 Act), or the eggs of those birds for breeding purposes during a period of 2 weeks after the start of the close season for those birds, provided that the person taking the birds or eggs has the legal right or permission to do so. This process is sometimes referred to as “catching up”. As with subsection (4)(a), the amendment does not alter legal rights to take birds or confer power to grant permission to others.

27. Subsection (3C) provides that catching up of mallards or mallards’ eggs is not permitted on the foreshore, below the high-water mark of ordinary spring tides.

28. Subsection (4)(f) amends section 2(4) of the 1981 Act to create close seasons for pheasant, grey and red-legged partridge, black grouse, red grouse and ptarmigan. The provision should be read with section 21 and the schedule, which repeals the close seasons set for those species under the Game (Scotland) Act 1772.

29. Subsection (4A) is a consequential amendment of the provision in section 5(5) of the 1981 Act which authorises the use of a cage trap or net to catch a ‘game bird’ for the purpose of breeding. It substitutes a reference to grouse, mallard, partridge or pheasant included in Part I of Schedule 2 to the 1981 Act.

30. Subsection (4B) amends the procedure for an order which removes black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge from Part I of Schedule 2 to the 1981 Act. It makes any order made under section 22(1)(a) of the 1981 Act for that purpose subject to affirmative procedure.

31. Subsection (5) amends Part 1 of Schedule 2 of the 1981 Act to add the game bird species (black grouse, red grouse, grey partridge, red-legged partridge, common pheasant, and ptarmigan) to the list of birds which may be killed or taken outside the close season.

Section 4 – Areas of special protection for wild birds

32. Section 4 of the Bill repeals section 3 of the 1981 Act, which enabled the Scottish Ministers to declare areas of special protection for wild birds, their nests, and their young. Eight Scottish areas of special protection created by order under the Protection of Birds Act 1954
This document relates to the Wildlife and Natural Environment (Scotland) Bill as amended at Stage 2 (SP Bill 52A)

(where they are described as “bird sanctuaries”), which was repealed and re-enacted by the 1981 Act, will be abolished as a consequence of that repeal.

Section 5 – Sale of live or dead wild birds, their eggs etc.

33. This section amends sections 2 and 6 of and Schedule 3 to the 1981 Act. Section 6 creates offences in relation to the sale of birds and their eggs. These offences are subject to exceptions which apply to certain species of bird which are listed in Schedule 3 to the Act.

34. The amendments to section 6 and Schedule 3 extend the exceptions to cover the sale of dead game birds (grouse, partridge, pheasant and ptarmigan) which are killed legally outside the close season. These provisions should be read with section 21 and the schedule, which repeal older restrictions on the sale of game birds. The amendments to section 2(6) are consequential on these changes.

35. The amendments to section 6 and Schedule 3 also extend the exceptions in section 6 to permit the sale of live birds and eggs of species which are taken or collected in accordance with the “catching up” provisions in section 2(3A) to (3C), as inserted by section 3.

36. The amendments to Schedule 3 also remove the restrictions on selling certain birds between 28 February and 1 September by moving the species currently listed in Part III of Schedule 3 to a new Part of that Schedule.

37. Subsection (2) amends section 2(6) of the 1981 Act so that if the Scottish Ministers declare a period of special protection for a bird species, this period of special protection would be treated as part of the close season for the purposes of assessing whether it was an offence to sell a bird or egg of that species under section 6(5A) or (5B).

38. Subsections (3)(a) and (b) and (4)(a) deal with the sale of live birds and eggs. Subsection (3)(a) and (b) amends section 6(1) of the 1981 Act and inserts a new section 6(1A) and (1B), while subsection (4)(a) inserts a new Part IIA into Schedule 3 of that Act. The effect is to allow birds and eggs of the species listed in the new Part of the Schedule (red grouse, grey partridge, red-legged partridge, common pheasant and mallard) to be sold alive if they are bred in and remain in captivity or if they taken legally outside close seasons or during the catching up period provided under section 2(3A) and (3B) (as inserted by section 3).

39. Subsection (3)(d) replaces section 6(5) of the 1981 Act with a new section 6(5) and (5A). The effect of the changes made by the subsection is that the offence in section 6(1) of that Act applies to birds bred in captivity and lawfully released for conservation purposes. Section 6(5A) re-enacts the enabling power in section 6(5) of the Act.

40. Subsections (3)(e) and (e) and (4)(b) and (c) amend provisions which deal with the sale of dead birds. They amend subsection (2) of section 6 of the 1981 Act, insert a new subsection (5B), insert a new Part IIA into Schedule 3 and repeal all the entries in Part III of that Schedule. The new Part IIA of Schedule 3 lists game species (grouse, partridge, pheasant and ptarmigan) as well as the species previously listed in Part III of the Schedule. The effect of the changes is to
allow birds of all species listed in Part IIA to be sold dead at any time provided that they are killed outside the close season by someone with the legal right to do so.

41. Subsection (3)(f) makes a consequential amendment to section 6 of the 1981 Act. It replaces subsection (6) of that section to remove a redundant reference to Part II of Schedule 3.

Section 6 – Protection of wild hares etc.

42. Section 6 inserts new sections 10A and 10B and Schedule 5A into the 1981 Act. These provisions set close seasons for wild mountain hares and brown hares and create related offences. The new sections are inserted by subsection (2) and the Schedule by subsection (5).

Inserted section 10A of the 1981 Act

43. Inserted section 10A of the 1981 Act sets close seasons and creates offences in relation to hares. Subsection (1) of that section specifies that it is an offence to intentionally or recklessly kill, injure or take any animal on Schedule 5A outside the close season. The species listed on Schedule 5A are the brown hare and the mountain hare.

44. Subsection (2) of new section 10A specifies separate close seasons for mountain hares and brown hares. The close seasons are 1 March to 31 July and 1 February to 30 September, respectively. Subsection (3) of new section 10A allows Scottish Ministers to vary these close seasons by order.

45. Subsections (4) to (7) of new section 10A allow periods of special protection to be set outside the close season for animals on Schedule 5A. The provisions are similar to the provisions for setting periods of special protection in respect of wild birds, under section 2(6) and (7) of the 1981 Act. Subsections (4) and (7) allow Ministers to set such periods by order for all or any part of Scotland, subject to compliance with the consultation requirements in subsection (5). Subsection (6) provides that a period of special protection has effect as if it was part of the close season. Section 6(3) of the Bill amends section 26(2) of the 1981 Act to provide that orders setting periods of special protection for animals under new section 10A(4) will not be subject to parliamentary procedure. Section 26(2) of the 1981 Act already makes similar provision for orders setting periods of special protection for wild birds.

46. Subsection (8) of new section 10A creates a presumption in relation to any offence under subsection (1) that the animal in question was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and in new section 11E(2), as inserted by section 7 of the Bill.

Inserted section 10B of the 1981 Act

47. Inserted section 10B of the 1981 Act creates exceptions to the offences of killing, injuring or taking an animal during the close season under section 10A.

48. Subsection (1) of new section 10B provides a defence to the offence of killing an animal during its close season if the accused can show that the animal in question was too seriously
This document relates to the Wildlife and Natural Environment (Scotland) Bill as amended at Stage 2 (SP Bill 52A)

disabled to recover. That defence will only apply if the disability to the animal was not caused by an unlawful act of the accused.

49. Subsection (2) of new section 10B provides a defence to the offence of taking an animal during its close season if the accused is able to show that the animal had been disabled and was taken for the purpose of tending it and releasing it once it had recovered. The defence can only be relied on by someone who, apart from the close season, had a legal right or permission to take the animal and if the disability to the animal had not been caused by an unlawful act of the accused.

50. Subsections (3) to (6) of new section 10B provide a defence to the offence of killing or injuring an animal during its close season. The defence can only be relied on by an “authorised person”, which is defined in section 27 of the 1981 Act to include the owner or occupier of the land involved and persons authorised by the local authority. The defence allows an authorised person to kill or injure an animal listed on Schedule 5A, in cases where subsections (4) and (5) do not apply and if he shows that the action was necessary to prevent serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

51. Subsection (4) prevents an authorised person from relying on the defence if it became apparent in advance that it would be necessary to kill or take the animal and either the person failed to apply for an appropriate licence under section 16 of the Act as soon as practicable or a licence application had already been determined. Subsection (5) prevents an authorised person from relying on the defence if he failed to inform the licensing authority (the “appropriate authority” under section 16(9) of the 1981 Act) as soon as practicable after the animal was killed or injured.

52. Subsection (7) ensures that any action taken in relation to wild hares as a result of a requirement of the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948 or in pursuance to anything done under the Animal Health Act 1981 (whether by order or otherwise) is not an offence under section 10A. These provisions relate to the powers of Scottish Ministers to take measures to control animal disease (Animal Health Act 1981) or require action to be taken for the prevention of damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks, any works on land (Agriculture (Scotland) Act 1948).

Section 7 – Prevention of poaching: wild hares, rabbits etc.

53. Section 7 inserts new sections 11E and 11F and Schedule 6A into the 1981 Act (sections 11A to 11DA being inserted into the 1981 Act by section 13 of the Bill, which relates to snaring). These provisions create offences in relation to killing and taking hares and rabbits without a legal right to do so. This type of offence is more commonly described as poaching. The provisions should be read with section 21 and the schedule, which repeals the older legislation which creates poaching offences in relation to hares and rabbits (which are referred to in that context as “ground game”).

54. Subsection 7(3) inserts a new section 11E into the 1981 Act. Section 11E(1) creates an offence of intentionally or recklessly killing injuring or taking a wild animal listed in Schedule
6A of the Act. Schedule 6A is inserted by subsection (4) and lists rabbits, mountain hares and brown hares. Section 11E(2) creates a presumption that the animal in question in relation to an offence under section 11E(1) was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and section 10A(8), as inserted by section 6 of the Bill.

55. New section 11F of the 1981 Act creates defences to the offence of taking, killing or injuring an animal listed in Schedule 6A. Section 11F(1) allows a person with a legal right or permission to kill or take the animal. A legal right to kill or take wild animals may arise automatically under the common law (e.g. as a consequence of landownership), under a lease or another contract or under statute. Whether a person with a legal right to kill or take the bird has the authority to grant permission to someone else will depend on the nature of their legal right. The Bill does not alter legal rights to kill or take animals or confer new powers to grant permission to others.

56. Section 11F(2) provides that it is not an offence to kill an animal listed in Schedule 6A if the accused shows that the animal in question was so seriously disabled that there was no reasonable chance of its recovering and that the animal was not disabled by any unlawful act of the accused.

57. Section 11F(3) ensures that anyone who takes or kills a wild hare or rabbit as a result of a requirement of the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948 or in pursuance to anything done under the Animal Health Act 1981 (whether by order or otherwise) is not guilty of an offence under section 11E. These provisions relate to the powers of Scottish Ministers to take measures to control animal disease (Animal Health Act 1981) or require action to be taken for the prevention of damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks, any works on land (Agriculture (Scotland) Act 1948).

Section 8 – Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

58. Subsection 8 inserts a new section 11G into the 1981 Act. Section 11G(1) makes it an offence to possess, control, sell or offer to sell, possess or transport for the purpose of selling any wild animal or part of a wild animal which has been killed or taken in contravention of section 10A or 11E.

59. Section 11F(2) provides a defence if the accused shows he had a reasonable excuse.

60. Section 11F(3) creates a presumption that the animal in question in relation to an offence under section 11F(1) was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and sections 10A(8) and 11E(2), as inserted by sections 6 and 7 of the Bill.

Section 9 – Wild hares, rabbits etc.: licences

61. Section 9 makes consequential amendments to section 16(3) of the 1981 Act which allow the activities covered by the offences at new sections 10A(1) (killing of animals listed on Schedule 5A in the close season) and 11E(1) (poaching of hares, rabbits etc.) to be licensed under that section.
Section 10 – Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close season

62. This section extends the enabling power in section 22 of the 1981 Act to allow the Scottish Ministers to add to or remove animals from the lists in new Schedules 5A and 6A by order. It also allows such orders to set close seasons for any animal added to Schedule 5A by order.

Section 11 – Wild hares and rabbits: miscellaneous

63. Section 10 replaces section 12 of the 1981 Act with section 12YA and amends the title of Schedule 12 to clarify the content of Schedule 12. Schedule 12 concerns the protection from the noise of shooting hares and rabbits animals at night.

Section 12 – Single witness evidence in certain proceedings under the 1981 Act

64. Section 12 amends section 19A of the 1981 Act to extend the admissibility of single witness evidence to cover offences in relation to the unlawful taking, killing or injuring of game birds (grouse, partridge, pheasant,) and wild hares and rabbits. The provision reflects the position under the Game Acts, which are repealed in the Schedule but which permitted conviction on the evidence of a single witness for offences in relation to game birds and ground game.

Section 13 – Snares

65. Section 13 deals with the use of snares. Subsection (2) amends section 11 of the 1981 Act to insert a new subsection (1A). Subsection (3) inserts new sections 11A to 11D into that Act. As well as setting new requirements in relation to snaring, the amendments replace provisions in the Snares (Scotland) Order 2010 (S.S.I 2010/8), which set requirements about snare stops and anchors and checks of whether snares are free-running. The amendments also reorganise some existing provisions from section 11 into new sections 11B and 11C. These relate to inspecting snares and obtaining authorisation from landowners.

Snares calculated to cause unnecessary suffering

66. Inserted section 11(1A) of the 1981 Act sets out circumstances in which a snare is to be considered to be of a nature or set in a way calculated to cause unnecessary suffering for the purpose of the offence in section 11(1)(aa). It requires snares to be fitted with stops (subsection (1A)(a) and (b)), attached to the ground or an object to prevent them being dragged (subsection (1A)(d)) and not set in a place which is likely to cause an animal to become suspended or drown (subsection (1A)(e)). These provisions replace those in the Snares (Scotland) Order 2010.

Training, identification numbers and tags

67. Inserted section 11A of the 1981 Act requires people who set snares to be trained and to label their snares. It does so by requiring anyone who sets a snare to have an identification number (section 11A(1)). Failure to do so is an offence (section 11A(5)). Such numbers must be obtained from the police (section 11A(3) and (4)) and can only be issued to persons who have been trained to set snares (section 11A(4)(b)).
68. Identification numbers must be shown on tags which must be attached to snares (section 11A(2)). Tags must also indicate whether a snare is intended to catch brown hares or rabbits, or foxes. It is an offence to set or use a snare without a compliant tag (section 11A(6)). Section 11A(8) enables the Scottish Ministers to specify training requirements and other elements of the identification number and tagging regime by order.

69. Inserted section 11B of the 1981 Act requires a person who sets a snare to ensure that it is inspected at least every 24 hours to see whether there is an animal caught in the snare and whether the snare is free-running (as defined in section 11B(4)). If an animal is found to be caught then it must be released or removed. If the snare is found not to be free-running then it must be removed or mended to make it free-running. It is an offence to fail to comply with these requirements. The requirements in relation to whether the snare is free-running are new. The Bill moves the requirements in relation to animals caught in snares from section 11(3), (3A) and (3B) of the 1981 Act but does not alter their effect.

70. Inserted section 11C of the 1981 Act provides that it is an offence for a person to set, or have in their possession, a snare without permission of the owner of the land which the person is on. The Bill moves this provision from section 11(3D) of the 1981 Act but does not alter its effect.

71. Inserted section 11D of the 1981 Act creates a presumption that the identification number appearing on a tag fitted to a snare is that of the person who set the snare. This applies to all snaring offences under the 1981 Act.

72. Inserted section 11DA of the 1981 Act requires Scottish Ministers to carry out (or secure the carrying out of) a review of the operation and effect of the snaring provisions in and under sections 11 to 11D of the 1981 Act. The review must be carried out by 31 December 2016 with a report of the review being laid before Parliament as soon as practicable after this date. Scottish Ministers (or any person carrying out the review) must consider whether further legislation is required, and consult those persons and organisations with an interest.

Section 14 – Non-native species etc.

73. Section 14 amends sections 14 and 14A of the 1981 Act and inserts new sections 14ZC and 14B of that Act.

Introduction of new species etc.

74. Subsection (2) inserts section 14(1) to 14(2B) of the 1981 Act.

75. It is an offence under inserted section 14(1)(a)(i) to release or allow to escape from captivity any animal to a place outwith its native range. This replaces the former offence which relates to the release or escape into the wild of an animal which is of a kind not ordinarily resident in and is not a regular visitor to Great Britain in a wild state. Section 14P(2) and (3) of the 1981 Act, as inserted by section 15 of the Bill, provides for the meaning of the native range of animals and plants.
76. It is an offence under inserted section 14(1)(a)(ii) to release or allow to escape from captivity any other animal specified in an order made by the Scottish Ministers under that section and inserted section 14(2C). This replaces the former offence which relates to an animal of a kind listed in Schedule 9 to the 1981 Act. The new power relates to release of an animal within its native range. For example, it might enable Ministers to control the release of a raptor within its native range to prevent harm to the wild population from increased competition for food.

77. It is an offence under inserted section 14(1)(b) of the 1981 Act to cause any animal outwith the control of any person to be at place outwith its native range. The offence applies where an animal that is not in captivity for the purposes of inserted section 14(1) is enabled by some act or omission to move to a new place outwith its native range.

78. Inserted section 14(2A) has the effect that an offence is not committed under inserted section 14(1) if the common pheasant or red-legged partridge are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting. A release of any other non-native bird or for any other purpose is unlawful, unless authorised by an order made by the Scottish Ministers under inserted section 14(2B), or by a licence granted under section 16 of the 1981 Act.

79. It is an offence under new section 14(2) of the 1981 Act to plant or otherwise cause to grow any plant in the wild outwith its native range. This replaces the former offence which relates to a plant of a kind listed in Schedule 9 to the 1981 Act.

80. Inserted section 14(2B) and (2C) of the 1981 Act enables the Scottish Ministers to specify a plant or animal to which the offences in inserted section 14(1) and (2) do not apply. The power can be used to make lawful the release of animals outwith their native range. For example, an order might make possible the re-introduction into any part of Scotland of a formerly native animal such as the European beaver. Inserted section 14(2BA) enables the Scottish Ministers to specify a person or conduct (that conduct being undertaken for the purposes of any enactment or authorised by any such enactment) to which the offences in inserted section 14(1) and (2) do not apply.

81. Subsection (2)(b) amends the defence in section 14(3) of the 1981 Act to make it consistent with the other statutory defences in Part 1 of the 1981 Act. The accused must show that he took all reasonable steps and exercised all due diligence to avoid committing the offences in inserted sections 14(1) and (2).

82. Subsection (2)(c) repeals the provisions enabling the Scottish Ministers to authorise persons to enter any land to ascertain whether an offence in section 14 of the 1981 Act is being, or has been, committed. A wildlife inspector appointed by Ministers under section 19ZC of the 1981 Act has the same power, so the repeal removes an unnecessary duplication.

Prohibition on keeping etc. of invasive animals or plants

83. Subsection (3) of the Bill inserts new section 14ZC into the 1981 Act, which enables the Scottish Ministers to prohibit the keeping of invasive animals or plants. Inserted section 14P(4) provides for the meaning of invasive. It is an offence to keep a prohibited animal, and a defence
for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence. An order can provide for the payment of compensation to people who can no longer keep an animal or plant as a result of the making of an order. Keeping, and release, measures have been taken under the Destructive Imported Animals Act 1932 and the Import of Live Fish (Scotland) Act 1978, both repealed by the Schedule.

Prohibition on sale etc. of certain animals or plants etc.

84. Subsection (4) changes the powers of the Scottish Ministers in section 14A of the 1981 Act to prohibit the sale and marketing of certain animals and plants. The amended power is exercisable in respect of an invasive animal or plant and not as before in respect of the release of the animal or plant that is prohibited under section 14 of that Act.

Notification of presence of non-native animals or plants etc.

85. Subsection (5) revokes the existing section 14B (guidance: non-native species) of the 1981 Act and inserts a new section 14B into that Act. Inserted section 14B enables the Scottish Ministers to require notification of the presence of an invasive animal or invasive plant at a place outwith the native range of the plant or animal. It is an offence to fail without reasonable excuse to notify the presence of a plant or animal as required under the inserted section. Notification can only be required where the Scottish Ministers consider that the person or type of person to be subject to the requirement has, or should have, knowledge of, or is likely to encounter, the specified invasive animal or plant.

Section 15 – Non-native species etc.: code of practice

86. Section 15 inserts new section 14C into the 1981 Act. Section 14C enables the Scottish Ministers to issue codes of practice for the purpose of providing practical guidance in respect of the release, keeping, sale and notification offences in the 1981 Act, and in respect of species control agreements and species control orders (and related offences), and related matters. For example, a code could offer guidance on how far an animal temporarily released by any person (such as a raptor in a falconry display) remains under the control of that person for the purposes of the release offence. The Code may also provide guidance on how SNH, Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate they way they deal with non-native animals and plants. In addition the code will provide for best practice on a variety of issues.

87. The Scottish Ministers must consult with Scottish Natural Heritage and any other persons appearing to them to have an interest before making, replacing or revising a code. The first code of practice and any replacement code is subject to affirmative procedure. Revisions to the code of practice are subject to negative procedure.

88. Guidance in a code of practice issue under section 14C is not binding. It can however be taken into account in determining any question in any proceedings and in a criminal prosecution for a relevant offence the court may have regard to compliance with the code when deciding whether or not the accused is liable for the offence.
Section 16 – Species control orders etc.

89. Section 16 inserts new sections 14D to 14P of the 1981 Act. Sections 14D to 14O of the 1981 Act provide for species control orders and section 14P provides for the interpretation of terms used in sections 14 to 14O of that Act.

Power to make species control orders

90. Inserted section 14D of the 1981 Act enables any of the Scottish Ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency or the Forestry Commissions (each of which is a ‘relevant body’ as defined in inserted section 14P(6)) to make a species control order for premises when the relevant body is satisfied of the presence on the premises of an invasive animal or plant at a place outwith its natural range.

91. The relevant body must give any owner or occupier it has identified at least 42 days in which to enter into a voluntary agreement before it can make a species control order. If such an agreement is entered into then an order can only be made on default. Section 14D also provides for a statutory notice where an owner or occupier cannot be identified.

Emergency species control orders

92. Inserted section 14E enables a relevant body to make a species control order without agreement or notice under section 14D where the body is satisfied that the making of the order is urgently necessary. Any such emergency order expires 49 days after it is made.

Content of species control orders

93. Inserted section 14F provides for the contents of species control orders. It enables a relevant body to specify what must be done by whom and by when in order to control or eradicate an invasive species, such as the removal of Japanese knotweed. It enables the body to specify preventative measures (an ‘excluded operation’), such as a ban on strimming knotweed that might be needed due to a high risk that such an operation would cause the plant to spread. Lastly, it enables the relevant body to provide for who is to pay for control and eradication measures, which might include the owner or occupier of the premises subject to the order.

Notice of species control orders

94. Inserted section 14G provides for notice of the making of a species control order to be given to the owner and any occupier of premises, and if appropriate by a relevant body to the Scottish Ministers. The notice must give reasons for the making of the species control order, and set out where applicable that the order is an emergency order.

Appeals in connection with species control orders

95. Inserted section 14H enables an owner or occupier whose premises are subject to a species control order to appeal to the sheriff within 28 days of being given notice of the making of the order. The sheriff must consider the merits of the order, may suspend any effect of an emergency order, and will dispose of the appeal as he or she thinks fit. Further appeal from the decision of the sheriff is on a point of law only.
Effect of species control orders

96. Inserted section 14I provides that an emergency species control order has effect on the giving of notice under section 14G, and any other order has effect either on the expiry of the 28 day period for appeal under section 14H or where an appeal is made or the withdrawal or determination of the appeal.

Review of species control orders

97. Inserted section 14J enables a relevant body to review a species control order made by the body, and if appropriate revoke the order. An order might be revoked because it has been complied with before it would otherwise expire, or because an operation or excluded operation will for any reason no longer deliver the intended outcome (in which case it might be replaced by a subsequent order).

Offences in relation to species control orders

98. Inserted section 14K makes it an offence to fail without reasonable excuse to carry out an operation required under a species control order, to carry out an excluded operation, or to intentionally obstruct any person carrying out an operation required to be carried out under an order. Section 17(3)(d) of the Bill inserts new section 21(4ZA) of the 1981 Act which provides for penalties on conviction for such an offence.

Enforcement of operations under species control orders

99. Inserted section 14L enables a relevant body on default to carry out an operation required by a species control order. The body is not required to make any payment that would otherwise be required under the order, and may recover such payments and any additional costs incurred by the body in enforcing the order.

Species control orders: powers of entry

100. Inserted section 14M enables persons authorised by a relevant body to enter premises, giving notice where required, for the purposes of determining whether to enter into a species control order, whether to make or revoke an order, to serve any required notice, to ascertain whether an offence is being or has been committed, and to carry out operations required in connection with the order.

101. Inserted section 14P(5) defines premises for the purposes of sections 14 to 14O, with the effect that the powers of entry do not include power to enter a dwelling.

Species control orders: entry by warrant etc.

102. Inserted section 14N sets out when a sheriff must grant a warrant to an authorised person to use a power of entry that is otherwise authorised under section 14I, and the effect of such a warrant.

Species control orders: powers of entry: supplemental

103. Inserted section 14O sets out who may accompany an authorised person taking entry under a warrant granted under section 14N, and what that person may take on to the premises. It
also provides for compensation to be paid for damage caused when entry is taken, unless the damage is attributable to the person who sustained it.

**Interpretation of sections 14 to 14O of the 1981 Act**

104. Inserted section 14P provides for the meanings of native range, invasive, premises and relevant body. It also makes further provision for the meanings of animal and plant.

**Section 17 – Non-native species etc.: further provision**

105. Section 17 amends the 1981 Act in connection with the changes made to that Act by section 15 of the Bill.

106. Subsection (2) has the effect the keeping measures in inserted section 14ZC do not apply to anything done under and in accordance with a licence granted by the Scottish Ministers under section 16 of the 1981 Act.

107. Subsection (3) amends section 21 of the Act to provide for penalties on conviction for a keeping, notification or species control order offence, and for forfeiture of any animal or plant which is of the same kind as that in respect of which a ‘species’ offence is committed. It provides expressly that the maximum period of imprisonment on summary conviction of an offence under sections 14, 14A and 14ZC is 12 months. That maximum was increased from 6 months to 12 months in respect of sections 14 and 14A by virtue of the ‘gloss’ in section 45 of Criminal Proceedings Etc. (Reform) (Scotland) Act 2007.

108. Subsections (4) and (8) repeal references to Schedule 9 to the 1981 Act and that Schedule respectively.

109. Subsection (5) enables Scottish Natural Heritage to advise any other relevant body carrying out operations under a species control order, or a person authorised to enter premises in connection with an order.

110. Subsection (6) has the effect that the making of a release, keeping, sale or notification order by the Scottish Ministers can be annulled by the Scottish Parliament. Ministers must consult with Scottish Natural Heritage and other persons before making a release, keeping or sale order.

111. Subsection (7) makes further provision for notice preparatory to, or the making of, a species control order. It has the effect that a notice of a species control order under section 14G cannot be served by electronic means, and that the general rule in the 1981 Act for service of notices on persons who cannot be identified do not apply to notice of a species control order under section 14D.

**Section 18 – Licences under the 1981 Act**

112. Section 18 amends section 16 of the 1981 Act, which allows the licensing of activities prohibited under Part 1 of that Act.
113. Subsection (2)(a) and (b) amends section 16(3) and inserts a new section 16(3A) into the 1981 Act. The effect of this is to allow the licensing authority to grant a licence to carry out activities which would otherwise be prohibited in relation to animals and plants protected by Part 1 of the 1981 Act. The licence must be for a social, economic or environmental purpose. Inserted section 16(3A) also requires the licensing authority to be satisfied that the conduct authorised will give rise to or contribute towards social, economic or environmental benefit and that there is no other satisfactory solution.

114. Subsection (2)(c) to (e) amends section 16 of the 1981 Act to provide that the Scottish Ministers are the licensing authority (“the appropriate authority”) for all types of licence under section 16, except where they delegate licensing functions to SNH or a local authority as set out below.

115. Subsection (3) inserts a new section 16A into the 1981 Act. This enables Scottish Ministers to delegate licensing functions to SNH by direction or to local authorities by order. It also sets consultation requirements and makes other technical provisions in relation to such delegations. Subsection (4) makes consequential modifications to section 26 of the 1981 Act in relation to the new power to delegate by order in section 16A.

Section 19 – Amendment of Schedule 6 to the 1981 Act

116. Section 19 amends Schedule 6 of the 1981 Act to remove duplication in relation to species which are also protected by the Conservation (Natural Habitats &c.) Regulations 1994 (S.I.1994/2716).

Section 20 – Wildlife inspectors etc.

117. Section 20 amends the 1981 Act so that a wildlife inspector appointed by the Scottish Ministers under section 19ZC of the 1981 Act is authorised to take enforcement action in respect of the keeping, notification and species control order offences created by the Bill.

118. Subsections (2) and (3) repeal the provisions in sections 6 (sale etc. of live or dead wild birds, eggs etc.) and 7 (registration etc. of certain captive birds) of the 1981 Act that enable the Scottish Ministers to authorise persons to enter any land to ascertain whether an offence under those sections is being, or has been, committed. A wildlife inspector appointed by Ministers under section 19ZC of the 1981 Act has the same power, so the repeal removes unnecessary duplication.

119. Subsection (4) enables a wildlife inspector to enter and inspect any premises to ascertain whether or not an offence in respect of the sale etc. of wild hares or rabbits (inserted section 11G of the 1981 Act), the keeping or notification of an invasive plant or animal (inserted sections 14ZC and 14B), or a species control order (inserted section 14K), (the “new offences” in paragraph (a)) is being or has been committed. It enables a wildlife inspector to require in connection with the new offences that a specimen is made available for examination by the inspector. It enables a wildlife inspector to enter premises to check for compliance with a condition of a registration or licence granted under Part 1 of the 1981 Act as amended by the
This document relates to the Wildlife and Natural Environment (Scotland) Bill as amended at Stage 2 (SP Bill 52A)

Bill, as well as before to in connection with verifying statements made in connection with an application for or the holding of a licence or registration.

120. Subsection (5) enables a wildlife inspector to require the taking of a sample of blood or tissue from a specimen found when taking entry under section 19ZC in respect of the new offences, or any connected specimen, in order to determine the origin, identity or ancestry of the first specimen. It also provides a new definition of “tissue” in section 19ZD (power to take samples: Scotland) of the 1981 Act.

121. Subsection (6) repeals the function of a GB conservation body under the 1981 Act to advice or assist a person not being a wildlife inspector authorised to enter premises in connection with an offence under sections 6, 7 and 14 of that Act.

Section 20A – Offences by Scottish partnerships etc.

122. Section 20A inserts a new section 69A into the 1981 Act. Section 69A provides for partners to be prosecuted for the offences of a partnership, and managers to be prosecuted for the offences of an unincorporated association they are managing.

Section 20B – Liability in relation to certain offences by others

123. Section 20B inserts two new sections into the 1981 Act.

124. Inserted section 18A provides for the criminal vicarious liability of a person (person B) with right to take or kill a wild bird, or who manages such rights, for a relevant offence under the 1981 Act as specified in subsection (6). Person B will also be guilty of an offence where their employee or agent commits one of the specified offences.

125. Inserted section 18B provides for person B to be also guilty of an offence where a relevant offence is committed by a person who provides relevant services as specified in subsection (5) to person B. A person is providing “relevant services” for B if they are managing or controlling shooting on or over that land, habitat of birds on that land, presence of predators of those birds on that land or releasing birds from captivity for the purpose of shooting on or over that land.

126. It will be a defence under both sections 18A and 18B for person B to show that they did not know that an offence was being committed by the employee, agent or person providing relevant services and that they took all reasonable steps and exercised all due diligence to avoid the offence being committed.

127. The penalties relating to inserted sections 18A and 18B are the same as those that apply to the relevant offences.
Section 21 – Modifications and repeals relating to Part 2 and game licensing

128. This section repeals part, or all, of the various Acts in the Schedule. These mainly relate to game laws. The repeals of the Game Licences Act 1860 and the Game Act 1831, together with consequential repeals of related legislation, have the effect of abolishing the game licensing regime.

PART 3 – DEER

Section 22 – Deer management etc.

129. Section 22 amends SNH’s general functions and duties in relation to deer management under sections 1, 3 and 4 of the Deer (Scotland) Act 1996. Subsection (2) amends section 1 of the 1996 Act to require SNH to take into account the interests of public safety and the need to manage the deer population in urban and per-urban areas when exercising its functions. This adds to the current factors that must be taken into account (size and density of the deer population and its impact on natural heritage, the needs of agriculture and forestry and the interests of owners and occupiers of land).

130. Subsection (3)(a) amends section 3(1) of the 1996 Act to confer power on SNH to assist any person or organisation in reaching agreements with third parties. This adds to the powers currently set out in section 3 of the 1996 Act.

131. Subsection (3)(b) inserts a new section 3(3) into the 1996 Act. This imposes a duty on public bodies and office holders to have regard in exercising their functions to any guidance or advice issued by SNH relating to the conservation, control or sustainable management of deer or to any other aspect of the SNH’s deer functions.

132. Subsection (4) amends section 4(1) of the 1996 Act to remove a limit on the number of members of a panel appointed under that section.

133. Subsection (5) adds public safety as a ground for obtaining authorisation for the taking or killing deer at night and also changes the threshold in the existing ground for such authorisation being given from ‘serious damage’ to crops, pasture, human or animal foodstuffs or to woodland to ‘damage’ to crops, pasture, human or animal foodstuffs or to woodland.

Section 23 – Deer management code of practice

134. Section 23 inserts a new section 5A into the 1996 Act. This imposes a duty on SNH to draw up a Code of Practice for the purpose of providing practical guidance in respect of deer management. Section 5A(1) and (2) sets out the purpose and general content of the code. Section 5A(3) to (8) sets procedural requirements for the preparation and entry into force of the code as well as its replacement or revision. These include requirements for public consultation, approval by Scottish Ministers and parliamentary procedure. A first, and any replacement, code of practice will be subject to affirmative procedure, with any revision to a code being subject to negative procedure. Section 5A(9) requires SNH to monitor compliance with the code and to have regard to it in carrying out its own functions.
Section 24 – Control agreements and control schemes etc.

135. Section 24 amends sections 7, 8, 10 and 11 of the 1996 Act. Section 7 of that Act allows SNH to initiate control agreements where deer are causing certain kinds of damage. These agreements relate to “measures” to manage deer. Section 8 allows SNH to make control schemes where control agreements have failed. Schedule 2 of the 1996 Act sets out the procedure for Ministers to confirm control schemes. Sections 10 and 11 confer powers to take emergency action where deer are causing serious damage and control agreements or schemes are not an option.

136. Subsection (2) amends section 7 of the 1996 Act, which relates to control agreements. The effect of the amendments is to require SNH to have regard to the code of practice when deciding whether to exercise its functions. The amendments also expand the types of damage which can be relied on as a basis for SNH seeking a control agreement, the purposes of such agreements and the types of measures they can cover. The amended section 7 will cover damage as a result of steps taken or not taken for the purposes of deer management as well as damage by deer themselves. It will also cover damage to deer welfare or to public interests of a social, economic or environmental nature. It will allow SNH to seek a control agreement for the purpose of remedying existing damage (as well as preventing further damage in future). The amendments will also allow control agreements to provide for a wider range of measures than those to reduce deer numbers. The amended section will also state that control agreements may set out steps to be taken in each 12 month period within any control agreement. SNH will be required to review compliance with control agreements on an annual basis.

137. Subsection (3) amends section 8 of the 1996 Act, which relates to control schemes. The effect of the amendments is to ensure that, with one exception, the tests which allow SNH to make a control scheme are the same as those which would allow it to seek a control agreement. The exception is that SNH cannot make a control scheme in relation to a control agreement which was concluded for the purpose of altering or enhancing the natural heritage. The amendments also set deadlines for concluding that control agreements have failed. SNH will be required to review compliance with control schemes.

138. Subsections (4) and (5) amend sections 10 and 11 of the 1996 Act, which relate to emergency measures to control deer. The amendments will allow emergency measures to be taken in relation to any damage, including damage to deer welfare.

139. Subsection (6) relates to the procedure for control schemes made under section 8 of the 1996 Act. This replaces the current procedure specified in Schedule 2. This allows owners or occupiers aggrieved by a control scheme to object to the Scottish Ministers who must consider these objections and decide whether or not to confirm the control scheme. Owners or occupiers may subsequently appeal the decision of the Scottish Ministers or the terms and conditions of a control scheme to the Scottish Land Court.

Section 25 – Deer: close seasons etc.

140. Section 25 amends sections 5, 26 and 37 of the 1996 Act. Under section 26, occupiers will retain the right to take or kill deer where there is for the purpose of preventing damage (previously this was serious damage) but will require an authorisation under section 5 if they...
wish to do so during the close seasons. SNH will be able to grant authorisations under section 5 for the purposes of preventing damage to crops, pasture, human or animal foodstuffs or enclosed woodland. It will be possible to issue general authorisations to classes of people (e.g. occupiers) or in respect of types of land (e.g. arable land). The requirement to consider fitness and competence under section 37 will continue to apply except when considering authorisations to occupiers for the purposes of preventing damage to crops, pasture, human or animal foodstuffs or enclosed woodland.

Section 26 – Register of persons competent to shoot deer etc.

141. Section 26 inserts new sections 17A and 17B into the 1996 Act. Section 17A (inserted by subsection (4)) contains an enabling power which permits Ministers to introduce a requirement that any person shooting deer, or supervising the shooting of deer, must be named on a register as competent to do so. Section 17A(3) creates an offence of shooting deer in contravention of requirements set under the enabling power. This is subject to an exception (in section 17A(4)) which allows the killing of a deer which is injured or diseased or killing dependant young which has been, or is about to be, deprived of its mother.

142. Regulations made under the enabling power may also provide that persons who are registered as competent can be considered “fit and competent” for the purposes of authorisations to shoot deer at night, or during close seasons (section 17A(1)(c)).

143. In the event that a competence requirement is introduced, regulations may also require those persons named on the competence register to submit a regular cull return (section 17A(1)(d)). “Cull return” is defined in section 17A(6) as a return showing the number of deer of each species and of each sex which have been killed. Section 17A(5) creates an offence of failing to submit a cull return in accordance with regulations or submitting a return which is materially false or misleading. This offence would replace the offence under section 40(4) of the 1996 Act.

144. Section 17A(2) allows regulations to include supplementary, incidental or consequential provision and lists examples of the type of provision this might include.

145. Subsection (9) of section 26 sets maximum penalties for the new offences in section 17A(3) and (5). Subsections (2), (3) and (5) to (8) make further amendments to the 1996 Act in consequence of the new section 17A.

146. Section 17B (inserted by subsection (4)) requires SNH to conduct and publish a review of competence in deer stalking and its effect on deer welfare if the enabling power in section 17A has not been exercised by 1 April 2014.

Section 26A – Action intended to prevent suffering

147. Section 26A amends section 25 of the 1996 Act. Section 25 provides an exception to the offences in the 1996 Act where the action taken is to prevent suffering. Section 26A adds starvation (where there is no reasonable chance of recovery) to the existing provision which relates to injury or disease.
Section 26B – Offence by bodies corporate, Scottish partnerships etc. under the 1996 Act

148. Section 26B applies to all of the offences in the 1996 Act. It ensures that where bodies corporate are managed by members those members will be treated as if they were directors of that body and it allows partners to be prosecuted for the offences of a partnership, and managers to be prosecuted for the offences of an unincorporated association they are managing.

PART 4 – OTHER WILDLIFE ETC.

Section 27 – Protection of badgers


Offences

150. The 1992 Act provides for five separate offences in relation to badgers: taking, injuring or killing (section 1); cruelty (section 2); interfering with badger setts (section 3); selling and possession of live badgers (section 4) and marking and ringing (section 5).

151. It is already an offence to knowingly cause or permit interference with a badger sett (section 3(2) of the 1992 Act). Section 27(2) to (5) creates new offences of knowingly causing or permitting any of the other offences in the 1992 Act, except the offence of wilfully remaining on land or refusing to give a full name or address under section 1(5) of the 1992 Act.

Licences

152. Under the 1992 Act as originally enacted, licensing functions were split between SNH and Scottish Ministers based on the reason for granting the licence. Subsection (6) amends section 10 of the 1992 Act to provide that the Scottish Ministers are the licensing authority (“the appropriate authority”) with power to grant a licence for any of the listed reasons, except where they delegate licensing functions to SNH or a local authority as set out below. Before granting a licence, the Scottish Ministers are required to consult SNH.

153. Subsection (7) inserts a new section 10A into the 1992 Act. This section allows Scottish Ministers to delegate their licensing functions to SNH by written direction, or to a local authority by order following consultation with the local authority, SNH and anyone else affected by the making of the order. If a local authority has been delegated licensing functions, they must consult SNH before granting or modifying a licence.

Attempts to kill, injure or take badgers

154. Subsection (8) amends section 11A(3) of the 1992 Act. This section creates a presumption that a person was attempting to do kill injure or take a badger where there is evidence from which it can be reasonably concluded that this is what they were attempting to do. The amendment applies the presumption to the new offence of knowingly causing or permitting the killing, injuring or taking of a badger.
Penalties

155. Under section 12(1A) of the 1992 Act, certain offences can be prosecuted either on indictment or summarily. These offences are primarily those related to badger digging and baiting and include the offences of causing a dog to enter a sett and selling a live badger. These offences are “relevant offences” within the meaning of sections 45(6) and 47(6) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, which means that the maximum penalties on summary conviction are a 12 month sentence of imprisonment and/or a fine of the statutory maximum (which is set under section 225(8) of the Criminal Procedure (Scotland) Act 1995 and is currently £10,000). The maximum penalty for conviction on indictment is a 3 year sentence of imprisonment and/or an unlimited fine. Offences covered by section 12(1) of the 1992 Act can only be prosecuted summarily. The maximum penalties for these offences range from a fine of level 3 on the standard scale (for offences under section 1(5) of the 1992 Act) to a level 5 fine (currently set at £5,000 by section 225(2) of the Criminal Procedure (Scotland) Act 1995) and/or a six month sentence of imprisonment (for the offence of killing a badger as well as for most other offences under the 1992 Act).

156. Subsection (9) amends section 12 of the 1992 Act to extend the list of offences which can be prosecuted either on indictment or summarily. The effect is to allow the offences of illegally killing, injuring or taking a badger, possessing all or part of a dead badger, knowingly permitting or causing these offences, knowingly permitting or causing cruelty to a badger and knowingly permitting or causing the sale or possession of a live badger to be prosecuted summarily or on indictment.

157. Subsection (9) also amends section 12 of the 1992 Act to state that the maximum penalties for summary conviction for offences which can be tried either summarily or on indictment are a 12 month sentence of imprisonment and/or a fine of the statutory maximum. The effect is to ensure that the new offences which can be tried either way will be subject to the same penalties as the existing either way offences under the 1992 Act.

Time limits

158. Subsection (10) extends the application of the time limits prescribed in the 1992 Act for bringing summary proceedings to cover all of the offences in the 1992 Act. The effect is that summary proceedings for any offence under the 1992 Act must be brought within 6 months of the date on which the prosecutor has sufficient evidence to initiate proceedings. In addition summary proceedings cannot be brought more than 3 years after the commission of the offence or, where the offence is an ongoing one, more than 3 years after the last date on which the offence was committed.

Powers of court where dog used or present at commission of offence

159. Subsection (11) makes a consequential amendment to section 13 of the 1992 Act to include the new offence of knowingly causing or permitting someone to unlawfully kill, injure or take a badger. This means that a court can disqualify a person found guilty of this offence from having custody of a dog.
Section 28 – Muirburn

Muirburn season

160. Section 28 amends the Hill Farming Act 1946. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland.

161. Subsection (2) replaces section 23 of the 1946 Act which deals with the permitted times for making muirburn. The substituted section 23 establishes a positive muirburn season, consisting of a “standard muirburn season” (1 October until 15 April) and “extended muirburn season” (16 April until 30 April) (see section 23(2) to (4)). Muirburn may only be made during the extended muirburn season with the proprietor’s permission (section 23(5)).

162. The new section 23 removes the ability to make muirburn between 1 and 15 May on land situated more than 450 metres above sea level which had previously been possible with the proprietor’s permission. Under the new section 23, the last date of the “extended muirburn season” at all altitudes is 30 April.

163. The new section 23 also removes a power for Scottish Ministers to make limited extensions to the muirburn season in the spring by direction. This is replaced by an extension to the order making power in section 23A of the 1946 Act.

164. Subsection (3) amends section 23A of the 1946 Act, which was inserted by section 58 of the Climate Change (Scotland) Act 2009. Subsection (3)(b) and (c) extends the purposes for which the muirburn season may be varied (to include conserving, restoring, enhancing or managing the natural environment, or for public safety) and allows the dates to be varied on a geographical or phased basis. Subsection (3)(a) and (d) make changes to section 23A in consequence of the changes to section 23 of the 1946 Act, which sets the dates of the muirburn season.

165. Subsection (4) inserts new section 23AA into the 1946 Act. This allows Scottish Ministers to make further regulation by order, where they have extended the muirburn season on section 23A(1). In particular such further regulation might include provision on notification requirements or the making of objections or requiring approval for burning in an extended season, attaching conditions. Relevant offences can also be created. Orders made under section 23AA would be subject to negative procedure in the Scottish Parliament.

Muirburn licences

166. Subsection (4) inserts a new section 23B into the 1946 Act. This allows Scottish Ministers to license out of season muirburn for the purposes of conserving, restoring, enhancing or managing the natural environment, for research or for public safety. Muirburn licences may be granted subject to conditions. Scottish Ministers may delegate this licensing power to SNH. Inserted section 23B(11) enables Scottish Ministers to make further provision in regulations about muirburn licences. Such regulations are subject to negative procedure in the Scottish Parliament.
Notice by tenant

167. Subsection (4A) provides for tenants giving notice to proprietors of land. A tenant may give the notice of their intention to make muirburn required under subsection (2) of the 1946 Act to a person authorised by a proprietor of land to receive such notice and the notice (whoever given to) must be in writing.

Muirburn offences

168. Subsection (5)(a) amends section 25 of the 1946 Act to create an offence of making muirburn outwith the muirburn season and otherwise than in accordance with a muirburn licence. This replaces the offence under the previous version of section 23(4) of the 1946 Act and is consequential on the changes to section 23 and the insertion of section 23B.

Notifications in relation to muirburn

169. Subsection (6) amends section 26 of the 1946 Act to set new notification requirements in relation to muirburn. Subsection (7) inserts a new section 26A regarding the permitted methods for giving muirburn notices. Subsection (5)(b) repeals the previous notification requirements set under section 25(c) of the 1946 Act.

170. Under the amended section 26 of the 1946 Act it is an offence to make muirburn without having provided the proprietor of the land, and the occupiers of land within 1 km of the proposed muirburn site, with written notification of the intention to burn during that muirburn season (see section 26(1), (2) and (10)). Notice does not require to be given to those who have indicated in writing that they do not wish to be notified (section 26(3)).

171. Amended section 26(4) to (7) makes provision about timescales, content and permitted methods of notification. Notice of intention to burn must be given after the end of the previous muirburn season, and at least 7 days before burning (section 26(5)(a)). It must indicate the places where burning is planned and specify that further information about the intended dates, location and approximate extent of burns may be requested (section 26(5)(b) and (c)). When such a request is made, the person intending to make the muirburn must make reasonable efforts to comply with this request not later than the day before the muirburn is made (section 26(7)). Where there are 10 or more occupiers within 1km of the proposed muirburn site, notification may alternatively be made by placing a notice in a local newspaper (section 26(4)).

172. Inserted section 26A of the 1946 Act specifies the permitted methods for giving muirburn notices. In addition to delivering (section 26A(1)(a)), leaving or posting (section 26A(1)(b) and (c)) written messages, it permits the use of electronic communications (including email, text message and fax) where the person to be notified has agreed to be notified in that way (section 26A(1)(d)). Notices given by electronic communications are deemed to have been received 48 hours after they are sent (section 26A(3)). Where it is not possible to ascertain the identity of an occupier who requires to be notified, fixing a notice to a conspicuous object on their land is a permitted form of notification (section 26A(2)).
Section 28A – Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act

173. Inserted section 34A applies to the offences in the 1946 Act. It allows partners to be prosecuted for the offences of a partnership, and managers to be prosecuted for the offences of an unincorporated association they are managing.

PART 5 – SITES OF SPECIAL SCIENTIFIC INTEREST

Section 29 – Combining sites of special scientific interest

174. Section 29 inserts new section 5A into the 2004 Act which provides for the combination of SSSIs. Subsections (1) to (4) provide procedure relating to the notification and advertisement of combined SSSIs and the revision of the management statement for the combined site. From the date of notification of the combined SSSI, the component SSSI notifications cease to have effect under subsection (3)(c). Subsection (5) clarifies that SNH may not include any land in the new combined site which was not already part of one of the component sites and may not add a new operation requiring consent as a result of this procedure.

Section 30 – Denotification of SSSIs: damage caused by authorised operations

175. Section 30 inserts provision into section 9 of the 2004 Act for the streamlining of denotification of SSSIs in certain circumstances, i.e. when all or any part of an SSSI is no longer of special interest due to damage to, or destruction of, a natural feature when that damage or destruction is a consequence of an authorised operation and when the public body or office holder has already consulted SNH before permitting the operation.

Section 31 – SSSIs: operations requiring consent

176. Section 31 amends sections 13 and 14 of the 2004 Act such that existing provision relating to operations carried out by public bodies is also applied to operations which are caused or permitted by public bodies (when such operations occur on land which is owned or occupied by the public body).

177. Subsections (3)(a)(i) and (4)(a)(i) amend sections 14 and 17 of the 2004 Act such that SNH consent is not required when an operation is in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996. Subsections (3)(a)(iii) and 4(a)(iii) insert new paragraphs into section 14(1) and 17(1) such that SNH consent is not required for operations which are specified in an order made by the Scottish Ministers.

Section 32 – SSSI offences: civil enforcement

178. Section 32 provides for civil enforcement where SNH is satisfied that a person has committed an offence under section 19(1) or (3) of the 2004 Act.

179. Subsection (1) inserts a new section 20A into the 2004 Act which provides for the giving of restoration notices. Such notices may be given by SNH. The procedure has a preliminary step covered by subsections (1) and (3). Subsection (1) allows SNH to propose to give a restoration notice to the responsible person if it is satisfied that that person has committed an
offence under section 19(1) or 19(3) of the 2004 Act. Subsection (3) specifies how the proposal is to be made (i.e. it must explain why SNH proposes to give the restoration notice, be accompanied by a draft of the proposed restoration notice, explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question, explain that the responsible person has the right to make representations to SNH within 28 days from the date on which the proposal was made and specify the manner in which such representations are to be made).

180. Subsection (2) of inserted section 20A explains what is meant by the term “restoration notice”. Subsection (4) enables SNH to give a restoration notice after the period for making representations (28 days) has expired. Subsection (5) gives effect to a restoration notice only if the responsible person gives SNH notice of intention to comply with it within 28 days of the notice being given. Subsection (6) allows SNH to extend the period for operations to be carried under the notice or otherwise modify the notice as SNH considers appropriate. Subsection (7) clarifies that SNH may only modify the notice under (6)(b) where the responsible person has consented to such a modification. Subsection (8) allows SNH to withdraw a restoration notice should it become satisfied that the restoration notice should not have been given to the responsible person. Subsection (9) requires SNH to compensate the responsible person for any expenses reasonably incurred in complying with a notice which is withdrawn. Subsection (10) prevents proceedings being commenced or continued for an offence in relation to which a restoration notice has effect even if the notice is subsequently withdrawn.

181. Subsection (11) of inserted section 20A provides that failing to comply with a restoration notice will itself be an offence. In the event of the requirements of a restoration notice not being carried out, subsection (12) of that section allows SNH to carry out the operations and recover costs from the responsible person.

182. Subsection (1) also amends sections 14(1) and 17(1) of the 2004 Act such that SNH consent is not required for operations carried out by public bodies or owner occupiers when such operations are in accordance with the requirements of a restoration notice. Section 44(1) of the 2004 Act is amended so as to grant a new power of entry to SNH for the purposes of it ascertaining whether an operation as required by a restoration notice has been carried out in accordance with the notice.

183. Subsection (1A) is a consequential amendment of the Rehabilitation of Offenders Act 1974.

184. Subsection (2) makes consequential amendments of the Criminal Procedure (Scotland) Act 1995.
PART 6 – GENERAL

Section 33 – Crown application

185.  Section 33(2) inserts a new section 27A into the 1946 Act. Inserted section 27A provides that sections 23 to 27 (muirburn) of the 1946 Act bind the Crown, and that the Crown cannot be held criminally liable for the offences within these sections.

186.  Section 33(3) inserts a new section 66B into the 1981 Act. Inserted section 66B provides that Part 1 of the 1981 Act binds the Crown, provides for the powers in section 14M and 19ZC of the 1981 Act to be exercised in respect of Crown land only with the consent of the appropriate authority as defined in subsection (7), and provides that the Crown cannot be held criminally liable for the offences in Part 1.


188.  Section 33(5) amends section 44 of the 1996 Act, which provides for Crown application. It confirms that the 1996 Act binds the Crown, provides for the powers in section 15 of that Act to be exercised in respect of Crown land only with the consent of the appropriate authority as defined in new section 44(7), and provides that the Crown cannot be held criminally liable for offences in the 1996 Act.
WILDLIFE AND NATURAL ENVIRONMENT
(SCOTLAND) BILL

REVISED DELEGATED POWERS MEMORANDUM

Purpose

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Wildlife and Natural Environment (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The Bill makes a range of provision about wildlife and the natural environment. It consists of six Parts and a schedule, which make provision as explained below.

4. The following expressions are used throughout this memorandum:
   - “The 1946 Act” means the Hill Farming Act 1946;
   - “The 1996 Act” means the Deer (Scotland) Act 1996;
   - “The 2004 Act” means the Nature Conservation (Scotland) Act 2004;
   - “DCS” means the Deer Commission for Scotland, established under the 1996 Act and to be dissolved and its functions transferred to SNH on the commencement of section 1 of the Public Sector Reform (Scotland) Act 2010; and
   - “SNH” means Scottish Natural Heritage, established under the Natural Heritage (Scotland) Act 1991.

Part 1

5. Part 1 contains defined expressions for the statutes amended by the Bill.
Part 2 – Wildlife under the 1981 Act

6. Part 2 of the Bill makes amendments to Part 1 of the 1981 Act. Part 1 of that Act regulates the taking, killing, sale and possession of all wild birds and of the species of animals and plants which are specified in Schedules to the Act. Certain other species of animals and plants are protected separately under the Conservation (Natural Habitats &c.) Regulations 1994 (S.I.1994/2716). Part 1 of the 1981 Act also prohibits certain methods of taking and killing birds and animals and regulates the use of other methods (including snares). It also regulates the introduction of non-native species. Most activities prohibited under Part 1 are capable of being licensed for certain purposes under section 16 of that Act.

7. The amendments in Part 2 of the Bill add provisions about the protection and poaching of game species to the 1981 Act, abolish “areas of special protection” established under section 3 of that Act, impose restrictions on the use of snares to catch animals, reform and extend the regime for controlling non-native and invasive species, extend the scope of the licensing functions and enable the delegation by the Scottish Ministers of all such functions, and make consequential changes to licensing functions and the powers of wildlife inspectors.

Part 3 - Deer

8. Part 3 of the Bill amends the 1996 Act. Part I (sections 1 to 4) of the 1996 Act places a duty on DCS to further the conservation, control and sustainable management of deer. Part II of that Act (sections 5 to 16) provides for the setting of close seasons and creates mechanisms for DCS to work with landowners to manage deer numbers. Part III (sections 17 to 26) of that Act creates offences in relation to deer, including poaching offences which make it an offence to kill deer without the legal right to do so. Part IV (sections 27 to 48) regulates venison dealing and contains enforcement and other miscellaneous provisions.

9. The functions of DCS under the 1996 Act are to be transferred to SNH by section 1 of the Public Services Reform (Scotland) Act 2010. Schedule 1 to the 2010 Act makes a large number of consequential amendments to the 1996 Act. These have been taken into account in drafting the Bill, which refers to SNH throughout. The same approach has been taken in this memorandum.

10. Part 3 of the Bill amends the 1996 Act to change the provisions which allow certain occupiers of land to shoot deer during close seasons. It requires SNH to prepare a code of practice in relation to deer management. It revises the purposes for and the circumstances in which SNH can exercise powers in relation to control agreements, control schemes and emergency measures to manage deer. It also enables Scottish Ministers to make provision by order to require persons who shoot deer to be registered as competent to do so. Such orders may also be used to make consequential changes to the arrangements for collecting data about numbers of deer killed (known as “cull returns”).

Part 4 – Other wildlife etc.

11. Section 27 of the Bill amends 1992 Act. The 1992 Act prohibits a range of activities in relation to badgers, including the killing, taking and sale of badgers and disturbance to their setts. Some of these activities can be licensed for certain purposes. The Bill creates a number of new
offences under the 1992 Act and provides for certain offences to be triable on indictment as well as under summary procedure. It also makes provision for the delegation of licensing functions under the 1992 Act.

12. Section 28 of the Bill amends the 1946 Act. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland, which is defined in section 39 of that Act as including “setting fire to or burning heath or muir”. The Bill replaces periods during which muirburn is prohibited with a positive season during which it is permitted. It also expands the power to amend muirburn seasons by order and provides for a new licensing regime in respect of out of season muirburn. Finally it reforms requirements to inform neighbours of intentions to make muirburn.

Part 5 – Sites of Special Scientific Interest

13. Part 5 of the Bill amends the 2004 Act to make provision for the combination and denotification of SSSIs, operations which affect SSSIs and alternative procedure for securing reparation to SSSIs following illegal damage.

Part 6 - General


Schedule

15. The schedule contains repeals. These include the repeals of the 18th and 19th century statutes known as the Game Acts, which set close seasons for game birds, create poaching offences and establish requirements for game licences. The close seasons and poaching offences are replaced by provision under Part 2 of the Bill. The game licensing regime is repealed and not replaced, although it will be possible to grant licences in relation to game species for other purposes under the 1981 Act.

RATIONALE FOR SUBORDINATE LEGISLATION

16. The Bill contains a number of delegated powers provisions which are explained in more detail below. The Scottish Government has carefully considered whether and in what manner provisions should be set out in subordinate legislation rather than on the face of the Bill. In consideration of this, and in determining the appropriate level of scrutiny, the Scottish Government has had regard to:

• the likely frequency of amendment;
• the need to make proper use of Parliamentary time;
• ensuring sufficient flexibility to respond to changing circumstance; and
• the need to anticipate the unexpected which might otherwise frustrate the purpose of the provision in primary legislation.
17. The Bill amends primary legislation that contains delegated powers provisions. The level of scrutiny considered appropriate for the delegated powers provisions in the Bill are consistent with the level of scrutiny currently used for the delegated powers provisions in existing primary legislation.

DELEGATED POWERS

18. This memorandum lists the delegated powers provisions of the Bill together with a short explanation of:
   - what the power allows;
   - who the power is conferred on;
   - the form in which the power is to be exercised;
   - why it is considered appropriate to delegate the power; and
   - the Parliamentary procedure (if any) to which the exercise of the power is to be subject, and why this procedure (if any) is considered appropriate.

Section 3(4B)

Amended section 26 of the 1981 Act

| Power conferred on:               | Scottish Ministers       |
| Power exercisable by:             | Orders made by statutory instrument |
| Parliamentary procedure:          | Affirmative resolution    |

Provision

19. Section 3(4B) amends section 26 of the 1981 Act. Section 26 of the 1981 Act sets out the procedure for making regulations, orders and notices under that Act. The effect of section 3(4B) of the Bill is that any Order removing black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge from Part I of Schedule 2 to the 1981 Act is subject to affirmative resolution.

Reason for taking power

20. The Rural Affairs and Environment Committee recommended in their Stage 1 Report that the power to remove game birds from the list of species that may be killed or taken outwith close seasons (listed in Schedule 2 of the 1981 Act) be subject to affirmative, rather than negative, resolution. The Government accepted this recommendation and proposed an amendment at Stage 2 that would make any Order to remove a game bird from Part I of Schedule 2 subject to affirmative procedure. This was agreed by the Rural Affairs and Environment Committee.

Choice of procedure

21. The Government accepted the Committee’s recommendation that removal of a game bird from the list of species that may be killed or taken out with close seasons would be a significant step that would justify a greater degree of Parliamentary scrutiny.
Section 5(3)(d) – Power to make regulations about marking and ringing

**Substituted section 6(5) and (5A) of the 1981 Act**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution

**Provision**

22. Section 5(3)(d) amends section 6(5) (sale etc. of live or dead wild birds, eggs etc.) of the 1981 Act by substituting new subsections (5) and (5A). New subsection (5)(b) enables Scottish Ministers to make regulations about the marking and ringing of certain species of captive birds, while new subsection (5A) provides that such regulations may make different provision for different purposes. The provisions replace and do not extend the existing power to make such regulations under subsection (5).

**Reason for taking power**

23. The original power enables the identification and tracking of certain captive birds, the power in the Bill replaces that power, but does not extend it. The only substantive change to the legal effect of the current subsection (5) is the addition of subsection (5)(c) but that does not relate to the enabling power. The other changes are considered necessary for drafting purposes. The Bill does not make other changes in relation to marking or ringing captive birds.

**Choice of procedure**

24. Section 26(2) of the 1981 Act has the effect that regulations made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

25. In line with other regulations under the 1981 Act and the procedure which currently applies to regulations under section 6(5) of the 1981 Act, negative resolution is considered the appropriate level of scrutiny.

Section 6(2) and (3) – Power to vary the close season for any animal listed on Schedule 5A

**New section 10A(3) of the 1981 Act**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Orders made by statutory instrument  
**Parliamentary procedure:** Negative resolution

**Provision**

26. Section 6(2) inserts new section 10A in the 1981 Act. This new section provides for a close season for certain wild animals (brown hares and mountain hares) listed on new Schedule 5A of the 1981 Act. Section 10A(3) allows Scottish Ministers to vary the period of the close season during which the wild animals listed cannot be killed or taken. An order may be made for all or part of Scotland. Section 26(4)(b) of the 1981 Act has the effect that Scottish Ministers must consult with SNH before making an order.
Reason for taking power

27. This power allows Scottish Ministers to balance shooting and conservation interests by taking into account changes in the wild animal population and factors that might affect those populations such as disease or bad weather.

Choice of procedure

28. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

29. The negative resolution procedure is considered appropriate to allow Scottish Ministers to react to changing circumstances that may require prompt response. The negative resolution procedure is currently in place for the power contained in section 2(5) of the 1981 Act which allows changes to close seasons for certain species of birds. It is considered that this procedure is sufficient for those purposes and therefore the procedure for this new analogous power should be consistent. In addition, there is a requirement to consult on the face of the Bill.

Section 6(2) – Power to protect any animal listed on Schedule 5A outside the close season.

New section 10A(4) of the 1981 Act

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<td>Power exercisable by:</td>
<td>Orders made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>None</td>
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</table>

Provision

30. Section 6(2) inserts new section 10A in the 1981 Act. This new section provides for a close season for certain wild animals (brown hares and mountain hares) listed on new Schedule 5A of the 1981 Act. Section 10A(4) allows Scottish Ministers to extend protection to the wild animals listed on Schedule 5A outside of the close season for a period of up to 14 days. Before making any such order Scottish Ministers are required to consult such representatives of organisations representing those with an interest in killing or taking the wild animal in question as they consider appropriate. An order may be made for all or part of Scotland.

Reason for taking power

31. This power allows Scottish Ministers to provide for short term protection of hares. This may be required due to circumstances such as adverse weather in all, or some parts, of Scotland.

Choice of procedure

32. Section 6(3) of the Bill amends section 26(2) of the 1981 Act with the effect that orders made under this provision will be subject to no procedure in the Scottish Parliament.

33. The nature of such an Order is that it may be required in emergency or urgent circumstances. The Order is to cover a short period of time. It is considered that this should not require use of parliamentary time and scrutiny. In addition there are requirements to consult those with an interest in killing or taking the relevant animal and SNH (in section 26 of the 1981
Section 2(6) of the 1981 Act contains an analogous power which allows Scottish Ministers to make cold weather orders for certain species of birds. That power is not subject to any parliamentary procedure and it is considered that this is sufficient and that the same approach should be taken to this new analogous power in relation to animal species.

**Amended section 22 of the 1981 Act**

Power conferred on: Scottish Ministers  
Power exercisable by: Orders made by statutory instrument  
Parliamentary procedure: Negative resolution

**Provision**

34. Section 22 of the 1981 Act allows Scottish Ministers to vary the Schedules attached to that Act. These Schedules list the birds, animals and plants which are protected by different provisions in the 1981 Act. Section 10(a) of the Bill adds new Schedules 5A and 6A to those which may be varied under section 22 of the 1981 Act. Section 10(b) inserts a new section 22(2ZA) providing that an order adding an animal to Schedule 5A (which protects listed animals during their close seasons) may prescribe a close season for that animal. Therefore this section extends the current enabling power in section 22 of the 1981 Act.

**Reason for taking power**

35. The extended power under section 22(1)(b) allows Scottish Ministers to add or remove animals from the list in Schedule 5A of animals protected by close seasons under inserted section 10A and the list in Schedule 6A of animals protected by poaching offences under inserted section 11E. The power in new section 22(2ZA) allows Scottish Ministers to set the necessary close seasons for any new animal which is to be added to Schedule 5A. This will enable Scottish Ministers to balance shooting and conservation interests and to react to changing circumstances relating to animals for example populations and welfare.

**Choice of procedure**

36. Section 26(2) of the 1981 Act has the effect that orders made under the amended provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

37. The existing powers in section 22 of the 1981 Act which allow Scottish Ministers to vary the other Schedules to the Act are subject to negative resolution. It is considered that this is an appropriate level of scrutiny and therefore the new provision in Bill should be consistent with this.
Section 13(3) – Power to make provision as regards training, identification numbers, tags etc. for snares.

New section 11A(8) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Orders made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

38. Section 13(3) inserts new section 11A into the 1981 Act. The new section 11A makes provision for tags containing identification numbers and other information to be attached to snares. The identification numbers will be provided by the police provided they are satisfied that the applicant for an identification number has completed a training course. Section 11A(8) provides that Scottish Ministers may by order make provision regarding:

- when a person has been trained;
- how chief constables can be satisfied that a person has been so trained;
- the manner in which a tag is to be fitted including the material from which the tag is made;
- the manner in which an identification number and statement is to appear on a tag;
- form and manner of an application for an identification number;
- any fee that may accompany an application and the charging of such a fee;
- the issuing of identification numbers;
- the keeping of records of identification number issued and the sharing of information from such records; and
- any other appropriate matter relating to training, tags and identification numbers.

Reason for taking power

39. The power enables the practical details relating to the operation of training, tagging and identification numbers to be prescribed in detail and varied, if required, in light of experience in operating the scheme.

Choice of procedure

40. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

41. Negative resolution procedure is considered to be an appropriate level of scrutiny for setting out the technical and practical detail of the tagging scheme and training requirements. The Scottish Government aims to ensure that the practical detail of the scheme supports the policy aim contained in the Bill, this procedure will allow a considerable amount of specification, together with flexibility to alter details should this be required.
Section 14 – Powers to specify native animals which it is an offence to release, or to allow to escape from captivity, and non-native plants or animals which may be released

New sections 14(1)(a)(ii) and 17(6)(c) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

42. Inserted section 14(1)(a)(ii) and (2C) of the 1981 Act makes provision for Scottish Ministers to specify by order animals which it is an offence to release, or to allow to escape from captivity (unless done under a licence under section 16(4) of the 1981 Act).

43. Section 26(4A) and (4B) of the 1981 Act (inserted by section 17(6)(c) of the Bill) has the effect that the Scottish Ministers may only make an order under this provision where they have consulted SNH and any other person appearing to Scottish Ministers to have an interest in the making of an order, except where Scottish Ministers consider it necessary to make the order urgently and without consultation.

44. Section 26(4)(c) and (5) of the 1981 Act has the effect that Scottish Ministers may cause a public inquiry to be held before making an order, and the making of the order shall be published by the Scottish Ministers in the Edinburgh Gazette.

Reason for taking power

45. The new power relates to the release of an animal within its native range. This power replaces the list of animals that must not be released under section 14(1A) of and Schedule 9 to the 1981 Act. It enables the release of native species to continue to be regulated. It will be used to prevent the release of animals or control (under licence) the release of animals where that is necessary for conservation or welfare reasons, such as capercaillie, barn owl and sea eagle currently listed on Schedule 9.

Choice of procedure

46. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This is the same level of scrutiny given to orders amending the Schedule 9 list.

47. Negative resolution procedure is considered appropriate, given that a power to list animals that may be released is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), is consistent with the general level of scrutiny in Part 1 of the 1981 Act, and is the same level as the power being replaced.
Section 14(2) – Power to specify animals and plants which may be released or grown outwith their native range

New section 14(2B), (2BA) and (2C) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

48. Inserted sections 14(2B), (2BA) and (2C) of the 1981 Act makes provision for Scottish Ministers to specify by order animals, plants, persons or conduct undertaken or authorised by or under any enactment to which the release provisions in sections 14(1)(a)(i), 14(1)(b) and 14(2) (the “release provisions”) do not apply. The Scottish Ministers must consult on and publish a release order in the same way as a no-release order, and may also cause a public inquiry to be held.

Reason for taking power

49. The release provisions have the effect that it is an offence to:

- release, or allow to escape from captivity, an animal to a place outwith its native range;
- cause an animal outwith the control of any person to be at a place outwith its native range; or
- plant, or otherwise cause to grow, any plant in the wild at a place outwith its native range.

It will not be an offence to release or plant any such type of animal or plant if the type is specified in an order made under this provision.

50. At present, an animal is treated as a native animal that may be released if it is “ordinarily resident” in Great Britain. It is therefore lawful to release many types of animal introduced by man that have become established in the wild. The effect of the provisions in the Bill is that it will be unlawful to release an animal introduced by man even if it has established a presence in the wild. This reform will help to ensure that invasive non-native species do not spread into unaffected areas.

51. However, the release of non-native species may have no harmful impact, and may indeed deliver a positive benefit. Examples include the release of non-native game birds, or the release of animals for conservation purposes. The power will enable Scottish Ministers to make lawful the release of non-native animals where that is appropriate having regard to legitimate interests. It could for example be used to permit the release or growing of non-native species that were formerly native to any part of Scotland, such as the European beaver on the mainland of Scotland.
Choice of procedure

52. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

53. Negative resolution procedure is considered appropriate, given that a power to list animals or plants that can be released or grown is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), and is consistent with the general level of scrutiny in Part 1 of the 1981 Act. Negative resolution procedure is also considered appropriate for the power to disapply section 14(1) or 14(2) to a person, or conduct undertaken or authorised in pursuance of legislation. This may, for example, be used to disapply activities already authorised (for example by Forestry Commission).

Section 14(3) – Power to specify invasive animals and plants which it is an offence to keep, have in a person’s possession, or have under a person’s control

New section 14ZC(1) of the 1981 Act

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<td>Negative resolution</td>
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Provision

54. Inserted section 14ZC(1), (2) and (5) of the 1981 Act make provision for Scottish Ministers to specify by order invasive animals and plants which it is an offence to keep, have in a person’s possession, or have under a person’s control. An order may provide for the payment of compensation to people who can no longer keep an animal or plant as a result of the making of an order. The Scottish Ministers must consult on and publish a keeping order in the same way as for a no-release order, and may also cause a public inquiry to be held.

Reason for taking power

55. There are some invasive non-native species which pose a high-risk to biodiversity, the wider environment, and social and economic interests. Regulating their keeping will help to prevent their introduction into and spread in the wild.

Choice of procedure

56. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

57. Negative resolution procedure is considered appropriate, given that a power to ban the keeping of animals or plants is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), and is consistent with the general level of scrutiny in Part 1 of the 1981 Act.
Section 14(4) – Power to specify invasive animals and plants which it is an offence to sell or market

Amended section 14A(1) of the 1981 Act

Power conferred on: Scottish Ministers  
Power exercisable by: Order made by statutory instrument  
Parliamentary procedure: Negative resolution

Provision

58. Inserted section 14A(1) and (3) of the 1981 Act make provision for the Scottish Ministers to specify types of invasive animals and invasive plants that it is an offence to sell or market. The Scottish Ministers must consult on and publish a sale order in the same way as for a no-release order, and may also cause a public inquiry to be held.

Reason for taking power

59. At present, the enabling powers in section 14A(1) and (3) of the 1981 Act may be used to ban the sale or marketing of an animal not ordinarily resident in Great Britain, or a plant not ordinarily grown in Great Britain, or an animal or plant listed on Schedule 9 to that Act.

60. The Bill makes changes to section 14A that are consequential on the release provisions. The new power relates to invasive animals or invasive plants. The reason for taking the power is broadly the same as the reason for taking the keeping power. Regulating the sale or marketing of invasive species will help prevent their introduction into or spread in the wild.

Choice of procedure

61. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

62. Negative resolution procedure is considered appropriate, given that a power to ban the sale of animals or plants is relatively limited in scope, requires to be exercised in a flexible and responsive manner, is subject to consultation (except in the case of an emergency), is in general consistent with the level of scrutiny in Part 1 of the 1981 Act, and is in particular the same level of scrutiny as the power being replaced.
Section 14(5) – Power to specify invasive animals and plants outwith their native range which specified persons must provide notification of

**New section 14B(1) of the 1981 Act**

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** Order made by statutory instrument
- **Parliamentary procedure:** Negative resolution

**Provision**

63. Inserted section 14B(1) to (3) of the 1981 Act makes provision for the Scottish Ministers to require the notification by a specified person to a specified person of the presence of a specified invasive animal or invasive plant at a place outwith the native range of the plant or animal. It is an offence to fail without reasonable excuse to notify the presence of a specified plant or animal. In response to a recommendation of the Subordinate Legislation Committee, the Government proposed an amendment at Stage 2 to restrict the order to a person or type of person considered to have, or should have, knowledge of (or is likely to encounter) the relevant invasive animal or plant. This amendment was agreed by the Rural Affairs and Environment Committee.

**Reason for taking power**

64. There are some invasive non-native species which pose a high-risk to biodiversity, the wider environment, and social and economic interests. It most cases early action to control or eradicate such species is the most effective way to ensure that they do not spread in the wild. Ensuring that their presence must be notified by specified persons means that early detection is more probable, and therefore successful control action a more likely prospect.

**Choice of procedure**

65. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

66. Negative resolution procedure is considered appropriate, given that a power to require the notification of animals or plants is relatively limited in scope, requires to be exercised in a flexible and responsive manner, and is in general consistent with the level of scrutiny in Part 1 of the 1981 Act.
Section 15 – Non-native species code

New section 14C of the Wildlife and Countryside Act 1981

Power conferred on: Scottish Ministers
Power exercisable by: Scottish Ministers
Parliamentary procedure: Affirmative resolution for the first and any replacement code and negative resolution for any revision or revocation

Provision

67. Inserted section 14C of the 1981 Act confers on the Scottish Ministers a power to issue a code of practice to provide practical guidance in respect of the release, keeping, sale and notification offences in the 1981 Act, and after amendment at Stage 2 in respect of species control agreements and species control orders (and relevant offences), and related matters.

68. A code may only be issued following consultation with SNH and any other person who appears to the Scottish Ministers to have an interest in the code. The first and any replacement code is subject to affirmative resolution. A revision or revocation of the code (where it is not being replaced) is subject to negative procedure.

69. Failure to comply with a provision of a code does not, of itself, give rise to proceedings. It can however be taken into account in determining any question in any proceedings, and in a criminal prosecution for a relevant offence the court may have regard to compliance with the code when deciding whether or not the accused is liable for the offence.

Reason for taking power

70. The issuing of a code of practice will help the public to understand the nature of the duties imposed on them by the 1981 Act, and frame their behaviour accordingly. It will also assist the courts in interpreting and applying the relevant law. For example, the Scottish Ministers could give guidance on how far a non-native ferret released temporarily for the purposes of pest control can be considered as being under the control of any person.

71. A code of practice will also be able to go into more detail than the legislation, and illustrate the intended effect of the legislation with case studies.

Choice of procedure

72. The code requires to be user-friendly and in an accessible format, and is expected to require regular revision and updating. It is persuasive rather than binding. Following recommendations in the Subordinate Legislation Committee and Rural Affairs and Environment Committee Stage 1 Reports a Government amendment was proposed at Stage 2 to make to code the code subject to Parliamentary scrutiny. This makes provision for the code to be subject to affirmative procedure for the first version and replacement versions and negative procedure for any revisions or revocation. This amendment was agreed by the Rural Affairs and Environment Committee.
Section 18(3) and (4) – Delegation of a licence granting power to a local authority

New section 16A(4)(b) of the 1981 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

73. Section 18(2) of the Bill amends section 16 of the 1981 Act (which deals with licensing functions) and section 18(3) inserts a new section 16A into the Act. Inserted section 16A of the 1981 Act makes provision for the Scottish Ministers to delegate their species licensing functions under section 16 of that Act to SNH or a local authority. Section 16A(4)(b) provides that delegation to a local authority must be by order.

74. Section 26 of the 1981 Act (as amended by section 18(4) of the Bill) has the effect that the Scottish Ministers shall give any local authority or other person affected by an order an opportunity to submit representations or objections to the subject matter of the order, and may only make an order where they have consulted SNH.

Reason for taking power

75. To allow for species licensing to be as streamlined and efficient as possible, the power will give Scottish Ministers the opportunity to consider delegation (for example in relation to development where the local authority are currently considering species protection as part of planning controls) in particular circumstances.

Choice of procedure

76. Section 26(2) of the 1981 Act has the effect that orders made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

77. Negative resolution procedure is considered appropriate, given that a power to delegate the granting of licences is limited in scope, is subject to consultation requirements, and such procedure is in general consistent with the level of scrutiny in Part 1 of the 1981 Act.

Section 23 – Deer management code of practice

Power conferred on: Scottish Ministers
Power exercisable by: Scottish Ministers
Parliamentary procedure: Affirmative resolution for the first and any replacement code and negative resolution for any revision

Provision

78. Section 23 of the Bill inserts a new section 5A into the 1996 Act. Section 5A requires SNH to draw up a code of practice for the purpose of providing practical guidance in respect of deer management. SNH must consult any person appearing to have an interest in the code before
drawing up the code of practice. The code of practice will be submitted to Scottish Ministers
who may approve or reject the code.

79. The code once approved is subject to affirmative procedure for the first, and any
replacement, code and negative procedure for any revision.

80. Failure to comply with a provision of the code will not, of itself, give rise to any action in
terms of the 1996 Act.

Reason for taking power

81. The code of practice will provide practical examples of deer management and set out
detail which would not be appropriate for legislation.

Choice of procedure

82. The code is not binding (although SNH will have regard to it when exercising
intervention powers and may direct public bodies and office holders to have regard to it in
exercising their functions).

83. A non-Government amendment was agreed by the Rural Affairs and Environment
Committee at Stage 2 to make to code the code subject to Parliamentary scrutiny. This makes
provision for the code to be subject to affirmative procedure for the first version and replacement
versions and negative procedure for any revisions.

Section 26(4) – Power to introduce a competence requirement in deer stalking

Inserted section 17A(1) of the 1996 Act

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

84. Section 26(4) of the Bill inserts a new section 17A into the 1996 Act. This enables the
Scottish Ministers to make regulations which provide for the establishment and maintenance of a
register of persons competent to shoot deer in Scotland. These regulations could prohibit anyone
who was not named on the register, or not supervised by a named person, from shooting deer.
They could provide that registration is sufficient to establish that a person—

- is fit and competent for the purpose of exercising occupiers rights under section 26(2)(d)
of the 1996 Act to shoot deer in close season in order to protect crops;

- is authorised to shoot deer out of season to prevent damage to unenclosed woodland, or
the natural heritage, or in the interests of public safety, under section 5(6) of the 1996
Act;

- is authorised to shoot deer out of season for scientific purposes under section 5(7) of the
1996 Act;
is authorised to shoot deer at night under section 18(2) of the 1996 Act; or

is authorised to drive deer with vehicles under section 19(2).

Regulations made under this power could also require cull returns to be submitted to SNH either by those registered as competent or by owners or occupiers of land.

85. The regulations may provide who will set up and maintain the competence register, and how applications to be named on the register will be decided, together with deciding the criteria for judging competence, arrangements for supervision and the procedure for handling an appeal. Provision may be made to charge a registration fee and to specify the form in which cull return must be made.

Reason for taking power

86. The shooting of deer by persons with a low standard of shooting competence creates a risk to deer welfare and impacts on public confidence. Concerns in that respect have been expressed to the Scottish Ministers by DCS, and it is therefore appropriate to enable Scottish Ministers to impose compulsory competence requirements on those intending to shoot deer.

87. Those requirements are not set out in the Bill because the deer sector may through self-regulation be able to demonstrate that shooting in Scotland is carried out by those that are competent to do so. Indeed the deer sector has signalled its commitment to ensure high standards of competence and best practice amongst all those who shoot deer, on a voluntary basis. While Scottish Ministers may exercise this power at any time, new section 17B of the 1996 Act requires SNH to conduct and publish a review of standards of competence in deer stalking if the power has not been exercised by April 2014.

88. Section 47 of the 1996 Act has the effect that regulations made under this power would be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Choice of procedure

89. Any regulations would set out the administrative and technical requirements relating to competence levels, application process and maintenance of registers. Regulations of this sort are considered to be appropriate for negative procedure.

Section 27(7) – Protection of Badgers

New section 10A(4)(b) of the 1992 Act

**Power conferred on:** Scottish Ministers

**Power exercisable by:** Order made by statutory instrument

**Parliamentary procedure:** Negative resolution

**Provision**

90. Section 27(7) of the Bill inserts a new section 10A into the 1992 Act. This makes provision for the Scottish Ministers to delegate their species licensing functions under that Act to
SNH or a local authority. Section 10A(4)(b) and (8) provide that delegation to a local authority must be by order made by statutory instrument.

91. Before making an order, section 10A(9) requires the Scottish Ministers to consult the local authority to which functions are to be delegated, SNH and any other persons they consider are affected by the order.

Reason for taking power

92. To allow for licensing in relation to badgers to be as streamlined and efficient as possible, the power will give Scottish Ministers the opportunity to consider delegation in particular circumstances (for example in relation to development where the local authority are currently considering badger protection as part of planning controls).

Choice of procedure

93. Inserted section 10A(8) of the 1992 Act provides that orders under section 10A(4) will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

94. Negative resolution procedure is considered appropriate, given that a power to delegate the granting of licences is limited in scope.

Section 28(3) – Variation of the permitted times for making muirburn

Amended section 23A of the 1946 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution

Provision

95. Section 28(3) of the Bill amends section 23A of the 1946 Act. Section 23A was inserted by the Climate Change (Scotland) Act 2009 (“the 2009 Act”), and allows Scottish Ministers to vary by order the permitted dates for making muirburn in any year, where necessary or expedient in relation to climate change. A technical change to section 23A(1) was proposed by Government amendment at Stage 2, and agreed by the Rural Affairs and Environment Committee, so that the section refers only to extending or reducing the standard muirburn season, and not varying. This does not alter the legal effect of the Bill as introduced.

96. Section 28(3)(b) inserts a new subsection (1A) into section 23A, allowing an order to make different provision for different purposes and, in particular, for different lands and different years. Subsection (3)(c) specifies new purposes (conserving, restoring, enhancing or managing the natural environment and public safety) for which the muirburn season may be varied, in addition to adaptation to climate change. Under Section 23A, Scottish Ministers may not reduce the total number of burning days when varying the muirburn season. Subsection (3)(d) alters the minimum number of burning days which must be maintained in order to reflect the removal of the May extension to the muirburn season.
Reason for taking power

97. The permitted times for making muirburn in Scotland have not changed since the 1946 Act came into force.

98. The 2009 Act introduced an order-making power allowing Scottish Ministers to vary the permitted muirburn dates in order to allow adaptation to climate change, in case climatic changes continue to impact on the ability to successfully undertake muirburn. That power has not yet been exercised.

99. It is considered appropriate to be able to vary the dates of the muirburn season for reasons not related to climate change, or where a link to climate change cannot be clearly demonstrated. The muirburn season currently extends from 1 October until 15th April (subject to conditional extensions). Land managers report that a shortage of suitable burning days within the current muirburn season is constraining good practice and making it difficult to carry out sufficient muirburn. This may result in an increased risk of wildfire, if practitioners are forced to burn in less suitable conditions, and less managed habitats of lower quality for livestock, grouse and other wildlife. Constraints on the number of burning days also increase the pressure on practitioners to burn in the spring, when there may be risks to nesting birds. For these reasons, it may be beneficial to extend the muirburn season into September, to increase the window of opportunity for burning. Before using the power in this way, it will be necessary to assess the likely environmental impacts of September burning on soils and biodiversity.

Choice of procedure

100. Subsection (5) of section 23A of the 1946 Act provides that an order made under subsection (1) of that section is subject to approval by resolution of the Scottish Parliament. Section 28(3) of the Bill does not change the procedure required when making an order under section 23A. It simply broadens the purposes for which the muirburn season may be varied, and allows an order to make different provisions for different lands and for different years. It is therefore appropriate for the amended power to be subject to the same level of scrutiny as the original power.

Section 28(4) – Further regulation of extension to muirburn season

Inserted section 23AA(1) of the 1946 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

101. Inserted section 23AA(1) of the 1946 Act allows Scottish Ministers to make provision for regulation of the extended muirburn season (where this has been extended by an order under section 23A(1) of the 1946 Act). Any order made under this section would prescribe additional measures, and does not alter the existing regulation and notification requirements contained in the 1946 Act.
102. Any order made under section 23AA(1) may provide for notification requirements, the making of objections, requirement for approval, the imposition of conditions and associated offences.

Reason for taking power

103. An extension to the muirburn season under section 23A(1), particularly if this was to include September, may have an effect on stock management practices of crofters and other tenant farmers. Inserted section 23AA(1) would allow any necessary additional requirements to be made (for example notification requirements or procedures) to address any concerns about the impact of the extension of the muirburn season.

Choice of procedure

104. Negative procedure is considered appropriate for a power that is ancillary to the power to extend the muirburn season (which is subject to affirmative procedure).

Section 28(4) – Regulations relating to muirburn licences

Inserted section 23B(11) of the 1946 Act

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative resolution</td>
</tr>
</tbody>
</table>

Provision

105. Section 28(4) of the Bill inserts a new section 23B into the 1946 Act, allowing Scottish Ministers to issue licences permitting the making of muirburn outwith the muirburn season. Section 23B(11) and (12) enables the Scottish Ministers to make regulations by statutory instrument making further provision for, or in connection with, muirburn licences.

Reason for taking power

106. This power will allow Scottish Ministers to specify further details of the licensing system in regulations, such as procedures for notifying unsuccessful applicants, any appeals procedures, application timescales etc. Specification of such details in secondary legislation will allow the licensing system to operate more flexibly.

Choice of procedure

107. Section 23B(13) provides that regulations made under 23B(11) are subject to annulment in pursuance of a resolution of the Scottish Parliament. These regulations will specify technical details relating to the operation of the licensing system, as opposed to the permitted licensing purposes and licensing authority set out in the Bill. A negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature.
Section 31 – SSSIs: operations not requiring SNH consent

**Amended sections 14(1) and 17(1) of the 2004 Act**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** Negative resolution

**Provision**

108. Section 31(3)(a)(iii) and (4)(a)(iii) amends sections 14(1) and 17(1) of the 2004 Act respectively. These amendments provide for extension of the lists of circumstances in which the consent of SNH is not required in relation to the carrying out of operations under section 13 (for public bodies) and section 16 (for non-public body-owner occupiers) of that Act. New paragraphs are added to each of section 14(1) and 17(1), specifying that an operation will not require consent if it is of a type described by order made by the Scottish Ministers.

**Reason for taking power**

109. The purpose of these amendments to the 2004 Act is to streamline the control regime for operations on SSSIs where this can be achieved without diminishing the protection afforded to such sites. It is intended that the power be used to specify operations authorised by an existing process where that process allows sufficient input by SNH such that it can be satisfied that the operations are acceptable without the need for a separate formal consent. The reason for taking the power in this manner is to provide flexibility for a possible range of situations where SNH consent will not be required (an example at the present time is the granting of certain types of rural development contract) and also to provide flexibility to accommodate operations which might be carried out under regimes created by future legislation.

**Choice of procedure**

110. Instruments will be subject to negative resolution procedure in terms of section 53(4) of the 2004 Act. Negative resolution procedure is considered appropriate in this case given the subject-matter of the provisions. No rights are affected and the provisions are concerned with administrative streamlining.

**Section 34(1) – Ancillary provision**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** negative resolution of the Scottish Parliament, unless the order amends an Act, in which case affirmative resolution

**Provision**

111. Section 34(1) enables the Scottish Ministers, by order, to make incidental, supplemental, consequential, transitional, transitory or saving provision, if appropriate.

**Reason for taking power**

112. Any body of new law may give rise to a need for a range of ancillary provisions.
113. Without the power to make incidental, supplemental and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament’s or the Government’s resources.

Choice of procedure

114. Where an order changes primary legislation it is submitted that the affirmative procedure is appropriate. In any other situation, the negative procedure is considered appropriate for these powers. The kind of provision that would attract negative procedure would be incidental or consequential in nature – the power to make such provision by order is considered desirable in case it proves necessary to make further minor and consequential tidying up provision e.g. further repeals.

Section 35(1) – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no Parliamentary procedure

Provision

115. This section provides that all of the provisions of the Bill, except certain provisions containing definitions and order-making powers, shall come into force on a day set by the Scottish Ministers by order.

Reason for taking power

116. The decision on when and to what extent the Bill is commenced is an administrative issue for the Scottish Ministers.

Choice of procedure

117. As the decision on commencement is a matter for the Scottish Ministers, and as is usual, the Scottish Government considers that the commencement powers should not be subject to any Parliamentary procedure.
Since the Committee concluded their Stage 2 consideration of the Wildlife and Natural Environment (Scotland) Bill I have had the opportunity to have discussions with members of the Committee about various issues that arose at Stage 2. I thought it worthwhile that I write formally to the Committee to provide some further information on a number of issues in advance of Stage 3.

Release of pheasants and red-legged partridges

I understand the main concerns regarding the release of red-legged partridge and common pheasant stem from the possible impacts which release of large numbers of birds might have on native flora and habitat and the potential implications for native wild species which depend on those flora or habitats.

I would like to make clear that there are provisions that could be used to mitigate such an impact, whether or not the land in question is a protected site. Nature Conservations Orders can be made both for SSSIs as well as for other areas. These powers would be applicable to other areas if Ministers considered that, for the purpose of the conservation of any natural feature by reason of which they consider land to be of special interest, the carrying out of an operation should be prohibited. This wider power is provided by virtue of Section 23(3)(b) of the Nature Conservation (Scotland) Act 2004. In this context, 'natural feature' means any flora or fauna on the land or any geological or geomorphological features of the land (section 3(2) of the 2004 Act).

These existing powers would cover the situations envisaged by Peter Peacock’s amendment 81.

Bees

I recognise the importance of the issues raised by Peter Peacock in amendment 80, particularly in relation to Colonsay. I would like to reassure the Committee that it is a firm commitment that Government publicly consult on using the prospective new powers contained in the invasive non-native species provisions in the Bill for the purpose of protecting both the genetic integrity of the black bee and to protect this bee from disease. It is a compulsory requirement in the Bill that Government consult on the use of these powers prior to making any Order. I expect this consultation to be completed in 2011.

Art and part offences relating to wildlife crime

In the context of proposals to provide ‘concerned in the use’ offences in the Wildlife and Countryside Act 1981 Karen Gillon raised concerns about the lack of use of art and part in the enforcement and prosecution of wildlife crime. I have asked that discussions about ‘art and part’ be taken forward through PAW Scotland. I understand that this will be considered at the next Legislation, Regulation and Guidance Sub-Group meeting.

Game bag data

Both Bill Wilson and Liam McArthur raised the issue of a statutory system for collecting data on birds shot at Stage 2 (amendments 21 and 47). I recognise that there are particular concerns about certain species, such as geese. While we will work with representative
organisations, such as BASC Scotland, to establish a voluntary system of acquiring bag data, I would like to reassure the Committee that (following proper consultation) subordinate legislation made under the European Communities Act 1972 could introduce a statutory system, should that be required at some point in the future.

In addition, I understand that the Wildlife Estates Initiative is also considering how to incorporate bag data including the Game and Wildlife Conservation Trust’s National Gamebag Census.

I hope this is helpful.

Rosanna Cunningham
Minister for Environment and Climate Change
21 February 2011
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter;

      (iii) Pension or grants motion as described in Rule 8.11A.1;

   and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

   (c) general questions relating to powers to make subordinate legislation; and

   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Bob Doris (Deputy Convener)
Helen Eadie
Rhoda Grant
Alex Johnstone
Ian McKee
Elaine Smith
Jamie Stone (Convener)
Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Jake Thomas

Support Manager
Lori Gray
Subordinate Legislation Committee

12th Report, 2011 (Session 3)

Wildlife and Natural Environment (Scotland) Bill as amended at Stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 22 February 2011, the Subordinate Legislation Committee considered the delegated powers provisions in the Wildlife and Natural Environment (Scotland) Bill as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Scottish Government provided the Parliament with a revised delegated powers memorandum on the provisions in the Bill (“the revised DPM”).

3. The Committee is content with the new or amended powers at sections: 3(4B), 14(2) and (5), 15, 23 and 28(3) and (4).

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1 Revised Delegated Powers Memorandum
Wildlife and Natural Environment (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 35                      Schedule
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 3

John Scott

39 In section 3, page 2, line 32, leave out <grouse, mallard,>

John Scott

40 In section 3, page 2, line 36, leave out <14> and insert <28>

John Scott

41 In section 3, page 3, leave out lines 1 and 2

John Scott

42 In section 3, page 3, line 2, at end insert—

<(3D) A person does not commit an offence under section 1 by reason of the taking of a red grouse if—

(a) the grouse is taken—

(i) for the purpose of preventing the spread of disease; and

(ii) with the intention of releasing it from captivity after no more than 12 hours, and

(b) the person had—

(i) a legal right to take such a grouse; or

(ii) permission, from a person who had a right to give permission, to take such a grouse.,”>

Peter Peacock

61 In section 3, page 3, line 34, at end insert—

<( ) In section 27(1) (interpretation of Part I), in paragraph (c) of the definition of “livestock”, at the end add “(except in section 16(1), where it does not include any grey or red-legged partridge, common pheasant or red grouse which is kept for the provision or improvement of shooting which is not wholly confined with secure housing)”>
After section 4

Peter Peacock

43 After section 4, insert—

<Protection of wild birds: notification of concern by the Scottish Ministers

(1) The 1981 Act is amended as follows.

(2) After section 3 of the 1981 Act (areas of special protection), insert—

“3A Protection of wild birds: notification of concern by the Scottish Ministers

(1) Where the conditions in subsection (2) apply, the Scottish Ministers may make a notification under this section.

(2) Those conditions are that—

(a) on any area of land, as defined by the Scottish Ministers in the notification, one or more species of wild bird is at an unfavourable conservation status; and

(b) the Scottish Ministers have reasonable cause to consider that the reason for this unfavourable conservation status relates to recurring management practices carried out with a view to limit the presence of any species among those listed at Schedule 2A.

(3) For the purposes of subsection (2)(a), when assessing whether one or more species of wild bird is at an unfavourable conservation status in the area concerned, the Scottish Ministers must consult Scottish Natural Heritage.

(4) The Scottish Ministers must publish the factors that they must take into account in deciding whether the conditions in subsection (2) apply.

(5) Before publishing factors to be taken into account under subsection (4), the Scottish Ministers must consult any person appearing to them to have an interest in determining those factors.

(6) A notification under subsection (1) must—

(a) be served on the relevant person or persons specified in subsection (17);

(b) be in writing and accompanied by a written explanation of the factors that led the Scottish Ministers to conclude that the conditions in subsection (2) apply; and

(c) set out a procedure which allows the relevant person or persons specified in subsection (17) to respond, within a period two months, to the written explanation accompanying the notification under subsection (1).

(7) The relevant person or persons specified in subsection (17) may appeal the notification under subsection (1) to the Land Court.

(8) An appeal under subsection (7) must be lodged not later than 4 months after the date on which the Scottish Ministers gave notice of the notification under subsection (1).

(9) The Land Court may suspend the effect of the notification under subsection (1) pending the determination of the appeal.

(10) The Land Court must determine an appeal under subsection (7) on the merits rather than by way of review and may do so by—
(a) affirming the notification;
(b) directing the Scottish Ministers to revoke or amend the notification; or
(c) making such other direction as it thinks fit.

(11) A decision of the Land Court on appeal is final except on a point of law.

(12) Not less than six months after the notification under subsection (1) the Scottish Ministers may make an order (a “notification of concern order”) in respect of all or part of the land referred to in the notification under subsection (1), but only where the conditions in subsection (13) apply.

(13) Those conditions are that—

(a) responses made under subsection (6)(c) have not been received from all persons notified;
(b) the Scottish Ministers do not consider that the responses made under subsection (6)(c) sufficiently address the concerns that prompted the notification under subsection (1); or
(c) where an appeal is made under subsection (7), the Land Court has affirmed the notification by the Scottish Ministers.

(14) A notification of concern order made under subsection (12) must be laid before the Scottish Parliament.

(15) Where the Scottish Ministers do not, within two years of the notification being made under subsection (1), make a notification of concern order under subsection (12), they must revoke the notification made under subsection (1).

(16) In this section “unfavourable conservation status” means an abundance or breeding productivity significantly below the level that might reasonably be expected by comparisons with other areas of suitable habitat.

(17) This section applies to such owners, bodies corporate, Scottish partnerships or other such other person as the Scottish Ministers may determine are concerned with the management of the land referred to in the notification.”.

(3) After Schedule 2, insert—

“SCHEDULE 2A
(introduced by section 3A)
PROTECTION OF WILD BIRDS UNDER SECTION 3A

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buzzard</td>
<td>Buteo buteo</td>
</tr>
<tr>
<td>Eagle, Golden</td>
<td>Aquila chrysaetos</td>
</tr>
<tr>
<td>Eagle, White-tailed</td>
<td>Haliaeetus albicilla</td>
</tr>
<tr>
<td>Falcon, Peregrine</td>
<td>Falco peregrinus</td>
</tr>
<tr>
<td>Harrier, Hen</td>
<td>Circus cyaneus</td>
</tr>
<tr>
<td>Kite, Red</td>
<td>Milvus milvus</td>
</tr>
<tr>
<td>Owl, Short-eared</td>
<td>Asio flammeus</td>
</tr>
</tbody>
</table>
After section 4, insert—

<Protection of wild birds: intervention by the Scottish Ministers>

After section 3A of the 1981 Act (protection of wild birds: notification of concern by the Scottish Ministers), insert—

“3B Protection of wild birds: intervention by the Scottish Ministers

(1) This section applies where a notification of concern order under section 3A(12) has been—

(a) made; or

(b) where appealed under section 3A(7), the Land Court has affirmed the notification.

(2) The Scottish Ministers may make an order (a “regulation of activity order”) which requires the relevant person or persons specified in subsection (17) to produce a plan for the management of the land subject to an order made under section 3A(12).

(3) Before making an order under subsection (2), the Scottish Ministers must notify such relevant person or persons to whom the order will apply.

(4) The notification under subsection (3) must give the relevant person or persons three months from it being issued to provide the Scottish Ministers with notice of an action plan to respond to the matters contained within the notification made under section 3A(1).

(5) The Scottish Ministers may make a regulation of activity order only if—

(a) responses have not been received from all persons notified; or

(b) the Scottish Ministers consider that the action plan provided under subsection (4) does not respond to the concerns that prompted the notification under section 3A(1).

(6) Where subsection (5) applies, the Scottish Ministers may make a regulation of activity order requiring such relevant person or persons as specified in subsection (17) to produce a management plan which sets out how they will respond to the concerns of the Scottish Ministers contained within the notification made under section 3A(1), regardless of whether or not they have already produced an action plan under subsection (4).

(7) The management plan produced in response to a regulation of activity order must be submitted to the Scottish Ministers within six months of the making of the order.

(8) Within six months of receiving a management plan under subsection (7), the Scottish Ministers must confirm the plan, either with or without amendment.

(9) A relevant person or persons specified in subsection (17) must act in accordance with the terms of the management plan.

(10) Where the Scottish Ministers make a regulation of activity order, the relevant person or persons specified in subsection (17) must—

(a) propose to the Scottish Ministers arrangements for the monitoring of that order for the agreement of the Scottish Ministers; and
(b) beginning six months after the making of the order and in each subsequent period of six months, report to the Scottish Ministers on what steps have been taken during the reporting period to comply with the regulation of activity order.

(11) Where the Scottish Ministers do not consider that the proposals for monitoring arrangements are adequate, they may specify what monitoring arrangements shall apply.

(12) The Scottish Ministers or Scottish Natural Heritage, as the case may be, may, as part of the monitoring arrangement under subsection (11), authorise in writing a person to carry out the monitoring and that person may enter any area of land with respect to which a regulation of activity order applies provided that it is for the purpose of monitoring compliance with that order.

(13) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless it is for the purpose of monitoring compliance with regulation of activity order.

(14) Nothing in this section authorises any person to break any lock barring access to any area of land to which the person is authorised to enter.

(15) A regulation of activity order shall not apply to any land below high-water mark of ordinary spring tides.

(16) Where a regulation of activity order is in force, any relevant person or persons specified in subsection (17) who sells, leases or otherwise allows for payment the shooting of wild birds on the land subject to the order must, in advertisement for such shooting, indicate that the order is in force.

(17) This section applies to such owners, bodies corporate, Scottish partnerships or any other person as the Ministers may determine is concerned with the management of the land included in the area with respect to which the regulation of activity order is to be made.

Peter Peacock

45 After section 4, insert—

<Protection of wild birds: disapplication of rights by the Scottish Ministers

After section 3B of the 1981 Act (protection of wild birds: intervention by the Scottish Ministers), insert—

“3C Protection of wild birds: disapplication of rights by the Scottish Ministers

(1) This section applies where a regulation of activity order has been made under section 3B(2), and the condition in subsection (2) of this section is met.

(2) The condition is that the Scottish Ministers consider that the terms of a regulation of activity order have not been met over the course of two successive reports under section 3B(10).

(3) The Scottish Ministers may make an order to disapply the provisions of section 2(1) to any person on the land referred to in that order (a “disapplication of rights order”).

(4) A disapplication of rights order under subsection (3) must—

(a) identify all the owners and people concerned with the management of land in the area of land to which the order applies;
(b) provide for an exemption to the provisions of the order to any person or persons concerned with the management of land in the area of land to which the order applies where, from the information provided to them, the Scottish Ministers consider that the relevant person or persons are engaged solely in agricultural operations and do not profit from the exercise of rights accorded by section 2(1).

(5) An order under subsection (3) must be—

(a) laid before the Parliament; and

(b) given notice of by advertisement in a newspaper circulating in the locality of the area in which the order applies.

(6) Where, after 2 years, the Scottish Ministers consider that the terms of the regulation of activity order are consistently being met, they may revoke a disapplication of rights order applying to the area in respect of which the regulation of activity order applies.

(7) Where ownership of the area of land to which the disapplication of rights order applies changes, on the application of that new owner, the Scottish Ministers may revoke that order.

(8) In revoking a disapplication of rights order, the notification made under section 3A(1), a notification of concern order and a regulation of concern order applying to the same area of land are also revoked.

(9) The revocation of an order under subsection (6) or (7) does not prevent the Scottish Ministers from imposing a subsequent notification of concern order or regulation of activity order on the same area of land where the Scottish Ministers have reasonable cause to believe that the relevant condition applies.

(10) An owner or person concerned in the management of land with respect to which a disapplication of rights order applies may appeal to the Land Court.

(11) An appeal under subsection (10) must be lodged not later than 28 days after the date on which the Scottish Ministers gave notice to the appellant of the disapplication of rights order.

(12) The Land Court may suspend the effect of the disapplication of rights order pending the determination of the appeal.

(13) The Land Court must determine an appeal under subsection (10) on the merits rather than by way of review and may do so by—

(a) affirming the disapplication of rights order;

(b) directing the Scottish Ministers to revoke or amend the disapplication of rights order; or

(c) making such other direction as it thinks fit.

(14) A decision of the Land Court on appeal is final except on a point of law.

(15) A disapplication of rights order shall not apply to any land below high-water mark of ordinary spring tides.
Section 5

John Scott

46  In section 5, page 5, line 33, at end insert—

<( ) was such a wild bird of the following type and was taken by a person
with such right or permission>

John Scott

47  In section 5, page 5, line 34, leave out <14> and insert <28>

John Scott

48  In section 5, page 5, line 35, at end insert —

( ) a partridge included also in Part I of Schedule 2; or
( ) a pheasant included also in that Part>

John Scott

49  In section 5, page 6, line 3, leave out <14> and insert <28>

John Scott

50  In section 5, page 6, line 36, leave out <14> and insert <28>

Section 13

Irene Oldfather

5*  In section 13, page 12, line 22, leave out from beginning to end of line 15 on page 16 and insert—

<( ) in subsection (1), for paragraphs (a) and (aa), substitute—

“(a) sets in position or otherwise uses any snare;”,

( ) subsections (3) to (3B) are repealed,

( ) in subsection (3C)—

(i) in paragraph (b), at the beginning insert “manufactures,”,

(ii) the words “which is capable of operating as a self-locking snare or a snare
of any other type specified in an order under subsection (1)(a)” are
repealed,

( ) subsections (3D) and (3E) are repealed,

( ) in subsection (4A), for “to (3E)” substitute “, (2) and (3C)”.

( ) In section 16 (power to grant licences)—

(a) in subsection (3), for “11(1), (2) and (3C)(a)” substitute “11(1)(b) and (c), (1)(d)
(except in so far as it relates to section 11(1)(a)) and (2)”,

(b) after subsection (4A), insert—
“(4B) Sections 11(1)(a), (1)(d) (in so far as it relates to section 11(1)(a)) and (3C)(a) do not apply to anything done for scientific or research purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.

(4C) Section 11(3C)(a) does not apply to anything done for educational purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.”.

Liam McArthur

14 In section 13, page 13, line 23, at beginning insert <For the purposes of this section and sections 11D and 11DZA,>

Elaine Murray

15 In section 13, page 13, line 24, at end insert—

<(3A) Any person who sets a snare in position must, at the time of setting the snare in position, reasonably consider that no other method of controlling or capturing the wild animal or animals that the snare is intended to catch would be effective.

(3B) The Scottish Ministers must prepare and publish guidance in relation to subsection (3A); and such guidance may give examples of—

(a) things that a person might do (prior to setting the snare in position) in order to reasonably consider, at the time of setting the snare in position, that no other method of controlling or capturing the wild animal or animals that the snare is intended to catch would be effective;

(b) circumstances in which a person may (without trying alternative methods of control and capture) reasonably consider that no other method of controlling or capturing the wild animal or animals that the snare is intended to catch would be effective.>

Elaine Murray

16 In section 13, page 13, line 30, at end insert <and on the circumstances in which the setting of snares is an appropriate method of predator control,>

Elaine Murray

17 In section 13, page 13, line 32, at end insert—

<( ) Subsection (4) is subject to any provision made by virtue of subsection (8)(ga).>

Elaine Murray

18 In section 13, page 13, line 38, at end insert—

<( ) Any person who fails to comply with subsection (3A) is guilty of an offence.>

Elaine Murray

51 In section 13, page 13, line 38, at end insert—
(6B) Where a person who is convicted of an offence mentioned in subsection (6C) has an identification number, the chief constable who issued that identification number must revoke the identification number.

(6C) The offences are offences under—

(a) section 5(1)(a) or (b) which involve the use of a snare;
(b) section 11(1)(a) or (aa), (3C) or (3E);
(c) section 11(2)(a) or (b) which involve the use of a snare;
(d) this section;
(e) section 11B;
(f) section 11C.

Elaine Murray

20 In section 13, page 14, line 6, at end insert <and on the circumstances in which the setting of snares is an appropriate method of predator control;>

Elaine Murray

21 In section 13, page 14, line 19, at end insert—

<(ga) the issuing of identification numbers to a person whose previous identification number was revoked under subsection (6B);>

Roseanna Cunningham

22 In section 13, page 15, line 15, leave out <to (c)> and insert <or (b)>

Liam McArthur

23 In section 13, page 15, line 30, at end insert—

<11DZA Snares: record keeping

(1) Any person who has an identification number must keep a record of the following—

(a) the location of every snare set in position by the person which remains in position,
(b) the location of every other snare set in position by the person within the past two years,
(c) the date on which each snare mentioned in paragraph (a) or (b) was set,
(d) the date on which each snare mentioned in paragraph (b) was removed,
(e) in relation to each animal caught in a snare mentioned in paragraph (a) or (b)—

(i) the type of animal,
(ii) the date it was found,
(f) such other information as the Scottish Ministers may by order specify.

9
(2) For the purposes of subsection (1)(a) and (b), the location of a snares is to be recorded—

(a) by reference to a map, or

(b) by such other means (for example, by means of a description) capable of readily identifying the location.

(3) Any person who, without reasonable excuse, fails to comply with the duty under subsection (1) is guilty of an offence.

(4) Any person who—

(a) is requested to produce the record kept under subsection (1) to a constable, and

(b) fails to do so within 21 days of being so requested, is guilty of an offence.

(5) Subsection (1) does not apply in relation to any snares set in position by a person before the person is issued with an identification number.

Liam McArthur

24 In section 13, page 15, line 36, leave out <and 11D> and insert <, 11D and 11DZA>

Bill Wilson

1 In section 13, page 15, leave out line 38 and insert—

<(2) A review must be carried out under subsection (1) no later than—

(a) 31st December 2016 (“the first review date”),

(b) the end of the period of 5 years beginning with the first review date, and

(c) the end of each subsequent period of 5 years.>

Elaine Murray

1A As an amendment to amendment 1, line 3, leave out <31st December 2016> and insert <30th June 2014>

Elaine Murray

1B As an amendment to amendment 1, line 4, leave out <5> and insert <4>

Elaine Murray

1C As an amendment to amendment 1, line 5, leave out <5> and insert <4>

Bill Wilson

2 In section 13, page 16, line 1, leave out <the review> and insert <a review under subsection (1)>

Bill Wilson

3 In section 13, page 16, line 5, leave out first <the review> and insert <a review under subsection (1)>
Bill Wilson

4 In section 13, page 16, line 9, leave out <31st December 2016> and insert <a review is carried out under subsection (1)>.

Section 15

John Scott

6 In section 15, page 19, line 32, at end insert—

<( ) species control agreements;>

Section 18

Peter Peacock

52 In section 18, page 29, line 7, at end insert—

<( ) after subsection (1A) insert—

“(1B) A licence under paragraph (k) of subsection (1) may not authorise any activity involving any wild bird included in Schedule 8A which would be an offence under a section mentioned in that subsection if the purpose of the activity is the prevention of serious damage to animals which are kept for the provision or improvement of shooting.”;

Peter Peacock

53 In section 18, page 29, leave out lines 11 to 18 and insert—

<(i) for other imperative reasons of overriding public interest including those of a significant social or economic nature and beneficial consequences of primary importance for the environment,”,

( ) for subsection (4A) substitute—

“(4A) The appropriate authority shall not grant a licence under subsection (3) or (4) unless it is satisfied—

(a) that there is no other satisfactory solution; and

(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status.”;

Elaine Murray

25 In section 18, page 29, line 36, at end insert—

<(1A) But a function may be delegated to a local authority only in so far as it relates to—

(a) the development of land within the meaning of section 26(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8), or

(b) the demolition of buildings within the meaning of section 55 of the Building (Scotland) Act 2003 (asp 8).>
Peter Peacock

54 In section 18, page 30, line 17, at end insert—

<( ) In section 22 (power to vary Schedules), in subsection (1)(a), after “4” insert “or 8A”.

Peter Peacock

55 In section 18, page 30, line 28, at end insert—

<( ) After Schedule 8, insert—

“SCHEDULE 8A
(introduced by section 16)

Licences: Birds which are specially protected by section 16(1B)

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buzzard</td>
<td>Buteo buteo</td>
</tr>
<tr>
<td>Eagle, Golden</td>
<td>Aquila chrysaetos</td>
</tr>
<tr>
<td>Eagle, White-tailed</td>
<td>Haliaeetus albicilla</td>
</tr>
<tr>
<td>Falcon, Peregrine</td>
<td>Falco peregrinus</td>
</tr>
<tr>
<td>Harrier, Hen</td>
<td>Circus cyaneus</td>
</tr>
<tr>
<td>Kite, Red</td>
<td>Milvus milvus</td>
</tr>
<tr>
<td>Owl, Short-eared</td>
<td>Asio flammeus”</td>
</tr>
</tbody>
</table>

After section 19

Roseanna Cunningham

26 After section 19, insert—

<Annual report on wildlife crime

Annual report on wildlife crime

After section 26A of the 1981 Act insert—

“26B Annual report on wildlife crime

(1) The Scottish Ministers must, after the end of each calendar year, lay before the Scottish Parliament a report on offences relating to wildlife.

(2) The report may, in particular, include—

(a) information on the incidence and prosecution of such offences during the year to which the report relates,

(b) information on research and advice relating to wildlife which the Scottish Ministers consider relevant to such offences.

(3) The report need only include information in relation to such offences relating to wildlife as the Scottish Ministers consider appropriate.

(4) For the purposes of this section, an offence relating to wildlife is an offence—

(a) under Part 1 of this Act, or
(b) under any other enactment which the Scottish Ministers consider may have an impact on wildlife.”.

Liam McArthur

7 After section 19, insert—

\(<\text{Offence of knowingly causing or permitting certain offences}\>

\textbf{Offence of knowingly causing or permitting certain offences under the 1981 Act}

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.), after subsection (2), insert—

\“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsections (1)(b) and (2)(b)) shall be guilty of an offence.”.

(3) In section 7 (registration etc. of certain captive birds), after subsection (5), insert—

\“(5A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”.

(4) In section 15A (possession of pesticides), after subsection (2), insert—

\“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (1) shall be guilty of an offence.”.

Before section 20

Peter Peacock

56 Before section 20, insert—

\(<\text{Enforcement: power to confer certain functions on persons other than constables}\>

(1) The 1981 Act is amended as follows.

(2) In section 19 (enforcement), after subsection (8) insert—

\“(9) The Scottish Ministers may, by order, provide that the functions conferred on a constable by this section (except the power conferred by subsection (1)(c)) and section 19ZD are also exercisable by a person authorised by them for the purposes of this subsection.

(10) An order under subsection (9) may include such incidental, supplementary or consequential provision (including provision amending this Act) as the Scottish Ministers consider appropriate for the purposes of, in connection with, or for the purpose of giving full effect to subsection (9).

(11) An authorisation under subsection (9)—

(a) shall be in writing;

(b) is subject to any conditions or limitations specified in it;

(c) may be revoked by the Scottish Ministers.”.

(3) In section 26 (regulations, orders, notices etc.)—
(a) in subsection (2), for “and 11(4)” substitute “, 11(4) and 19(9)”,
(b) in subsection (3), for “or 11(4)” substitute “, 11(4) or 19(9)
(c) in subsection (4), after “14D” (as inserted by section 17(6)(b)(i)) insert “or 19(9)”
(d) in subsection (5), after “16A(4)(b)” (as inserted by section 18(4)(b)) insert “or
19(9)”
(e) after subsection (5), insert—
“(5A) Before laying a draft statutory instrument containing an order under section
19(9) before the Parliament, the Scottish Ministers must consult—
(a) chief constables;
(b) any organisation employees of which the Scottish Ministers would
intend, in the event of the order being made, to authorise under section
19(9); and
(c) such other persons (if any) as they consider appropriate.
(5B) For the purposes of such a consultation, the Scottish Ministers must—
(a) lay a copy of the proposed draft order before the Parliament;
(b) send of copy of the proposed draft order to any person to be consulted
under subsection (5A); and
(c) have regard to any representations about the proposed draft order that are
made to them within 60 days of the date on which the copy of the
proposed draft order is laid before the Parliament.
(5C) In calculating any period of 60 days for the purposes of subsection (5B)(c), no
account is to be taken of any time during which the Parliament is dissolved or
is in recess for more than 4 days.
(5D) When laying a draft statutory instrument containing an order under section
19(9) under subsection (3), the Scottish Ministers must also lay before the
Parliament an explanatory document giving details of—
(a) the consultation carried out under subsection (5A); 
(b) any representations received as a result of the consultation; and
(c) the changes (if any) made to the proposed draft order as a result of those
representations.”.

Section 20B

Liam McArthur
27 In section 20B, page 33, line 2, after <1(1),> insert <(2),>

Before section 22

Robin Harper
28 Before section 22, insert—
**Duty of sustainable deer management**

Before section 1 of the 1996 Act, insert—

"**PART A1**

**SUSTAINABLE DEER MANAGEMENT**

**Duty of sustainable deer management**

(1) It is the duty of—

(a) a public body or office holder owning, occupying or otherwise controlling land on which deer are found;

(b) an owner or occupier of land on which deer are found,

to further the sustainable management of deer on that land by complying with a code of practice drawn up under section 5A of this Act.

(2) But subsections (1)(a) and (b) only apply to land on which deer are found in sufficient number or with sufficient frequency as to—

(a) cause, or be likely to cause, damage or injury of the nature set out in section 7(1)(a) of this Act; or

(b) have become a danger, or be likely to become, a danger to public safety.”.

**Section 22**

**Jamie McGrigor**

57 In section 22, page 34, line 10, leave out <1(2)> and insert <1>

**Jamie McGrigor**

58 In section 22, page 34, line 10, at end insert—

<(  ) in subsection (1)(a), for “conservation,” substitute “conservation of deer native to Scotland, the”,

(  ) in subsection (2)—

(  )>}

**Roseanna Cunningham**

29 In section 22, page 34, line 30, after <safety;> insert <and>

**Section 23**

**Liam McArthur**

30 In section 23, page 35, line 1, leave out <may, in particular> and insert <must>

**Liam McArthur**

31 In section 23, page 35, line 6, at beginning insert—
The code of practice may

Liam McArthur

In section 23, page 35, line 7, at end insert—

The recommendations referred to in subsection (2)(a) must cover arrangements for determining the levels of any cull and, if needed, how they are implemented to achieve sustainable deer population levels.

Liam McArthur

In section 23, page 35, line 7, at end insert—

The recommendations and provisions referred to in subsection (2)(a) and (b) must cover arrangements for collaboration on deer management planning between the owners and occupiers of land within deer natural ranges.

Liam McArthur

In section 23, page 35, line 7, at end insert—

SNH must from time to time review the code of practice.

John Scott

In section 23, page 35, line 20, leave out <made under this section must>

John Scott

In section 23, page 35, line 22, at beginning insert <must>

John Scott

In section 23, page 35, line 24, leave out <come> and insert <comes>

John Scott

In section 23, page 35, line 34, leave out <made under this section>

Section 24

Liam McArthur

In section 24, page 36, line 8, at end insert—

after “is satisfied that” insert “a failure to carry out management work as required by the code, or a management plan agreed in accordance with the code, requires addressing by means of measures under this section or section 8, or that”,>
Section 25

**Roseanna Cunningham**

35 In section 25, page 40, line 11, leave out subsection (5)

Section 26

**John Scott**

13 In section 26, page 41, line 26, at end insert—

<( ) Before making regulations under subsection (1) above, the Scottish Ministers (or a person nominated by them) must consult such persons and organisations as they consider (or, as the case may be, the nominated person considers) have an interest in the regulations.>

**After section 26B**

**Jamie McGrigor**

59 After section 26B, insert—

<Deer injured by motor vehicles

After section 42 of the 1996 Act insert—

“42A Deer injured by motor vehicles

SNH may, in such areas as it considers appropriate, take such steps as it considers appropriate to ensure that drivers of motor vehicles are aware of who to notify of any concerns about a deer’s welfare following a collision between a motor vehicle and the deer which resulted in injury to the deer.”.>

Section 27

**Elaine Murray**

36 In section 27, page 45, line 5, at end insert <(but only in relation to the purpose mentioned in section 10(1)(d)).>

**After section 28A**

**Robin Harper**

37 After section 28A, insert—

<PART

Biodiversity

In section 2 (Scottish biodiversity strategy) of the 2004 Act, after subsection (3), insert—>
“(3B) A strategy designated under subsection (1) must set out the Scottish Ministers’ objectives in relation to the conservation of biodiversity, together with how—
   (a) policies in relation to protected areas,
   (b) species and habitat conservation measures,
   (c) land use policies,
   (d) town and country planning policies,
   (e) marine planning policies, and
   (f) such other policies as they consider relevant,
will contribute to the achievement of those objectives.”.

Peter Peacock

60 After section 28A, insert—

<PART
BIODIVERSITY

Reports on compliance with biodiversity duty

After section 2 of the 2004 Act insert—

“2A Reports on compliance with biodiversity duty

(1) A public body must prepare and publish a biodiversity report within 3 years of—
   (a) the base date,
   (b) the date on which a report was last published by the body under this subsection.

(2) A biodiversity report is a report on the actions taken by the body in pursuance of its duty under section 1 during the period to which the report relates.

(3) The base date is—
   (a) the date on which section (Reports on compliance with biodiversity duty) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 00) comes into force, or
   (b) where the body is established after that date, the date on which the body is established.

(4) A report under this section—
   (a) is to be prepared in such form and published in such manner as the body thinks fit,
   (b) may be incorporated within another report prepared or published by the body.”.

Section 35

Roseanna Cunningham

38 In section 35, page 60, line 19, leave out <and this Part> and insert <, section 34 and this section>
Wildlife and Natural Environment (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 proceedings, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Taking of game birds – catching up and disease control**
39, 40, 41, 42, 46, 47, 48, 49, 50

**Group 2: Licensing of taking or killing etc. certain birds for purpose of protecting certain livestock**
61, 52, 54, 55

**Group 3: Protection of wild birds – intervention by the Scottish Ministers**
43, 44, 45

**Debate to end no later than 40 minutes after proceedings begin**

**Group 4: Snares**
5, 14, 15, 16, 17, 18, 51, 20, 21, 22, 23, 24, 1, 1A, 1B, 1C, 2, 3, 4

**Notes on amendments in this group**
Amendment 5 pre-empts amendments 14, 15, 16, 17, 18, 51, 20, 21, 22, 23, 24, 1 (and, as a consequence, 1A, 1B and 1C), 2, 3 and 4

**Group 5: Minor amendments**
6, 29, 9, 10, 11, 12, 35, 38

**Debate to end no later than 1 hour 25 minutes after proceedings begin**
Group 6: Grounds etc. on which certain licences under the 1981 Act may be granted
53

Group 7: Delegation of licensing functions to local authorities
25, 36

Group 8: Annual report on wildlife crime
26

Debate to end no later than 1 hour 45 minutes after proceedings begin

Group 9: Knowingly causing or permitting offences under the 1981 Act etc.
7, 27

Group 10: Power to confer certain functions of constable under the 1981 Act on other persons
56

Debate to end no later than 2 hours 5 minutes after proceedings begin

Group 11: Sustainable deer management (including content of and compliance with code of practice)
28, 30, 31, 32, 33, 8, 34

Group 12: SNH’s deer conservation duty – species covered
57, 58

Group 13: Establishment of register of persons competent to shoot deer – consultation
13

Debate to end no later than 2 hours 35 minutes after proceedings begin

Group 14: Deer injured by motor vehicles
59

Group 15: Biodiversity duty and strategy
37, 60

Debate to end no later than 2 hours 55 minutes after proceedings begin
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 4, No. 57 Session 3

Meeting of the Parliament

Wednesday 2 March 2011

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Bruce Crawford, on behalf of the Parliamentary Bureau, moved S3M-8038—that the Parliament agrees that, during Stage 3 of the Wildlife and Natural Environment (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

Groups 1 to 3: 40 minutes
Groups 4 and 5: 1 hour 25 minutes
Groups 6 to 8: 1 hour 45 minutes
Groups 9 and 10: 2 hours 5 minutes
Groups 11 to 13: 2 hours 35 minutes
Groups 14 and 15: 2 hours 55 minutes.

The motion was agreed to.

Wildlife and Natural Environment (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 39, 40, 41, 42, 46, 47, 48, 49, 50, 22, 1, 2, 3, 4, 6, 25, 26, 7, 57, 58, 29, 8, 9, 10, 11, 12, 35, 13, 36 and 38.

The following amendments were agreed to (by division)—

14 (For 104, Against 17, Abstentions 0)
16 (For 107, Against 16, Abstentions 0)
20 (For 107, Against 16, Abstentions 0)
23 (For 106, Against 17, Abstentions 1)
24 (For 104, Against 16, Abstentions 1)
60 (For 106, Against 16, Abstentions 0)

The following amendments were disagreed to (by division)—

61 (For 45, Against 78, Abstentions 0)
43 (For 46, Against 76, Abstentions 1)
5 (For 50, Against 72, Abstentions 0)
15 (For 49, Against 74, Abstentions 0)
17 (For 49, Against 75, Abstentions 0)
18 (For 49, Against 75, Abstentions 0)
51 (For 49, Against 74, Abstentions 0)
1A (For 47, Against 75, Abstentions 2)
1B (For 48, Against 75, Abstentions 0)
1C (For 48, Against 75, Abstentions 0)
52 (For 46, Against 73, Abstentions 0)
28 (For 46, Against 75, Abstentions 0)
37 (For 46, Against 75, Abstentions 0)

The following amendments were moved and, with the agreement of the Parliament, withdrawn: 53, 56 and 59.

The following amendments were not moved: 44, 45, 21, 54, 55, 27, 30, 31, 32, 33 and 34.

Wildlife and Natural Environment (Scotland) Bill - Stage 3: The Minister for Environment and Climate Change (Roseanna Cunningham) moved S3M-8020—That the Parliament agrees that the Wildlife and Natural Environment (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Wildlife and Natural Environment (Scotland) Bill: Stage 3

13:49

The Presiding Officer (Alex Fergusson): The next item of business is stage 3 proceedings on the Wildlife and Natural Environment (Scotland) Bill. Members should have the bill as amended at stage 2, which is SP bill 52A; the marshalled list, which is SP bill 52A-ML; and the groupings, which I have agreed.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. All other divisions will be 30 seconds.

Section 3—Protection of game birds etc and prevention of poaching

The Presiding Officer: I refer members to the marshalled list of amendments. We come to group 1. Amendment 39, in the name of John Scott, is grouped with amendments 40 to 42 and 46 to 50.

John Scott (Ayr) (Con): I will speak to all the amendments in the group. The chief purpose of the amendments is to seek to extend the period for catching up for pheasants and partridges from 14 days, as is currently proposed, to 28 days. Catching up is the practice of collecting male and female pheasants and partridges to use as breeding stock. It is traditionally carried out by gamekeepers and game rearers immediately after the end of the shooting season, usually during the whole of February.

The extension of the period from 14 days to 28 days would give greater flexibility, particularly if there is severe weather, such as the snow that we have experienced during the past two winters. Furthermore, shoots, particularly commercial ones, shoot right up until the end of the season, which means that staff are usually very busy and preparations for catching up cannot begin until the shooting season has ended. Commercial shoots and game rearers often catch up a large number of birds during a sustained period, and a 14-day period is not sufficient to allow that to take place.

I acknowledge concerns about the possible catching up of grouse and mallard, which is why amendment 39 would remove those species from the provisions.

After discussions with the British Association for Shooting and Conservation Scotland and RSPB Scotland, I understand that the amendments in group 1 offer an acceptable approach and deal with the concerns that both sides raised at stage 2. Because of that, I trust that the amendments will find members' support.

Amendment 42 would permit the catching up of red grouse for disease control during the close season. The practice is well established and thousands of red grouse are caught each year for direct dosing and worm monitoring. The practice ensures the effective monitoring and treatment of grouse disease and helps to deliver a healthy, productive and stable red grouse population, which, in turn, boosts the rural economy, given that a great deal of income and employment depends on grouse shooting.

Some people have suggested that the practice might have environmental implications, but the same drug, delivered in the same way, is used to reduce disease in Scotland's hill populations of sheep and cattle, with no perceptible effects. The activities that amendment 42 would enable are important and uncontroversial and are undertaken by the Langholm Moor demonstration project, with Scottish Natural Heritage, the RSPB, the Game and Wildlife Conservation Trust and Buccleuch Estates as partners.

I commend all the amendments in the group. I move amendment 39.

Liam McArthur (Orkney) (LD): Ministers' initial attempts to establish clear parameters for dealing with the need for catching up at the end of the season were genuine and well motivated, if a little arbitrary. Concerns were expressed about the appropriateness of a 14-day limit, given that in certain conditions the limit might be the earliest point at which the process could even begin.

John Scott's amendment on the matter at stage 2 had the benefit of simplicity, although it was perhaps no less arbitrary than the approach that it sought to replace, but it prompted the RSPB and others to express concern about what could be perceived as a de facto extension to the shooting season.

The amendments that John Scott has lodged at stage 3 take a pragmatic approach to the issue, perhaps with the exception of amendment 42, on which we have not heard evidence. I appreciate the reason for proposing the change, but I am concerned that the issue has emerged so late in the day, given that it relates to an established practice, as John Scott said. In principle, that is not a sensible basis on which to make policy, and I invite the minister to address the concerns that I know have been expressed to her by the RSPB and other people.

The Minister for the Environment and Climate Change (Roseanna Cunningham): Members should be aware that the catching up of game birds in the close season is currently illegal.
However, it happens, and in effect a blind eye is turned to the practice. Our view was that that is not a sensible way to proceed. I commend the stakeholders who raised the issue at stages 1 and 2 for taking a constructive approach and coming to reasonable agreement on the appropriate time periods for catching up in the close season.

I hope that the inclusion of grey partridge in the 28-day period will, in a practical way, support and encourage an increase in grey partridge numbers. Therefore, I am happy to support amendments 39 to 41 and 46 to 50 inclusive. The Government does not see a difficulty with amendment 46.

I turn briefly to amendment 42. Licences could be granted for the purpose of preventing the spread of disease. However, the approach in the amendment seems practical and appropriately limited. The animal health and welfare considerations that currently apply to such treatment, whether in open season or under licence, would equally apply under the amendment. The same is the case for ensuring the appropriate withdrawal periods before treated birds can enter the food chain. Those issues do not specifically relate to medicating in the close season.

I am content to support John Scott’s amendment 42, together with the rest of the amendments in the group.

John Scott: I thank the minister and, indeed, Liam McArthur for their support. I will press the amendments.

Amendment 39 agreed to.

Amendments 40 to 42 moved—[John Scott]—and agreed to.

The Presiding Officer: We come to group 2. Amendment 61, in the name of Peter Peacock, is grouped with amendments 52, 54 and 55.

Peter Peacock (Highlands and Islands) (Lab): A concern has arisen about whether licences will be granted to kill raptors to protect a species that is bred for the purpose of its being shot for so-called sport.

I have made it clear that I think it ridiculous that it might ever prove possible to get a licence to kill a valued, protected species to protect a species that is bred in huge numbers solely for the purpose of shooting. I lodged an amendment at stage 2 to seek to resolve that matter and make it impossible for a minister to issue a licence in such circumstances.

Since stage 2, the Parliament has approved the code that governs the raising of such birds for shooting. That statutory code makes it clear that it is up to those who rear the stock to protect it adequately. That strengthens the case for there being no need ever to issue a licence to kill raptors to protect birds that are raised specifically to be shot quickly thereafter.

I have lodged a similar amendment today, taking out the reference to mallard, which was one of the points that concerned the minister when the proposal was debated at stage 2. However, I have also gone further and lodged another amendment that would completely remove any doubt about the matter. It would remove the power for a minister to issue a licence in such circumstances in relation to species that are specified in a schedule. A schedule can be relatively easily amended if there is a case to extend the number of species—for example, to include the likes of goshawk, sparrowhawk or tawny owl—or, indeed, to remove any that are listed.

I welcome the minister’s indication in previous debates that a high test would always remain to be passed before any licence was issued, namely that there was no alternative measure to manage the situation. The more that one thinks about it, the harder it is to envisage any circumstance in which a licence could be issued. Indeed, no such licence has been issued since the provisions were put into statute many years ago.

We could put the matter to bed once and for all by removing the power for a minister to issue such a licence—a power that has never been used.

I move amendment 61.

John Scott: I speak against Peter Peacock’s amendments in this group. Their purpose, as far as I can perceive, is to prevent licences from being granted for the limited control of specific wild birds to protect stocks of reared game birds. While such reared birds are dependent on their keepers for food and the like, they should be classed as livestock in the same way as any other kept animal.

The amendments are also unnecessary. The way in which the Government has operated sawbill duck and raven licensing for fisheries and agriculture since 1981 shows that there is no risk of such licences leading to mass culls of sensitive birds of prey and/or loss of conservation status.

 Licensing always requires an applicant to show SNH that measurable impacts are largely due to the raptor in question, that alternatives to lethal control have been tried, and that all parties are clear that the conservation status of the raptor will not be affected. Those matters can be dealt with on a case-by-case basis, or even a regional basis. Therefore, I urge members not to support Peter Peacock’s amendments in the group.
Liam McArthur: Peter Peacock has rightly highlighted the almost absurd position in which a licence might be granted to shoot a protected species in order to protect a non-native species raised as livestock. During stage 1 and again at stage 2, we considered whether there were any circumstances in which we could foresee such a decision being justified. On the back of that, we discussed whether there was a need to raise the bar higher or remove the option entirely.

I take more than a little comfort from knowing that, despite encouragement from some quarters, no minister has yet seen any reason to grant such a licence, as Peter Peacock suggested. On that basis, I remain to be persuaded of the need to change the law as it currently stands. There is an argument for saying that a line could be drawn under the issue, that the need to try to devise criteria by which any such licence might be granted could be avoided, and even that ministers could be prevented from being put in a difficult position. All those aims are legitimate, albeit that they are not all equally laudable. Moreover, Peter Peacock is to be congratulated on raising the issue in a way that will, I hope, discourage any inappropriate use of the power to grant licences in future.

However, on balance, I am disinclined to support amendments 52, 54 and 55. Similarly, although I appreciate the sentiment behind amendment 61, I am not convinced that it would not create a wider set of difficulties for those who will follow in Peter Peacock’s footsteps.

Roseanna Cunningham: As I said at stage 2, I have not issued any licences to do what Peter Peacock’s amendments seek to prevent, but I acknowledge that the issue is difficult. I will not repeat the entire debate that we had in the committee, but we must note that we are talking about a balancing issue. On the one hand, we must note the economic benefits and the benefits relating to biodiversity that shooting often brings to rural Scotland; on the other hand, as Peter Peacock has pointed out, it is difficult to reconcile the licensed control of native species such as buzzards and sparrowhawks with protecting non-native species such as pheasants and partridges. It is already the case that a variety of other options must be fully exhausted before licences are considered, including the relocation of pens or the use of deterrent devices and diversionary feeding.

I cannot ignore the backdrop to the debate, which is wildlife crime. It is clear that the actions of a few are adversely affecting the majority, but the amendments would provide a relatively inflexible basis for moving forward.

Amendment 61 would essentially prevent any such licences for the protection of game birds from being issued, given the requirement for “secure housing”, as people will know if they are aware of what the actual practice is in rural Scotland.

Amendments 52, 54 and 55 would send a strong message about the birds that Parliament deems untouchable for the purposes of preventing serious damage to livestock. That would stymie any further balanced discussion of the issue. I accept that amendment 54 refers to the “power to vary Schedules”, but would that ever be used in practice, save perhaps to add the birds that Peter Peacock may have erroneously omitted?

The brief discussion that we have had today again confirms to me that the right decision has been taken to date. Given that, I wonder why members cannot continue to leave the matter to the discretion of ministers.

For those reasons, I do not support the amendments in the group.

Peter Peacock: I hear what members have to say, but they will not be surprised to hear that I take a contrary view. When we were in Langholm during the early stages of our consideration of the bill, the Scottish Gamekeepers Association argued for a greater opportunity to get licences to deal with the problem. We are aware that the association has lobbied on that point, and there is an attempt to agree guidance on the circumstances in which a licence might be offered. That is quite a reasonable thing to do, given that the power to issue licences exists in statute. However, it also sends signals to people that such guidance might be the beginning of a relaxation, and I want to ensure that that does not happen. Therefore, I press my amendment 61.

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

Members: No.

The Presiding Officer: There will be a division. As this is the first division, I will suspend the meeting for five minutes.

14:04

Meeting suspended.

14:09

On resuming—

The Presiding Officer: We now come to the division on amendment 61.

For

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
provisions on the matter at the start of the
notwithstanding the fact that the bill did not contain
the main debating points in the bill,
because there is a persistent problem in Scotland
amendments 44 and 45.
name of Peter Peacock, is grouped with
division is: For 45, Against 78, Abstentions 0.
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The Presiding Officer: The result of the
division is: For 45, Against 78, Abstentions 0.
Amendment 61 disagreed to.

After section 4

The Presiding Officer: Amendment 43, in the
name of Peter Peacock, is grouped with
amendments 44 and 45.

Peter Peacock: We are having this debate
because there is a persistent problem in Scotland
with bird persecution, which has come to be one of
the main debating points in the bill,
notwithstanding the fact that the bill did not contain
provisions on the matter at the start of the
process. It ought to be a matter of national shame that a minority of Scots persistently and routinely shoot, poison or otherwise trap or illegally kill some of our most magnificent wild creatures. Anyone who has had the good fortune to study our predator birds at close quarters can testify to their magnificence. Those creatures have evolved to hunt; they have penetrating eyes and are able to soar to great heights. Some have a wingspan that inspires awe.

What kind of people seek to destroy them by laying poisoned bait, setting traps or shooting them? There is no evidence that such things are done for some kind of perverse pleasure; it appears to be an approach to managing certain grouse moors on some of our big estates. I am by no means talking about all our big estates, but there are too many examples to pretend that the practice is not being used routinely in some localities.

Recent studies of golden eagles and hen harriers—a report on which was done only last week—look systematically at areas of land in which the absence of certain species is only plausible and explicable by those species being persecuted as a result of certain management practices. Such practices are specifically designed to remove those species from the territory in pursuit of an economic objective. The pressure that underlies such actions is to increase the supply of grouse for shooting—that is their economic purpose. Some estates seem to believe that they can operate with the required level of shooting only if they remove some of our most iconic species. Today we have the opportunity to do more to eliminate that evil practice.

Many people in Scotland are dismayed that although we know that the practice goes on and have a fair idea of where it does so, we have been unable to stop it happening. Part of that must be to do with how that set of crimes is prioritised at the local level, but part of it must be to do with inadequacies in our law. A vicarious liability has been introduced in the bill. I welcome that and think that we should take it further. We need to fight crimes that have an economic purpose with severe economic consequences. That is what lies behind my amendments today.

The amendments have been developed over several months of parliamentary debate and today is our last chance to deal with them. I have broken my approach into three separate amendments.

The first, amendment 43, provides those in Parliament who are not prepared to go along the road as far as I would with the ability to go some way towards bearing down on such a nasty set of crimes. Amendment 43 seeks to allow ministers to formally indicate under certain clear conditions that they have reasonable cause to be concerned about what is happening in a specified area when that concern is scientifically formed on the basis of evidence, and provides for an appeal to challenge whether the minister is acting reasonably. If any appeal fails, the minister can then come to Parliament and, by order, formally register that Parliament should be concerned about what is happening. Parliament would then have the opportunity to agree or not. The prospect of that measure being taken might help to focus people’s minds and lead them to act against the crimes that we all want to be eliminated.

Being named and, I hope, shamed in that way would have an economic consequence for the estate that was managing its land inappropriately. However, if the estate was not deterred at that point, there would be further steps in the process, which is why I have lodged amendments 44 and 45. They would ratchet up the actions that the Parliament and ministers can take.

Why should those estates that are not prepared to end practices that eliminate some of our national treasures be allowed to continue with economic activity that motivates such crimes? At the least, the amendments would allow ministers and Parliament to formally express concern about what is happening in some areas and, moving further on, would remove from estates that are not following the approach that we all want to be taken the right to shoot on that land, with the severe economic consequence that such a move would have.

I move amendment 43.

14:15

**Liam McArthur:** Peter Peacock’s bid to be crowned master of pith lies in tatters as a result of this triple salvo of amendments. I fully appreciate that they have moved a long way from the licensing scheme that was initially envisaged in the amendment that Mr Peacock himself lodged at stage 2, but I remain concerned about the potential consequences, intended or otherwise, of what he is now proposing.

First, I reiterate my firm belief that the illegal persecution of birds of prey in this country is wholly unacceptable. Despite claims to the contrary in some quarters, far from improving, the situation for certain species in certain parts of Scotland is actually getting worse. Responsibility for this deplorable trend rests firmly with a small number of estates and land managers who persist in defying the law. That is why the vicarious liability provisions introduced at stage 2 must be made to work effectively through the targeted efforts of the Crown Office and Procurator Fiscal Service and the police. Indeed, I would welcome the minister’s assurance that she is willing to look
at how the penalties and sanctions for those who are found guilty under the vicarious liability provisions might be toughened up, perhaps through further consideration by the partnership for action against wildlife crime in Scotland.

Of course, in expressing our abhorrence of these wildlife crimes, we must also acknowledge the fact that the majority of estates and land managers do not engage in such activity. Indeed, many share our frustration at the unwillingness of recalcitrants to desist, which is why we have supported the wildlife estates initiative, which can and must help to define and embed best practice. The process will be watched closely over the coming years; indeed, for some, it might well be viewed as the last chance saloon.

For now, however, I do not think that Peter Peacock’s amendments are justified. Despite the safeguards and appeals that he has proposed for each, I still believe that they will open the legislation up to legal challenge as well as offering considerable scope for mischief. Fundamentally, whatever our frustrations at the lack of progress in securing convictions, I do not believe that we can play fast and loose with the burden of proof.

John Scott: I want to speak against amendments 43, 44 and 45. Although I welcome the intention behind them—namely tackling the illegal persecution of raptors—they represent a disproportionate and overly bureaucratic response to the issue. According to recent police statistics, the incidence of bird poisoning has reduced, and work must not be prejudiced by unnecessary legislative intervention at this critical stage, particularly at a time when the sector itself is voluntarily piloting a scheme to demonstrate and increase best practice in land management and conservation.

On amendment 43, given the ranges over which some of the species listed hunt and disperse, it would be a considerable task to ascertain all the relevant persons related to the area of land affected. I presume that in order to notify all the right people, SNH would wish to notify as many land managers as it could identify, but amendment 43 risks the serving of notices on those whose activities have no impact on the wild birds conservation status and any failure to respond could trigger a notification of concern order. At the very least, there should have been an obligation to notify the owner in all cases and then other such persons as ministers deemed appropriate. Furthermore, given recent debate about the hen harrier framework, it is improbable that ministers will be able to define “unfavourable conservation status” for any “wild bird” and “any area of land” without challenge, because the term “unfavourable conservation status” has a different definition from that in European and existing United Kingdom legislation.

Even though they seek to make some provision for appeal and consultation during the process, there are still major problems with amendments 44 and 45. For example, some of the time periods appear to overlap; the deadline for the first report on compliance seems to be the same as that for producing the management plan.

For all those reasons, I believe that amendments 43, 44 and 45 should be rejected.

Roseanna Cunningham: I appreciate that Peter Peacock has taken on board some of my comments about his stage 2 amendment. However, the result is amendments that are twice as long. I am not being flippant; I believe that it was almost inevitable because he is attempting to untangle very complex land management and ownership arrangements. However, what we have been left with is a set of byzantine procedures; I am certain that even if the ministers of the day were inclined to use them, they would be unable to.

Perhaps in an attempt to deal with the concerns that I raised about the proposal for a sus law at stage 2, the trigger for the process relates to a link between recurring land management practices and unfavourable conservation status. However, that is just as problematic. Aside from the process being triggered by “reasonable cause to consider”—which is a lower standard of proof than even the civil standard of proof—the conservation status of a species is necessarily monitored on a large scale, either nationally or according to defined natural heritage zones, of which there are 21 in Scotland. In practice, a link between recurring land management practices on an estate that limited the presence of the birds that are listed by Peter Peacock—which, I note, do not include the goshawk, although that is one of the five raptors that are currently UK and Scottish wildlife crime priority species for persecution—and unfavourable conservation status would be unworkable, as John Scott has said.

I do not know how the issue could be resolved. Let us consider the western Southern Uplands and inner Solway natural heritage zone, which includes areas in Karen Gillon’s, Elaine Murray’s and the Presiding Officer’s constituencies—you may be interested to know that, Presiding Officer. Would all land managers in that zone have to be notified? I am sure that that was not Peter Peacock’s intention. However, if we cannot get over the first hurdle, amendments 44 and 45, which rely on the process, are equally unworkable.

Liam McArthur: In a sense, what Peter Peacock is trying to achieve through amendment 43 is a naming and shaming, but I understand that...
provisions for that already exist. It would be helpful if the minister could observe why they have not been used more freely to date and whether there is scope for considering methods whereby naming and shaming might take place.

**Roseanna Cunningham:** I was going to come on to the naming and shaming aspect of the debate. It is important that we are very careful when we move into that territory. Anyone is free to draw conclusions as they please, but the presence of a poisoned carcase is not irrefutable proof that those who are responsible for managing the land on which it is found were also responsible for the death of the bird. The investigation of crimes is the responsibility of the police and determining guilt is the responsibility of the courts. Under vicarious liability, the bill would allow the courts to determine the guilt of a land manager if his employee had committed an offence.

I take the intention of Peter Peacock’s amendment 43 in the broadest sense and fully appreciate the intention of those who have put forward proposals for additional measures to vicarious liability, whether as a safeguard or a threat. Indeed, as others, including Liam McArthur, have mentioned, the penalties associated with vicarious liability may not prove a sufficient deterrent. The bill does not deal with the existing penalties in the Wildlife and Countryside Act 1981; however, PAW Scotland would have my total support for a review of the penalties relating to wildlife crime. Those penalties must be considered in the wider criminal justice context, however, and that should be borne in mind.

**Peter Peacock:** I welcome the minister’s latter point about a review of the penalties. That will be an important part of strengthening the law. I also welcome the vicarious liability provisions in the bill. Nevertheless, I think that vicarious liability will be as difficult to prove as almost any other offence relating to wildlife crime. Those penalties must be considered in the wider criminal justice context, however, and that should be borne in mind.

I have taken something like 15 acts through the Scottish Parliament. I have stood where the minister is standing and have picked holes in many of the amendments that have come before me, explaining why they were technically flawed. It is one of the great benefits of being a minister that one has a legal department to provide one with the arguments. However, I was never wholly convinced that, on every occasion, I was not overregg the pudding.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** It was very obvious at the time.
### Against

- Adam, Brian (Aberdeen North) (SNP)
- Aitken, Bill (Glasgow) (Con)
- Allan, Alasdair (Western Isles) (SNP)
- Brocklebank, Ted (Mid Scotland and Fife) (Con)
- Brown, Gavin (Lothians) (Con)
- Brown, Keith (Ochil) (SNP)
- Brown, Robert (Glasgow) (LD)
- Brownlee, Derek (South of Scotland) (Con)
- Campbell, Aileen (South of Scotland) (SNP)
- Carlaw, Jackson (West of Scotland) (Con)
- Coffey, Willie (Kilmarnock and Loudoun) (SNP)
- Constance, Angela (Livingston) (SNP)
- Crawford, Bruce (Stirling) (SNP)
- Cunninghame, Roseanna (Perth) (SNP)
- Don, Nigel (North East Scotland) (SNP)
- Doris, Bob (Glasgow) (SNP)
- Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
- Fabiani, Linda (Central Scotland) (SNP)
- Finnie, Ross (West of Scotland) (LD)
- FitzPatrick, Joe (Dundee West) (SNP)
- Fraser, Murdo (Mid Scotland and Fife) (Con)
- Gibson, Kenneth (Cunninghame North) (SNP)
- Gibson, Rob (Highlands and Islands) (SNP)
- Goldie, Annabel (West of Scotland) (Con)
- Grahame, Christine (South of Scotland) (SNP)
- Harvie, Christopher (Mid Scotland and Fife) (SNP)
- Hepburn, Jamie (Central Scotland) (SNP)
- Hume, Jim (South of Scotland) (LD)
- Hyslop, Fiona (Lothians) (SNP)
- Ingram, Adam (South of Scotland) (SNP)
- Johnstone, Alex (North East Scotland) (Con)
- Kidd, Bill (Glasgow) (SNP)
- Lamont, John (Roxburgh and Berwickshire) (Con)
- Lochhead, Richard (Moray) (SNP)
- MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
- Marwick, Tricia (Central Fife) (SNP)
- Mather, Jim (Argyll and Bute) (SNP)
- Matheson, Michael (Falikirk West) (SNP)
- Maxwell, Steward (West of Scotland) (SNP)
- McArthur, Liam (Orkney) (LD)
- McGregor, Jamie (Highlands and Islands) (Con)
- Mclnnnes, Alison (North East Scotland) (LD)
- McKee, Ian (Lothians) (SNP)
- McKelvie, Christina (Central Scotland) (SNP)
- McLaughlin, Anne (Glasgow) (SNP)
- McLetchie, David (Edinburgh Pentlands) (Con)
- McMillan, Stuart (West of Scotland) (SNP)
- Milne, Nanette (North East Scotland) (Con)
- Mitchell, Margaret (Central Scotland) (Con)
- Morgan, Alasdair (South of Scotland) (SNP)
- Neil, Alex (Central Scotland) (SNP)
- O'Donnell, Hugh (Central Scotland) (LD)
- Paterson, Gill (West of Scotland) (SNP)
- Pringle, Mike (Edinburgh South) (LD)
- Purvis, Mary (Central Fife) (SNP)
- Robison, Shona (Dundee East) (SNP)
- Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
- Russell, Michael (South of Scotland) (SNP)
- Salmone, Alex (Gordon) (SNP)
- Scanlon, Mary (Highlands and Islands) (Con)
- Scott, John (Ayr) (Con)
- Smith, Elizabeth (Mid Scotland and Fife) (Con)
- Smith, Iain (North East Fife) (LD)
- Smith, Margaret (Edinburgh West) (LD)
- Somerville, Shirley-Anne (Lothians) (SNP)
- Stephen, Nicol (Aberdeen South) (LD)
- Stevenson, Stewart (Banff and Buchan) (SNP)
- Sturgeon, Nicola (Glasgow Govan) (SNP)
- Swinney, John (North Tayside) (SNP)
- Thompson, Dave (Highlands and Islands) (SNP)
- Tolson, Jim (Dunfermline West) (LD)
- Watt, Maureen (North East Scotland) (SNP)
- Welsh, Andrew (Angus) (SNP)
- Wilson, Bill (West of Scotland) (SNP)
- Wilson, John (Central Scotland) (SNP)

### Abstentions

- MacDonald, Margo (Lothians) (Ind)

**The Presiding Officer:** The result of the division is: For 46, Against 76, Abstentions 1.

**Amendment 43 disagreed to.**

**Amendments 44 and 45 not moved.**

### Section 5—Sale of live or dead wild birds, their eggs etc

Amendments 46 to 50 moved—[John Scott]—and agreed to.

### Section 13—Snares

**The Presiding Officer:** We come to group 4. I draw members’ attention to the pre-emption information that is shown on the list of groupings.

Amendment 5, in the name of Irene Oldfather, is grouped with amendments 14 to 18, 51, 20 to 24, 1, 1A, 1B, 1C and 2 to 4.

**Irene Oldfather (Cunninghame South) (Lab):** Amendment 5 would remove the whole of section 13 and replace the measures with an outright ban on the manufacture, sale, possession and use of snares in Scotland. It includes limited exceptions to ensure that no one is unfairly prosecuted for being in possession of a snare for an innocent reason. The specific situations that are intended to be exempt are law enforcement situations that involve, for example, a Scottish Society for the Prevention of Cruelty to Animals officer removing a snare; education situations in which, for example, a teacher, lecturer or animal welfare organisation shows students how things were done in the old days; and scientific research, which would be subject to the same licensing arrangements.

There are two reasons why snares must be banned in Scotland. First, they cause unacceptable suffering to target animals, such as foxes, rabbits and hares, and to non-target species, such as badgers, otters, deer, other livestock and domestic pets. Secondly, they are indiscriminate. The UK independent working group on snaring has said that, in some circumstances, it might be impossible to reduce non-target capture to below 69 per cent. Protected animals, such as badgers, are often found suffering severely in snares, in the most distressing circumstances.

The dreadful impact of snares on the animals that they capture has been repeatedly described by veterinary experts. An independent report by...
the centre for animal welfare and anthrozoology at
the University of Cambridge concluded that the
welfare of vertebrate pest animals should be
assessed in the same way as the welfare of any
other vertebrate animal and stated that
“some pest control methods have such extreme effects on
an animal’s welfare that, regardless of the potential
benefits, their use is never justified”.

I believe that snaring is such a method and I invite
members to support my amendment.

I move amendment 5.

Liam McArthur: The issue of snaring is emotive
and a compromise that would be satisfactory to all
sides was never likely to be achievable. The
passage of the bill, unlike the order that was
introduced last year—the Snares (Scotland) Order
2010—has at least enabled us to have a more
extensive and public discussion about the practice
and the place that it has or should have in modern
pest control.

Few people, even among those who advocate
the retention of snaring, would argue that it cannot
be unpleasant. However, like my fellow committee
members, on balance, I was persuaded of the
continued need for snaring in certain
circumstances.

That said, I was also convinced of the need to
challenge further and, where necessary, to
constrain the extent of those circumstances. For
that reason, I welcome the amendments that were
agreed to at stage 2, including the requirement for
a review.

14:30

Bill Wilson’s amendments 1 to 4 would help to
tighten up further the timeframe for the review and
would ensure that the exercise is repeated
thereafter. That can help to maintain pressure on
the gamekeeping industry and others to keep
innovating in snare design and usage while also
keeping the need for snaring itself under review.
Although I believe that that focus is necessary, the
timeframes that Elaine Murray proposes perhaps
give insufficient time for the changes that the bill
introduces to bed in.

I support Elaine Murray’s amendments 16 and
20. She and I shared a concern at stage 2 about
the extent to which snares are simply used in large
numbers with too few questions being asked about
how and where they are to be used.

The introduction of identification numbers will be
helpful, and Elaine Murray’s proposal, that they be
issued only where a chief constable is satisfied
that a snare operator has received suitable
training on when snaring is an appropriate method
of predator control, is sensible. I would welcome
the minister’s thoughts on how training modules
will be kept up to date, on how suitable
independent advice on animal welfare issues will
be built in and on how snare operators might be
required to undergo refresher training sessions at
appropriate intervals.

My amendments 23 and 24 follow on from
attempts that I made at stage 2 to ensure that
more accurate series of records are kept of snares
that are used. Amendment 23 reflects the wording
of the current practitioners guide on snaring, but it
does no harm for that to appear in the text of the
bill. OneKind observes:

“not only will this information help with law enforcement
but will also prove useful in the review process as laid out
in the Bill”.

I will therefore have pleasure in moving those
amendments.

I have reservations about amendments 17, 51,
21, 15 and 18. Although there will continue to be
those who argue for an outright ban on snaring, I
believe that we have struck a reasonable balance
based on the evidence that has been presented to
us as a committee and as a Parliament.

For now, snaring remains a necessary if
unpleasant method of predator control for farmers
and other land managers. The measures that we
are putting in place through the bill will ensure that
its use is more limited, tightly controlled and
subject to on-going scrutiny. I hope that, even
among those who seek an outright ban—which, of
course, would not eliminate illegal snaring
completely—there is recognition of the progress
that has been made, which must now be properly
monitored and enforced.

Elaine Murray (Dumfries) (Lab): Irene
Oldfather’s amendment 5 reflects Labour Party
policy, as accepted at our annual conference and
included in our manifestos for the 2007 and 2010
elections. In the Labour Party, we like to stick by
our manifesto commitments.

If amendment 5 is not agreed to, the
subsequent amendments in my name give
members the opportunity to tighten up further on
the use of snares. There is no doubt on this side of
the chamber that holding a frightened animal
without food, water or shelter for up to 24 hours,
possibly in extreme weather conditions, causes
suffering to that animal. The Humane Society aims
to prevent unnecessary suffering, and practices
that cause suffering should not be used unless
there is no other method of control available that
would cause less suffering. That is the purpose of
my amendments.

Amendment 15 would require a person who is
setting a snare to be assured that no alternative
method of controlling or capturing the animal is
possible and would require Scottish ministers to
provide guidance on how that judgment should be
made. Anyone setting a snare would have to consider alternatives before doing so. If they were found to have set a snare in circumstances in which it was not reasonable to consider that other methods would have been ineffective, they would commit an offence.

My amendments are alternatives to the ones that I lodged at stage 2, which required a judgment to be made by the chief constable, and which were felt by the minister to be overly bureaucratic for the police.

Amendment 16 would require the chief constable issuing a snare identification number to be satisfied that the applicant had received training, for example on what alternative methods of control might be available, before issuing that identification number.

Under amendment 18, failure to comply with the requirement to ensure that no alternative and preferable method can be used would constitute an offence.

Amendment 51 would require the chief constable to revoke the snare identification number if an offence had been committed. The bill as introduced will allow someone who has committed an offence to retain their identification number and to continue to use their snares. It is important that someone’s ability to use a snare is revoked if they are found guilty of committing an offence. That will help to concentrate the minds of the users of snares on the circumstances under which their use is permitted.

Amendment 17 would require the chief constable to consider whether an offence has been committed when an identification number has been issued.

Amendment 20 would empower the Scottish ministers to make provisions by order, describing the circumstances under which the use of a snare is considered appropriate.

Amendment 21 would allow such an order to include the conditions that would have to be met for an applicant whose identification number had been revoked after being found guilty of committing an offence to successfully reapply for an identification number.

We support amendments 23 and 24 in the name of Liam McArthur.

Amendments 1A, 1B and 1C would amend Bill Wilson’s amendment 1. His amendments 1 to 4 require a review of the snaring provisions to be undertaken by 31 December 2016 and further reviews to be undertaken every five years. That was the committee’s recommendation at stage 1. However, that would mean that no review would take place during the next parliamentary session, even if that session is increased to five years. My amendment 1A would enable the next Scottish Government to review the effectiveness of the snaring provisions. The date by which that would have to be done—30 June 2014—would give the next Government time to introduce new measures even if the session runs for only four years. My amendments 1B and 1C would reduce the period of review to every four years. In conjunction with amendment 1A, that would enable the provisions to be reviewed once in every session of Parliament.

Roseanna Cunningham: I am well aware that snaring evokes strong feeling among the public and members of the Parliament. Most of us do not like to contemplate predator control, but it is a reality and a necessary element of responsible countryside management.

Rhona Brankin (Midlothian) (Lab): Will the member take an intervention?

Roseanna Cunningham: With respect, it might be advisable if the member waited until I said a little more before she tries to intervene.

Irene Oldfather does not go as far as saying that we should not control predators.

Irene Oldfather: On a point of order, Presiding Officer, I wonder whether you will clarify for the minister that it was not in fact me who tried to intervene. She may want to apologise.

The Deputy Presiding Officer (Trish Godman): That is not a point of order.

Roseanna Cunningham: I am sorry if I picked up the wrong person who was trying to intervene.

I ask Irene Oldfather to consider the consequences of amendment 5. Crofters, gamekeepers and farmers throughout Scotland need to be able to protect their crops and livestock. If amendment 5 is agreed to, they will still have to do that, but Irene Oldfather would leave them with no other option but lamping and shooting. Unfortunately, that would have one of two effects: either it would force crofters, gamekeepers and farmers to shoot what might be less than ideal situations; or it would force them to stand by and watch the damage to, or destruction or death of, their crops and livestock. For some, the damage might cost them the viability of their business and their livelihood.

Rhona Brankin: The member has said that snaring is a necessity. Is she not aware of the estates in Scotland that manage perfectly well without snaring?

Roseanna Cunningham: We are persuaded by the evidence that we get from the vast majority of estate managers that snaring has to happen. It is not just estates, of course—there is a requirement to use snaring more widely. I am not prepared to
put people in the position of having a much more difficult process for controlling predators to protect their livelihoods, so I do not support amendment 5.

The Rural Affairs and Environment Committee unanimously recognised the stark reality as part of its detailed consideration of the arguments in evidence. Therefore, we must shift our focus to ensuring high standards of snaring practice, with animal welfare at the forefront. Animal welfare should be central to accredited training. Ministers would seek the input of Government vets and the constructive input of the SSPCA in considering accredited training. In addition, I emphasise that, as new technology becomes available and workable, all operators will have to be trained in its use.

Liam McArthur’s amendments 14, 23 and 24, which provide for record keeping, are reasonable. There are obvious benefits to ensuring that unforeseen circumstances, such as those that he described, do not result in harm to animal welfare because of a lack of information about where snares are set. I therefore support amendments 14, 23 and 24.

I cannot support Elaine Murray’s amendments 15 and 18, as they would have the presumably unintentional effect of creating a thought crime. The amendments would not limit the consideration of alternative methods to only legal methods. Similarly, I do not support amendments 17, 21 and 51, which relate to the revocation of snare numbers following conviction, as they would amount to a de facto licensing scheme.

A licensing scheme was not consulted on by Government, not subject to evidence taking at stage 1 and not proposed at stage 2. It is an entirely new and significant issue for us to be first considering at stage 3 of the bill, given the scrutiny that has already been given to the snaring provisions. Amendments 17, 21 and 51 are not supported by any detail that gives clarity and assurance on how the scheme might operate, which means that it is all left to orders.

Karen Gillon (Clydesdale) (Lab): Does the minister not find it a bit strange that there seems to be no sanction in the bill that would be applied to someone who consistently uses a snare inappropriately in order to prevent them from operating snares?

Roseanna Cunningham: As I said, the amendments are not supported by any detail that gives clarity and assurance on how the scheme might operate, which means that it is all left to orders.

What Karen Gillon and her colleagues propose would create a worse mess than we have at present. From the way in which the amendments are currently drafted, the only thing of which we can be sure is that they would cut across the courts’ sentencing powers. We have courts to do the type of things that members are talking about. The amendments would provide an additional layer of penalty, irrespective of the courts’ view of appropriate sentencing. I do not support amendments 17, 21 and 51.

Elaine Murray: Will the minister give way?

Roseanna Cunningham: If members on the Labour side of the chamber do not think that the courts are the right place to make decisions about guilt or innocence, I am sorry to hear that.

Elaine Murray: Will the minister give way?

Roseanna Cunningham: Elaine Murray might wish to know that I support her amendments 16 and 20, because they leave to accredited training something that it was proposed at stage 2 should be in the hands of the police. That is entirely reasonable.

All the amendments on snaring reviews go much further than the committee’s recommendation, on which the Government has already acted by lodging an amendment at stage 2. Elaine Murray’s amendments 1A, 1B and 1C would provide, on the basis of the suggested timescales for training provided by the committee, a maximum of a year before a review. I consider that to be far too short a timescale in which to gather the relevant data, research and information for such a review. We should also note, given recent discussions, that we cannot be certain about future lifetimes of the Parliament.

In contrast, I am pleased to support Bill Wilson’s amendments 1, 2 3 and 4 to provide for future reviews of snaring beyond 2016. That is in keeping with what the committee recommended and with the amendment that I lodged in accordance with that recommendation, and it repeats the period of review. It is a sensible approach, bearing in mind the technological developments that will undoubtedly continue to emerge and the need to gather proper data and research. I should also note that amendment 22 in my name is a technical renumbering amendment.

I urge the chamber to act in accordance with the lead committee’s conclusions on the issue, to ensure that those crofters, gamekeepers and farmers for whom snaring is the only option to protect their livestock and crops are not stripped of their ability to do so by this Parliament, and to leave it to the courts to make the right determinations about guilt and innocence.

Bill Wilson (West of Scotland) (SNP): Snaring is a controversial issue. Those who argue for it state that it is an essential aspect of land management. The committee was provided with evidence from a range of sources that argued for
maintaining the option of snaring, because it is important to land managers. However, many members, myself included, have a deep sense of unease when contemplating snaring as a management tool.

Two fundamental issues arise: the number of non-target species that are caught and the suffering that a snared animal may undergo. Those who argue for snaring accept those concerns and claim that the actions that they have taken to develop new types of snares, the code of practice that is proposed in the bill and the introduction of training programmes will significantly reduce the by-catch of non-target species and the suffering that trapped animals undergo.

I well understand why some members in the chamber cannot vote for a continuation of snaring under any circumstance. I believe that the issue is one of conscience. I am prepared to vote for a continuation of the practice, but I cannot do so without some conditions.

We need good-quality data, and we must be certain that suffering is limited and that non-target species by-catch is limited—I say “limited” because it is clear that both will always occur. For that reason, I lodged amendment 1. Regular reviews will ensure that we have the data to determine whether this management technique should be allowed to continue, and that there is continuing pressure on those who manage the land to maintain the highest standards of practice and to continue to develop improved techniques.

I must say to the minister that the reviews should be no rubber stamp. If they show that there is a substantial impact on non-target species, or if there remain significant concerns about the level of suffering of animals trapped in snares, or perhaps if there is evidence of widespread failure to check snares regularly within appropriate time limits, snaring should come to an end.

14:45

Christine Grahame (South of Scotland) (SNP): I rise to speak in support of Irene Oldfather’s amendment 5. I am very sympathetic to what I might term the fallback position posited by Elaine Murray in her amendments.

I say to Liam McArthur that I speak not just with my heart but with my head, which is no bad combination. I say to the minister that I fully acknowledge that pest control is a necessity of life.

I have a long-standing opposition to snaring, and it is not the result of blind prejudice. Indeed, I recently chaired a debate that the cross-party group on animal welfare held, when we had the gamekeepers and land managers on one side and the animal welfare groups, such as OneKind and the SSPCA, on the other. The debate was straightforward and it was held in a very civilised and informed manner. The result was 13 each—no white hats, no black hats.

The SSPCA in particular showed respect to the gamekeepers. It made it plain that much intelligence on animal cruelty and unauthorised pest control is brought to its attention by those very gamekeepers—who incidentally pled the succinct case that if there were a more humane means of fox control in particular, they would opt for it.

However, the evidence from, for example, veterinary pathologists who appeared at previous meetings of the cross-party group proved to me beyond reasonable doubt that snares can be indiscriminate and can cause severe distress and result in a prolonged death, not just for target species but for badgers, roe deer and domestic pets. I am not yet convinced that the stops and the regulations that have been brought in will prevent those instances. Regulation and licensing is better than what we have, but it is not enough.

Let us look at reporting and policing. How would a member of the public who came upon a dead or dying animal in a snare know whether the snare was licensed? They would not know.

I think that Parliament will accept that people with no scruples will lay illegal snares—or even legal snares—and not check them or even set them properly. In a previous debate, I asked who would go out in the various valleys in the pouring rain to check snares. Will everybody go out within 24 hours to check a snare? I doubt it.

For me, simplicity in law and enforcement are key tests. I therefore ask members to consider whether they accept that cruel, slow deaths will still occur, notwithstanding regulation and reviews. The simplest, cleanest and most enforceable thing to do is to ban snaring—no ifs, no buts.

Marilyn Livingstone (Kirkcaldy) (Lab): I rise to support the amendments in the name of Irene Oldfather and Elaine Murray. As members will be aware, I lodged an amendment at stage 2 calling for an outright ban on the use of snares. I withdrew the amendment to allow for further public and parliamentary debate. At that stage, I highlighted the evidence of animal suffering that Irene Oldfather and others have outlined in the chamber and, importantly, the overwhelming public support for a ban on these outmoded traps.

If members support amendment 5, in the name of Irene Oldfather, they will show their humanity and reflect the views of the vast majority of people in Scotland. I cannot agree with the minister that snaring is a necessary part of land management.
Like Christine Grahame, I am not convinced of the case that the minister made.

Snaring is cruel and indiscriminate and it is not supported by scientific evidence. I hope that members will support amendment 5 and, in so doing, represent the 77 per cent of their constituents who support an outright ban. Seventy-five per cent of veterinary surgeons also support an outright ban. Some 10,000 messages on this issue were sent to constituency MSPs the length and breadth of Scotland in the past three months.

I ask members to please search their consciences and support an outright ban on this outmoded and very cruel method of land management.

John Scott: Like others, I am aware that snaring is a very emotive subject. I share the concerns of many who are opposed to snaring and am aware of the genuinely held views of people such as Christine Grahame, Marilyn Livingstone and Irene Oldfather.

However, the Scottish Conservatives continue to believe that snaring is an important tool for predator control for the reasons that the minister outlined, so regrettably we will not be supporting Irene Oldfather’s amendment 5, in line with evidence led before the committee and the committee’s conclusions.

We oppose Elaine Murray’s amendments because they assume that other effective means of control are available, which is not always the case. For example, the snare is the only viable fox-culling method in the field that has been assessed for humaneness against an international standard. That might be news to Elaine Murray and to the whole Parliament.

Elaine Murray: John Scott misinterprets the purpose of my amendments, because if no other reasonable method of control was available, snaring would be permitted. That is the opposite of what he described.

John Scott: I take Dr Murray’s point but, notwithstanding her intention, what I described would be the effect of her amendments.

We will not support Liam McArthur’s amendments 14, 23 and 24. I acknowledge that the principle of record keeping is good, but the industry code of practice, rather than the bill, is the correct place in which to include such provisions, because that would allow flexibility later if change was required. The Rural Affairs and Environment Committee discussed this morning the dangers of putting in bills provisions that preclude flexibility later.

We will support Bill Wilson’s amendments 1 to 4, which would make a valuable contribution to improving the practice of snaring by establishing a quinquennial review.

Karen Gillon: The Scottish Government’s position on Elaine Murray’s amendment 51 is nonsensical. If it accepts that snaring must exist, sets up a system in which snares can be used and puts in statute a framework, that framework must be enforceable. The amendment says that, if a person is convicted of an offence that ministers have created, that person—who has been trained as the bill requires but has not done what the bill requires—is not fit to set snares.

Under the bill, surely the Parliament should require the chief constable to remove such a person’s right to set snares. Surely that is not too much to ask of the Parliament. If a person is convicted of not doing what the Parliament wants, surely they should no longer have the tags that allow them to set snares and we should remove their right to set snares under the bill. I ask members to support amendment 51.

Irene Oldfather: It is clear that views on snares are deeply held across the chamber. Many have said that snares are a necessity. I draw to the attention of the minister and others the words of a practising Glasgow vet and active Scottish National Party member, George Leslie, who has considerable experience in the matter. He said:

“Supporters of snaring … say that they are a necessity … no evidence has been produced to explain this ‘necessity’ or why the majority of landholdings in Scotland do not use snares and … conduct programmes of sensitive wildlife conservation.”

RSPB Scotland, the John Muir Trust, the Scottish Wildlife Trust and the Forestry Commission—among a host of others—undertake such sensitive land management, and 10 member states of the European Union do not use snares.

Christine Grahame’s point about clarity and simplicity was well made. Even when snares are used legally, animal suffering cannot be avoided. Scotland should treat its beautiful wild animals with respect and accept once and for all that killing them in wire nooses is a technique that must be consigned to the dustbin of history.

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
The Deputy Presiding Officer: On amendment 5, there voted yes 56, no 72—[**Interuption.**] I apologise—someone was talking, so I will start again.

The result of the division is: For 50, Against 72, Abstentions 0.

**Amendment 5 disagreed to.**

**Amendment 14 moved—[**Liam McArthur**].**

**The Deputy Presiding Officer:** The question is, that amendment 14 be agreed to. **Are we agreed?**

**Members:** No.

**The Deputy Presiding Officer:** There will be a division—but would members who want to say "no" say it a bit louder and quicker, please?

**For**
Amendment 15 moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

The result of the division is: For 104, Against 17, Abstentions 0.

The Deputy Presiding Officer: The result of the division is: For 104, Against 17, Abstentions 0.

Amendment 14 agreed to.

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Branden, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Cragie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Martyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glascow Springfield) (Lab)
Mckeever, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatie, Cathy (Falkirk East) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whiton, David (Strathkelvin and Bearsden) (Lab)

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Sirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roskirk and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Scotland) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Iain (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (LD)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Surgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 49, Against 74, Abstentions 0.
Amendment 15 disagreed to.
Amendment 16 moved—[Elaine Murray].
The Deputy Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?
Members: No.
The Deputy Presiding Officer: There will be a division.
For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Aileen (South of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Margaret (Glasgow Baillieston) (Lab)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Eddie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Fergusson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Foulkes, George (Lothians) (Lab)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Graham, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Kidd, Bill (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Ken (Eastwood) (Lab)
Martin, Pauline (Glasgow Kelvin) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McMillan, Stuart (West of Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeil, Pauline (Glasgow Kelvin) (Lab)
McNutty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Putnis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watson, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Whitfield, Karen (Airdrie and Shotts) (Lab)
Whiton, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Aitken, Bill (Glasgow) (Con)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Carlaw, Jackson (West of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Elizabeth (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 107, Against 16, Abstentions 0.

Amendment 16 agreed to.
Amendment 17 moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 17 be agreed to. Are we agreed?
Members: No.
The Deputy Presiding Officer: There will be a division.
For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Martyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Graham, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlee, Cathy (Falkirk East) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whiton, David (Strathkelvin and Bearsdon) (Lab)

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Mile, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 49, Against 75, Abstentions 0.

Amendment 17 disagreed to.

Amendment 18 moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
The Deputy Presiding Officer: The result of the division is: For 49, Against 75, Abstentions 0.

Amendment 18 disagreed to.

Amendment 51 moved—[Elaine Murray].
The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brookman, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (East Lothian) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Graham, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springfield) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cumbernauld South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peattie, Harry (Highlands and Islands) (Lab)
Pettie, Hugh (Falkirk West) (Lab)
Pettie, Cathy (Falkirk East) (Lab)
Peatfield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against
Adam, Brian (Aberdeen North) (SNP)
Alton, Bill (Glasgow) (Con)
Aitken, Alasdair (Highlands and Islands) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
Fitpatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Ross, Skye and Lochalsh) (Lab)
Leach, Richard (Moray and Berwickshire) (Con)
MacAskill, Kenny (Edinburgh West and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Mckee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gil (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scalman, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicola (Central Scotland) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watson, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 49, Against 74, Abstentions 0.

Amendment 51 disagreed to.

Amendment 20 moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Aileen (South of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Lothians) (SNP)
Constance, Angela (Livingston) (SNP)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Eagie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Foulkes, George (Lothians) (Lab)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Graham, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Kidd, Bill (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKee, Iain (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McMillan, Stuart (West of Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peatvie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Covenantry and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somervile, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Aitken, Bill (Glasgow) (Con)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Carlaw, Jackson (West of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Elizabeth (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 107, Against 16, Abstentions 0.

Amendment 20 agreed to.

Amendment 21 not moved.

Amendment 22 moved—[Roseanna Cunningham]—and agreed to.

Amendment 23 moved—[Liam McArthur].
The Deputy Presiding Officer: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Branikin, Rhona (Midlothian) (Lab)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Aileen (South of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Margaret (Glasgow Baillieston) (Lab)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (Highlands and Islands) (SNP)
Gillies, John (Dunfermline West) (SNP)
Gibson, David (Cumbernauld and Kilsyth) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Graham, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hay, Hugh (Paisley South) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Kidd, Bill (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Central Fife) (SNP)
Mathew, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mckee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McMillan, Stuart (West of Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeil, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Neill, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Pettie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robinson, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Cumbernauld and Kilsyth) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whittle, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)
Against
Aitken, Bill (Glasgow) (Con)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Carlaw, Jackson (West of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
McLeish, David (Edinburgh Pentlands) (Con)
Milne, Nanette (Glasgow) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Thompson, Dave (Highlands and Islands) (SNP)
Abstentions
MacDonald, Margo (Lothians) (Ind)

The Deputy Presiding Officer: The result of the division is: For 106, Against 17, Abstentions 1.
Amendment 23 agreed to.
Amendment 24 moved—[Liam McArthur].

The Deputy Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Aileen (South of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Craggie, Cathie (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Foulkes, George (Lothians) (Lab)
Gibbon, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillies, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Humé, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Kidd, Bill (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Ayrshire and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McMillan, Stuart (West of Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNutty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
O’Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (West of Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Perivs, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

Aitken, Bill (Glasgow) (Con)
Broeklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brownlee, Derek (South of Scotland) (Con)
Carlaw, Jackson (West of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Elizabeth (Mid Scotland and Fife) (Con)

Abstentions

MacDonald, Margo (Lothians) (Ind)

The Deputy Presiding Officer: The result of the division is: For 104, Against 16, Abstentions 1.
Amendment 24 agreed to.

Amendment 1 moved—[Bill Wilson].

Amendment 1A moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 1A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Clare (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brown, Robert (Glasgow) (LD)
Brown, Keith (Ochil) (SNP)
Brown, Gavin (Lothians) (Con)
Brown, Willie (Kilmarnock and Loudoun) (SNP)
Brown, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Constance, Nigel (North East Scotland) (SNP)
Don, Bob (Glasgow) (SNP)
Donovan, Brian (Inverness East, Nairn and Lochaber) (SNP)
European (Central Scotland) (SNP)
Finn, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Golding, Annabel (Mid Scotland and Fife) (Con)
White (East Kilbride) (Lab)
Hume, Jim (South of Scotland) (LD)
Lennon, Fiona (Lothians) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLeish, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gill (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (SNP)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dumfierline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alian, Alasdair (Western Isles) (SNP)
Brookbank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finn, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (Mid Scotland and Fife) (Con)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (Con)
Johnstone, Alex (South Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLeish, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gill (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (SNP)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dumfierline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions
The Deputy Presiding Officer: The result of the division is: For 47, Against 75, Abstentions 2.

Amendment 1A disagreed to.

Amendment 1B moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 1B be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Graeme, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McManus, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McHale, Des (Clydebank and Milngavie) (Lab)
McLellan, Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murphy, Daniel (Cumbernauld) (Lab)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peat, Cathy (Falkirk East) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Dorris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentland) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milk, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neill, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gill (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 48, Against 75, Abstentions 0.

**Amendment 1B disagreed to.**

**Amendment 1C moved—[Elaine Murray].**

**The Deputy Presiding Officer:** The question is, that amendment 1C be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craighie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grieve, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnel, Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mullan, Mary (Linthgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

**Murray, Elaine (Dumfries) (Lab)**
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whiton, David (Strathkelvin and Bearsden) (Lab)

**Against**
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Dorrian, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLeitchie, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gill (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy ( Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thomson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Amendment 1C disagreed to.
Amendment 1 agreed to.

Amendments 2 to 4 moved—[Bill Wilson]—and agreed to.

Section 15—Non-native species etc: code of practice

The Deputy Presiding Officer: We move to group 5. Amendment 6, in the name of John Scott, is grouped with amendments 29, 9 to 12, 35 and 38.

John Scott: In essence, the amendments in the group are drafting amendments, which make minor consequential corrections to amendments in my name that were agreed to at stage 2. I commend the amendments.

I move amendment 6.

Roseanna Cunningham: Given the commendable brevity of John Scott’s remarks, it would ill behove me to speak for longer. We support the amendments in the group.

Amendment 6 agreed to.

Section 18—Licences under the 1981 Act

The Deputy Presiding Officer: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Graham, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Humie, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 48, Against 75, Abstentions 0.
The first part seeks to replace the new licensable purposes in the bill with the wording of the habitats directive. At stage 2, I asked for practical examples of how the new licensable purpose would fall short to justify such a change. I have received no practical examples. Therefore, the problem that the first part of amendment 53 seeks to address is, as far as I can tell, totally theoretical.

I can understand that it might appear appealing to some people to have the same construction in European and domestic legislation, but the Wildlife and Countryside Act 1981 does not transpose the habitats directive; that is done elsewhere. Therefore, it would be unwise to accept an amendment that suggests that that is what the 1981 act does.

Peter Peacock is correct in that the policy objectives behind the new licensable purpose in the bill are the same as those that are contained in the directive. I hope that he will take some comfort from that.

The second part of amendment 53 seeks to change our licensing system in relation to animals, and its significance as part of the amendment should not be overlooked. No justification for the change has been given that is based on actual problems with the current system and I do not accept that it would not impose an unnecessary burden. Any change to the current and well-established legal position of species licensing on animals that was not consulted upon is bound to introduce a new burden. In addition, it would require considerable work by SNH to establish favourable conservation status for all the animals that are covered.

The second part of amendment 53 would affect every animal licence issued and may even, in the short term, bring current systems to a grinding halt. We have heard no justification for it as part of the Parliament’s scrutiny of the bill. I do not support the amendment.

Peter Peacock: The minister made it clear that the policy intention behind the bill’s provisions is to secure the same outcomes that I seek. On that basis, I will not press the amendment.

Amendment 53, by agreement, withdrawn.

The Deputy Presiding Officer: We move to group 7. Amendment 25, in the name of Elaine Murray, is grouped with amendment 36.

Elaine Murray: At stage 2, I raised concerns over the delegation of licensing powers to local authorities in the bill. That was not a power that local authorities seemed to want—those that responded indicated that they did not particularly wish for the delegation—and concerns were expressed that it could lead to inconsistencies

The Deputy Presiding Officer: The result of the division is: For 46, Against 73, Abstentions 0.

Amendment 52 disagreed to.

The Deputy Presiding Officer: We move to group 6. Amendment 53, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock: Amendment 53 was lodged following concern that the provisions in the bill do not fully match the requirements of the relevant EU directive. There are species, such as the water vole and the red squirrel, that deserve more protection. That was debated at stage 2, and I am clear that the Government shares the concerns to protect those species adequately and that it believes that it has sufficient powers to do so.

Nonetheless, concerns remain in some quarters that the provisions are not as strong as the EU directive implies. I am sure that the minister does not share that view. The amendment is lodged in the spirit of providing her with an opportunity to make it clear on the record that there is nothing to fear in the wording’s being different and that the effect is the same.

I hope that the minister can give the necessary reassurance and we can all save ourselves a vote.

I move amendment 53.

Roseanna Cunningham: Peter Peacock’s amendment 53 deals with two distinct issues, so I will address it in two parts, both of which relate to animals only.
between local authority areas if, for example, different views were taken on the issuing of licences to take protected species.

At stage 2, I received assurances from the minister that the intention referred only to planning issues and local authorities’ planning responsibilities. My amendment 25 makes that clear in the bill.

I move amendment 25.

John Scott: I will support Elaine Murray in this group of amendments.

Roseanna Cunningham: Elaine Murray is correct in saying that we would consider the delegation of licensing functions to local authorities only where they relate to planning, so I have no issue with supporting amendments 25 and 36.

Any delegation would follow consultation with all interested parties. However, I am a little nonplussed by those local authorities that say that they do not have the expertise to deal with species licences. Where a development affects European protected species, they are bound to consider whether any disturbance to the species will be authorised by a licence granted by the Scottish ministers for the purposes of the derogation in article 16 of the habitats directive. I hope that the local authorities that are in that position will have a look at their processes.

I support both amendments in the group.

Elaine Murray: I am pleased to have received support from John Scott and the minister. I press amendment 25.

Amendment 25 agreed to.

Amendments 54 and 55 not moved.

After section 19

15:15

The Deputy Presiding Officer: We move to group 8. Amendment 26, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Members will have noticed the commendable restraint with which the Government has approached stage 3. Amendment 26 is the first major Government amendment that we are considering this afternoon.

Members are well aware that, during consideration of the bill in the Parliament, there was much discussion about and frank exchanges of views on wildlife crime. It seems that members would value a regular account of wildlife crime, and amendment 26 will deliver that in a flexible and appropriate way.

There are two points to make about amendment 26. First, it will allow ministers to provide an annual account of the scale of wildlife crime, to relate that to the UK wildlife crime priorities in Scotland, and to explore other issues of concern at the time. There is flexibility to ensure that the key issues of the day can be addressed in the annual report. We need to remember that, in 10 or 20 years, the landscape of wildlife crime could be very different. Indeed, given the on-going work to address priority issues, I hope that the same issues will not continue to blot Scotland’s landscape.

Secondly, the report could be much more than a short set of statistics. I think that we all agree that we would want to see crime figures from the police and an account of prosecutions, but the report could and should go further. Relevant and timely research that provides context and advice that provides direction to all those who are involved in the prevention, investigation and prosecution of wildlife crime would be welcome inclusions in the report.

I move amendment 26.

Elaine Murray: I will be brief. I welcome amendment 26. There is cross-party condemnation of wildlife crime. A report, as suggested by the minister, would help to inform future legislative proposals and it is very much to be welcomed.

Liam McArthur: At earlier stages, it was suggested that such a report would perhaps elevate wildlife crime to a more exalted status than other types of crime, but I do not think that that will be the case. The Parliament has a fairly good track record of shining a spotlight on all types of crime, and ministers regularly report on the latest figures and the steps that are being taken to address trends and aspects that are the subject of concern. I do not wish to overstate the comparisons in that regard, but the approach that the minister has set out in her amendment is sensible and will provide a focus for an issue that, as Elaine Murray has said, we have all agreed remains stubbornly resistant to the measures that successive Governments and Parliaments have taken to address it. I welcome that approach.

Amendment 26 agreed to.

The Deputy Presiding Officer: We move to group 9. Amendment 7, in the name of Liam McArthur, is grouped with amendment 27.

Liam McArthur: Members will recall that, at stage 2, I lodged an amendment that was similar to amendment 7 to seek to extend the cause-or-permit provisions to offences in part 1 of the 1981 act. Those sections do not currently have such a provision attached, and that inconsistency of approach to different offences requires to be
addressed. The minister expressed sympathy for that approach at stage 2, but invited further discussion ahead of stage 3. I am grateful to her for the input that she and her officials have provided, and I hope that amendment 7 finds favour throughout the chamber.

Amendment 27 may prove a little less straightforward. Before I decide whether to press it, I will give some brief background information. The vicarious liability provisions that we have already discussed and which enjoy cross-party support do not currently apply to section 1(2) of the 1981 act. It is argued that that means that the measures are too narrowly defined, not least because it is the offence of possession with which many who are accused of bird of prey persecution can potentially be charged.

As the RSPB states in its briefing, its staff regularly assist police in inquiries in which illegal killing has taken place but “often in the absence of admissions, there was no provable link to a suspect to connect them with the offences uncovered prior to the warrant. The only charges libelled are as a result of what is found on that one day. Without the inclusion of this offence, there is a risk that the new provisions will have only limited benefit.”

As I said, my proposal might well be a step too far for the minister at this stage, but I invite her to consider whether the partnership for action against wildlife crime might be asked to look at it, with a view to making recommendations ahead of a future criminal justice bill.

I welcome the minister’s assurance in her recent letter to the committee that she plans to add to PAWS’s already hefty workload by asking it to look at the issue of “concerned in” the use of. During discussion of my amendment on that at stage 2, the minister argued that an additional provision in the bill was not necessary as the matter was already covered by art and part. However, in response to questioning from Karen Gillon, she conceded that no successful prosecutions had been brought for wildlife crime under those provisions, so although I have no interest in adding to the toolbox another tool that will not be used, I believe that an assessment needs to be made of how the existing provisions can be made more effective in the fight against raptor persecution and other forms of wildlife crime. In that regard, the minister’s assurances are welcome.

I move amendment 7.

John Scott: I welcome amendment 7 but, as amendment 27 would introduce a further unwelcome and unnecessary offence and would add to and widen the scope of vicarious liability, which I oppose, it will come as no surprise to Liam McArthur that I oppose it.

Roseanna Cunningham: I appreciate the impetus for Liam McArthur’s amendment 7, so although I believe it to be of limited value in widening the scope for prosecutions under the 1981 act, I am content to support it. I also appreciate that there may be a desire to tinker with the Government’s vicarious liability provisions to see whether they could somehow be stretched further.

However, the vicarious liability provisions have been carefully constructed to target only those offences that are relevant to raptor persecution, which means that extending them to offences under section 1(2) of the 1981 act is problematic. That would not provide the right fit with the other underlying offences that the vicarious liability provisions cover. Section 1(2) is more likely to apply to those who take birds or eggs from the wild for breeding purposes than to those who kill or take wild birds. There is not the same link to persecution on which the vicarious liability provisions are predicated.

Extending the scope of the provisions in the way that Liam McArthur has proposed would go beyond those people and scenarios that vicarious liability is aimed at. I can understand that he may have been advised that extending the provisions to offences under section 1(2) of the 1981 act would provide an important addition to the fight against bird persecution, but that was not the conclusion that we reached with the police and the Crown Office during the development of the vicarious liability provisions. Apart from anything else, the complexity involved in developing due diligence guidance for a much wider group of people would be hugely increased.

The trade-off between the very small chance of an extra charge being brought under section 1(2) of the 1981 act, in addition to the offences that are covered by vicarious liability, and the possibility of unintended consequences arising from that change is not a good one, and I am not willing to take that risk. However, I agree to the proposal that PAWS should in future review vicarious liability and look at art and part. We are conscious that the issue will have to be constantly monitored.

Liam McArthur: I welcome the welcome for amendment 7, which I will press. I take on board the minister’s concerns about amendment 27 and welcome the suggestion that PAWS will be invited to look at art and part.

Amendment 7 agreed to.

Before section 20

The Deputy Presiding Officer: We move to group 10. Amendment 56, in the name of Peter Peacock, is the only amendment in the group.
Peter Peacock: Amendment 56 relates to the powers of the SSPCA, which were fully debated at stage 2. I understand the concerns that some members have about the issue.

The minister pointed out that the offer by the SSPCA—which, in my view, was a generous offer—to deploy resources to help fight wildlife crime raised important issues that should be properly consulted on before any decisions are made. I agree with that point. My amendment seeks to make provision for such consultation before the enactment of the powers that it contains.

The minister has indicated an alternative approach, whereby a criminal justice bill might provide a vehicle for change at some point in the future, and it would seem from earlier debates that a majority of people may prefer to follow that route. I understand that. The reason for amendment 56 is to reiterate my belief that the SSPCA could have an extremely important role to play in gearing up our ability to fight wildlife crime, particularly when police budgets are under such pressure.

However, amendment 56 has also been lodged to entice the minister to go a bit further than she has done before and indicate that the Government is committed to moving towards consultation at some point in the not-too-distant future. Such a consultation would allow all the necessary issues to be explored. If the minister is in a position to indicate that policy, I do not intend to push the issue further today.

I move amendment 56.

John Scott: Scottish Conservatives remain strongly opposed to amendment 56, which would allow significant powers to be given to private, campaigning or single interest bodies that might have little or no accountability, as well as to the SSPCA. The answer to tackling wildlife crime lies in recruiting more police or special constables. There is, of course, nothing to prevent members of the SSPCA from becoming special constables as a means of channelling their zeal for the cause. Indeed, I am sure that the police would welcome such recruits. I trust that members will agree and will oppose amendment 56.

Roseanna Cunningham: I have concerns about including a provision in the bill that could extend police powers without there having been any consultation. The significance of such a step should not be underestimated. At stage 2, I outlined issues of accountability, impartiality and independence that would require serious and considered deliberation. However, anything that might aid the enforcement of wildlife crime legislation is worthy of proper consultation so, in response to amendment 56, I give this Government’s commitment to consult on the issue in the future. I therefore ask Peter Peacock to withdraw amendment 56 and to allow for further consideration and proper consultation on this important issue.

Peter Peacock: I am grateful for the minister’s generous offer and I readily accept it. Whether she will have the chance to do anything about it is another matter, but I accept the offer in the spirit in which it was made. I seek leave to withdraw amendment 56.

Amendment 56, by agreement, withdrawn.

Section 20B—Liability in relation to certain offences by others

Amendment 27 not moved.

Before section 22

The Deputy Presiding Officer: In group 11, amendment 28, in the name of Robin Harper, is grouped with amendments 30 to 33, 8 and 34.

Robin Harper (Lothians) (Green): Red deer numbers are a major factor determining the nature, quality and extent of many of Scotland’s most important habitats and iconic species and the economic benefits, such as tourism, that they support. In the absence of natural predators, red deer numbers are determined by the management measures that we deploy. It is widely recognised that, in the past, such measures were not in the best interests of the natural environment. Formerly the Deer Commission for Scotland and now SNH have begun to address the issue. The measures that are already in the bill deliver a large number of the Deer Commission’s recommendations.

However, one of the Deer Commission’s key recommendations, which the Government supported in its first consultation, is missing: a general duty to manage deer sustainably. Amendment 28 seeks to rectify that omission. The amendment might not make a huge legal difference but placing sustainability at the forefront for the Deer (Scotland) Act 1996 sends a strong message to deer managers and to those who will draft and agree the code of practice that the Parliament expects them to act with sustainability in the front of their minds and not just as a desirable afterthought.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): On one of the estates in my constituency, the National Trust for Scotland slaughtered many deer. Does the member consider that to be sustainable management? Is that a prime example of what he is talking about?
Robin Harper: I am not privy to the details of that particular incident. I must declare an interest here, which is my election to the board of the National Trust for Scotland. [Applause.]

The view is shared by all the non-governmental organisations involved in deer management including the John Muir Trust, the National Trust for Scotland, the Scottish Wildlife Trust and RSPB Scotland; it was the view of the Deer Commission, the Government's adviser on deer at the time; and it is the view of the Government's current adviser, whose chief executive recently wrote to the convener of the LINK deer task force, saying:

“We maintain the view that a duty on individual land managers to comply with a code of sustainable deer management would be beneficial in encouraging collaborative deer management”.

At stage 2, the minister reiterated that adviser's comment, caveating it with a reference to “legal problems”. However, legal opinion has since been sought on those matters and I believe that amendment 28 would address any such concerns. It creates no specific offences and any criminal charges would be derived from other sections of the 1996 act.

Amendment 28 seeks to set a context and purpose for all the activities that are undertaken by SNH and other public bodies under the 1996 act and to put sustainability at the forefront of things. Instead of simply having an unwritten objective for all the processes that the bill establishes, the amendment seeks to set a clear and definitive outcome that those processes can achieve.

I move amendment 28.

Liam McArthur: Throughout our consideration of the bill, I, like other committee members, was made aware of the divergence of views over the need for a general duty on sustainable deer management. On balance, I remain of the view that the Government probably took the right approach in its backstop powers and that Robin Harper’s revised proposal in amendment 28 still goes too far.

Nevertheless, there are strong arguments for strengthening the code of practice and ensuring that it can and will be made effective. Although a voluntary approach might well be desirable it is clear that to date it has been too easy for those so minded to frustrate efforts to manage deer sustainably, however that is defined and to be achieved. Amendments 30 to 33, in my name, which cover ground that we touched on at stage 2, seek to address that matter.

Amendments 30 and 31 seek to require the code of practice to cover practice for sustainable deer management and collaboration on such management. It might seem inconceivable that that would not happen but, as I said at stage 2, even the possibility that such aspects might be absent from any code undermines confidence in its ability to achieve its objectives.

Amendment 32 returns to the issue of seeking to ensure that the code specifies arrangements for setting and implementing cull targets. Given that the greatest environmental risk from poor deer management stems from overgrazing, such a requirement seems logical. Circumstances in which there is no such risk—or, indeed, where additional numbers of deer are seen as desirable—can still be reflected in the code, but it should nevertheless be able to provide clear guidance on how cull levels are determined and, where necessary, on how they should be implemented.

Amendment 34 again seeks to deal with a matter discussed at stage 2 and, in lodging it, I have sought to deal with some concerns that the minister expressed in her response at that stage. A failure by the authorities, in this case SNH, to act where there has been a breach of the code would, I suspect, strike most people as a flaw in the system that we are putting in place. Given the extent of the powers that are available to SNH to act, that could and should not be on the basis of a technical or administrative breach. However, any failure to carry out management work required by the code or a management plan agreed in accordance with the code would seem to merit a response.

If amendment 34 is not acceptable to the minister, I would welcome at least clarification that the powers which SNH has at its disposal under sections 7 and 8 of the Wildlife and Countryside Act 1981 are not limited to use in relation to sites of special scientific interest. That suggestion has been made by some stakeholders and any assurance that that is not the case and that those powers will be more widely applicable will go some way to allaying fears in that respect.

Finally—and self-evidently—for any code of practice to remain credible it will require to be updated. Amendment 8 is a modest affair that seeks to ensure that the code keeps pace with best practice and developing technologies.

John Scott: Amendment 28 seeks to place a duty of sustainable deer management on public bodies and private individuals by requiring compliance with the deer code of practice. That is not appropriate, given that the code will contain guidance rather than duties or obligations with which a person will have to comply.

The amendments in the name of Liam McArthur would place obligations on SNH to set out in the deer code of practice certain matters such as
recommendations on sustainable deer management provision and collaboration on deer management. As drafted, the bill gives SNH discretion over what it includes in the code. The latter is the better approach, as the bill should not be prescriptive about the code.

As a result, the Scottish Conservatives will not support the amendments in this group.

**Elaine Murray:** We have considerable sympathy for the intentions behind the amendments. The committee was concerned about what happens when a landowner simply does not engage with the deer management group or ignores the code. The sanctions that are available when that happens have not been made clear. Both Robin Harper and Liam McArthur have attempted to strengthen the bill, and I welcome that very much. I also welcome the fact that Robin Harper proposes to state in the bill the need to manage deer sustainably. That is an omission, as we have not made that intention explicit in the bill. I am, therefore, happy to support the amendments in the names of Robin Harper and Liam McArthur.

**Roseanna Cunningham:** Amendment 28 provides a vision for the Deer (Scotland) Act 1996. As admirable as that vision might be, it nevertheless neglects the other issues that the 1996 act covers. The amendment has the benefit of not engaging European convention on human rights issues, but that is because—with the best of intentions—it is meaningless. However, it is not benignly meaningless. It has the potential to create disputes between deer managers in the belief that they should take certain actions, and such disputes could ultimately end up in court. Amendment 28 would not add any clarity to the current deer management structure. I re-emphasise what I said at stage 2, which still applies despite Robin Harper’s attempts at refinement: the code cannot be a one-size-fits-all code; it will apply in different ways to different people in different circumstances. Amendment 28 should be resisted and I do not support it.

I turn to the amendments in the name of Liam McArthur on the code of practice. I am aware that there is some anxiety about what the code might cover. Since August 2010, SNH has been developing the code of practice with input from a wide range of stakeholders. The views that have been expressed in Parliament and among the different interests support the need to move forward on the code so that it can provide the clarity that we all seek. I have, therefore, asked SNH to provide ministers with a code of practice no later than six months from today. That will give Parliament the opportunity to consider the code and proceeds towards approval in autumn 2011. I hope that that satisfies Liam McArthur. It is with that in mind that I do not support amendments 30 to 33.

The bill currently provides a good steer as to what is expected of the code and those who are currently involved in its development. I do not think that making that compulsory, as amendment 30 would do, or setting out further areas for inclusion, as amendments 31, 32 and 33 would do, would add anything to the process. The code will include recommended practice for sustainable deer management. That clearly includes collaboration, which is mentioned in amendment 33, as well as consideration of whether culling is needed and, if so, the need for an agreed cull plan, which is dealt with by amendment 32. The code should also address other management measures such as deer fencing.

I am happy to support amendment 8, which provides for review of the code of practice by SNH from time to time.

However, I do not agree with the premise behind amendment 34, which would fundamentally change the intervention processes and shift the focus from outcomes and impacts to process. Either the process has not worked and an adverse impact is likely or has occurred, in which case section 7 will be engaged anyway, or no adverse impact is likely or has occurred, in which case a failure in process alone should not be a ground for intervention. If there is no adverse impact, why would a failure in process be used as justification to intervene? I do not support amendment 34.

I understand that there are concerns that the newly refined intervention powers in sections 7 and 8 of the 1996 act are limited to application on SSSIs, but that is not the case. SNH can consider using the intervention powers that are contained in sections 7 and 8 on any land, as defined in the 1996 act. In the past, the Deer Commission was hampered in its use of intervention powers by clunky procedures without clear timelines. The bill improves those powers and I expect that they will allow SNH to take action as and when required. I mentioned at stage 2 that the merger of the Deer Commission with SNH made me optimistic about the future of deer management. That feeling has been bolstered by a positive reaction from deer management groups on the approach that has been taken in the bill. They are fully seized of what is expected of them in the coming years.

I support amendment 8 but not the other amendments in the group. I hope that Liam McArthur is satisfied with what he has heard in respect of the issues that he is concerned about.

**Robin Harper:** I have tried for the past 12 years, at various stages of various pieces of legislation, to introduce some kind of vision into the legislation. Amendment 28 represents my
penultimate attempt to do so, and I intend to press it.

The Deputy Presiding Officer: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dundrumton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (Hamilton North and Bellshill) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, John (Highlands and Islands) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McManus, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whittal, David (Strathkelvin and Bearsden) (Lab)

Against

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Carlaw, Jackson (West of Scotland) (Con)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)

Crawford, Bruce (Stirling) (SNP)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Humza, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John (Roxburgh and Berwickshire) (SNP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mathery, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McArthur, Liam (Orkney) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Mckee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McLaughlin, Anne (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
O'Donnell, Hugh (Central Scotland) (LD)
Paterson, Gill (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddaale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturge, Nicola (Glasgow Govan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Amendment 28 disagreed to.
Section 22—Deer management etc

The Deputy Presiding Officer: Amendment 57, in the name of Jamie Mcgrigor, is grouped with amendment 58.

Jamie Mcgrigor (Highlands and Islands) (Con): The purpose of amendments 57 and 58 is to help to address concerns about sika deer in Scotland. [Interruption.]

The Deputy Presiding Officer: I am sorry, Mr Mcgrigor. There is far too much noise in the chamber.

Jamie Mcgrigor: Native to east Asia, sika have escaped from parks since the late 19th century and have become established in the wilds of Scotland. Their populations can reach higher densities than those of any other species in a similar habitat and they can cause significant damage to trees and agricultural production.

The main concern in relation to sika is their ability to interbreed with our native red deer and produce fertile offspring. Research into the matter was recently carried out by a team of international researchers in Kintyre and was published in the Journal of Animal Ecology in 2009. Professor Josephine Pemberton, of the University of Edinburgh, whose laboratory undertook the research, said:

“It is possible that a new type of deer with new ecological impacts will emerge ... the ‘Mongrel of the Glens’ is a real possibility.”

The fact that, according to the Scottish Government’s own figures, sika now occupy more than 40 per cent of the red deer range underlines the seriousness of the problem.

I welcome the fact that some refuges for red deer that are free from sika deer genes have been established on west coast islands. However, it is my firm belief that we have an obligation to do much more to protect the genetic integrity of what is arguably Scotland’s most iconic animal. There are robust ecological, heritage and economic reasons to act. For visitors coming to Scotland, few experiences match the thrill of spotting a red deer stag on the hillside. However, the appeal of our tourism product will be markedly lessened if we cannot guarantee that what looks like a red deer is a red deer. Similarly, for people who come from across the globe to stalk and hunt our famous red deer, the appeal of doing so would undoubtedly be lessened should there be uncertainty about the purity of the red deer stock.

Last August, when I asked the minister, in a written question, about the Government’s aim with regards to sika, I was told that SNH had a statutory duty, under the Deer (Scotland) Act 1996 to “further the conservation ... of deer” —[Official Report, Written Answers, 25 August 2010; S3W-35553.] and that that applies to all deer in Scotland, including sika and hybrids.

Although any widespread efforts to eradicate sika would be neither desirable nor achievable, I believe that SNH should be developing a robust strategy to deal with sika in areas in which hybridisation is widespread. A statutory duty to conserve all deer would appear to militate against any such strategy.

The effect of the amendments is to remove the duty that is placed on SNH to conserve all deer and to replace it with a duty to conserve native deer. That is an important first step if we are serious about protecting the genetic purity of our native red deer.

I move amendment 57.

15:45

Roseanna Cunningham: Sika deer, which were introduced to this country in the mid-1800s, can, as Jamie Mcgrigor has identified, interbreed with our native red deer to produce hybrids, which poses a significant threat to the native red deer. In addition, where populations are high, they can have a serious impact on woodlands and can cause accidents on roads. The risk that they pose to our native red deer has resulted in the Scottish ministers establishing refugia islands for red deer on the islands off the west coast.

I understand that the current structure of the Deer (Scotland) Act 1996 has not presented SNH and its predecessors with any obstacles in dealing with sika where they are causing adverse impacts. That said, amendment 58 is sensible and reflects the current practical situation on the ground. Furthermore, it does not change the species that are relevant to the remainder of the 1996 act. For that reason, and noting the consistency with the approach in the bill on invasive non-native species, I support amendments 57 and 58.

Amendment 57 agreed to.

Amendment 58 moved—[Jamie Mcgrigor]—and agreed to.

Amendment 29 moved—[Roseanna Cunningham]—and agreed to.

Section 23—Deer management code of practice

Amendments 30 to 33 not moved.

Amendment 8 moved—[Liam McArthur]—and agreed to.

Amendments 9 to 12 moved—[John Scott]—and agreed to.
Section 24—Control agreements and control schemes etc
Amendment 34 not moved.

Section 25—Deer: close seasons etc
Amendment 35 moved—[Roseanna Cunningham]—and agreed to.

Section 26—Register of persons competent to shoot deer etc

The Deputy Presiding Officer (Alasdair Morgan): Group 13 is on the establishment of a register of persons competent to shoot deer—consultation. Amendment 13, in the name of John Scott, is the only amendment in the group.

John Scott: Amendment 13 requires consultation to be carried out on regulations that set up the register of persons competent to shoot deer. As it stands, the bill simply allows ministers and SNH to set out the criteria for competence, with no assurance that the industry will be consulted. It is vital that work is done with the industry to develop the criteria, which should be sector-led rather than top down. A lot of work is already being undertaken to develop competence on a voluntary basis, and the criteria that are being developed as a result of that work should be replicated if regulations are ever made under the bill.

I move amendment 13.

Mike Rumbles: I support this important amendment. The industry feels that such consultation is extremely important, and it would be helpful if the minister could acknowledge that a great deal of work has already been done over the years, not least by estate managers in my constituency—on Deeside in particular—to ensure that people who are competent to shoot deer are recognised through obtaining the relevant vocational qualifications. The minister visited Glen Tanar estate in my neck of the woods, where this very point was put directly to her. I hope that she will feel able to accept the amendment, so that ministers consult those who have already done a great deal of work in this regard.

Roseanna Cunningham: The decision on whether a compulsory competence system should be introduced, and on what form it should take, is ultimately one for ministers rather than anyone else. However, it is important that there is industry input into the process. Therefore, I support amendment 13.

Whether ministers ever get to the point of considering compulsory competence is very much in the hands of those organisations that wrote to me, offering to further competence on a voluntary basis. I understand that they have conducted discussions with organisations such as Lantra, which is a positive step. I am happy to endorse Mike Rumbles’s comments regarding stakeholder involvement and the work that they have done.

Any compulsory system should be based on existing qualifications and should include a practical element. There should be a system of recognition for equivalent foreign qualifications. I see no point in reinventing the wheel. Uptake is the key issue. I very much look forward to seeing the industry make good progress.

John Scott: The game and wildlife management industry group of the sector skills council—Lantra—has responsibility for improving national occupational standards. There is serious concern that the process of setting standards that cover all necessary skills and of developing vocational qualifications that are appropriate to employers’ needs could be undermined if the regulations were made and criteria for competence were determined solely by SNH. I welcome the support from Mike Rumbles and the Liberals and from the minister.

Amendment 13 agreed to.

After section 26B

The Deputy Presiding Officer: Group 14 is on deer injured by motor vehicles. Amendment 59, in the name of Jamie McGrigor, is the only amendment in the group.

Jamie McGrigor: Anyone who regularly drives through areas such as Glen Coe often sees the carcases of deer by the side of the road. That is the case elsewhere in the north of Scotland. I have no doubt that the flashing warning signs that were recently installed in Glen Coe following lobbying by me and others have reduced the number of such collisions. However, accidents involving red deer remain too frequent.

It has been my distressing experience on occasion to come across deer that are badly wounded and obviously in great pain as a result of being hit by vehicles and left to die. I am concerned that many people are not aware of what to do if they hit a deer and cripple it or if they find a deer in the circumstances that I have described. I am grateful to the retired Dalmally policeman Christopher Gillespie for giving me his experience on the issue. He found that people would bring wounded deer to him at the police station. He informed me of something called the SHAMPOG pool that is taught at the Scottish Police College at Tulliallan. SHAMPOG stands for sheep, horses, asses, mules, pigs, ox and goats. People must report to the police any accident involving an animal on that list, but it does not include deer.
That adds to my theory that wounded deer are left lying in pain at the side of the road. In my view, that situation should be changed. The answer is clearly a matter of education. I therefore urge SNH to look into the matter and to address what is undoubtedly a gap in the code of good practice regarding deer welfare. Amendment 59 seeks to clarify in the bill that SNH can take measures to ensure that drivers are made aware of whom to contact following a collision with a deer. I commend it to members.

I move amendment 59.

Roseanna Cunningham: I share Jamie McGrigor’s concern about the increase in road accidents involving deer, particularly as deer come down from the hills and are more in and about urban areas. We have touched on the issue in the bill, which requires SNH to take account of public safety in exercising its deer functions, and that includes the issue that Jamie McGrigor raises. I reassure him that there is SNH best practice on the humane dispatch of deer, including following a vehicle collision. In most cases, the advice is to call the police. Irrespective of whether people are aware of the advice, I hope that any motorist or their passenger who is faced with such a situation would do just that. It is difficult to see what else one could expect the average motorist or their passenger to do, given that most people do not have veterinary experience, which is really the only other thing that might be helpful.

Therefore, although I share Jamie McGrigor’s sentiment, I do not think that amendment 59 would further the issue in any practical way, so I do not support it. However, I recognise the concern that is being expressed and share it.

Jamie McGrigor: The minister might consider the possibility of getting deer added to the SHAMPOG pool, which I explained earlier. However, on the strength of what she has said, I am prepared to accept that something will be done about the issue, so I seek to withdraw the amendment.

Amendment 59, by agreement, withdrawn.

Section 27—Protection of badgers

Amendment 36 moved—[Elaine Murray]—and agreed to.

After section 28A

The Deputy Presiding Officer: Group 15 is on biodiversity duty and strategy. Amendment 37, in the name of Robin Harper, is grouped with amendment 60.

Robin Harper: The United Nations Convention on Biological Diversity was agreed at Rio de Janeiro in 1992. In 2004, Scotland’s commitment to such objectives was made in the Nature Conservation (Scotland) Act 2004, which introduced a general biodiversity duty and the concept of a biodiversity strategy to co-ordinate Government and public sector work towards the common goals.

Unfortunately, Scotland failed to meet its biodiversity targets for 2010. It is widely felt that part of the reason for that was foreseen in 2004, when Roseanna Cunningham said:

“I still have some concerns that the bill as drafted”—that is, the 2004 act—

“basically requires a strategy to be designated and requires some reporting, yet does not actually require any actions to be taken.”—[Official Report, Environment and Rural Development Committee, 28 January 2004; c 655.]

That remains a key criticism of the strategy: it is a vision without actions.

The objective of amendment 37 is to ensure that future biodiversity strategies require future Governments to be honest about what they will do for biodiversity through mainstream policies. It would ensure that the strategy sets out objectives and—more important—what our various key Government departments, policies and measures would contribute to achieving those objectives.

It seems so fundamental to me that I am not sure how anyone can call a document that is missing such elements a strategy. I very much hope that the minister will take this opportunity to put right the deficiency that she herself saw in the 2004 act and strengthen the statutory basis for Scotland’s biodiversity process.

I move amendment 37.

Peter Peacock: I support Robin Harper’s amendment. Amendment 60, in my name, is on reporting against our biodiversity obligations, which was debated fully at stage 2.

The minister indicated at stage 2 that she would work with me to try to agree on an amendment at stage 3 to cover the point, which resulted in amendment 60. It is quite technical in nature, but given that it was e-mailed to me from the minister’s office, I hope that she will not find any technical flaws in it.

Liam McArthur: Robin Harper quite rightly drew attention to Scotland’s failure to meet its biodiversity targets. I think that he would agree that Scotland is not unique in that respect, as it is an accusation that can be levelled at many member states.

The risk all along has been that the bill would be open to having all manner of different issues hung on it. There were certainly early efforts to try to backfill a narrative into the legislation.
I have a great deal of sympathy for much of what Robin Harper has suggested. The work on that will certainly continue and should be progressed with a degree of urgency after May, by the next Government and Parliament, but I am not entirely sure that it is appropriate in the context of this bill.

Peter Peacock’s amendment on reports is probably something that we can agree to, to move the agenda forward, pending more significant and substantive action in the next parliamentary session.

Roseanna Cunningham: The biodiversity strategy could no doubt be improved but, as I pointed out in the stage 2 discussions, the strategy in its current form already touches on the issues that Robin Harper’s amendment proposes to list in statute. Listing specific policy areas that the strategy must cover risks compartmentalising biodiversity to those areas. The UN Convention on Biological Diversity was revised in Nagoya in October last year and now emphasises the need to mainstream biodiversity across Government policy. We should all support mainstreaming, but I doubt that amendment 37 is the way to achieve it.

Setting out such requirements in the strategy will be a bureaucratic process. It will find itself quickly out of date, and it is not where we can best focus our efforts. To mainstream biodiversity successfully, different areas across the public sector must actively consider how biodiversity impacts on their policy and how they impact on biodiversity. Effort spent aligning policy documents in a perpetual cycle will be of limited benefit at best and a bureaucratic exercise at worst. For those reasons, I do not support amendment 37.

16:00
I turn to amendment 60, in the name of Peter Peacock. I note his acknowledgement of the Government’s generosity in this entire process. I recognise that Audit Scotland and others have rightly identified the lack of a reporting requirement in the biodiversity duty as a significant weakness. Of course, the benefit of introducing a reporting requirement to the duty has to be balanced against the negative impact of adding bureaucratic burdens such as that proposed in amendment 37, particularly in the current financial climate. By allowing public bodies to use existing reporting structures, I am pleased that amendment 60 strikes the right balance and will encourage public bodies to mainstream actions for biodiversity within their activities, which really ought to satisfy what Robin Harper is trying to achieve. For that reason, I am able to support amendment 60, which might not come as an enormous surprise to anybody.

Robin Harper: The intention of amendment 37, which I would have thought was obvious, is to ensure that, across the board, Government departments raise their heads above the silos and talk to each other about biodiversity strategy—quite the opposite to the compartmentalisation that the minister suggested would result from my amendment. I will press amendment 37.

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Foulkes, George (Lothians) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitting, David (Strathkelvin and Bearsden) (Lab)

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Amendment 37 disagreed to.

Amendment 60 moved—[Peter Peacock].

The Deputy Presiding Officer: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Aileen (South of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Margaret (Glasgow Baillieston) (Lab)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Edie, Helen (Dumfries and Galloway) (Lab)
Ewing, Fergus (Inverness West, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Foulkes, George (Lothians) (Lab)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hepburn, Jamie (Central Scotland) (SNP)
Hume, Jim (South of Scotland) (LD)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Kidd, Bill (Glasgow) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
The result of the division is: For 106, Against 16, Abstentions 0.

Amendment 60 agreed to.

Section 35—Commencement and short title

Amendment 38 moved—[Roseanna Cunningham]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
Wildlife and Natural Environment (Scotland) Bill

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-8020, in the name of Roseanna Cunningham, on the Wildlife and Natural Environment (Scotland) Bill.

16:05

The Minister for the Environment and Climate Change (Roseanna Cunningham): I am pleased to open the debate on the Wildlife and Natural Environment (Scotland) Bill. I thank the Rural Affairs and Environment Committee for its close scrutiny of the bill and its excavation of complex issues, in which it navigated what was often conflicting evidence. At the end of the legislative process, a great many people must be thanked. They include the Finance Committee and the Subordinate Legislation Committee, which contributed to the lead committee’s scrutiny. Stakeholders’ significant contribution to the bill should also be noted. A wide range of people have invested much time. We should acknowledge that we in the Parliament demand that of people throughout civic Scotland.

The key word in the debate is balance. The Government has tried to produce a bill that maintains a fair and reasonable balance between the sometimes conflicting demands of a wide range of interests, some of which diametrically oppose one another. In the course of the bill process, I feared that some suggestions and amendments would upset that balance. However, I am happy to say that the Parliament took a constructive approach to the issues and conflicts that were before us. I hope that we can all agree that, although the bill will not satisfy all the interests all the time, it will nevertheless satisfy most interests most of the time. That is an achievement in itself.

From the outset of the original consultation to the lobbying e-mails, letters, persuasive press releases and briefings that have been received in the past few days, views have been expressed strongly. However, some subjects in the bill had barely a mention in the stage 3 proceedings, because consensus was reached much earlier. I will mention one or two of those issues for completeness.

The bill will deliver a framework for dealing with invasive non-native species that leads the way in implementing the internationally recognised approach. Invasive non-native species are identified by the millennium ecosystem assessment as one of the most important direct drivers of biodiversity loss and ecosystem service
changes. That damage can also be measured by the significant negative impacts on economic interests of invasive non-native species, which cost Scotland an estimated £245 million every year.

I am aware of how important the Parliament considers the code on invasive non-native species to be. The early draft that was provided to the Rural Affairs and Environment Committee has benefited from informal comment and I will issue a public consultation on the code in the next few weeks.

Wildlife crime has loomed over many debates. The scrutiny of the bill sends the message that we are not prepared to tolerate continued persecution of our magnificent birds of prey. I say to those who question whether the problem persists that they should look at the facts. Despite sensationalist pronouncements on one side and almost denialist pronouncements on the other, we know that we continue to find birds poisoned in our countryside. As I have said before, that is a wholly unacceptable state of affairs.

It should now be clear to those who might have doubted us or to those who thought that they could call our bluff that the Government is prepared to act to introduce new measures to combat wildlife crime. If the motion to pass the bill is agreed to, we will press ahead to work with land managers to produce guidance on the new vicarious liability offences, to ensure that everyone has the advice that they need before the planned commencement of provisions this autumn.

I will touch on an issue that emerged too late to be considered in relation to the bill. Some members will be aware that amendments were sought to protect the Scottish wildcat but could not be developed without proper consideration and consultation. Those who know me will know that I have a great attachment to and fondness for our wildcats, so I am pleased to advise members that the Cairngorms wildcat project will continue to work with estates to benefit wildcats and will work to reduce hybridisation in the coming year. Scottish Natural Heritage has confirmed £30,000 of funding for that under the species action framework. I hope that people who are as concerned as I am about the future of that iconic species will be glad of that. I look forward to the debate.

I move,

That the Parliament agrees that the Wildlife and Natural Environment (Scotland) Bill be passed.
Sarah Boyack: They pressed consistently for restrictions on snaring. You see that in the evidence. We were always of the view that it would be very difficult to get a majority on a full ban on snaring. The work that Elaine Murray, Peter Peacock and Karen Gillon did was to try to push the agenda on as far as we could. We were keen to support proposals that other colleagues put at committee and in the chamber today, but we remain convinced that snaring—as currently practised in this country—is not required. We need only look at other countries where snaring does not take place routinely. There are alternatives not only abroad, but in Scotland.

We worked very constructively. The great irony is that a petition to ban snaring that is live in the Parliament was not made a formal part of the process. I say to Mr McArthur that, given the live nature of the petition, our expectation was that it would be discussed in the context of the bill—that was the natural place in which to discuss it—and we remain disappointed that that did not happen. We are particularly disappointed that we could not go further than the minister’s initial offer on the review period, which is the parliamentary equivalent of kicking the issue into touch—into never-never land. Progressive Parliaments have changed legislation; they have changed the ground rules on snaring. I give a commitment today: Labour considers a ban on snaring. The work that Elaine Murray, Peter Peacock and Robin Harper both aimed to strengthen our chances of protecting our rich biodiversity. It will not survive without our help. We impact on biodiversity in the legislation that we pass, the Scottish Government’s moves to give a lead and local government’s day-to-day planning decisions. As we pass the bill, we will work strongly and constructively to ensure that its good provisions are implemented, but I wish that we had gone further, particularly on animal welfare and support for the protection of biodiversity. Biodiversity is the basis of our economy, tourism and quality of life, and it would have been good to see more done today.

Notwithstanding those comments, I think that there are strong and constructive elements in the bill. For that reason, we will support it at stage 3.

The Deputy Presiding Officer: I call John Scott, who has four minutes.

16:15

John Scott (Ayr) (Con): I begin by thanking all those who have contributed to the development of the bill and by declaring an interest as a farmer, which I should have done earlier.

To all those who responded to the consultations, to those who provided expert evidence and advice, and to all the lobbying organisations, whatever their point of view, I say a huge thank you. I say a huge thank you, too, to the clerks to our committee, to Tom Edwards from the Scottish Parliament information centre, to the bill team and of course to colleagues on the committee, with whom the bill has been much debated and argued over, for what from my perspective has been the largely good-natured way in which the work and effort has been carried out by all involved. I also thank the minister, particularly for her sympathetic consideration of my amendments.

Today we will pass into law the WANE bill, which is in essence a tidying-up bill. By and large, the bill is welcome and much needed, amending most notably the Wildlife and Countryside Act 1981, the Deer (Scotland) Act 1996, the Protection of Badgers Act 1992 and the Hill Farming Act 1946. In addition, it repeals 18th and 19th century game acts, so its scope is wide ranging.
There is one key element of the bill with which I disagree: the introduction of vicarious liability in part 2. Although I understand and agree with the minister’s motives for introducing vicarious liability—namely, the need to stop raptor persecution—I do not believe that that is the correct way of resolving the problem, especially as it introduces the concept that an individual is assumed to be guilty of a crime or crimes of another individual unless and until he or she can prove him or herself innocent. Notwithstanding the defences offered in the bill, I believe that to be a disproportionate response to the crime of raptor persecution.

However, we are where we are. I look forward to guidance being issued this autumn, before that part of the bill is commenced, and I hope that all those who are directly involved and affected by it will be fully consulted. Perhaps the minister might give us her views on that, particularly on who will be consulted, in her closing remarks.

On a more positive note, I welcome the retention of snaring as a useful tool in the box for the control of foxes, although like Liam McArthur I am somewhat surprised at the apparent divergence of views between—[Interruption.]—on the Labour front benches. I also agree with others that more needs to be done to ensure that snares continue to be developed into an easily monitored restraining device, and I welcome the adoption of Bill Wilson’s amendment to ensure quinquennial reviews of snaring.

Forgive me, I meant to refer to the divergence of views on the Labour front bench between Sarah Boyack and her colleagues in the Rural Affairs and Environment Committee. I was having a senior moment. [Laughter.]

Turning now to the protection of hares, I believe that the Parliament has taken a valuable step forward by introducing a close season for brown and mountain hares, and I for one will be very interested to see what effect that has on hare numbers across Scotland.

With regard to deer management, I hope that we have struck the right balance in inviting SNH to introduce a code of practice on 1 September 2011—a code of practice that will be subject to the affirmative procedure and therefore widely consulted on. I ask the minister, notwithstanding her announcement today, whether that timetable is technically feasible given that, I suspect, the summer recess will not have ended by that date.

The rules on competency to shoot deer have been further tightened up, with an enabling power introduced to deal with the situation if voluntary training schemes are subsequently regarded as inadequate. That, too, is to be welcomed.

Finally, muirburning provision and practice has been altered for the better. A licence for burning out of season introduces a welcome flexibility, and that no burning under normal circumstances is to take place anywhere in Scotland after 30 April is, again, to be welcomed—

The Deputy Presiding Officer: The member must conclude.

John Scott: —particularly in the light of climate change and earlier nesting of ground-nesting birds.

Tonight we will support the bill’s passage into law—

The Deputy Presiding Officer: I am sorry. We really have no latitude.

16:20

Liam McArthur (Orkney) (LD): In the limited time that is available, I will offer a few observations on the bill and the process that we are bringing to a close. I start by again putting on the record my thanks to the committee clerks, Scottish Parliament information centre staff and other staff who helped us to get to this point, and my thanks to the wide range of individuals, businesses and organisations who gave evidence and provided briefings. It was not always easy to navigate a sensible and workable way through evidence that was often conflicting, but our work would have been immeasurably more difficult if we had been unable to draw on the advice and expertise of stakeholders.

The bill is worth while. It tidies up anomalies and anachronisms and it confronts serious and substantive policy issues. Its importance is a reflection of the value that we attach to the activity that helps to create and sustain our biodiversity and that shapes the landscape and our typically Scottish natural environment. Of course, biodiversity is under threat and more needs to be done to protect it, but for now I am pleased that we have agreed a new reporting requirement, which is linked to existing biodiversity duties.

Whatever satisfaction we take from the bill that we are about to enact, we must pay heed to the advice of Sheriff Drummond, who said that the law in the area is complex, fragmented and difficult to find and that it is difficult to see the direction in which the law is going. That is not good for public understanding or, by extension, for compliance. I repeat the committee’s view that consolidation will be needed before further amendments are made.

Let us consider the changes that we are introducing. Many people might think that we have not gone far enough on snaring, but I think that we have struck an appropriate balance and left the way open for further action, should it prove
necessary. Despite steps that have been taken in recent times to improve the design and placement of snares, abuses still occur, sometimes with disturbing consequences. However, on the balance of the evidence that the committee took, I am persuaded—as were all three Labour members of the committee—that the case was made for allowing snaring to continue, as one tool in the predator management box.

Further safeguards are being introduced, including better record keeping and improvements in training on animal welfare. There are also improvements in snare design and use, which must continue. The prospect of a review by the end of 2016 and subsequent rolling reviews will help to ensure that such improvements happen and will keep a focus on an area that will continue to arouse strong emotions. It is sad that the posturing and historical revisionism of Sarah Boyack and Elaine Murray this afternoon leave an unpleasant taste at the end of the process.

I repeat my condemnation of acts of wildlife crime. Despite efforts in recent years to tighten the law and increase resources, the problem persists and in some places it is getting worse. I am delighted that we have added to the armoury of the people who are tasked with combating wildlife crime. The introduction of vicarious liability is welcome, as are the changes to cause-or-permit provisions. Of course, obtaining sufficient proof will be a challenge. Nobody thinks that vicarious liability will be a silver bullet, but we have taken an important step.

All holiday leave for members of partnership for action against wildlife crime is likely to be cancelled as PAWS considers a range of issues. Some people will be frustrated, notably by the Parliament’s unwillingness to adopt the amendments in Peter Peacock’s name that would have introduced an approach of three strikes and you’re out. However, we have sent a strong signal about the need for change. I suspect that if the Parliament has cause to return to the issue in future, such provisions will be the starting point for members and ministers.

We have struck an appropriate balance on deer management. I hope that some of the minister’s comments today will reassure people who were concerned that back-stop powers would be used effectively where necessary in delivering the sustainable deer management that we all want.

I have enjoyed working on the bill, which rightly enjoys and is the product of a great deal of cross-party consensus. I am grateful to committee colleagues for the way in which they approached our collective task. We have worked together to produce a bill that is greatly improved and strikes a good balance between competing claims and demands. It will serve well our natural environment and the people who do so much to help to sustain it. I will be pleased to add my support and that of my party to the bill at decision time.

16:24

Maureen Watt (North East Scotland) (SNP): For members of the Rural Affairs and Environment Committee, reaching this stage of the bill late this afternoon means that we see light at the end of the tunnel. It feels as though the process has been protracted, because of the sheer weight of evidence from various stakeholders and perhaps because of the need to debate amendments at stage 3 on issues that we dealt with at stage 2.

I thank the people who were involved in the work on the bill. The work of the clerks and SPICe went well beyond the call of duty. I thank everyone who contributed to the process.

Many articulated deeply and passionately held views. As I said in the stage 1 debate, it was difficult for members to decipher the true picture because of the sometimes exaggerated claims that were made.

There have been attempts to use the bill to do things that it was never intended to do. The intention behind the bill is to ensure that Scotland’s wildlife and environment are managed successfully in future. It is not a vehicle for land reform or land tenure changes. The amendments that were agreed to at stage 2 and today will lead to a bill that is fit for the purpose for which it was originally intended.

I am pleased that the minister has readily taken on board many of the committee’s recommendations, which we picked up as we went round the country. Examples of that are the catching-up and muirburn provisions, which provide sensible flexibility for work on the hills, taking into account the vagaries of the Scottish weather.

Many safeguards and reviews are also built into the bill, and I have no doubt that we will return to many aspects of it in the future. However, I hope that its various elements are given sufficient time to work before people seek to amend them. For example, I hope that gamekeepers, landowners and land managers do not take their foot off the gas in relation to training, and adhering to the code of practice, on snaring.

Marilyn Livingstone (Kirkcaldy) (Lab): Maureen Watt summed up the debate on banning snaring when she said “I hope that”. For animal welfare’s sake, I hope that it is more than a hope.

Maureen Watt: I am confident that, because it has had such an airing at all stages of the bill, the code of practice will be adhered to. Marilyn Livingstone does not live in the real world of the
rural economy if she does not realise that gamekeepers and other land managers are not the only ones who are involved in snaring. The code of practice on snaring will not help with illegal snaring anyway; that is a criminal matter and is one for the police.

Similarly, I hope that the estates vigorously pursue the wildlife estates initiative and that they all come on board. If they do not, I suspect that there will be moves to introduce further legislation—such moves would not be unreasonable if wildlife crime, for example, does not shift significantly.

All who are involved in our rural economy wish to manage it sustainably. That does not mean that it should be managed in the same way throughout Scotland. I hope that all involved allow diversity not only in wildlife but in the way in which our land is managed.

I look forward to the passage of the bill tonight.

16:28

Peter Peacock (Highlands and Islands) (Lab):
I thank the clerks and the bill team, whom I burdened considerably, given the size of the amendments that I lodged—although they also had a hand in that. I genuinely thank them for all their efforts in helping me.

I also thank RSPB Scotland, of which I am a member, the Scottish raptor study groups, which do remarkable work in helping our understanding of the condition of our raptors throughout Scotland, the Scottish Wildlife Trust and others who helped with the amendments that I proposed today.

The bill has made some good progress, although it has not gone as far as I would have liked. As Roseanna Cunningham rightly said, it is not only what is in the bill that is important, because there have been important policy clarifications along the way. Indeed, there were further clarifications today about the consultation on the powers of the Scottish Society for the Prevention of Cruelty to Animals, which I hope will happen in the not-too-distant future so that we can get the issue bottomed out properly.

I draw attention to the fact that, in the course of the bill’s passage through the Parliament, we have clarified that its provisions will help to protect the native black bee on Colonsay and other islands. That is a significant and important development.

I welcome the vicarious liability provisions in the bill—I have said that many times throughout its passage—but I do not underestimate the difficulty that there will be in securing any convictions under them. I suspect that some of the estates that are involved in nefarious practices realise that difficulty as well. They are the kind of clientele that can readily afford to get the best lawyers to defend them in the courts. I think that there will be big challenges on vicarious liability, but I genuinely hope that the provisions work. That is why I lodged amendments in that regard, and I am disappointed that they did not make the progress that I would have liked them to make. However, as Liam McArthur said, the amendments have—at least, I hope that they have—explored some territory and opened up future possibilities that we may have to come back to as we continue to monitor what is happening.

One important thing that has been developing is the science of understanding why territories are unoccupied by certain birds. I refer to a book that is being published this week—sadly, it is being published posthumously. It was started by Jeff Watson, who used to work for SNH and was a considerable expert on Scotland’s golden eagles. I remember being in Harris with him many years ago. He pointed out an eagle that was soaring above us and, during a walk around the shoreline that evening, he talked about the problems of protecting raptors. He explained some of the basic science that was being explored then. I hope that those principles go much further in the scientific world, and that we develop our understanding, which is already quite sophisticated, so that it becomes far greater and enables us target our efforts increasingly around good scientific evidence on where things are clearly not right in certain parts of Scotland. I hope that that work continues in the spirit of Jeff Watson’s scientific work.

John Scott: I will try to be brief; I apologise for using up Peter Peacock’s time.

Is Peter Peacock aware of the feature known as intraguild predation, which involves superior predators preying on other predators? Hen harriers are predated on by golden eagles. That is one well-known reason why hen harrier populations are not growing as they might.

Peter Peacock: But it is not the only reason—that is the point that I am trying to make. We need to develop the science further. I am talking about rigorous work that we ought to respect, but we also ought to encourage its further development so that we can use it as a tool to bear down on a problem that we all believe still exists.

Having said that, I think that we may have to come back to the issue of licensing estates at some future date. The more I have thought about that matter in our interesting journey through the issues, the more it seems that there is a simple solution. Every estate can be licensed. They can be given five years to sort things out; if they do not, they should not get a licence. That would focus people’s minds wonderfully. The issue has
not gone away; it will come back. I hope that my colleagues who are on the front bench in future years will pursue it. If they do not, I will lobby them from outside the Parliament.

16:32

Ian McKee (Lothians) (SNP): One of the problems in considering Scotland’s wildlife and natural environment, let alone legislating on it, is that there are so many potentially competing interests. The needs of hunting estates—of grouse shooters, for example—are very different from those of bird watchers and ramblers. There are also the needs of our children and those yet unborn who deserve to enjoy all that Scotland has to offer in that respect. We are the guardians for the future, not the owners, of Scotland’s rich natural heritage. The bill attempts to balance all those interests, and it largely does so.

I intend to concentrate on merely one or two aspects in this short speech. I turn first to wildlife crime. We all unite in condemning the poisoning of raptors, the stealing of eggs and other wildlife crimes, but such crimes still occur too frequently despite measures that have been taken in the past. As far as raptors are concerned, the suspicion arises that poisoning and shooting are often illegal efforts to preserve the stock of game birds—or even lambs, where eagles are concerned. However, it is difficult to attribute blame in specific instances, and those who get caught are often relatively lowly estate employees who may or may not have acted under orders. The vicarious liability provisions in the bill are a welcome step forward in that respect, although I suspect that still more needs to be done. I hope that the subject will receive further attention in the next parliamentary session.

On deer management, there is another potential conflict of interest between the owners and managers of shooting estates on one side and those who can loosely be called environmentalists on the other side, although I think that the perceived differences are often magnified. Deer have no natural predators in Scotland apart from man, and it is vital that their numbers are regulated, as in meeting their dietary needs, large numbers of deer can cause severe damage to natural habitats and protected areas. Moreover, overpopulation causes extreme food shortages, with consequent malnutrition and a form of animal cruelty that is caused by neglect. Culls are needed, but they should be carried out according to carefully formulated deer management plans. I welcome the power that the bill gives the Scottish Government to introduce a competence requirement for deer stalking, should a voluntary approach and self-regulation fail.

Finally, a more determined effort to combat non-native invasive species of plants such as Japanese knotweed, which seems to be spreading all over our country, is to be welcomed.

In summary, we are taking another significant step forward in the wise management of our envied rich natural heritage, but I am sure that there is much more to be done. Perhaps we will see further legislation in the next session.

I commend the bill to members.

16:34

Marilyn Livingstone (Kirkcaldy) (Lab): I am pleased to contribute to the debate and to outline the importance of the Wildlife and Natural Environment (Scotland) Bill, which gave us the opportunity to ban snaring of Scotland’s wildlife. Significantly, there is a difference between the protection that the law offers pets and livestock and the protection that it offers wild animals. The bill provided the opportunity to narrow that gap and to offer wider and greater protection from actions such as attempts at pest control through the use of snares.

I believe that the bill represents a missed opportunity. We have moved forward, but we needed to take a major step forward on animal welfare. Snares inflict immense physical and mental suffering on animals. Their vigorous attempts to escape can lead to kinking of the snare wire and can change a free-running snare to a self-locking one. Animal charities such as OneKind and the League Against Cruel Sports describe how animals that have been caught in snares are often strangled and choked, with injuries from the wire including evisceration and amputation.

In addition, there is extensive evidence of the indiscriminate nature of snaring. In 2006, an SSPCA report on snaring showed that of the 269 animals that were reported as having been caught in snares, which ranged from badgers and deer to pets such as cats, only 23 per cent were considered to be pests. The report of the independent working group on snaring said that the proportion of non-target animals that were caught in snares was as high as 69 per cent.

Although I believe that most landowners in Scotland are responsible in their pest control measures, there is no firm evidence of the need for snaring or that a ban on snaring would significantly impact on Scottish agriculture. A cost benefit analysis that was conducted by OneKind suggests that, as a general rule, resources could be better focused and that a lot of money that is spent on culling wildlife should be redirected to long-term measures to reduce the impact of wildlife on agriculture.
That is why I lodged an amendment to the bill at stage 2 that sought to ban the use of any snare. I withdrew it because I believed that the continued use of snares needed to be debated and voted on by the full Parliament. As we have seen, the Scottish Government has resisted such calls for a ban, insisting that snaring is vital to the rural economy, although no figures have been produced to support that argument. A member of the Government’s party said that I do not live in the real world. My opinion is simply different from hers, and I think that that remark was probably uncalled for.

Evidence that has been gathered by animal activist charities indicates that the new regulations on the use of snares that will be introduced by the Scottish Government under the bill are not sufficient and will not prevent thousands of animals from suffering. A recent poll commissioned by OneKind shows that 77 per cent of people in Scotland—and 75 per cent of people in rural constituencies—think that snaring should be illegal, and a joint survey that OneKind carried out with the League Against Cruel Sports found that 75 per cent of vets are opposed to snaring. We have all had Valentine’s day messages from our constituents supporting a ban on the use of snares.

The Scottish Parliament had an opportunity and, I believe, a responsibility to represent the views of the people of Scotland by voting to ban snaring and to protect Scotland’s wildlife. Like my Labour colleagues, I am happy to support the bill, but I would have liked it to go much further on animal welfare. I believe that we will come back to the issue when Scotland’s Government changes in May. We on this side of the chamber will bring forward the measures that are needed to protect Scotland’s wildlife and to act in line with 10 of our European colleagues.

16:38

Robin Harper (Lothians) (Green): I thank the Rural Affairs and Environment Committee for all its hard work on the bill, which is a welcome measure. It will improve and modernise a range of statutes on wildlife and the natural environment, especially as they relate to game species, wildlife crime and invasive non-native species.

On snaring in particular, it is a great disappointment to us that, again, the Parliament did not see fit to ban the practice outright, but that issue will keep with us. The bill makes some modest but insufficient improvements on deer management. Despite its inadequacies, we will support the bill at decision time.

I will address what I think is a more significant inadequacy. Neither the bill nor, as the response to my amendments made clear, Government policy has a clear enough vision for Scotland’s wildlife and our natural environment or, more important, for how the Government’s vision will be delivered.

A land that is rich in wildlife is one whose social and economic development is truly sustainable. The loss of biodiversity is a symptom of unsustainable lifestyles and, like addressing climate change, conserving biodiversity by protecting and enhancing the natural environment cannot be achieved in isolation.

To reduce our carbon emissions, we must address planning, transport, energy and land use policies. The same and more applies to biodiversity. Indeed, some policies, such as the expansion of native woodlands through more sustainable deer management, or restoring peatlands, can contribute to achieving both climate change and biodiversity objectives. Although the bill makes welcome and incremental improvements to a range of statutes that affect wildlife and the natural environment, it fails to address the strategic issue.

Nothing in the bill will specifically discourage the Government from overturning the protection of sites of special scientific interest for a golf course, a coal-fired power station or an open cast coal mine. Nothing in the bill will specifically require the Government to embrace common agricultural policy reform and improved agri-environment schemes in order to encourage farmers and crofters to adopt more sustainable land management practices, or to ensure that native woodlands are protected and well managed and that woodland expansion is focused on native trees in the right place.

A range of Government policies suggest that those are the Government’s objectives but, from our failure to meet the 2010 biodiversity target, we know that the objectives are not delivering the outcomes. They are no more than aspirations. We need to turn good intentions into real delivery. A real and overarching purpose for the bill might have made a difference, as was incorporated in my very modest suggestion in amendment 28. Addressing overriding, cross-Government issues was the objective behind my amendment, and I am disappointed that it was not agreed to. I ask the minister to indicate in her summing up how the Government intends to ensure that the fine intentions behind the bill and the 2010 biodiversity target will be achieved without the entirely sensible details that I tried to insert into the bill.

After May, if the Green party is in a position to do so, those are among the issues that we will seek to address. If we are not in that position, I, like Peter Peacock, shall have to haunt the Parliament from beyond dissolution.
Irene Oldfather (Cunninghame South) (Lab): I begin by thanking OneKind and the League Against Cruel Sports for their assistance in drafting my amendment to ban snaring and for their work throughout the parliamentary session to support parliamentarians across the political spectrum on animal welfare issues.

I also thank my colleague, Marilyn Livingstone, for all her work to lodge my amendment at stage 2 when I was unable to do so. I thank colleagues on the committee for the efforts that they have made to improve the bill throughout the process.

I cannot deny that I am disappointed that my amendment to create an outright ban on snaring was not supported by the majority of members in the chamber. Even if a gamekeeper inspects a snare every two hours, he cannot absolutely eliminate the possibility of serious animal suffering. Despite the aim of improving the way in which snares are used, I am concerned that the complexity of the regulations will continue to work against effective implementation.

On the subject of enforcement, snares will be tagged with numbers to allow authorities to identify who is responsible for setting them, but when breaches occur, investigation after the event cannot prevent the suffering and death of animals. Only an end to snaring can do that. Like others, I look forward to returning to the matter in a future parliamentary session when, I hope, the voice of Scotland’s people will be heard.

I will try to end on a positive note. Improvements in record-keeping and annual reporting on wildlife crime through monitoring, reviewing, training and enforcement will be crucial. The chamber has sent a key message today that wildlife crime will be viewed just as seriously as any other crime, and that action will be taken when breaches occur.

Animal welfare organisations also consider that the improvement of the animal welfare content of training schemes is crucial. I hope that the minister will consider developing that element further.

On the basis of what I have said, I will support the passage of the bill tonight, but I reserve the right to return to the issue during the next parliamentary session, under, I hope, a Government that has a more positive attitude to banning snaring.

Jim Hume (South of Scotland) (LD): I welcome the chance to sum up for the Liberal Democrats in this stage 3 debate on the Wildlife and Natural Environment (Scotland) Bill. As a Liberal Democrat with rural interests, which I declare, I, like other members, am completely opposed to any crime—but I am opposed to wildlife crime in particular. There is simply no space for it in a modern, civilised society. However, as with all crimes, it is all well and good having laws but proof is needed if those laws are to have any effect. Finding proof is not easy in any situation, but it is particularly difficult in a rural situation.

Many different issues have been raised at various stages of the bill. In certain of his amendments, Peter Peacock attempted to suggest that suspicion was enough to take away the rights of individuals and organisations. I doubt whether such an approach would have been legally competent; indeed, it could well have been abused. Of course, it would have affected not only large estates but any land user, including crofters.

Peter Peacock: Does Mr Hume realise that under current cross-compliance rules agricultural support can be removed on similar evidence?

Jim Hume: I am well aware of that. However, the proposals would have applied not to people who get subsidies but to all land users. After all, cross-compliance rules apply only to people who receive single farm payments and the like.

Although it was not moved in the end, the amendment that proposed giving a constable’s powers to other persons would have had a negative effect. Wildlife crimes are difficult enough to prove in court and the police receive many years of training to ensure that their evidence is sound before there is any attempt to prosecute. It is not a competency for a lay person, and police forces alone, whether or not we are talking about special constables, should continue to have those powers. Of course, police forces—of which I hope there will be many left after the next election—continue to invest in wildlife crime officers; indeed, perhaps tackling wildlife crime should be retained as part of police training.

We have had to strike a balance. For a start, we need to remember the importance of rural sports to rural economies. Many country hotels, bed and breakfasts and so on would not have enough trade, especially at winter time, if they did not have their regular fishers and shooters. Of course, it all helps the broader tourism industry. Moreover, 80 per cent of woodland in the Borders is at some stage used for country sports and many woods and copses are managed solely for such purposes, which, along with the feeding of released birds in the open, obviously benefits the wider wildlife community.

The provisions on vicarious liability have concerned many—indeed, they still concern the Conservatives—but have gained further support. As Roseanna Cunningham suggested, they should be implemented methodically, giving
The bill is not just about wildlife crime. It deals with protection for brown hares as well as white hares, which are of course blue in the summer. They do not breed in the same way as rabbits, which hide away in burrows, and I welcome the fact that they will be protected during their breeding season.

The bill also introduces improvements to deer management in Scotland. Issues surrounding deer are complex; we have our indigenous reds and roes and I believe that Jamie McGrigor mentioned the monarch of the glen—or perhaps it was the mongrel of the glen. There are also non-native sikas and the like that can damage the environment, including mature trees.

This important bill shows that the Parliament is concerned about the Scottish environment and listens to the many interests that understand not only the broader Scottish economy but the fact that we have to strike a balance between the two aspects. We are united in opposition—

The Deputy Presiding Officer: I am afraid to say that the member’s time is up.

Jim Hume: —to any wildlife crime and I look forward to its eradication from Scotland. If unsuccessful—

The Deputy Presiding Officer: The member’s time is up.

16:49

Jamie McGrigor (Highlands and Islands) (Con): As I said in the stage 1 debate, “It is vital that we get the bill right for those men and women who work in the hills and glens and keep them well managed”.—[Official Report, 2 December 2010; c 31244.]

After all, the bill will impact on land managers and estates throughout Scotland, and I am always incredibly conscious of the socioeconomic importance of the country sports industry, especially in fragile remote and rural areas. Although the parliamentary process has improved the bill in many ways, some concerns definitely remain and, given that much of the media coverage of the bill has focused on wildlife crime, I want to use this opportunity to bring some balance and proportionality to the debate.

I believe that everyone in the Parliament deplores wildlife crime of every kind and supports strong action against it. The vast majority of landowners and land managers deplore it, too. We should not forget that we are talking about a very small number of culprits. We must be aware that the vast majority of Scotland’s sporting estates are among the best managed and often most conservation friendly in Europe—and, indeed, further afield.

I agree with the Scottish Rural Property and Business Association and the Game and Wildlife Conservation Trust Scotland that peer pressure is likely to have a greater effect than overburdensome statutory intervention. That is one reason why the Scottish Conservatives were the only party to oppose the vicarious liability provisions at stage 2, and we make no apology for doing that. Nonetheless, as John Scott said, we are where we are. Can the minister give detailed timescales on the commencement of that part of the bill? Is it correct that it will not be commenced for six months, to allow the Government to draw up guidance, and that organisations such as the SRPBA and the GWCTS will be involved in that process? I would be grateful if the minister could put that information on the record. Also, what defence does a landowner have against being framed or stitched up by people who are intent on doing them down by placing poisoned baits on their land? How can they prove their innocence?

During stages 1 and 2, it was clearly demonstrated that the snaring of foxes is vital in allowing land managers to protect livestock and maximise biodiversity. Snaring, with the strict regulation that is placed on it, is a key tool for many farmers, crofters and land managers in my region of the Highlands and Islands. Anybody who has witnessed the bloody, distressing and savage results of Mr Fox’s visits to a chicken run, a lambing park or a pheasant pen would probably be shocked into realising the necessity of snares as a preventive tool.

The Scottish Conservatives were pleased to amend the bill successfully at stages 2 and 3. We welcome large parts of the bill, including the modernisation of game law and the regulation of non-native species, and I thank the minister for supporting my amendments. As I indicated, however, we remain concerned that the Government has pushed ahead in some areas—notably on vicarious liability—without the support of key countryside stakeholders. We are content for the bill as a whole to pass at stage 3 but ask that ministers work as closely and positively as possible with all the countryside interests in the most co-operative manner as the bill’s provisions are enacted.

I close by saying how good the committee was, as were the people who made contributions to the debates.

16:52

Elaine Murray (Dumfries) (Lab): I will first touch on snaring. As I said earlier, an outright ban has been Labour Party policy for a number of
thought that it was brave of the minister to do that.

As I said at that time, I preserve that part of the economy as well as the economy over six years. It is necessary to having contributed some £21 million to the local economy, for example, the red kite trail is assessed as balance. Wildlife tourism is growing. In Galloway, wildlife tourism also contributes significantly to it. As the minister said, there must therefore be agree that it contributes significantly to the Scottish economy; I do not think that that is why shooting has no place in the Scottish economy; I am not going to argue that shooting, and I am not going to argue that evidence first and I do not have a problem with training.

There might be occasions on which no other form of control is possible, so I sought to tighten up the regulation while the evidence was accumulated. I also wanted a review in every session of Parliament, not after one year. The regulations are already in place and we have evidence, so let us collect the evidence. Let us also not allow people who have been convicted of an offence—we are not talking about licensing, but about people who have been convicted of an offence in using a snare—to continue using snares. That is wrong. The matter was not pointed out to me until stage 3, by the bill team, which is out to me until stage 3, by the bill team, which is something that really troubled me is the fact that there are perhaps circumstances in which no other form of control can be used. That was the background to my amendments.

Liam McArthur: Will Elaine Murray give way?

Elaine Murray: No. I am sorry, but I have only about four minutes and I cannot take any interventions.

I do not have a problem with having a slightly different view in committee. I just want to see the evidence and have a bit more time to think about it before we make a decision. That may be a boring way of doing things that I learned during my training—I am not sure—but I would like to see the evidence first and I do not have a problem with that.

On wildlife crime, I must say that I am not anti-shooting, and I am not going to argue that shooting has no place in the Scottish economy; I agree that it contributes significantly to the Scottish economy. However, we must be clear that wildlife tourism also contributes significantly to it. As the minister said, there must therefore be balance. Wildlife tourism is growing. In Galloway, for example, the red kite trail is assessed as having contributed some £21 million to the local economy over six years. It is necessary to preserve that part of the economy as well as the other.

I welcome the fact that the minister introduced vicarious liability at stage 2. As I said at that time, I thought that it was brave of the minister to do that. However, we have to accept that it might be difficult to secure convictions.

Earlier, John Scott talked about raptors preying each other. I do not think that that is why there are not many hen harriers around, because there are not many golden eagles around either. Something man-made is happening to raptors. I know of estates near me where peregrine falcons are not breeding—a breeding pair appears, but the female disappears and there are no chicks. Something that is not right is going on.

When I was a small child, I used to think that buzzards were an American bird. I had never seen a buzzard, and thought that they did not exist in Britain. Now, I like seeing them, because they are a native species. Over many years, we did a lot of damage to our wildlife and our native species. We need to reverse that and I welcome all the steps that we are taking to do so.

I, too, had representations made to me about wildcats, but they were too late to be brought into consideration today. I am glad to hear that we might find ways of taking forward that issue.

We must be clear that we have to do more about our biodiversity duty. We are not hitting our targets and, as others have said, neither are other European countries. We must take that seriously, and I am pleased that Robin Harper, in what I think was his last amendment in Parliament, raised some of those concerns.

The issue of ecological coherence, which we did not touch on today, is not just a planning issue within local authorities. We must have a national overview on that.

I conclude by thanking the clerks who, as ever, worked extremely hard. I also thank the witnesses, who brought us a plethora of sometimes conflicting information, and the bill team, which assisted members with the amendments that we lodged at stages 2 and 3. I know that we caused them a lot of work. On behalf of Labour members, I thank all those who helped during the passage of the bill.
think that it is possible to sit in an office in Edinburgh and micromanage a situation elsewhere.

As we anticipated, there has been great focus on snaring. Statements have been made on both sides of the argument, and we well understand what the argument is about. However, to those who are opposed to snaring on the ground that it is a cruel practice, I gently say that they need to think carefully about the language that they use. In some of what has been said this afternoon, the cruel practice that is under discussion has been the harming and death of the animal. However, banning snaring would not, of course, change the likelihood of an animal’s being harmed or killed; it would merely change the method that is used. If snaring were banned, the only methods that would be left to people would be shooting and lamping. I have absolutely no doubt that, if the ban on snaring were to go through, it would shortly be followed by a campaign to ban shooting and lamping as well, because that is the direction from which the approach comes. Before making some of the suggestions that have been made, people need to have a long, hard look at the rural economy.

Some of the evidence that has been referred to—today and previously—has been about illegal snaring. However, illegal snaring is illegal, and it is illegal because it is wrong. Talking about illegal snaring and the cruelties that it involves does not address the issues around the sensible approach to snaring that we are trying to bring in.

I should say that many of the estates that snare are managed for different purposes than those that are managed for economic reasons and profit-based reasons.

Liam McArthur: The debate on snaring today was inevitable and, in many senses, it was helpful. There is an unhelpful element, however. Despite there being discussion of the matter at stages 1 and 2, there was no suggestion at any stage that it was a party-political matter. In fact, we all have colleagues who have voted for a ban on snaring. It is slightly uncomfortable that, at stage 3—perhaps with half an eye to an election—the subject is suddenly deemed to be a party-political issue.

Roseanna Cunningham: Liam McArthur’s comments are justified. The issue was never raised or pushed for at an earlier stage.

Marilyn Livingstone: Will the minister take an intervention?

Roseanna Cunningham: This leads me to think that committee members representing the Labour Party—

Marilyn Livingstone: On a point of order, Presiding Officer.

Roseanna Cunningham: I do think that—

The Deputy Presiding Officer (Trish Godman): There is a point of order, minister.

Marilyn Livingstone: I would like the minister to withdraw that statement, as I raised the issue at stage 2.

The Deputy Presiding Officer: Minister.

Roseanna Cunningham: The member knows that she is not a member of the Rural Affairs and Environment Committee, and she was not involved in all the evidence taking that led up to stage 2. Perhaps somebody has discovered at some point—fairly lately—what Labour Party policy is, and members are now having to pull themselves into line on it.

The review period, which was discussed by Sarah Boyack, was a committee recommendation. I did not come up with it out of thin air—it was what the committee, on which Labour Party members sit, recommended.

The bill is not an animal welfare bill, but it nevertheless includes many aspects that relate directly to animal welfare, and I have said that animal welfare will be at the forefront of snaring training. The way in which some of the issues have been raised suggests to me that, if its members are not very careful, the Labour Party as a whole will be in grave danger of being seen as being completely out of touch with rural Scotland. Perhaps that is not a matter of concern to Labour members, but it ought to be.

I will move on, as I have a very short time and an awful lot of points to make. On vicarious liability, I appreciate that not everybody will agree with the policy. I am sorry that the Conservatives could not see their way to supporting it. They asked for more time—I have to ask them how much more time before we bring in measures to change the position. The code of practice will be on ministers’ desks by 2 September, and it will be before Parliament later in the autumn, so members need not be worried about people going on holiday. That matter will be dealt with pretty quickly.

I join Peter Peacock in paying tribute to the exceptional input that was provided by the late Jeff Watson. The point about his research into golden eagles was well made in the debate. However, some of Peter Peacock’s other comments suggested to me that he is somewhat impatient with the boring reality that proof has to be established before a crime and guilt are established. However tough it is, that is fundamental to our criminal justice system and must surely remain so.

I am not able to address other points that were raised in the debate, so in closing I commend the
motion that the Wildlife and Natural Environment (Scotland) Bill be passed by Parliament.
Decision Time

19:00

The Presiding Officer (Alex Fergusson):
There are seven questions to be put as a result of today’s business.

The first question is, that motion S3M-8020, in the name of Roseanna Cunningham, on the Wildlife and Natural Environment (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Wildlife and Natural Environment (Scotland) Bill be passed.
Wildlife and Natural Environment (Scotland) Bill
[AS PASSED]

CONTENTS

Section

PART 1

DEFINED EXPRESSIONS

1 Defined expressions in this Act

PART 2

WILDLIFE UNDER THE 1981 ACT

Wild birds, their nests and eggs

2 Application of the 1981 Act to game birds
3 Protection of game birds etc. and prevention of poaching
4 Areas of special protection for wild birds
5 Sale of live or dead wild birds, their eggs etc.

Wild hares, rabbits etc.

6 Protection of wild hares etc.
7 Prevention of poaching: wild hares, rabbits etc.
8 Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully
9 Wild hares, rabbits etc.: licences
10 Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons
11 Wild hares and rabbits: miscellaneous

Wild birds, hares, rabbits etc.: single witness evidence

12 Single witness evidence in certain proceedings under the 1981 Act

Snares

13 Snares

Non-native species etc.

14 Non-native species etc.
15 Non-native species etc.: code of practice
16 Species control orders etc.
17 Non-native species etc.: further provision

Species licences

18 Licences under the 1981 Act
19 Amendment of Schedule 6 to the 1981 Act

SP Bill 52B

Session 3 (2011)
Annual report on wildlife crime

19A Annual report on wildlife crime

Offence of knowingly causing or permitting certain offences

19B Offence of knowingly causing or permitting certain offences under the 1981 Act

Enforcement

20 Wildlife inspectors etc.

20A Offences by Scottish partnerships etc.

Liability in relation to certain offences by others

20B Liability in relation to certain offences by others

Modifications and repeals relating to Part 2 and game licensing

21 Modifications and repeals relating to Part 2 and game licensing

PART 3

DEER

22 Deer management etc.

23 Deer management code of practice

24 Control agreements and control schemes etc.

25 Deer: close seasons etc.

26 Register of persons competent to shoot deer etc.

26A Action intended to prevent suffering

26B Offences by bodies corporate, Scottish partnerships etc. under the 1996 Act

PART 4

OTHER WILDLIFE ETC.

Protection of badgers

27 Protection of badgers

Muirburn

28 Muirburn

28A Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act

PART 4A

BIODIVERSITY

28B Reports on compliance with biodiversity duty

PART 5

SITES OF SPECIAL SCIENTIFIC INTEREST

29 Combining sites of special scientific interest

30 Denotification of SSSIs: damage caused by authorised operations

31 SSSIs: operations requiring consent

32 SSSI offences: civil enforcement
PART 6

GENERAL

33 Crown application
34 Ancillary provision
35 Commencement and short title

Schedule—Modifications and repeals relating to Part 2 and game licensing
   Part 1—Modifications
   Part 2—Repeals
Wildlife and Natural Environment (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision in connection with wildlife and the natural environment; and for connected purposes.

PART 1

DEFINED EXPRESSIONS

1 Defined expressions in this Act

In this Act—

“the 1946 Act” means the Hill Farming Act 1946 (c.73),
“the 1981 Act” means the Wildlife and Countryside Act 1981 (c.69),
“the 1992 Act” means the Protection of Badgers Act 1992 (c.51),
“the 1996 Act” means the Deer (Scotland) Act 1996 (c.58),
“the 2004 Act” means the Nature Conservation (Scotland) Act 2004 (asp 6).

PART 2

WILDLIFE UNDER THE 1981 ACT

Wild birds, their nests and eggs

2 Application of the 1981 Act to game birds

In section 27(1) of the 1981 Act (interpretation of Part I)—

(a) the definition of “game bird” is repealed,

(b) in the definition of “wild bird”, the words “or, except in sections 5 and 16, any game bird” are repealed.

3 Protection of game birds etc. and prevention of poaching

(1) The 1981 Act is amended as follows.
(2) In the italic heading before section 1 (protection of wild birds, their nests and eggs), at the end add “and prevention of poaching”.

(3) In that section, for subsection (6) (“wild birds” in section 1 does not include birds shown to have been bred in captivity), substitute—

“(6) For the purposes of this section, the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless—

(a) it has been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme; or

(b) it is a mallard, grey or red-legged partridge, common pheasant or red grouse which is no longer in captivity and is not in a place where it was reared.”.

(4) In section 2 (exceptions to section 1)—

(a) in the title, at the end add “: acts by certain persons outside close season”,

(b) in subsection (1), after “this section,” insert “where subsection (1A) applies”,

(c) after that subsection insert—

“(1A) This subsection applies where—

(a) the person who kills or injures had—

(i) a legal right to kill such a bird; or

(ii) permission, from a person who had a right to give permission, to kill such a bird; or

(b) the person who takes had—

(i) a legal right to take such a bird; or

(ii) permission, from a person who had a right to give permission, to take such a bird.”.

(d) in subsection (3), after “Christmas Day” insert “in relation to those birds included in Part I of Schedule 2 which are also included in Part IA of that Schedule”,

(c) after subsection (3), insert—

“(3A) Subject to the provisions of this section, where subsection (3B) applies a person does not commit an offence under section 1 by reason of the taking for the purposes of breeding of—

(a) a partridge or pheasant included in Part I of Schedule 2; or

(b) an egg of such a bird.

(3B) This subsection applies where—

(a) the person who takes does so during the period of 28 days commencing with the first day of the close season for the bird; and

(b) the person who takes had—

(i) a legal right to take such a bird; or

(ii) permission, from a person who had a right to give permission, to take such a bird.
(3D) A person does not commit an offence under section 1 by reason of the taking of a red grouse if—

(a) the grouse is taken—

(i) for the purpose of preventing the spread of disease; and

(ii) with the intention of releasing it from captivity after no more than 12 hours, and

(b) the person had—

(i) a legal right to take such a grouse; or

(ii) permission, from a person who had a right to give permission, to take such a grouse.”,

(f) in subsection (4)—

(i) after paragraph (b) insert—

“(ba) in the case of pheasant, the period in any year commencing with 2nd February and ending with 30th September;

(bb) in the case of partridge, the period in any year commencing with 2nd February and ending with 31st August;”;

(ii) after paragraph (c) insert—

“(ca) in the case of black grouse, the period commencing with 11th December in any year and ending with 19th August in the following year;

(cb) in the case of ptarmigan and red grouse, the period commencing with 11th December in any year and ending with 11th August in the following year;”;

(g) in subsection (7)—

(i) for “a person” substitute “such persons”;

(ii) at the end add “as he considers appropriate”.

(4A) In section 5(5) (use of cage traps or nets for breeding purposes), for “game bird” substitute “grouse, mallard, partridge or pheasant included in Part I of Schedule 2”.

(4B) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (2)—

(i) after “than” insert “—

(a) an order under any of”,

(ii) for “and” substitute “or”,

(iii) after “11(4)” insert “; and

(b) an order under section 22(1)(a) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge,”,

(b) in subsection (3)—

(i) after “No” insert “—

(a)”,
(ii) after “11(4)” insert “; or

(b) order under section 22(1)(a) which removes from Part I of Schedule 2 any bird referred to in paragraph (b) of subsection (2).”.

(5) In Schedule 2, Part I (birds which may be killed or taken outside the close season)—

(a) before the entries relating to the bird with the common name “Mallard” insert in columns 1 and 2 the following entries—

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grouse, Black</td>
<td>Tetrao tetrix</td>
</tr>
<tr>
<td>Grouse, Red</td>
<td>Lagopus lagopus scoticus</td>
</tr>
</tbody>
</table>

(b) after the entries relating to the bird with the common name “Moorhen” insert in columns 1 and 2 the following entries—

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partridge, Grey</td>
<td>Perdix perdix</td>
</tr>
<tr>
<td>Partridge, Red-legged</td>
<td>Alectoris rufa</td>
</tr>
<tr>
<td>Pheasant, Common</td>
<td>Phasianus colchicus</td>
</tr>
</tbody>
</table>

(c) after the entries relating to the bird with the common name “Pochard” insert in columns 1 and 2 the following entries—

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ptarmigan</td>
<td>Lagopus mutus</td>
</tr>
</tbody>
</table>

(6) In Schedule 2, after Part I insert—

“PART IA

EXCEPTION: BIRDS INCLUDED IN PART I WHICH MAY NOT BE KILLED OR TAKEN ON SUNDAYS OR CHRISTMAS DAY

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coot</td>
<td>Fulica atra</td>
</tr>
<tr>
<td>Duck, Tufted</td>
<td>Aythya fuligula</td>
</tr>
<tr>
<td>Gadwall</td>
<td>Anas strepera</td>
</tr>
<tr>
<td>Goldeneye</td>
<td>Bucephala clangula</td>
</tr>
<tr>
<td>Goose, Canada</td>
<td>Branta canadensis</td>
</tr>
<tr>
<td>Goose, Greylag</td>
<td>Anser anser</td>
</tr>
<tr>
<td>Goose, Pink-footed</td>
<td>Anser brachyrhynchus</td>
</tr>
<tr>
<td>Mallard</td>
<td>Anas platyrhynchos</td>
</tr>
<tr>
<td>Moorhen</td>
<td>Gallinula chloropus</td>
</tr>
<tr>
<td>Pintail</td>
<td>Anas acuta</td>
</tr>
<tr>
<td>Plover, Golden</td>
<td>Pluvialis apricaria</td>
</tr>
<tr>
<td>Pochard</td>
<td>Aythya ferina</td>
</tr>
<tr>
<td>Shoveler</td>
<td>Anas clypeata</td>
</tr>
<tr>
<td>Snipe, Common</td>
<td>Gallinago gallinago</td>
</tr>
<tr>
<td>Teal</td>
<td>Anas creca</td>
</tr>
<tr>
<td>Wigeon</td>
<td>Anas penelope</td>
</tr>
</tbody>
</table>
Areas of special protection for wild birds

(1) The 1981 Act is amended as follows.

(2) Section 3 (areas of special protection) is repealed.

(3) In section 4 (exceptions to sections 1 and 3)—
   (a) for the title, substitute “Further exceptions to s. 1”,
   (b) in subsection (1) the words “or in any order made under section 3” are repealed,
   (c) in subsections (2) and (3) the words “or any order made under section 3” are repealed.

(4) In section 16 (power to grant licences)—
   (a) in subsection (1) the words “and orders under section 3” are repealed,
   (b) in subsection (2) for “and orders under section 3 do” substitute “does”.

(5) In section 26 (regulations, orders, notices etc.)—
   (a) in subsection (2) “3,” is repealed,
   (b) in subsection (4)(a) the words from “, except” to “3,” are repealed.

Sale of live or dead wild birds, their eggs etc.

(1) The 1981 Act is amended as follows.

(2) In section 2—
   (a) in subsection (4) (close seasons), for “this section and section 1” substitute “section 1, this section and section 6”,
   (b) in subsection (6) (period of special protection forms part of close season), for “this section and section 1” substitute “section 1, this section and section 6”.

(3) In section 6 (sale etc. of live or dead wild birds, eggs etc.)—
   (a) in subsection (1)(a)—
      (i) the words from “other” to “3” are repealed,
      (ii) after “egg” where it second occurs insert “other than—
         (i) a bird included in Part I of Schedule 3 (see also subsection (5));
         (ii) a bird included in Part 1A of that Schedule to which subsection (1A) applies; or
         (iii) an egg to which subsection (1B) applies or any part of such an egg”,
   (b) after subsection (1) insert—
      “(1A) This subsection applies to a bird which—
         (a) was bred in captivity and remained in captivity or a place where it was reared;
Wildlife and Natural Environment (Scotland) Bill
Part 2—Wildlife under the 1981 Act

(b) was a wild bird for the purposes of section 1 (see section 1(6)) and was taken by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird outside the close season for the bird; or

(c) was such a wild bird of the following type and was taken by a person with such right or permission during the period of 28 days which commences with the first day of its close season—

(i) a partridge included also in Part I of Schedule 2; or

(ii) a pheasant included also in that Part.

(1B) This subsection applies to the following eggs—

(a) an egg of a bird included in Part I A of Schedule 3 to which subsection (1 A) applies; or

(b) an egg of a bird included in Part I A of Schedule 3 to which that subsection does not apply if the egg was taken—

(i) outside the close season for the bird or during the period of 28 days commencing with the first day of its close season; and

(ii) by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird.”,

(c) in subsection (2)(a)—

(i) after “Part II” insert “, IIA”,

(ii) after “Schedule 3” insert “(see also subsections (5B) and (6))”,

(d) for subsection (5) substitute—

“(5) Any reference in this section to any bird included in Part I of Schedule 3 is a reference to any bird included in that Part which—

(a) was bred in captivity;

(b) has been ringed or marked in accordance with regulations made by the Scottish Ministers; and

(c) has not been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme.

(5A) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.”,

(e) after subsection (5A) (as inserted by paragraph (d)) insert—

“(5B) Any reference in this section to any bird included in Part IIA of Schedule 3 is a reference to any bird included in that Part which was killed outside the close season for the bird by a person who had a legal right to kill such a bird or permission, from a person who had a right to give permission, to kill such a bird.”,

(f) for subsection (6), substitute—
“(6) Any reference in this section to any bird included in Part III of Schedule 3 is a reference, during the period commencing with 1st September in any year and ending with 28th February of the following year, to any bird included in that Part.”.

(4) In Schedule 3 (birds which may be sold)—

(a) after Part I insert—

```
<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grouse, Red</td>
<td>Lagopus lagopus scoticus</td>
</tr>
<tr>
<td>Mallard</td>
<td>Anas platyrhynchos</td>
</tr>
<tr>
<td>Partridge, Grey</td>
<td>Perdix perdix</td>
</tr>
<tr>
<td>Partridge, Red-legged</td>
<td>Alectoris rufa</td>
</tr>
<tr>
<td>Pheasant, Common</td>
<td>Phasianus colchicus”</td>
</tr>
</tbody>
</table>
```

(b) after Part II insert—

```
<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coot</td>
<td>Fulica atra</td>
</tr>
<tr>
<td>Duck, Tufted</td>
<td>Aythya fuligula</td>
</tr>
<tr>
<td>Grouse, Black</td>
<td>Tetrao tetrix</td>
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</tr>
<tr>
<td>Pheasant, Common</td>
<td>Phasianus colchicus”</td>
</tr>
<tr>
<td>Pintail</td>
<td>Anas acuta</td>
</tr>
<tr>
<td>Plover, Golden</td>
<td>Pluvialis apricaria</td>
</tr>
<tr>
<td>Pochod</td>
<td>Aythya ferina</td>
</tr>
<tr>
<td>Ptarmigan</td>
<td>Lagopus mutus</td>
</tr>
<tr>
<td>Shoveler</td>
<td>Anas clypeata</td>
</tr>
<tr>
<td>Snipe, Common</td>
<td>Gallinago gallinago</td>
</tr>
<tr>
<td>Teal</td>
<td>Anas crecca</td>
</tr>
<tr>
<td>Wigeon</td>
<td>Anas penelope</td>
</tr>
<tr>
<td>Woodcock</td>
<td>Scolopax rusticola”</td>
</tr>
</tbody>
</table>
```
in Part III (birds which may be sold dead from 1st September to 28th February), the entries relating to birds with the following common names are repealed—

Coot
Duck, Tufted
Mallard
Pintail
Plover, Golden
Pochard
Shoveler
Snipe, Common
Teal
Wigeon
Woodcock.

Wild hares, rabbits etc.

15 Protection of wild hares etc.

(1) The 1981 Act is amended as follows.

(2) After section 10, insert—

“10A Protection of wild hares etc.

(1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 5A in the close season for the animal is guilty of an offence.

(2) In this section, “close season” means—

(a) in the case of a mountain hare, the period in any year beginning with 1st March and ending with 31st July;

(b) in the case of a brown hare, the period in any year beginning with 1st February and ending with 30th September.

(3) The Scottish Ministers may by order vary the close season for any wild animal included in Schedule 5A which is specified in the order.

(4) If it appears to the Scottish Ministers expedient that any wild animals included in Schedule 5A should be protected during any period outside the close season for those animals, they may by order declare any period not exceeding 14 days as a period of special protection for those animals.

(5) Before making an order under subsection (4), the Scottish Ministers must consult such persons appearing to them to be representative of persons interested in the killing or taking of animals of the kind proposed to be protected by the order as they consider appropriate.

(6) Where an order is made under subsection (4), this section has effect as if any period of special protection declared by the order forms part of the close season for those animals.
(7) An order under subsection (3) or (4) may be made as respects the whole of Scotland or any part of Scotland specified in the order.

(8) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

10B Exceptions to s. 10A

(1) A person is not guilty of an offence under section 10A(1) by reason of the killing of an animal included in Schedule 5A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.

(2) A person is not guilty of an offence under section 10A(1) by reason of taking any such animal if he shows that—

(a) he had a legal right to take such an animal or permission, from a person who had a right to give permission, to take such an animal; and

(b) the animal—

(i) had been disabled otherwise than by his unlawful act; and

(ii) was taken solely for the purpose of tending it and releasing it when no longer disabled.

(3) An authorised person is not guilty of an offence under section 10A(1) by reason of the killing or injuring of an animal included in Schedule 5A if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

(4) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action if—

(a) it had become apparent, before the action was taken, that it would prove necessary for the purpose mentioned in that subsection; and

(b) either—

(i) a licence under section 16 authorising the action had not been applied for as soon as reasonably practicable after that fact had become apparent; or

(ii) an application for such a licence had been determined.

(5) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action unless he notified the appropriate authority as soon as reasonably practicable after the action was taken that he had taken it.

(6) In subsection (5), “the appropriate authority” has the same meaning as in section 16(9).

(7) Nothing in section 10A makes unlawful—

(a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or

(b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.
(3) In section 26(2) (regulations, orders, notices etc.), after “5” insert “, 10A(4)”.  
(4) In the title of Schedule 5 (animals which are protected), at the end add “under section 9”.  
(5) After that Schedule, insert—

“SCHEDULE 5A  
(introduced by sections 10A and 22)  
ANIMALS WHICH ARE PROTECTED UNDER SECTION 10A IN THEIR CLOSE SEASON

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hare, mountain</td>
<td>Lepus timidus</td>
</tr>
<tr>
<td>Hare, brown</td>
<td>Lepus europaeus</td>
</tr>
</tbody>
</table>

7 Prevention of poaching: wild hares, rabbits etc.

(1) The 1981 Act is amended as follows.
(2) In the italic heading before section 9 (protection of certain wild animals), at the end add “and prevention of poaching”.
(3) After section 11DA (inserted by section 13(3)), insert—

“11E Prevention of poaching: wild hares, rabbits etc.

(1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 6A is guilty of an offence.
(2) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

11F Exceptions to s. 11E

(1) A person is not guilty of an offence under section 11E(1)—
   (a) by reason of the killing of an animal included in Schedule 6A if he had a legal right, or permission from a person who had a right to give permission, to kill such an animal; or
   (b) by reason of the taking of such an animal if he had a legal right, or permission from a person who had a right to give permission, to take such an animal.
(2) A person is not guilty of an offence under section 11E(1) by reason of the killing of an animal included in Schedule 6A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.
(3) Nothing in section 11E makes unlawful—
   (a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or
   (b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.
(4) After Schedule 6, insert—
“SCHEDULE 6A
(introduced by sections 11E and 22)

ANIMALS NOT TO BE POACHED

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hare, mountain</td>
<td>Lepus timidus</td>
</tr>
<tr>
<td>Hare, brown</td>
<td>Lepus europaeus</td>
</tr>
<tr>
<td>Rabbit</td>
<td>Oryctolagus cuniculus</td>
</tr>
</tbody>
</table>

Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

(1) The 1981 Act is amended as follows.

(2) After section 11F (inserted by section 7(3)), insert—

“11G Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully

(1) Any person who does any of the following is guilty of an offence—

(a) has in his possession or control any live or dead wild animal which has been killed or taken in contravention of section 10A or 11E, or any part of or anything derived from such an animal;

(b) sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale any such animal or any part of or anything derived from such an animal; or

(c) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells or intends to buy or sell any of those things.

(2) A person is not guilty of an offence under subsection (1) in relation to an activity mentioned in that subsection if he shows that he carried out the activity concerned with reasonable excuse.

(3) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.”.

Wild hares, rabbits etc.: licences

In section 16 of the 1981 Act (certain offences not committed if activity done in accordance with licence)—

(a) in subsection (3)—

(i) after “9(1), (2), (4) and (4A),” insert “10A(1),”;

(ii) after “11C” (inserted by section 13(4)) insert “, 11E(1),”

(b) in subsection (4)(b) after “9(5)” insert “, 11G(1),”

Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons

In section 22 of the 1981 Act (power to vary schedules and prescribe close seasons)—

(a) in subsection (1)(b), for “or 6” substitute “, 5A, 6 or 6A”,


(b) after subsection (2), insert—

“(2ZA) An order under subsection (1) adding any animal to Schedule 5A may prescribe a close season in the case of that animal for the purposes of section 10A.”.

11 Wild hares and rabbits: miscellaneous

(1) The 1981 Act is amended as follows.

(2) Before section 12 (protection of certain mammals), insert—

“12YA Relaxation of restriction on night shooting of hares and rabbits

Schedule 7, which amends certain Acts prohibiting night shooting of hares and rabbits by occupiers of land etc., has effect.”.

(3) Section 12 (protection of certain mammals) is repealed.

(4) In Schedule 7—

(a) for the title substitute “Amendment of Acts In Relation To Night Shooting of Hares and Rabbits”,

(b) in the section reference after the Schedule title for “12” substitute “12YA”.

Wild birds, hares, rabbits etc.: single witness evidence

12 Single witness evidence in certain proceedings under the 1981 Act

In section 19A of the 1981 Act (single witness evidence in Scotland as to taking or destruction of eggs)—

(a) in the section title for “as to taking or destruction of eggs” substitute “in certain proceedings”,

(b) for the words from “an” to “Act” substitute “any of the following offences”,

(c) at the end insert “—

(a) an offence under section 1(1)(a) in relation to a grouse, partridge, pheasant or ptarmigan included in Part I of Schedule 2;

(b) an offence under section 1(1)(c);

(c) an offence under section 6(1) in relation to a grouse, partridge or pheasant included in Part IA of Schedule 3;

(d) an offence under section 6(2) in relation to a grouse, partridge, pheasant or ptarmigan included in Part IIA of that Schedule;

(e) an offence under section 10A(1), 11E(1) or 11G(1)”.

Snares

13 Snares

(1) The 1981 Act is amended as follows.

(2) In section 11 (prohibition of certain methods of killing or taking wild animals)—

(a) after subsection (1), insert—
“(1A) For the purposes of subsection (1)(aa), a snare which is of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it includes—

(a) where the person who sets in position or otherwise uses the snare does so to catch any animal other than a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 13 centimetres;

(b) where the person who sets in position or otherwise uses the snare does so to catch a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 23 centimetres;

(c) a snare which is neither—

(i) staked to the ground; nor

(ii) attached to an object,

in a manner which will prevent the snare being dragged by an animal caught by it; and

(d) a snare which is set in a place where an animal caught by the snare is likely to—

(i) become fully or partially suspended; or

(ii) drown.”,

(b) subsections (3) to (3B) and (3D) are repealed.

(3) After that section, insert—

“11A Snares: training, identification numbers, tags etc.

(1) Any person who sets a snare in position must have an identification number (see also subsections (3), (4) and (7) in relation to identification numbers and training).

(2) Any person who sets in position or otherwise uses a snare must ensure—

(a) that a tag is fitted on the snare in such a manner that it is not capable of being easily removed from the snare;

(b) that there is displayed on the tag (in a manner in which it will remain readable) the identification number of the person who set the snare in position; and

(c) where the snare is intended to catch the following types of animal—

(i) brown hares or rabbits; or

(ii) foxes,

that there is also displayed on the tag (in a manner in which it will remain readable) a statement that it is intended to catch the type of animal in question.

(3) For the purposes of this section and sections 11D and 11DZA, the identification number of a person who sets a snare in position is the identification number issued to him by a chief constable.

(4) A chief constable—
(a) on receipt of an appropriate application from any person for an identification number for the purpose of setting snares in position in the chief constable’s police area; and

(b) on being satisfied that the applicant has been trained to set a snare in position and on the circumstances in which the setting of snares is an appropriate method of predator control,

must grant the application and issue the applicant with an identification number.

(5) Any person who fails to comply with subsection (1) is guilty of an offence.

(6) Any person who—

(a) has an identification number and sets in position or otherwise uses a snare; but

(b) fails to comply with subsection (2) in any respect,

is guilty of an offence.

(7) Where an identification number has been issued by a chief constable under subsection (4), the person to whom it is issued—

(a) may use it also for tags fitted on any snares which he sets in position in any other chief constable’s police area; and

(b) need not apply to any other chief constable for a separate identification number in relation to setting any such snare in position.

(8) The Scottish Ministers may by order make provision as regards—

(a) when a person has been trained to set a snare in position and on the circumstances in which the setting of snares is an appropriate method of predator control;

(b) how a chief constable is to be satisfied that an applicant for an identification number has been so trained;

(c) the manner in which a tag is to be fitted for the purposes of subsection (2)(a) (including the material from which a tag is to be made);

(d) the manner in which an identification number is to appear on a tag for the purposes of subsection (2)(b), and in which a statement is to be displayed on a tag for the purposes of subsection (2)(c);

(e) the form of and manner of making an application for an identification number;

(f) the determining by the Scottish Ministers, or by chief constables in accordance with the order, of any fee to accompany the application and the charging of any such fee;

(g) the issuing of identification numbers under subsection (4);

(h) the keeping of records of identification numbers issued, the persons to whom they are issued and the sharing of information from such records;

(i) such other matters in relation to training, tags or identification numbers (including the making of an application for, or the issuing of, an identification number) as they consider appropriate.
Part 2—Wildlife under the 1981 Act

(9) In this section—

“appropriate application” means an application made in accordance with the provisions of an order under subsection (8);

“chief constable” means a chief constable of a police force appointed under section 4(1) of the Police (Scotland) Act 1967;

“chief constable’s police area” means the police area for which the police force of which the chief constable is such officer is maintained; and “police area” is to be construed in accordance with section 50 of that Act.

11B Snares: duty to inspect etc.

(1) Any person who sets a snare in position must while it remains in position inspect it or cause it to be inspected, at least once every day at intervals of no more than 24 hours, for the following purposes—

(a) to see whether any animal is caught by the snare; and

(b) to see whether the snare is free-running.

(2) Any person who while carrying out such an inspection—

(a) finds an animal caught by the snare must, during the course of the inspection, release or remove the animal (whether it is alive or dead); and

(b) finds that the snare is not free-running must remove the snare or restore it to a state in which it is free-running.

(3) Subject to the provisions of this Part, any person who—

(a) without reasonable excuse, contravenes subsection (1); or

(b) contravenes subsection (2),

is guilty of an offence.

(4) For the purposes of this section, a snare is “free-running” if—

(a) it is not self-locking;

(b) it is not capable (whether because of rust, damage or other condition or matter) of locking; and

(c) subject only to the restriction on such movement created by the stop fitted in accordance with section 11(1A)(a) or (b), the noose of the snare is able at all times freely to become wider or tighten (and is not prevented from doing so whether because of rust, damage or other condition or matter other than the stop).

11C Snares: authorisation from landowners etc.

Subject to the provisions of this Part, any person who without reasonable excuse—

(a) while on any land has in his possession any snare without the authorisation of the owner or occupier of the land; or
(b) sets any snares in position on any land without the authorisation of the owner or occupier of the land,
is guilty of an offence.

11D  Snares: presumption arising from identification number

The identification number which appears on a tag fitted on a snares is presumed in any proceedings to be the identification number of the person who set the snares in position.

11DZA  Snares: record keeping

(1) Any person who has an identification number must keep a record of the following—

(a) the location of every snares set in position by the person which remains in position,
(b) the location of every other snares set in position by the person within the past two years,
(c) the date on which each snares mentioned in paragraph (a) or (b) was set,
(d) the date on which each snares mentioned in paragraph (b) was removed,
(e) in relation to each animal caught in a snares mentioned in paragraph (a) or (b)—
   (i) the type of animal,
   (ii) the date it was found,
(f) such other information as the Scottish Ministers may by order specify.

(2) For the purposes of subsection (1)(a) and (b), the location of a snares is to be recorded—

(a) by reference to a map, or
(b) by such other means (for example, by means of a description) capable of readily identifying the location.

(3) Any person who, without reasonable excuse, fails to comply with the duty under subsection (1) is guilty of an offence.

(4) Any person who—

(a) is requested to produce the record kept under subsection (1) to a constable, and
(b) fails to do so within 21 days of being so requested,
is guilty of an offence.

(5) Subsection (1) does not apply in relation to any snares set in position by a person before the person is issued with an identification number.
11DA Snaring: review and report to the Scottish Parliament

(1) The Scottish Ministers must carry out, or secure the carrying out by another person of, a review of the operation and effect of—

(a) section 11 and any orders made under that section (in so far as the section and the orders make provision as regards snaring);

(b) sections 11A, 11B, 11C, 11D and 11DZA and any orders made under those sections.

(2) A review must be carried out under subsection (1) no later than—

(a) 31st December 2016 (“the first review date”),

(b) the end of the period of 5 years beginning with the first review date, and

(c) the end of each subsequent period of 5 years.

(3) In carrying out a review under subsection (1), the matters that must be considered include whether in the opinion of the Ministers (or, if the review is being carried out by another person, that person) amendment of this Act or enactment of other legislation is appropriate.

(4) In carrying out a review under subsection (1), the Scottish Ministers (or, if the review is being carried out by another person, that person) must consult such persons and organisations as they consider (or, as the case may be, the other person considers) have an interest in it.

(5) The Scottish Ministers must, as soon as practicable after a review is carried out under subsection (1), lay a report of the review before the Scottish Parliament.”.

(4) In section 16(3) (certain offences not committed if activity done in accordance with licence), after “11(1), (2) and (3C)(a)” insert “, 11C”.

(5) In section 17 (false statements made for obtaining registration or licence etc.)—

(a) in the title, after “registration” insert “, identification number”,

(b) after “7(1)” insert “, an identification number under section 11A(4)”.

Non-native species etc.

14 Non-native species etc.

(1) The 1981 Act is amended as follows.

(2) In section 14 (introduction of new species etc.)—

(a) for subsections (1) to (2) substitute—

“(1) Subject to the provisions of this Part, any person who—

(a) releases, or allows to escape from captivity, any animal—

(i) to a place outwith its native range; or

(ii) of a type the Scottish Ministers, by order, specify; or

(b) otherwise causes any animal outwith the control of any person to be at a place outwith its native range,

is guilty of an offence.
Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.

Subsection (1) does not apply to the following animals where those animals are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting—

(a) common pheasant;
(b) red-legged partridge.

The Scottish Ministers may, by order, specify—

(a) other types of animals to which subsection (1)(a)(i) or (1)(b) does not apply; and
(b) types of plants to which subsection (2) does not apply.

The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—

(a) any person specified in the order;
(b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or
(c) any conduct authorised by, under or in pursuance of any such enactment.

An order under subsection (1)(a)(ii), (2B) or (2BA) may make different provision for different cases and, in particular, for—

(a) different types of animal or plant;
(b) different circumstances or purposes;
(c) different persons;
(d) different times of the year; and
(e) different areas or places.”;

After section 14ZB (codes of practice in connection with invasive non-native species: England and Wales) insert—

“14ZC  Prohibition on keeping etc. of invasive animals or plants

Subject to the provisions of this Part, any person who keeps, has in the person’s possession, or has under the person’s control—

(a) any invasive animal of a type which the Scottish Ministers, by order, specify; or
(b) any invasive plant of a type so specified,

is guilty of an offence.

An order under subsection (1) may make different provision for different cases and, in particular, for—

(a) different types of invasive animal or invasive plant;
(b) different circumstances or purposes;
(c) different persons;
(d) different times of the year; and
(e) different areas or places.

(3) Subject to subsection (4), it is a defence to a charge of committing an offence under subsection (1) to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing, the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person’s possession.

(5) The Scottish Ministers may, in an order under subsection (1), make provision for or in connection with the compensation of persons who, at the time of the coming into force of the order, may no longer keep, have in their possession or have under their control, an animal or plant.”.

(4) In section 14A (prohibition on sale etc. of certain animals or plants)—

(a) in the title, for “certain” substitute “invasive”,
(b) for subsection (1) substitute—

“(1) This section applies to—

(a) any type of invasive animal; or
(b) any type of invasive plant,

the Scottish Ministers, by order, specify.”,
(c) for subsection (3) substitute—

“(3) An order under subsection (1) may make different provision for different cases and, in particular, for—

(a) different types of invasive animal or invasive plant;
(b) different circumstances or purposes;
(c) different persons;
(d) different times of the year; and
(e) different areas or places.”.

(5) For section 14B (guidance: non-native species) substitute—

“14B Notification of presence of invasive animals or plants etc.

(1) The Scottish Ministers may, by order, make provision about the notification of the presence of—

(a) invasive animals; or
(b) invasive plants,

at any specified place outwith their native range where persons are, or become, aware of the presence of such animals or plants.
(2) An order under subsection (1) may make provision for, or in connection with—
(a) the persons (or types of persons) who must make a notification;
(b) the circumstances in which a notification must be made;
(c) the times of the year when a notification must be made;
(d) the persons to whom a notification must be made;
(e) the form and method of any notification; and
(f) the period within which any notification must be made.

(2A) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.

(3) An order under subsection (1) may make different provision for different cases and, in particular, for—
(a) different types of invasive animal or invasive plant;
(b) different circumstances or purposes;
(c) different persons;
(d) different times of the year; and
(e) different areas or places.

(4) A person who, without reasonable excuse, fails to make a notification in accordance with the requirements of an order made under subsection (1) is guilty of an offence.”.

15 Non-native species etc.: code of practice

After section 14B (notification of presence of non-native species etc.) of the 1981 Act insert—

“14C Non-native species etc.: code of practice

(1) The Scottish Ministers may make a code of practice for the purpose of providing practical guidance in respect of—
(a) the application of any of sections 14, 14ZC, 14A and 14B;
(b) the application of any order made under any of those sections;
(ba) species control agreements;
(bb) species control orders;
(c) licences granted under section 16(4)(c).

(2) A code of practice may, in particular, provide guidance on—
(za) how Scottish Natural Heritage, the Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way in which they exercise their respective functions in relation to animals or plants which are outwith their native range;
(a) which species, sub-species, varieties or races of animal or plant, or hybrids of animals or plants, are considered to be particular types of animals or plants for the purposes of—

(i) this section;

(ii) section 14, 14ZC, 14A or 14B;

(iii) any order made under any of those sections;

(iiiza) species control agreements;

(iiiia) species control orders;

(iv) the code;

(b) the native range of any type of animal or plant;

(c) the circumstances in which any type of animal is considered to be—

(i) in captivity; or

(ii) under the control or otherwise of a person at a place outwith its native range;

(d) the circumstances in which a type of plant is considered to be growing in the wild outwith its native range, and conduct that would cause any type of plant to grow in the wild;

(e) the circumstances in which a type of invasive animal or plant is considered to be kept in a person’s possession or under a person’s control;

(f) which types of animals or plants are invasive and the circumstances (if any) in which any such type of animal or plant is not considered to be invasive;

(g) best practice (where permitted) for—

(i) keeping animals of any type which are invasive or which are kept at a place from which they may not be put outwith the control of any person;

(ii) keeping plants of any type which are invasive or which are kept at a place outwith their native range;

(iiia) releasing animals of any type from captivity; and

(iii) planting, or otherwise causing to grow, any type of plant in the wild;

(h) best practice for—

(i) containing, capturing or killing animals of any type which are outwith the control of any person and which are—

(A) at a place outwith their native range; or

(B) animals of a type specified in an order made under section 14(1)(a)(ii);

(ii) containing, uprooting or destroying plants of any type which are growing in the wild outwith their native range; and
(iii) transferring animals or plants of any type which are not permitted to be kept by virtue of section 14ZC into the custody of Scottish Natural Heritage or any other person (and for keeping such animals or plants prior to the transfer);

(i) the making and content of species control agreements;

(j) the making, content of and enforcement of species control orders.

(3) The Scottish Ministers may revoke, replace or revise a code of practice.

(4A) The first code of practice, and any replacement code of practice, made under this section—

(a) requires to be laid before, and approved by resolution of, the Scottish Parliament; and

(b) comes into effect on such date after approval under paragraph (a) as is specified in the code.

(4B) Any revision to a code of practice (or revocation of a code of practice which is not being replaced) must—

(a) be laid before the Scottish Parliament; and

(b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).

(4C) The Scottish Parliament may, before any such revision or revocation comes into effect, resolve that it is not to come into effect.

(4D) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.

(5) Before making, revoking, replacing or revising a code of practice, the Scottish Ministers must consult—

(a) Scottish Natural Heritage; and

(b) any other person appearing to them to have an interest in the code.

(6) A person’s failure to comply with a provision of a code of practice—

(a) does not of itself render the person liable to proceedings of any sort; but

(b) may be taken into account in determining any question in any such proceedings.

(7) In any proceedings for an offence under section 14, 14ZC, 14A, 14B or 14K—

(a) failure to comply with a relevant provision of a code of practice may be relied upon as tending to establish liability;

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

16 Species control orders etc.

After section 14C of the 1981 Act (non-native species etc.: code of practice) (inserted by section 15) insert—
14D Power to make species control orders

(1) A relevant body may make an order (a “species control order”) in respect of premises where—

(a) it is satisfied of the presence on the premises of—

(i) an invasive animal at a place outwith its native range; or

(ii) an invasive plant at a place outwith its native range; and

(b) any of subsections (2) to (4) applies.

(2) This subsection applies where—

(a) the relevant body has offered to enter into an agreement with the owner or, as the case may be, occupier of the premises to control or eradicate—

(i) invasive animals outwith their native range; or

(ii) invasive plants outwith their native range,

on the premises (referred to in this section as a “species control agreement”);

(b) 42 days have elapsed since the date of the offer; and

(c) the owner or occupier has refused or otherwise failed to enter into the agreement.

(3) This subsection applies where—

(a) a person has entered into a species control agreement with the relevant body; and

(b) the person has failed to comply with the terms of the agreement.

(4) This subsection applies where the relevant body has failed to ascertain the name or address of any owner or occupier of the premises (having made reasonable efforts to do so) and accordingly has not been able to offer to enter into a species control agreement.

(5) Subsection (4) does not apply unless—

(a) the relevant body has given notice in accordance with subsection (6) stating that it wishes to offer to enter into a species control agreement;

(b) 48 hours have passed since the notice was given; and

(c) no owner or occupier of the premises has identified themselves to the relevant body.

(6) A notice under this subsection must be addressed to “The owners and any occupiers” of the premises (describing it) and a copy of it must be affixed to some conspicuous object on the premises (in so doing the relevant body is to be treated as having provided notice to each owner or occupier whose name and address is unknown).
14E Emergency species control orders

(1) Where a relevant body considers that the making of a species control order is urgently necessary, the relevant body may, despite section 14D(1)(b), make a species control order whether or not any of subsections (2) to (4) of section 14D apply (such an order is referred to in this Part as an “emergency species control order”).

(2) An emergency species control order expires 49 days after it is made.

14F Content of species control orders

(1) A species control order must—

(a) describe the premises to which it relates;

(b) be accompanied by a map on which the premises to which it relates are delineated;

(c) specify the type of invasive animal or plant in question;

(d) specify—

(i) any operations which are to be carried out on the premises for the purpose of controlling or eradicating the type of invasive animal or plant in question;

(ii) the person who is to carry out the operations; and

(iii) how and when the operations are to be carried out;

(e) specify any operations which must not be carried out on the premises (referred to in this Part as “excluded operations”);

(f) specify the date on which the order is to come into effect and the period for which it is to have effect; and

(g) set out the circumstances in which an appeal may be made under section 14H against either the decision to make the order or the terms of the order.

(2) A species control order—

(a) may provide for the making of payments by the relevant body making the order;

(b) other than an emergency species control order, may provide for the making of payments by the owner or occupier of the premises to which the order relates, to any person in respect of reasonable costs incurred by a person carrying out an operation under the order.

14G Notice of species control orders

(1) A relevant body making a species control order must give notice of the making of the order—

(a) to the owner and any occupier of the premises to which the order relates; and
(b) where the relevant body is a body other than the Scottish Ministers, to the Scottish Ministers.

(2) Notice must—
   (a) be in writing;
   (b) specify the relevant body’s reasons for making the order;
   (c) attach a copy of the order; and
   (d) where the order is an emergency species control order, state that fact.

### 14H Appeals in connection with species control orders

(1) Any owner or occupier of premises to which a species control order relates may appeal to the sheriff if aggrieved by—
   (a) a decision of a relevant body to make the species control order; or
   (b) the terms of such an order.

(2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the relevant body gave notice to the appellant of the decision being appealed.

(3) The sheriff may suspend any effect of an emergency species control order pending the determination of an appeal.

(4) The sheriff must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—
   (a) affirming the order in question;
   (b) directing the relevant body to amend the order in such manner as the sheriff may specify;
   (c) directing the relevant body to revoke the order; or
   (d) making such other order as the sheriff thinks fit.

(5) A decision of the sheriff on appeal is final except on a point of law.

### 14I Coming into effect of species control orders

Unless a species control order specifies a later date under section 14F(1)(f), such an order has effect from—

(a) in the case where an order is an emergency species control order, the giving of notice in accordance with section 14G;

(b) in any other case—
   (i) the expiry of the time limit for appealing against the decision to make the order; or
   (ii) where such an appeal is made, its withdrawal or final determination.
14J  Review of species control orders

(1) A relevant body which has made a species control order may, when it thinks fit, review the order prior to its expiry for the purposes of determining whether it should make an order revoking the order.

(2) If, on completion of a review, the relevant body decides that the species control order should be revoked, it may make an order to that effect.

(3) The making of an order to revoke a species control order does not prevent a relevant body subsequently making a species control order in relation to the same premises.

14K  Offences in relation to species control orders

(1) Any person who, without reasonable excuse, fails to carry out, in the manner required by a species control order, an operation which the person is required by the order to carry out is guilty of an offence.

(2) Any person who intentionally obstructs any person from carrying out an operation required to be carried out under a species control order is guilty of an offence.

(3) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, any excluded operation is guilty of an offence.

14L  Enforcement of operations under species control orders

(1) This section applies where a relevant body considers—

   (a) that any operation required to be carried out by a species control order it has made has not been carried out within the period or by the date specified in it; or

   (b) that any such operation has been carried out otherwise than in the manner required under the order.

(2) The relevant body—

   (a) may carry out the operation, or such further work as is necessary to ensure that it is carried out, in the manner required under the order;

   (b) is not required to make any payment (and may recover any payments made) in pursuance of the species control order in relation to the operation in question; and

   (c) may recover from the person whom the species control order required to carry out the operation any expenses reasonably incurred by it in doing so (less any payment which the relevant body is required to make in relation to the carrying out of the operation under the order by virtue of section 14F(2)(a)).

14M  Species control orders: powers of entry

(1) A person authorised in writing by a relevant body may enter any premises for any of the following purposes—
(a) to determine whether or not to offer to enter into a species control agreement with the owner or, as the case may be, occupier of the premises;

(b) to determine whether or not to make or revoke a species control order;

(c) to serve notice to an owner or occupier of premises in accordance with section 14D(5)(a) or 14G;

(d) to ascertain whether an offence under section 14K is being, or has been, committed in relation to an order made by the relevant body;

(e) to carry out an operation or other work in pursuance of section 14L(2)(a).

(2) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless—

(a) the entry is for a purpose mentioned in subsection (1)(a) or (b) and at least 24 hours' notice of the intended entry has been given;

(b) the entry is for a purpose mentioned in subsection (1)(c) or (d); or

(c) the entry is for a purpose mentioned in subsection (1)(e) and at least 14 days' notice of the intended entry has been given.

(3) Subsection (2) does not apply in relation to entry in connection with an emergency species control order.

(4) Nothing in this section authorises any person to break any lock barring access to premises which the person is authorised to enter.

14N Species control orders: entry by warrant etc.

(1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for a person authorised by a relevant body to enter premises for a purpose mentioned in section 14M(1) and that—

(a) admission to the premises has been refused;

(b) such refusal is reasonably apprehended;

(c) the premises are unoccupied;

(d) the occupier is temporarily absent from the premises;

(e) the giving of notice under section 14M(2) would defeat the object of the proposed entry; or

(f) the situation is one of urgency,

the sheriff or justice may grant a warrant authorising the person to enter premises (including lockfast places), if necessary using reasonable force.

(2) In the cases of a warrant under subsection (1)(a) to (d), a sheriff or justice must not grant a warrant unless satisfied that notice of the intended entry has been given in the manner described in section 14M.

(3) A warrant under this section—

(a) may be executed without notice; and
(b) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(4) Any person authorised by a warrant to enter any premises must, if required to do so by the owner or occupier or anyone acting on the owner or occupier’s behalf, show that person the warrant.

(5) Any person authorised by a warrant to use reasonable force—
   (a) must be accompanied by a constable when doing so; and
   (b) may not use force against an individual.

14O Species control orders: powers of entry: supplemental

(1) Any person who exercises a power of entry to premises in accordance with section 14M or 14N may—
   (a) be accompanied by any other person; and
   (b) take any machinery, other equipment or materials on to the premises,
   for the purpose of assisting the person in the exercise of that power.

(2) A power specified in subsection (1) which is exercisable under a warrant is subject to the terms of the warrant.

(3) Any person leaving any premises which have been entered in exercise of a power conferred by section 14M or a warrant granted under section 14N, being either unoccupied premises or premises from which the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as the person found the premises.

(4) A relevant body must compensate any person who has sustained damage by reason of—
   (a) the exercise by a person authorised by the relevant body of any powers of entry conferred on the person by section 14M or a warrant granted under section 14N; or
   (b) the failure of a person so authorised to perform the duty imposed by subsection (3),
   unless the damage is attributable to the fault of the person who sustained it.

(5) Any dispute as to a person’s entitlement to compensation, or to the amount of such compensation, is to be determined by arbitration.

14P Interpretation of sections 14 to 14O

(1) This section applies to sections 14 to 14O only.

(2) Any reference to the native range of an animal or plant, or a type of animal or plant, is a reference to the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.

(3) The native range of a hybrid animal or plant is any locality within the native range of both parents of the hybrid animal or plant.
(4) Any reference to an invasive animal or invasive plant, or type of such an animal or plant, is a reference to an animal or plant of a type which if not under the control of any person, would be likely to have a significant adverse impact on—

(a) biodiversity;

(b) other environmental interests; or

(c) social or economic interests.

(5) Any reference to premises—

(a) includes reference to land (including lockfast places and other buildings), movable structures, vehicles, vessels, aircraft and other means of transport; but

(b) does not include reference to dwellings.

(6) Any reference to a relevant body is a reference to—

(a) the Scottish Ministers;

(b) Scottish Natural Heritage;

(c) the Scottish Environment Protection Agency; or

(d) the Forestry Commissioners.

(7) Any reference to an animal includes a reference to ova, semen and milt of the animal.

(8) “Plant” includes fungi and any reference to a plant includes a reference to—

(a) bulbs, corms and rhizomes of the plant; and

(b) notwithstanding section 27(3ZA), seeds and spores of the plant.”.

17 Non-native species etc.: further provision

(1) The 1981 Act is amended as follows.

(2) In section 16 (power to grant licences), in subsection (4)(c), after “14” insert “, 14ZC”.

(3) In section 21 (penalties, forfeitures etc.)—

(a) in subsection (1) after “13” insert “, 14B”,

(b) in subsection (4)—

(i) after “14” insert “, 14ZC”,

(ii) in paragraph (a), for “six” substitute “12”,

(c) after that subsection insert—

“(4ZA) Any person guilty of an offence under section 14K is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £40,000, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”,”

(4) In section 22(1) (power to vary schedules)—
(a) in paragraph (b) the words “or Part I of Schedule 9” are repealed,
(b) in paragraph (c) the words “or Part II of Schedule 9” are repealed.

(5) In section 24 (functions of GB conservation bodies), after subsection (4) insert—
“(4A) The functions of Scottish Natural Heritage include the power to advise or assist—
(a) another relevant body exercising functions under section 14L(2)(a); and
(b) a person authorised to enter premises under section 14M exercising functions under that section.”.

(6) In section 26 (regulations, orders, notices etc.)—
(a) in subsection (1), for “this Part” substitute “a provision of this Part other than section 14D”,
(b) in subsection (4)—
(i) for “this Part” substitute “a provision of this Part other than section 14D”,
(ii) in paragraph (a), after “2(6)” insert “, 14, 14ZC, 14A or 14B”,
(iii) in paragraph (b), after “section” insert “14, 14ZC, 14A, 14B,”,
(c) after that subsection, insert—
“(4A) The Scottish Ministers may make an order under section 14, 14ZC or 14A only where they have consulted—
(a) Scottish Natural Heritage; and
(b) any other person appearing to them to have an interest in the making of the order.
(4B) Subsection (4A) does not apply where the Scottish Ministers consider it necessary to make the order urgently and without consultation.”.

(7) In section 70A (service of notices), after subsection (2) insert—
“(2A) Subsection (1)(cc) of the said section 271 shall not apply to a notice required to be served under section 14G.
(2B) Subsection (2) of the said section 271 shall not apply to a notice required to be served under section 14D(5)(a).”.

(8) Schedule 9 (animals and plants to which section 14 applies) is repealed.

18 Licences under the 1981 Act

(1) The 1981 Act is amended as follows.

(2) In section 16 (power to grant licences)—
(a) in subsection (3)—
(i) the word “or” immediately after paragraph (g) is repealed,
(ii) after paragraph (h) insert “; or
(i) for any other social, economic or environmental purpose;”,
(b) after subsection (3) insert—
“(3A) The appropriate authority shall not grant a licence under subsection (3)(i) unless it is satisfied—

(a) that undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and

(b) that there is no other satisfactory solution.”,

(c) subsection (8B) is repealed,

(d) for subsections (9) to (9ZC) substitute—

“(9) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 16A.

(9ZA) The Scottish Ministers must consult Scottish Natural Heritage before granting or modifying a licence under any of subsections (1) to (5).

(9ZB) Subsection (9ZA) does not apply in relation to licences granted under—

(a) paragraph (i), (j) or (k) of subsection (1);

(b) paragraph (f), (g) or (h) of subsection (3); or

(c) paragraph (c) of subsection (4).”,

(c) subsection (13) is repealed.

(3) After that section insert—

“16A  Delegation of licence-granting power: Scotland

(1) The Scottish Ministers may delegate their functions in relation to licences under section 16 to—

(a) Scottish Natural Heritage; or

(b) a local authority.

(1A) But a function may be delegated to a local authority only in so far as it relates to—

(a) the development of land within the meaning of section 26(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8), or

(b) the demolition of buildings within the meaning of section 55 of the Building (Scotland) Act 2003 (asp 8).

(2) A delegation may be, to any degree, general or specific and may in particular relate to—

(a) a particular type of bird, other animal or plant;

(b) a particular licence or type of licence;

(c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.

(4) A delegation to—
Wildlife and Natural Environment (Scotland) Bill
Part 2—Wildlife under the 1981 Act

(a) Scottish Natural Heritage under subsection (1)(a) is to be made by written direction;
(b) a local authority under subsection (1)(b) is to be made by order.

(5) A local authority which is delegated a function under subsection (1)(b) must, before granting or modifying a licence, consult Scottish Natural Heritage.

(6) The Scottish Ministers may modify or revoke a direction under subsection (4)(a).

(7) Where a direction or order under subsection (4) is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).”.

(4) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (4)—

(i) after paragraph (a) insert—

“(aa) in the case of an order under section 16A(4)(b), shall consult Scottish Natural Heritage;”,

(ii) in paragraph (b), after “14B,” (as inserted by section 17(6)(b)(iii)) insert “16A(4)(b) or”,

(iii) in paragraph (c) after “may,” insert “except in the case of an order under section 16A(4)(b),”,

(b) in subsection (5) after “Part” insert “, other than an order under section 16A(4)(b),”.

19 Amendment of Schedule 6 to the 1981 Act

In Schedule 6 to the 1981 Act (animals which may not be killed or taken by certain methods) the entries relating to the animals with the following common names are repealed—

Bats, Horseshoe (all species),
Bats, Typical (all species),
Cat, Wild,
Dolphin, Bottle-nosed,
Dolphin, Common,
Dormice (all species),
Marten, Pine,
Otter, Common,
Polecat,
Porpoise, Harbour (otherwise known as Common Porpoise).

Annual report on wildlife crime

19A Annual report on wildlife crime

After section 26A of the 1981 Act insert—
“26B Annual report on wildlife crime

(1) The Scottish Ministers must, after the end of each calendar year, lay before the Scottish Parliament a report on offences relating to wildlife.

(2) The report may, in particular, include—

(a) information on the incidence and prosecution of such offences during the year to which the report relates,

(b) information on research and advice relating to wildlife which the Scottish Ministers consider relevant to such offences.

(3) The report need only include information in relation to such offences relating to wildlife as the Scottish Ministers consider appropriate.

(4) For the purposes of this section, an offence relating to wildlife is an offence—

(a) under Part 1 of this Act, or

(b) under any other enactment which the Scottish Ministers consider may have an impact on wildlife.”.

19B Offence of knowingly causing or permitting certain offences under the 1981 Act

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsections (1)(b) and (2)(b)) shall be guilty of an offence.”.

(3) In section 7 (registration etc. of certain captive birds), after subsection (5), insert—

“(5A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”.

(4) In section 15A (possession of pesticides), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (1) shall be guilty of an offence.”.

Enforcement

20 Wildlife inspectors etc.

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.) subsections (9) and (10) are repealed.

(3) In section 7 (registration etc. of certain captive birds) subsections (6) and (7) are repealed.

(4) In section 19ZC (wildlife inspectors: Scotland)—

(a) in subsection (3)—
Wildlife and Natural Environment (Scotland) Bill
Part 2—Wildlife under the 1981 Act

(i) in paragraph (a), after “9(5)” insert “, 11G(1)”,

(ii) in paragraph (d) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”,

(iii) in paragraph (e) for the words from “verifying” to the end substitute “—

(i) verifying any statement or representation made, or document or information supplied, by an occupier in connection with an application for, or the holding of, a relevant registration or licence; or

(ii) ascertaining whether a condition to which a relevant registration or licence was subject to has been complied with.”,

(b) in subsection (5) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC, 14A, 14B or 14K”,

(c) in subsection (9), in the definition of “relevant registration or licence” in paragraph (b) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC or 14A”.

(5) In section 19ZD (power to take samples: Scotland)—

(a) in subsections (3) and (4) for “13(2), 14 or 14A” substitute “11G(1), 13(2), 14, 14ZC, 14A, 14B or 14K”,

(b) in subsection (10) after paragraph (b) insert—

“(c) “tissue” means any type of biological material other than blood.”.

(6) In section 24 (functions of GB conservation bodies), in subsection (4)—

(a) immediately after paragraph (a) insert “or”,

(b) the word “or” immediately after paragraph (b) is repealed, and

(c) paragraph (c) is repealed.

20A Offences by Scottish partnerships etc.

After section 69 of the 1981 Act (offences by bodies corporate etc.), insert—

“69A Offences by Scottish partnerships etc.

Where a Scottish partnership or other unincorporated association is guilty of an offence under Part 1 of this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who is concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.
Liability in relation to certain offences by others

20B Liability in relation to certain offences by others

After section 18 of the 1981 Act insert—

“18A Vicarious liability for certain offences by employee or agent

(1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—

(a) has a legal right to kill or take a wild bird on or over that land; or
(b) manages or controls the exercise of any such right.

(2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In any proceedings under subsection (2), it is a defence for B to show—

(a) that B did not know that the offence was being committed by A; and
(b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.

(5) For the purposes of subsection (1)(b), management or control of the exercise of a right to kill or take any wild bird on or over land includes in particular management or control of any of the following—

(a) the operation or activity of killing or taking any such birds on or over that land;
(b) the habitat of any such birds on that land;
(c) the presence on or over that land of predators of any such birds;
(d) the release of birds from captivity for the purpose of their being killed or taken on or over that land.

(6) In this section and section 18B, “a relevant offence” is—

(a) an offence under—

(i) section 1(1), (5) or (5B);
(ii) section 5(1)(a) or (b); or
(iii) section 15A(1); and
(b) an offence under section 18 committed in relation to any of the offences mentioned in paragraph (a).

18B Liability where securing services through another

(1) This subsection applies where, on or in relation to any land—

(a) a person (A) commits a relevant offence;
(b) at the time the offence is committed, A is providing relevant services for B; and
(c) B—
(i) has a legal right to kill or take a wild bird on or over that land; or
(ii) manages or controls the exercise of any such right.

(2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In any proceedings under subsection (2), it is a defence for B to show—
(a) that B did not know that the offence was being committed by A; and
(b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.

(5) For the purposes of subsection (1)(b), A is providing “relevant services” for B—
(a) if A manages or controls any of the following—
(i) the operation or activity of killing or taking any wild birds on or over that land;
(ii) the habitat of any such birds on that land;
(iii) the presence on or over that land of predators of any such birds;
(iv) the release of birds from captivity for the purpose of their being killed or taken on or over that land; and
(b) whether A is providing the services—
(i) by arrangement between A and B; or
(ii) by arrangement with or as employee or agent of any other person (C) who is providing or securing the provision of relevant services for B.

(6) For the purposes of subsection (5)(b)(ii), C is providing or securing the provision of relevant services for B if C manages or controls any of the things mentioned in sub-paragraphs (i) to (iv) of subsection (5)(a).”.

Modifications and repeals relating to Part 2 and game licensing

(1) The modifications in Part 1 of the schedule have effect.

(2) The enactments mentioned in the first column of Part 2 of the schedule are repealed to the extent specified in the second column.

PART 3
DEER

(1) The 1996 Act is amended as follows.

(2) In section 1 (SNH’s deer functions)—
(a) in subsection (1)(a), for “conservation,” substitute “conservation of deer native to Scotland, the”;
(b) in subsection (2)—
   (i) the word “and” immediately after paragraph (b) is repealed,
   (ii) after paragraph (c) insert—
      “(d) the interests of public safety; and
   (e) the need to manage the deer population in urban and peri-urban areas.”.

(3) In section 3 (power of SNH to facilitate exercise of functions)—
   (a) in subsection (1)—
      (i) the word “and” immediately after paragraph (a) is repealed,
      (ii) after paragraph (b) insert “; and
   (c) to assist any person or organisation in reaching agreements with third parties,”;
   (b) after subsection (2) insert—
      “(3) A public body or office-holder issued guidance or advice under subsection (1)(a) must have regard to such guidance or advice in exercising any functions to which the guidance relates.”.

(4) In section 4(1) (appointment of panels), the words “, not exceeding nine,” are repealed.

(5) In section 18(2) (taking or killing at night), for paragraph (a) substitute—
      “(a) the taking or killing is necessary—
         (i) to prevent damage to crops, pasture, human or animal foodstuffs, or to woodland; or
         (ii) in the interests of public safety; and”.

23 Deer management code of practice

25 (1) After section 5 of the 1996 Act insert—

   “Code of practice on deer management

5A Code of practice on deer management

   (1) SNH must draw up a code of practice for the purpose of providing practical guidance in respect of deer management.

   (2) The code of practice may, in particular—
      (a) recommend practice for sustainable deer management;
      (b) make provision about collaboration in deer management;
      (c) set out examples of circumstances in which SNH may seek to secure a control agreement or make a control scheme;
      (d) make different provision for different cases and, in particular, for different circumstances, different times of the year or different areas.

   (2A) SNH must from time to time review the code of practice.

   (3) SNH may replace or revise the code of practice.
(4) Before drawing up, replacing or revising the code, SNH must consult any person appearing to them to have an interest in the code.

(5) SNH must submit a proposed code of practice (or a proposed replacement or revision) to the Scottish Ministers and, on receiving it, the Scottish Ministers may—

(a) approve it, with or without modifications; or

(b) reject it.

(6) Where the Scottish Ministers reject a proposed code of practice (or a proposed replacement or revision) under subsection (5)(b) above they may either instruct SNH to submit a new code (or replacement or revision) or they may substitute a new code (or replacement or revision) of their own devising.

(7A) The first code of practice, and any replacement code of practice—

(a) must be laid before, and approved by resolution of, the Scottish Parliament; and

(b) comes into effect on such date after approval under paragraph (a) as is specified in the code.

(7B) Any revision to a code of practice must—

(a) be laid before the Scottish Parliament; and

(b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).

(7C) The Scottish Parliament may, before such revision comes into effect, resolve that it is not to come into effect.

(7D) The Scottish Ministers must publish a code of practice (or any replacement or revision) no later than the day before the code (or replacement or revision) is to come into effect.

(9) SNH must—

(a) monitor compliance with a code of practice drawn up under this section; and

(b) have regard to such a code in exercising its functions under this Act.”.

(2) In section 45(1) (interpretation) of the 1996 Act, after the definition of “animal foodstuffs” insert—

““code of practice on deer management” means the code of practice currently in operation in pursuance of section 5A of this Act;”.

24 Control agreements and control schemes etc.

(1) The 1996 Act is amended as follows.

(2) In section 7 (control agreements)—

(a) in subsection (1)—

(i) after “SNH” insert “, having had regard to the code of practice on deer management,”,

(ii) the word “deer”, where first occurring, is repealed,
(iii) in paragraph (a)—
   
   (A) at the beginning insert “deer or steps taken or not taken for the purposes of deer management”,
   
   (B) in sub-paragraph (i), after “foodstuffs,” insert “to the welfare of deer”,
   
   (C) the word “or” immediately after sub-paragraph (i) is repealed,
   
   (D) after that sub-paragraph insert—

   “(ia) damage to public interests of a social, economic or environmental nature; or”,

   (iv) in paragraph (b), at the beginning insert “deer”,

   (v) for the words “the deer in that locality should be reduced in number” substitute “or for the remedying of such damage, measures require to be taken in relation to the management of deer”,

   (vi) the words “for that reduction in number” are repealed,

   (b) in subsection (3) after “SNH” insert “, having had regard to the code of practice on deer management,”,

   (c) in subsection (4)—

   (i) after “After” insert “it has given notice to such owners and occupiers of land as it considers to be substantially interested that”,

   (ii) for the words from first “such” to “interested” substitute “those owners or occupiers”,

   (d) in subsection (5)—

   (i) the word “and” immediately after paragraph (d) is repealed,

   (ii) after paragraph (e) insert “; and

   (f) set out measures, or steps towards taking such measures, which the owners or occupiers are to take during each 12 month period for which the agreement has effect.”,

   (e) after subsection (6) insert—

   “(7) SNH must, on at least an annual basis, review a control agreement for the purpose of assessing compliance with its provisions.”.

(3) In section 8 (control schemes)—

   (a) for subsection (1) substitute—

   “(A1) This subsection applies where SNH has given notice under subsection (4) of section 7 of this Act and—

   (a) either—

   (i) SNH is satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out; or

   (ii) 6 months have elapsed since SNH gave the notice and no agreement has been reached on the matters mentioned in that subsection; and

   (b) SNH continues to have the view that required it to consult under that subsection.
Where subsection (A1) above applies and SNH, having had regard to the code of practice on deer management, is satisfied that action is necessary for the purposes mentioned in subsection (1) or, as the case may be, subsection (3) of section 7 of this Act, it shall make a scheme (a “control scheme”) for the carrying out of such measures as it considers necessary for those purposes.

(b) in subsection (2)—

(i) for “Subsection (1) above does” substitute “Subsections (A1) and (1) above do”,

(ii) at the end insert “(except where a purpose of the control agreement is to remedy damage caused, directly or indirectly, by deer or by steps taken or not taken for the purposes of deer management).”

(c) subsection (5) is repealed, and

(d) after subsection (7) insert—

“(7A) Where any control scheme has been confirmed, SNH must, on at least an annual basis, review it for the purpose of assessing compliance with its provisions.”.

(4) In section 10 (emergency measures)—

(a) in sub-paragraph (i) of subsection (1)(a) the word “serious” is repealed,

(b) after that sub-paragraph insert—

“(ia) are causing damage to their own welfare or the welfare of other deer;”.

(5) In section 11 (application of section 10 to natural heritage), the word “serious” is repealed.

(6) In Schedule 2 (provisions as to control schemes)—

(a) in paragraph 1(b)—

(i) for the words from “two” to “situated” substitute “such manner as SNH thinks fit”,

(ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,

(b) in paragraph 3, for the words from “shall” to “may” substitute “—

(a) must consider the objection, and

(b) may”,

(c) in paragraph 4—

(i) the word “either” where it first occurs is repealed,

(ii) the words from “; or” to the end are repealed,

(d) in paragraph 6(b)—

(i) for the words from “two” to “situated” substitute “such manner as the Scottish Ministers think fit”,

(ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,

(e) in paragraph 8, for the words from “shall” to “may” where it second occurs substitute “—
(a) must consider the objection, and
(b) may”,
(f) in paragraph 9—
(i) the word “either” where it first occurs is repealed,
(ii) the words from “; or” to the end are repealed,
(g) paragraph 11 is repealed,
(h) in paragraph 12(b)—
(i) for the words from “the” where it first occurs to “situated” substitute “such manner as the Scottish Ministers think fit”;
(ii) in sub-sub-paragraph (ii), the words “within the district” are repealed,
(i) in paragraph 13—
(ii) for paragraphs (i) and (ii) substitute—
(a) a decision of the Scottish Ministers to—
(i) confirm a control scheme,
(ii) make a scheme varying a control scheme, or
(iii) revoke a control scheme, or
(b) the terms or conditions of such a scheme,
may appeal to the Scottish Land Court.
(3) An appeal under sub-paragraph (2) must be lodged not later than 28 days after the date of publication of the notice referred to in paragraph 12(b).
(4) The Scottish Land Court must determine an appeal under sub-paragraph (2) on the merits rather than by way of review and may do so by—
(a) affirming the control scheme,
(b) directing the Scottish Ministers to revoke the scheme,
(c) making such other order as it thinks fit.”.

25 Deer: close seasons etc.

(1) The 1996 Act is amended as follows.
(2) In section 5 (close season authorisations)—
(a) in subsection (6)—
(i) the words from the beginning to “and” where it first occurs are repealed,
(ii) for paragraphs (a) and (b) substitute—
“(a) the taking or killing is necessary—
(i) to prevent damage to any crops, pasture or human or animal foodstuffs on any agricultural land which forms part of that land; or
(ii) to prevent damage to any enclosed woodland which forms part of that land; or

(b) the taking or killing is necessary—

(i) to prevent damage to any unenclosed woodland which forms part of that land; or

(ii) to prevent damage, whether directly or indirectly, to the natural heritage generally; or

(iii) in the interests of public safety,

and no other means of control which might reasonably be adopted in the circumstances would be adequate.”,

(b) after subsection (7), add—

“(8) An authorisation under subsection (6) or (7) above—

(a) may be, to any degree, general or specific (including as regards the land in relation to which it is granted);

(b) may be granted to a particular person or to a category of persons.”.

(3) In section 26 (right of occupier in respect of deer causing serious damage)—

(za) in the title, the word “serious” is repealed,

(a) in subsection (1)—

(i) the words from “Notwithstanding” to “Act,” are repealed,

(ii) the word “serious” is repealed,

(b) after that subsection insert—

“(1A) Subsection (1) above does not apply during any period fixed by order under section 5(1) of this Act in relation to the sex and species of the deer concerned.”.

(4) In section 37 (restrictions on granting of certain authorisations)—

(a) in subsection (1), at the beginning insert “Except as mentioned in subsection (1A) below,”,

(b) after that subsection, insert—

“(1A) Subsection (1) above does not apply to an authorisation under section 5(6) of this Act to any of the following persons to take or kill, for the purpose of preventing any damage mentioned in section 5(6)(a), any deer found on land falling within section 26(1)(a) or (b) of this Act (“section 26 land”)—

(a) the occupier of the section 26 land; or

(b) if authorised by the occupier—

(i) the owner of the section 26 land;

(ii) an employee of the owner; or

(iii) an employee of the occupier, or any other person normally resident on, the section 26 land.”.
26  Register of persons competent to shoot deer etc.

(1) The 1996 Act is amended as follows.

(2) Before section 17, insert the following italic heading—

“Unlawful killing, taking and injuring of deer”.

(3) In section 17 (unlawful killing, taking and injuring of deer), subsection (4) is repealed.

(4) After that section, insert—

“Register of persons competent to shoot deer

17A  Register of persons competent to shoot deer

(1) The Scottish Ministers may by regulations—

(a) make provision for the establishment and operation of a register of persons competent to shoot deer in Scotland;

(b) prohibit any person from shooting deer unless the person is—

(i) registered; or

(ii) supervised by a registered person;

(c) provide that being a registered person is sufficient to meet the requirements as to fitness and competence under sections 26(2)(d) and 37(1);

(d) require registered persons or owners or occupiers of land to submit cull returns to SNH.

(2) Regulations under subsection (1) above—

(a) may make such supplementary, incidental or consequential provision as the Scottish Ministers think fit and may, in particular, make provision (or allow SNH to make provision) in relation to—

(i) who is to keep and maintain the register;

(ii) applications for registration (or for amendment of, or removal from, the register);

(iii) the determination of applications for registration (including the criteria to be used to determine whether a person is competent to shoot deer);

(iv) the imposition of conditions on the granting of an application (including conditions about compliance with any requirement for a registered person to submit a cull return);

(v) the amendment of the register;

(vi) the removal of a person from the register (including by revocation of registration);

(vii) the charging of fees in connection with registration;

(viii) appeals against decisions to—

(A) refuse to register a person;

(B) impose conditions on the granting of an application;

(C) remove a person from the register;
Wildlife and Natural Environment (Scotland) Bill
Part 3—Deer

(ix) circumstances in which a person shooting deer is to be regarded as being, or not being, supervised by a registered person;

(x) the information to be included in cull returns;

(xi) the periods in respect of, and within, which cull returns are to be submitted;

(xii) the form and manner in which cull returns are to be submitted;

(xiii) the repeal of section 40; and

(xiv) consequential modification of any of sections 5, 16, 18, 26 or 37 of, or Schedule 3 to, this Act; and

(b) may make different provision for different purposes.

(2A) Before making regulations under subsection (1) above, the Scottish Ministers (or a person nominated by them) must consult such persons and organisations as they consider (or, as the case may be, the nominated person considers) have an interest in the regulations.

(3) Any person who shoots a deer on any land in contravention of regulations made under subsection (1)(b) above is guilty of an offence.

(4) Subsection (3) above does not apply where a person shoots a deer for the purpose mentioned in section 25 of this Act.

(5) Any person who—

(a) fails without reasonable cause to submit a cull return in accordance with regulations made under subsection (1)(d) above; or

(b) knowingly or recklessly provides any information in a cull return so submitted which is, in a material particular, false or misleading,

is guilty of an offence.

(6) In this section, “cull return”—

(a) when required to be submitted by a registered person, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been killed; and

(b) when required to be submitted by an owner or occupier of land, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been taken or killed on the land.

17B Review of competence etc. by SNH

(1) SNH must carry out a review of the following matters if the power in section 17A(1) is not exercised by 1st April 2014—

(a) levels of competence among persons who shoot deer in Scotland;

(b) the effect of such levels of competence on deer welfare.

(2) In any such review, the matters SNH must consider include—

(a) the extent to which such persons have been trained to shoot deer and the availability and nature of such training;
(b) any available evidence as regards any effect of the absence of such training, or the nature of such training, on the welfare of deer which have been shot.

(3) If SNH carries out a review, it must—

(a) when doing so consult such persons and organisations as it considers have an interest in the review; and

(b) publish a report of the review.”.

(5) Before section 18, insert the following italic heading—

“Other offences and attempts to commit offences”.

(6) In section 30 (power to convict of alternative offence), after “17” insert “, 17A(3)”.

(7) In section 31(4) (forfeiture of deer), after “17(1), (2) or (3)” insert “, 17A(3)”.

(8) In section 45(1) (interpretation)—

(a) after the definition of “red deer” insert—

““registered person” means a person registered in accordance with regulations under section 17A(1);”,

(b) after the definition of “roe deer” insert—

““shoot” means discharge a firearm of a class prescribed in an order under section 21(1) of this Act; and “shooting” is to be construed accordingly;”.

(9) In Schedule 3 (penalties), after the entry for section 17(3) insert—

<table>
<thead>
<tr>
<th>“17A(3)”</th>
<th>Shooting deer when not registered or supervised</th>
<th>a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or 3 months imprisonment or both</th>
</tr>
</thead>
<tbody>
<tr>
<td>17A(5)</td>
<td>Failure to submit cull return or making false or misleading cull return</td>
<td>a fine of level 3 on the standard scale or 3 months imprisonment or both</td>
</tr>
</tbody>
</table>

26A Action intended to prevent suffering

(1) The 1996 Act is amended as follows.

(2) In section 25 (action intended to prevent suffering)—

(a) before paragraph (a), insert—

“(za) a deer which is starving and which has no reasonable chance of recovering;”,

(b) in paragraph (b), the word “by” is repealed.

26B Offences by bodies corporate, Scottish partnerships etc. under the 1996 Act

(1) The 1996 Act is amended as follows.

(2) In section 29 (offences by bodies corporate)—

(a) the existing text becomes subsection (1),
(b) after that subsection, insert—

“(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.

(3) After that section, insert—

“29A Offences by Scottish partnerships etc.

Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who was concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

PART 4

OTHER WILDLIFE ETC.

Protection of badgers

(1) The 1992 Act is amended as follows.

(2) In section 1 (taking, killing or injuring badgers) after subsection (5) add—

“(6) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) or (3) above.”.

(3) In section 2 (cruelty) after subsection (2) add—

“(3) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(4) In section 4 (selling and possession of live badgers)—

(a) the existing text becomes subsection (1),

(b) after that subsection add—

“(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(5) In section 5 (marking and ringing)—

(a) the existing text becomes subsection (1),
Wildlife and Natural Environment (Scotland) Bill

Part 4—Other wildlife etc.

(b) after that subsection add—

“(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(6) In section 10 (licences)—

(a) in subsection (1) for “conservation body” substitute “authority”,

(b) in subsection (2)—

(i) the words from the beginning to the second “licence” are repealed,

(ii) paragraphs (a) to (d) become paragraphs (g) to (j) of subsection (1),

(c) in subsection (3)—

(i) the words from the beginning to the second “licence” are repealed,

(ii) the remaining words becomes paragraph (k) of subsection (1),

(d) for subsection (4) substitute—

“(4) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 10A below.”.

(e) subsection (5) is repealed,

(f) for subsection (6) substitute—

“(6) The Scottish Ministers must consult Scottish Natural Heritage before granting a licence under subsection (1) above.”.

(g) subsection (7) is repealed,

(h) in subsection (8), after the word “be” insert “modified or”,

(i) in subsection (10), for “subsection (2)(a)” substitute “subsection (1)(g)”.

(7) After that section insert—

“10A Delegation of licence-granting power: Scotland

(1) The Scottish Ministers may delegate their functions in relation to licences under section 10 above to—

(a) Scottish Natural Heritage; or

(b) a local authority (but only in relation to the purpose mentioned in section 10(1)(d)).

(2) A delegation may be, to any degree, general or specific and may in particular relate to—

(a) a specific badger or badger sett;

(b) a particular licence or type of licence;

(c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.

(4) A delegation to—
(a) Scottish Natural Heritage under subsection (1)(a) above is to be made by
written direction;
(b) a local authority under subsection (1)(b) above is to be made by order
made by statutory instrument.

(5) A local authority which is delegated a function under subsection (1)(b) above
must, before granting or modifying a licence, consult Scottish Natural
Heritage.

(6) The Scottish Ministers may modify or revoke a direction under subsection
(4)(a) above.

(7) Where a direction or order under subsection (4) above is revoked, any existing
licence granted under the direction or order continues to have effect (unless the
revoking direction or order provides otherwise).

(8) A statutory instrument containing an order under subsection (4)(b) above is
subject to annulment in pursuance of a resolution of the Scottish Parliament.

(9) Before making an order under subsection (4)(b) above, the Scottish Ministers
must consult—

(a) the local authority to which functions are to be delegated under the order;
(b) Scottish Natural Heritage; and
(c) any other persons the Scottish Ministers consider are affected by the
making of the order.

(10) The Scottish Ministers must give consideration to any proposals for the making
by them of an order under subsection (4)(b) above with respect to any area
which may be submitted to them by a local authority whose area includes that
area.”.

(8) In section 11A (attempts), in subsection (3)—

(a) after “above” insert “or section 1(6) above”,
(b) after “consisting of” insert “or involving”,
(c) for “the accused” substitute “a person”.

(9) In section 12 (penalties and forfeiture)—

(a) in subsection (1)—

(i) for the words from the first “section” to the third “above” substitute “a
 provision mentioned in subsection (1ZA) below”,
(ii) after “section 5” insert “(1) or (2))”,

(b) after that subsection insert—

“(1ZA) The provisions referred to in subsection (1) above are—

(a) section 2(1)(d) above or section 2(3) above (in relation to an act made
unlawful by section 2(1)(d) above); and
(b) section 3(1)(a) to (c) or (e) above or section 3(2) (in relation to an act
made unlawful under section 3(1)(a) to (c) or (e) above).”,

(c) in subsection (1A)—
(i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1B) below”, and

(ii) in paragraph (a) —

(A) for “six” substitute “12”, and

(B) for “level 5 on the standard scale” substitute “the statutory maximum”, and

(d) after that subsection insert —

“(1B) The provisions referred in subsection (1A) above are —

(a) section 1(1), (3) and (6);

(b) section 2(1)(a) to (c) above and section 2(3) above (in relation to an act made unlawful by section 2(1)(a) to (c) above);

(c) section 3(1)(d) above or section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above); and

(d) section 4(1) and (2) above.”.

(10) In section 12A (time limit for bringing summary proceedings), in subsection (1), for “section 1(1), 2, 3, 5” substitute “any of sections 1 to 5”.

(11) In section 13 (powers of court where dog used or present at commission of offence) after “1(1)” insert “or (6) (in relation to an act made unlawful by section 1(1))”.

Muirburn

(1) The 1946 Act is amended as follows.

(2) For section 23 (prohibition of muirburn at certain times) substitute —

“23 Muirburn season

(1) A person may make muirburn on land only during the muirburn season.

(2) The muirburn season consists of —

(a) the standard muirburn season; and

(b) the extended muirburn season.

(3) The standard muirburn season is the period of time from 1 October in any year to 15 April in the following year.

(4) The extended muirburn season is the period of time from 16 April to 30 April in any year.

(5) A person may make muirburn in the extended muirburn season only if the person is —

(a) the proprietor of the land; or

(b) authorised in writing by, or on behalf of, the proprietor of the land.”.

(3) In section 23A (power to vary permitted times for making muirburn) —
(a) in subsection (1), for the words from “subsection (1)” to the end substitute “subsection (3) or (4) of that section such other dates as they consider appropriate so as to extend or reduce the standard muirburn season or extended muirburn season”,

(b) after that subsection insert—

“(1A) An order under subsection (1) may make different provision for different purposes and, in particular, for—

(a) different land (for example, for land at different altitudes);

(b) standard muirburn seasons or extended muirburn seasons in different years.”,

c) in subsection (2)—

(i) the words “in relation to climate change” become paragraph (a),

(ii) after that paragraph insert—

“(b) for the purposes of conserving, restoring, enhancing or managing the natural environment; or

(c) for the purposes of public safety.”,

d) in subsection (3) from the word “immediately” to the end substitute “on the coming into force of section 28 of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 00).”.

(4) After that section insert—

“23AA Extension of muirburn season under section 23A(1): further regulation

(1) Where the standard muirburn season or the extended muirburn season is extended for any land by an order under section 23A(1), the Scottish Ministers may by order make provision regulating the making of muirburn during the additional period.

(2) Any provision so made applies in addition to the regulation by the provisions of this Act of the making of muirburn during the standard muirburn season or the extended muirburn season.

(3) An order under subsection (1) may make provision—

(a) as to the giving of notice;

(b) as to the making, to the Scottish Ministers or a specified person, of representations or objections;

(c) as to the consideration by the Ministers or a specified person of any such representations or objections;

(d) requiring the approval of the Ministers or a specified person for the making of muirburn;

(e) as to such approval being able to be subject to conditions;

(f) as to the making of muirburn being subject to conditions specified in the order;

(g) creating offences;

(h) providing that any offence created is triable only summarily;
(i) providing for any offence created to be punishable by a fine not exceeding level 3 on the standard scale;

(j) as to such other regulation of the making of muirburn as the Scottish Ministers consider appropriate.

(4) Conditions specified in pursuance of subsection (3)(f) may refer to matters specified elsewhere.

(5) In—

(a) subsection (1), “the additional period” means the period for which the standard muirburn season or, as the case may be, the extended muirburn season is extended for the time being for any land by an order under section 23A(1);

(b) subsection (3), “specified person” means a person specified in the order.

(6) The power conferred by subsection (1) is exercisable by statutory instrument.

(7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

23B Muirburn licences

(1) The Scottish Ministers may grant a licence to a person to make muirburn (a “muirburn licence”) during any period, other than the muirburn season, specified in the licence.

(2) A muirburn licence may, in particular, make provision for—

(a) the land on which the muirburn may be made; and

(b) the persons or types of persons who may make the muirburn.

(3) A muirburn licence may—

(a) relate to only part of the land to which the application relates;

(b) be subject to any specified conditions (including conditions about the giving of notice).

(4) A muirburn licence may be granted only for the purposes of—

(a) conserving, restoring, enhancing or managing the natural environment;

(b) research; or

(c) public safety.

(5) The Scottish Ministers may modify or revoke a muirburn licence.

(6) The Scottish Ministers may delegate their power to grant, modify and revoke muirburn licences to Scottish Natural Heritage.

(7) A delegation—

(a) must be made by written direction; and

(b) may be, to any degree, general or specific and may in particular relate to—

(i) a particular licence or type of licence;

(ii) a particular area.
(8) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type which were granted before the delegation.

(9) The Scottish Ministers may modify or revoke a direction under subsection (7).

(10) Where a direction is revoked, any existing licence granted under the direction continues to have effect (unless the revoking direction provides otherwise).

(11) The Scottish Ministers may, by regulations, make further provision for, or in connection with, muirburn licences.

(12) The power conferred by subsection (11) must be exercised by statutory instrument.

(13) A statutory instrument containing regulations under subsection (11) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(4A) In section 24 (right of tenant to make muirburn notwithstanding terms of lease), after subsection (2) insert—

“(2A) Notice by a tenant to a proprietor of land under subsection (2)—

(a) must be in writing; and

(b) may be given to any person purporting to be authorised by the proprietor to receive the notice.”.

(5) In section 25 (regulation of muirburn)—

(a) before paragraph (a) insert—

“(za) makes muirburn or causes or procures the making of muirburn on any land otherwise than—

(i) during the muirburn season in accordance with section 23; or

(ii) in accordance with a licence granted under section 23B;”,

(b) paragraph (c) is repealed.

(6) In section 26 (notices as to muirburn)—

(a) for the title, substitute “Notice as to muirburn: general requirement”,

(b) for subsections (1) and (2) substitute—

“(1A) A person who intends to make muirburn during the muirburn season must give notice in writing under this section to—

(a) the proprietor of the proposed muirburn site (if different from the person making the muirburn); and

(b) any occupier of land situated within 1 kilometre of the proposed muirburn site.

(An order under section 23AA(1) may make provision as to other notice to be given in relation to certain periods; and section 24(2) makes provision as to other notice to be given by a tenant.)

(3) Notice need not be given to a person (“A”) under this section if A has given notice in writing to the person intending to make muirburn that A wishes not to be notified of any intention to make muirburn.
(4) Where there are 10 or more occupiers of land situated within 1 kilometre of the proposed muirburn site, the person making muirburn may, instead of giving notice under this section to each occupier separately in accordance with section 26A, notify those persons collectively by placing a notice in at least one newspaper circulating in the area which includes the proposed muirburn site.

(5) Notice under this section must—

(a) be given—

(i) after the expiry of the previous muirburn season; and
(ii) not less than 7 days before the muirburn is made;

(b) specify the land on which the muirburn is intended to be made;

(c) specify that the person being notified may, before the muirburn is made, require further information in relation to—

(i) the dates on or between which the muirburn is intended to be made;

(ii) the places at which the muirburn is intended to be made; and

(iii) the approximate extent of the proposed muirburn.

(7) Where either the proprietor of the land or an occupier of land situated within 1 kilometre of the proposed muirburn site requests any of the further information mentioned in subsection (5)(c), the person intending to make the muirburn must make reasonable efforts to comply with the request not later than the end of the day before the muirburn is made.

(9) Any notice required to be given to proprietors of land under this section may be given to any person purporting to be authorised by the proprietor to receive the notice.

(10) Any person who fails to comply with the requirements of this section is guilty of an offence.”.

(7) After that section insert—

“26A Giving of muirburn notices under section 24(2) or 26

(1) Subject to the provisions of this section, any written notice required to be given to a person under section 24(2) or 26 may be given—

(a) by delivering it to the person personally;

(b) by leaving it at, or posting it to, the usual or last known address of the person in the United Kingdom, or in a case where an address has been given by the person, at or to that address;

(c) where the person is—

(i) a body corporate, by leaving it at or posting it to the address of the registered or principal office of the body in the United Kingdom;

(ii) a partnership, by leaving it at or posting it to the principal office of the partnership in the United Kingdom;

(d) to the person by electronic communication of any particular form if—

(i) the person has agreed to be notified in that form;
(ii) the person has supplied the person who is to send the notice with the person’s electronic address or number; and

(iii) the electronic communication is capable of being accessed and understood by the person.

(2) Where, after reasonable inquiry, the identity of an occupier cannot be ascertained for the purposes of giving notice under section 26, notice may be given by—

(a) addressing the notice to “Any occupiers of the land” (describing it); and

(b) affixing it to some conspicuous object on the land.

(3) Unless the contrary is shown, a notice given in accordance with subsection (1)(d) is taken to have been received 48 hours after it is given.”.

(8) In section 27 (offences as to muirburn)—

(a) in the title, for “Offences” substitute “Penalties etc. for offences”,

(b) for the words “twenty-three or section twenty-five” substitute “25 or 26(10)”.  

28A Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act

After section 34 of the 1946 Act, insert—

“34A Offences by bodies corporate etc.

(1) Where an offence under this Act has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body; or

(b) a person who purported to act in any such capacity,

he (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who was concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”. 
PART 4A

BIODIVERSITY

28B Reports on compliance with biodiversity duty

After section 2 of the 2004 Act insert—

“2A Reports on compliance with biodiversity duty

(1) A public body must prepare and publish a biodiversity report within 3 years of—

(a) the base date,

(b) the date on which a report was last published by the body under this subsection.

(2) A biodiversity report is a report on the actions taken by the body in pursuance of its duty under section 1 during the period to which the report relates.

(3) The base date is—

(a) the date on which section 28B of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 00) comes into force, or

(b) where the body is established after that date, the date on which the body is established.

(4) A report under this section—

(a) is to be prepared in such form and published in such manner as the body thinks fit,

(b) may be incorporated within another report prepared or published by the body.”.

PART 5

SITES OF SPECIAL SCIENTIFIC INTEREST

29 Combining sites of special scientific interest

(1) The 2004 Act is amended as follows.

(2) After section 5 insert—

“5A Combining sites of special scientific interest

(1) Where SNH considers that two or more sites of special scientific interest should be combined, it may notify that fact to the persons who are the interested parties in relation to the sites in question.

(2) Subsections (4) to (7) of section 3 apply in relation to a notification under subsection (1) as they apply to a notification under section 3(1), but as if—

(a) references in section 3(4)(a)(ii) and (iii) to a natural feature were references to the natural features by reason of which SNH considers the original sites to be of special interest, and

(b) section 3(4) required the notification to also be accompanied by a revised site management statement prepared in relation to the combined site of special scientific interest.
Accordingly, from the date when notification is given under subsection (1)—

(a) that notification is an “SSSI notification” for the purposes of this Act,

(b) the combined site of special scientific interest is a single “site of special scientific interest” for the purposes of this Act, and

(c) the original SSSI notifications cease to have effect.

SNH must give public notice describing the general effect of an SSSI notification given by virtue of subsection (1) in such manner (including on the internet or by other electronic means) as SNH thinks fit.

Nothing in this section allows SNH to—

(a) include any land in a combined site of special scientific interest which was not included in at least one of the original sites of special scientific interest,

(b) add to the operations requiring consent specified in the original SSSI notifications (otherwise than by extending the original area to which any such operation requiring consent related so as to include any land in the combined site of special scientific interest).”.

In section 48(11)(a) (notices etc.), after “5(1)” insert “, 5A(1)”.

In section 58(1) (interpretation)—

(a) in the definition of “site of special scientific interest”, after “3(6)” insert “(read, where necessary, together with section 5A(3)(b))”,

(b) in the definition of “SSSI notification”, after “3(5)” insert “(read, where necessary, together with section 5A(3)(a))”.

Denotification of SSSIs: damage caused by authorised operations

In section 9 (denotification of SSSIs) of the 2004 Act, after subsection (4) insert—

“(5) This subsection applies where—

(a) a public body or office-holder (after consulting SNH in accordance with any enactment) permits the carrying out of an operation,

(b) the carrying out of the operation in pursuance of that permission damages a natural feature specified in an SSSI notification,

(c) SNH, because of that damage, gives notification under subsection (1) of its intention to revoke or modify the SSSI notification, and

(d) the explanation given by virtue of subsection (4)(a)(ii) in the document accompanying the notification under subsection (1)—

(i) states that SNH considers that all or part of the site of special scientific interest is no longer of special interest by reason of the damage caused by the carrying out of the permitted operation, and

(ii) explains the effect of subsection (6)(b).

(6) Where subsection (5) applies—

(a) section 11, and paragraphs 3 to 15 of schedule 1, do not apply in relation to the notification under subsection (1), and
(b) the relevant SSSI notification is revoked or, as the case may be, modified when the notification is given under subsection (1).”.

31 SSSIs: operations requiring consent

(1) The 2004 Act is amended as follows.

(2) In section 13(1) (SNH consent required for operations carried out by public bodies), after “out” insert “, or cause or permit to be carried out on land owned or occupied by the public body or office-holder,”.

(3) In section 14 (SNH consent not required for certain operations)—

(a) in subsection (1)—

(i) after paragraph (c) insert—

“(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,

(ii) the word “or” immediately following paragraph (d) is repealed,

(iii) after paragraph (e) insert “, or

(f) if that operation is of a type described by order made by the Scottish Ministers.”,

(b) in subsection (2), after second “out” insert “or cause or permit to be carried out out”,

(c) in subsection (3)—

(i) in paragraph (a)(i), for “proposes to commence the operation” substitute “is proposed that the operation be commenced”,

(ii) in paragraph (b), after “way” insert “, or causes or permits the operation to be carried out only in such a way,”,

(iii) in paragraph (c), after “operation” insert “or, as the case may be, in causing or permitting the carrying out of the operation,”,

(d) in subsection (4)(a), for “an operation for” substitute “or causes or permits the carrying out of an operation in circumstances in”.

(4) In section 17 (SNH consent not required for certain operations)—

(a) in subsection (1)—

(i) after paragraph (c) insert—

“(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,

(ii) the word “or” immediately following paragraph (d) is repealed,

(iii) after paragraph (e) insert “, or

(f) if that operation is of a type described by order made by the Scottish Ministers.”,

(b) in subsection (4), for the words from “owner” to “functions” substitute “operation in respect of which section 13 applies.”.
32  SSSI offences: civil enforcement

(1) The 2004 Act is amended as follows—

(a) after section 20 insert—

“Restoration notices

20A Restoration notices

(1) SNH may propose to give a restoration notice where it is satisfied that a person (the “responsible person”)—

(a) has committed an offence under section 19(1), or

(b) has committed an offence under section 19(3) in respect of an operation which has damaged a natural feature specified in an SSSI notification.

(2) A restoration notice is a notice which requires the responsible person to carry out such operations as may be specified in the notice, within such periods from the notice taking effect as may be so specified, for the purpose of restoring, so far as is reasonably practicable, the damaged natural feature to its former condition.

(3) A proposal under subsection (1) must be made to the responsible person and must—

(a) explain why SNH proposes to give the restoration notice,

(b) be accompanied by a draft of the proposed restoration notice,

(c) explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question,

(d) explain that the responsible person has the right to make representations to SNH about the proposal within the period of 28 days from the date on which the proposal is made,

(e) specify the manner in which such representations must be made.

(4) SNH may, after the period for making representations about a proposal has expired, give the restoration notice (with or without modifications) to the responsible person.

(5) A restoration notice has effect only if the responsible person gives SNH notice of intention to comply with it within 28 days of it being given.

(6) SNH may by giving notice to a responsible person in respect of whom a restoration notice has effect—

(a) extend the period specified in the restoration notice within which operations are to be carried out, or

(b) otherwise modify the restoration notice in such manner as SNH considers appropriate.

(7) A notice may be given under paragraph (b) of subsection (6) only where the responsible person has consented to the modification.

(8) SNH may withdraw a restoration notice (by giving notice to the responsible person) where it is satisfied on the basis of information subsequently obtained that the restoration notice should not have been given to the responsible person.
(9) Where a restoration notice is withdrawn, SNH must compensate the responsible person for any expenses reasonably incurred in complying with the restoration notice.

(10) Proceedings against the responsible person may not be commenced or continued for an offence in relation to which the restoration notice has effect (even if the restoration notice is subsequently withdrawn).

(11) If, within the period specified in a restoration notice, the responsible person to whom it is given fails, without reasonable excuse, to comply with it, the responsible person is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding £40,000,

(b) on conviction on indictment, to a fine.

(12) If, within the period specified in a restoration notice, any operations so specified have not been carried out in accordance with the restoration notice, SNH may—

(a) carry out those operations, and

(b) recover from the responsible person any expenses reasonably incurred by it in doing so.

(b) in section 14(1) (SNH consent not required for certain operations by public bodies), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”;

(c) in section 17(1) (SNH consent not required for certain operations by owners or occupiers), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”;

(d) in section 44(1) (powers of entry), after paragraph (b) insert—

“(ba) to ascertain whether an operation required to be carried out by a restoration notice given under section 20A(4) has been carried out in accordance with the notice,

(bb) to carry out operations in pursuance of section 20A(12),”;

(e) in paragraph 1(1)(b) (duty to give notice before entering occupied premises) of schedule 4, for “(1)(h)” substitute “(1)(bb), (h)”.

(1A) In section 8B(1) (protection afforded to spent alternatives) of the Rehabilitation of Offenders Act 1974 (c.53), after paragraph (c) insert—

“(ca) has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section.”.

(2) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows—

(a) in section 69(7) (notice of previous alternative disposals), after paragraph (b) insert “;
(c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,

(b) in section 101 (previous convictions)—

(i) in subsection (10), after paragraph (b) insert “;

(c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,

(ii) in subsection (11)—

(A) the word “or” immediately following paragraph (b) is repealed,

(B) after paragraph (c) insert “; or

(d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related.”,

(C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”,

(c) in section 166 (previous convictions: summary proceedings)—

(i) in subsection (10), after paragraph (b) insert “;

(e) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,

(ii) in subsection (11)—

(A) the word “or” immediately following paragraph (b) is repealed,

(B) after paragraph (c) insert “; or

(d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related.”,

(C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”.

PART 6

GENERAL

33 Crown application

(1) The modifications of enactments made by this Act bind the Crown to the extent the enactments bind the Crown.

(2) After section 27 of the 1946 Act, insert—

"27A Crown application: sections 23 to 27

(1) Sections 23 to 27 (including orders made under section 23AA) of this Act bind the Crown."
(2) No contravention by the Crown of any provision made by or under sections 23 to 27 of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing those provisions, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), sections 23 to 27 (including orders made under section 23AA) apply to persons in the public service of the Crown as they apply to other person.”.

(3) After section 66A of the 1981 Act, insert—

“66B Application of Part 1 to Crown: Scotland

(1) Subject to subsections (2) to (5), Part 1 (including regulations and orders made under it) bind the Crown.

(2) No contravention by the Crown of any provision made by or under Part 1 makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), any provision made by or under Part 1 applies to persons in the public service of the Crown as it applies to other persons.

(4) A species control order may be made under section 14D in relation to Crown land only with the consent of the appropriate authority.

(5) The powers conferred by sections 14M and 19ZC are exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this section, “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;
(b) belongs to Her Majesty in right of Her private estates;
(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

(7) In this section, the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;
(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;
(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;

(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.

(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

(4) After section 13 of the 1992 Act, insert—

“13A Crown application: Scotland

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.”.

(5) In section 44 of the 1996 Act—

(a) for subsection (1), substitute—

“(1) This Act binds the Crown, subject to such modifications as may be prescribed.”,

(b) after subsection (2), insert—

“(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (3), this Act applies to persons in the public service of the Crown as it applies to other persons.

(5) The power conferred by section 15 of this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5), “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;

(b) belongs to Her Majesty in right of Her private estates;

(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or

(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department”.


Part 6—General

(7) In subsection (5), the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;

(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;

(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;

(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;

(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.

(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

34 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment.

(3) A statutory instrument containing an order under subsection (1) is (except where subsection (4) applies) subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

35 Commencement and short title

(1) The provisions of this Act (other than section 1, section 34 and this section) come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) An order under subsection (1) may—

(a) make different provision for different purposes,

(b) make such transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
(3) This Act may be cited as the Wildlife and Natural Environment (Scotland) Act 2011.
SCHEDULE
(introduced by section 21)

MODIFICATIONS AND REPEALS RELATING TO PART 2 AND GAME LICENSING

PART 1

MODIFICATIONS

1 In section 39(2) of the Agriculture (Scotland) Act 1948 (c.45), in the proviso, for the words from “game” to the end substitute “—

(a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or

(b) brown hare or mountain hare in the close season for that hare (within the meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the right to comply with a requirement falling within this proviso by reason only that, apart from the proviso, compliance with the requirement would constitute an offence under section 1 or (as the case may be) 10A(1) of that Act”.

PART 2

REPEALS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Game (Scotland) Act 1772 (c.54)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Night Poaching Act 1828 (c.69)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Act 1831 (c.32)</td>
<td>The provisions of the Act extended to Scotland by section 13 of the Game Licenses Act 1860 (c.90).</td>
</tr>
<tr>
<td>Game (Scotland) Act 1832 (c.68)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Night Poaching Act 1844 (c.29)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Hares (Scotland) Act 1848 (c.30)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Licences Act 1860 (c.90)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Poaching Prevention Act 1862 (c.114)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Game Laws Amendment (Scotland) Act 1877 (c.28)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Ground Game Act 1880 (c.47)</td>
<td>Section 4.</td>
</tr>
<tr>
<td>Customs and Inland Revenue Act</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Enactment</td>
<td>Extent of repeal</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td>1883 (c.10)</td>
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<tr>
<td>Hares Preservation Act 1892 (c.8)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Finance Act 1924 (c.21)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Destructive Imported Animals Act 1932 (c.12)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Finance Act 1937 (c.54)</td>
<td>Section 5.</td>
</tr>
<tr>
<td>Agriculture (Scotland) Act 1948 (c.45)</td>
<td>Second Schedule.</td>
</tr>
<tr>
<td>Local Government (Scotland) Act 1966 (c.51)</td>
<td>Section 53.</td>
</tr>
<tr>
<td>Game Act 1970 (c.13)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Import of Live Fish (Scotland) Act 1978 (c.35)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Deer (Scotland) Act 1996 (c.58)</td>
<td>Section 38.</td>
</tr>
<tr>
<td>Protection of Wild Mammals (Scotland) Act 2002 (asp 6)</td>
<td>In the schedule, paragraphs 1 and 2.</td>
</tr>
<tr>
<td>Marine (Scotland) Act 2010 (asp 5)</td>
<td>Section 104.</td>
</tr>
</tbody>
</table>
Wildlife and Natural Environment (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision in connection with wildlife and the natural environment; and for connected purposes.

Introduced by: Richard Lochhead
On: 9 June 2010
Supported by: Roseanna Cunningham
Bill type: Executive Bill