



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Environment, Climate Change and Land Reform Committee

**Tuesday 17 December 2019**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



---

**Tuesday 17 December 2019**

**CONTENTS**

**Col.**

<b>ANIMALS AND WILDLIFE (PENALTIES, PROTECTIONS AND POWERS) (SCOTLAND) BILL: STAGE 1</b> .....	<b>1</b>
--	----------

---

**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**  
**35<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Gillian Martin (Aberdeenshire East) (SNP)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)

\*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

\*Angus MacDonald (Falkirk East) (SNP)

\*Mark Ruskell (Mid Scotland and Fife) (Green)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Leia Fitzgerald (Scottish Government)

Mairi Gougeon (Minister for Rural Affairs and the Natural Environment)

Grant McLarty (Scottish Government)

Hazel Reilly (Scottish Government)

Andrew Voas (Scottish Government)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Environment, Climate Change and Land Reform Committee

*Tuesday 17 December 2019*

*[The Convener opened the meeting at 09:30]*

### Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: Stage 1

**The Convener (Gillian Martin):** Welcome to the Environment, Climate Change and Land Reform Committee's 35th meeting in 2019. I remind everyone to switch off their mobile phones or put them on silent, as they might otherwise affect the broadcasting system.

Agenda item 1 is to take evidence at stage 1 on the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. I am delighted to welcome the Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, who is accompanied by her Scottish Government officials Andrew Voas, veterinary head of animal welfare; Leia Fitzgerald, wildlife management team leader; and Hazel Reilly and Grant McLarty, solicitors. I welcome all of you and thank you for coming to the meeting.

I believe that the minister would like to make a short opening statement.

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** Yes, if that is okay.

**The Convener:** That is fine.

**Mairi Gougeon:** Thank you very much.

I am delighted to be here to give evidence on the proposals in the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. If the bill is passed, it will have an immediate impact in modernising and strengthening the implementation of the existing legislation to assist the enforcement authorities and ensure that Scotland's animals and wildlife benefit from the best protection.

As members know, the bill is tightly focused to deliver the changes that are most sought by front-line enforcement staff, which require amendments to the existing primary legislation, with the aim of those changes being in force by next year. My officials are also working on a number of other initiatives that do not require changes to primary legislation. I hope that the committee appreciates that that package of complementary measures will

address a wide range of stakeholder concerns about Scotland's animals. The priorities that the bill addresses result from a close working relationship between officials and stakeholders with practical experience of implementing Scotland's groundbreaking legislation.

Bearing in mind the increasingly busy parliamentary schedule, we are presenting a tightly focused bill that tackles the most important issues that require primary legislation. It increases the maximum available penalties for animal cruelty and wildlife crime, introduces Finn's law and the power to introduce suitable fixed-penalty notice regimes in future and improves the procedure to rehome animals that have been taken into possession by enforcement authorities as soon as possible to protect their welfare.

Thankfully, the most serious animal cruelty and animal fighting offences in Scotland are rare—there have been 41 custodial sentences in the past 10 years. However, those offences, which are sometimes horrific, rightly attract considerable public concern. We have also heard evidence about the links to serious organised crime in some cases. The bill therefore provides courts with the flexibility that is needed to impose sentences that are appropriate for a wide range of offending behaviour.

We have heard evidence that, in some recent cruelty cases, the sheriffs have commented that the current sentencing restriction of 12 months might not be appropriate for the worst types of offending. The new maximum penalties of five years and an unlimited fine will provide an appropriate penalty for the worst cases of animal cruelty—namely, offences that cause any unnecessary suffering to an animal and offences that relate to animal fighting. It is worth noting that any other cruelty, such as mutilating, poisoning or abandoning a protected animal, could also be prosecuted using the new penalties if unnecessary suffering can be proved.

The new penalties and the availability of trial by indictment will also directly benefit enforcement agencies such as Police Scotland, the Scottish SPCA, local authorities and the Crown Office and Procurator Fiscal Service by removing the statutory six-month time limit to report cases for prosecution. That will give authorities additional time to gather all the appropriate evidence and to draft reports that are complete and considered in relation to increasingly complicated cases, which often involve serious organised crime elements.

I am proud to be introducing Finn's law in Scotland. I have met Finn and his handler, Dave, as well as colleagues in Police Scotland and have heard first hand about the importance of the role of police dogs and horses. I have also been touched by their support for the measures, which, along

with the other elements of the bill, are essentially the right thing to do and keep pace with other United Kingdom Administrations.

The intention is that the proposed technical refinement along with the increase in the maximum penalties available for all cruelty offences will make it easier to prosecute those who attack service animals in the course of indispensable duties. That will provide police animals with equivalent protection to that for animals that are not routinely used in situations in which an attacker can claim to have been acting to defend themselves.

The bill proposes to insert overarching powers into the Animal Health and Welfare (Scotland) Act 2006 and the Animal Health Act 1981 that will allow the future introduction of fixed-penalty notices through regulations. FPNs will be an additional enforcement tool that will provide additional flexibility to address a variety of future offences. FPNs could be used to deal more effectively with technical and administrative types of breaches. Although such breaches might not impact negatively on individual animals, they can be detrimental to the welfare of the wider animal populations, and it is important to deal with them to improve compliance overall.

The bill proposes a new and innovative approach to swiftly resolve the emergency situation when animals are taken into care to protect their welfare. It allows animal welfare authorities to make the best arrangements for such animals without the need for a court order. The new streamlined process will result in significant savings in staff time and resources for all parties, including the courts, and should speed up the process of resolving the often traumatic animal welfare situation. The swift resolution of the animal welfare issue will enable other agencies, including social work, to deal with any other related issues. We know that the neglect and subsequent suffering of animals is often a symptom of another problem, such as financial difficulties, bereavement, mental health issues or other illness.

The new process has been designed to balance the property rights of the individual with the need to halt and prevent further animal suffering, recognising that, although animals have a legal status as someone's property, they are also sentient beings whose welfare needs need to be prioritised. The safeguards that are being put in place to comply with human rights obligations include the provision for compensation to be paid and two appeal processes: one to challenge the decision to rehome and one to challenge the amount of compensation. The bill introduces an important new power for payment of compensation to be deferred pending the outcome of a relevant

prosecution, as well as allowing a court order that no compensation is payable if an owner has been convicted of a relevant offence.

The bill will standardise wildlife crime penalties and bring the penalties for 22 of the most serious offences that involve the illegal killing or injuring of wild birds and animals into line with the new maximum penalties for animal welfare offences. That recognises that wild animals should be given equivalent protection to domestic and farm animals from the worst types of deliberate harm. The penalties for 36 other offences, including those dealing with the disturbance of wild animals and their habitats, will be standardised and increased in line with the recommendations of the Poustie report.

As you have heard, there is widespread and strong support for the proposals in the bill. I am honoured to be responsible for introducing the refinements in it, which will make an immediate impact to assist enforcement and further protect Scotland's animals. During the committee's evidence sessions, there has been much discussion of other matters that could be improved. The suggestions included arrangements for better enforcement, developing empathy to avoid future offending, and possible new offences. It is useful for those issues to have been raised. I assure the committee that I will follow them up to see how they can best be addressed. However, many of those areas will not require new primary legislation. The bill's focus is on the most important improvements that can be made to assist the enforcement authorities in dealing with existing offences without creating new offences or responsibilities.

I look forward to working with the committee as the bill proceeds so that the important improvements that are contained in it can be introduced without unnecessary delay. I look forward to taking the committee's questions on that.

**The Convener:** Thank you for that comprehensive statement. You have taken us through some of the evidence base that the Scottish Government has looked at to support its decisions on the format of the bill, but I have a quick question on that. Did you look at how other countries have dealt with similar issues? Part of the point of the bill is prevention of cruelty to animals. Did you look at other countries that have been doing that better to inform your approach to the bill?

**Mairi Gougeon:** A vital consideration in increasing the penalties is so that they act as a real deterrent. There are not too many people involved. As I outlined in my statement, about 41 custodial sentences have been given in the past 10 years so, thankfully, such cases are not all that

common. However, we want the penalties to act as a strong deterrent to put people off committing such crimes in the first place.

It was important for us to look at what happens elsewhere and the penalties that exist there. Doing so highlighted how lenient our existing penalties appear to be, so we are now looking to increase them. I think that New Zealand, Canada and some states in America have penalties that are in line with the levels that we are seeking to increase ours to, with five years' imprisonment and a potential for an unlimited fine to be imposed. England and Wales are looking to increase their penalties to the same level. I think that Northern Ireland is another example closer to home where there are similar penalties. It is important to look at what is happening elsewhere and to try to learn from those examples.

**The Convener:** An issue that has been raised is disqualification orders. Questions have been asked about where the information on people who have been disqualified from keeping animals is kept and who has access to that information. Quite a few of the people who gave evidence to us asked about monitoring, given that in the past, disqualified people have been able to carry on keeping animals and even set up in business under another name. Have you given the issue any consideration?

**Mairi Gougeon:** That is an important point that has come out of the evidence that you have taken on the bill. It absolutely is something that we will look at. I think that the same issues have come up in relation to wildlife crime; there were discussions about the importance of information and intelligence sharing in that regard.

I will look at the issue to do with disqualification orders. I suppose that it is about how we make that information more available, as opposed to setting up an entirely new database where all the information would be, which would have resource implications. It is about ensuring that we share information better, so that the agencies that need it have access to it; it is not necessarily about making the information publicly available.

**The Convener:** The Scottish SPCA and the police told us that their officers can find themselves walking into a potentially dangerous situation—as a result of a report from a neighbour, for example—without realising that the person has been disqualified from keeping animals. They say that they do not currently have access to the information that they need.

**Mairi Gougeon:** I recognise that issue and we need to consider it seriously, to ascertain how the information could better be shared with the agencies that need access to it.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** A prison sentence serves as punishment. It also takes away the offender's opportunity to reoffend while they are in prison. The Scottish Government has chosen a third leg to stand on: deterrence through long sentences. I asked one of our witnesses to provide evidence that longer sentences act as a deterrent. My view is that what matters is the prospect of being caught rather than the prospect of a sentence. What evidence that longer sentences constitute a deterrent are you relying on?

**Mairi Gougeon:** The focus is not just on deterrence; we are trying to give agencies a full suite of options when they are in different scenarios and to ensure that all sorts of penalties are available. There are penalties that are not currently available that I hope will become available when the bill is passed. It is about covering all the bases. Deterrence is one element of that. We want the deterrent effect to be stronger. Andrew Voas might give an example of a situation in which a longer sentence proved to be a deterrent. The issue came up in evidence, probably more in relation to some of the wildlife crime legislation that we have introduced, which has had a deterrent effect.

**Andrew Voas (Scottish Government):** On deterrence, we have looked at the different studies that are available—there is a lot of evidence from the United States of America. There is a balance between the probability of being apprehended and the sentence, and the offender's state of mind must also be considered.

It is clear that some offences involve more planning and thought, and the possibility of a long sentence will be more of a deterrent in such cases than it would be in a situation in which someone acted on the spur of the moment or became violent and aggressive, when the person might not be thinking about the deterrent effect.

Having longer sentences is also about the importance of recognising public abhorrence at the worst cases of deliberate and sadistic cruelty to domestic and wild animals. That is part of the justification for making long sentences available in the most extreme cases.

There will be a deterrent effect if someone is going through the process of planning to commit a crime. We have heard about the profits that can be made from crimes such as illegal puppy dealing and fighting—profits can come from gambling or selling fighting dogs. In such cases, where there has been more planning and thought, we think that the longer sentence will be a deterrent.

**Finlay Carson (Galloway and West Dumfries) (Con):** There have been inconsistencies in sentencing when it comes to bans on keeping

animals or disqualification orders. What work have you done to ensure a more systematic approach?

09:45

**Mairi Gougeon:** Under section 40 of the 2006 act, there is already a strong presumption in favour of using disqualification orders. Right now, courts have to actively consider that and, if they do not grant a disqualification order, they have to give reasons for not doing so. In some ways we already have that in existing legislation.

**Finlay Carson:** Should there be a presumption that there will be a banning order as standard in cases of animal welfare convictions?

**Mairi Gougeon:** Again, I think that that is already the case. I do not know whether you heard anything contrary to that in your evidence.

**Finlay Carson:** We certainly had evidence of inconsistency in applying banning orders.

**Mairi Gougeon:** Again, I would say that section 40 of the 2006 act already provides that courts have to give a reason for not granting a disqualification order, so such orders have to be considered in those cases.

**Finlay Carson:** So there are no plans for the bill to strengthen that.

**Mairi Gougeon:** No, we are not proposing any changes to that.

**Finlay Carson:** Is any further work going to be done on what resources are available to raise awareness? It is all about deterrence. We just want to stop people being cruel to animals, so deterrence is very important. What work will you do to resource further awareness raising? We saw in the past that, when the Control of Dogs (Scotland) Act 2010 was introduced, a lack of awareness about it meant that it did not have the effect that we wanted it to have. What resources are you going to put in to make people aware of the bill?

**Mairi Gougeon:** As with any new piece of legislation, it is all very well our talking here about a deterrent, but it is a deterrent only if people know that it exists and know about the changes that we are making. I see that as an important element of the work that we will do as the bill progresses and, I hope, is passed by the Parliament. We need people to know about the changes that we have made and the consequences that there will be if anybody commits any of these offences.

We have experience in launching successful publicity campaigns. Towards Christmastime last year, we ran a campaign on the illegal puppy trade. We launched that campaign again this year, based on its success last year, to make people aware and to drive down the demand element of

the puppy trade. The campaign had a huge success rate last year—I think that it led to a 130 per cent increase in calls to the Scottish SPCA—and it is running again now. We will look at examples of where we have launched successful campaigns to see whether we can do something similar to raise awareness of the changes that we are making.

**Finlay Carson:** Finally, do you believe that we will need new sentencing guidelines to ensure that people are aware?

**Mairi Gougeon:** I know that that is a point that came up in your evidence, but it will be up to the Scottish Sentencing Council to determine that and to prioritise it as part of its work. I know that it is working to prioritise sexual offences at the moment and that its current work programme takes it up to 2021, but I imagine that it will have an interest in this new piece of legislation. I would be happy to raise that point with justice colleagues and flag it up as something that they should consider.

**The Convener:** Before I move on, I want to come back to knowledge sharing about people who have been banned from keeping animals or convicted of animal cruelty or animal welfare crimes, because we often see a link between animal cruelty and violent behaviour. Have you considered sharing knowledge about people who have committed animal welfare crimes, so that social services are aware of that aspect of their behaviour? There might be a link to other crimes, including organised crime.

**Mairi Gougeon:** Absolutely. It was very important in the evidence. The Scottish SPCA does a lot of good work, especially when it comes to prevention and working with young people at an early stage, identifying those links that can occur later in life. We would absolutely look to do what you propose. We do not need primary legislation to do that; it is all about the sharing of information and intelligence and ensuring that the relevant agencies are aware of it.

**Claudia Beamish (South Scotland) (Lab):** We have been told that, in certain American states, if someone receives a sentence for a serious animal welfare crime, the information about that offender is passed to social services. I thought that that was interesting. Obviously, such a provision would not be in the bill, but it is quite important that we consider such initiatives on the record.

**Mairi Gougeon:** Absolutely. We are happy to consider such examples and see whether there is anything that can be applied to what we are doing.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** As you will have seen from the evidence that we have taken, a number of stakeholders have questioned whether the



definition and scope of the term “protected animals” in the bill is broad enough, and believe that now is a good time to air those issues.

Does the Scottish Government consider that the definition is up to date and fit for purpose? Is it something that could be reviewed by the animal welfare commission?

**Mairi Gougeon:** The commission could review that. At the moment, the idea is that it would consider issues relating to all vertebrate animals. I believe that the definition in the 2006 act is suitable, and we are able to change and adapt it—that power already exists, so we do not need it to be included in the bill. However, I would be happy to consider the issue in the future.

**Rachael Hamilton:** Will the issue be considered by the animal welfare commission, rather than being addressed by the Scottish Government in the bill?

**Mairi Gougeon:** We have the ability to change and adapt the definition, but taking evidence on the issue could well be something that the animal welfare commission could do.

**The Convener:** I want to ask about the issue of rehoming and transferring animals without a court order. The minister will be aware that I had a situation in my constituency in which dogs and puppies were kept for nearly two years before a court process. It is welcome that we might now be able to rehome animals quickly. However, there are some issues that we would like to clarify, particularly with regard to the rights of the owners of those animals.

First, when an appeal is lodged, are there any opportunities for the court to expedite that appeal if a delay causes welfare issues?

**Mairi Gougeon:** There are lots of important elements in the bill, but the proposal on rehoming is one of the key things that will deliver a transformational change for the enforcement agency. The SSPCA highlighted in its evidence that the proposal could save it a lot of money—I think that it said that it had spent £1.5 million in less than two years on caring for animals in that position.

On appeals, it is important to highlight that we have reversed where the onus now lies. It is now on the owner rather than the enforcement agency. That is an important change. There will be a three-week window in which it is up to the owner to lodge an appeal. The process is as streamlined now as it possibly can be. Another important change is that it is up to the sheriff to make a decision on that, and I think that the nature of the way in which the appeal will be determined means that it should be a streamlined process and not a long, drawn-out affair. A further important change

is the fact that the sheriff's decision is final, and there is no further right of appeal beyond that. That, too, will make a big difference.

Grant McLarty might want to add something to that.

**Grant McLarty (Scottish Government):** The process would involve summary application procedure, which is the most streamlined procedure that is available within civil court procedure. I am not aware of any other ready-made procedure that could be used.

**The Convener:** When we were taking evidence, we discussed the issue of owners with mental health issues having their companion animals taken away from them because they are accused of harming them—I think that Finlay Carson brought that up. What will be in place to help those people, who might be under extreme stress at the time? Is anything being considered in that regard?

**Mairi Gougeon:** Again, I do not think that there is anything that we could do in primary legislation to deal with that—it is something that we would have to look at. A decision notice would have to be served, so a person would be made aware of what would happen. Presumably, when the enforcement agencies engage, they will be able to identify whether there are other issues. I would hope that we could support a person in such a position, or at least make them aware of what they could do, the measures that would be open to them should they choose to appeal a decision notice and how they could work through that process. That is very much how I envisage and hope that things will work. However, we can go away and consider the issue and discuss with the enforcement agencies what such a package might look like.

**The Convener:** Given that Finlay Carson initially raised the issue, is there anything else that he wants to pick up on?

**Finlay Carson:** I want to make sure that the Government has considered the implications for people's mental welfare in situations in which there is no direct intention to cause suffering. The measure applies to farmers, too, and an issue may arise because a farmer is having problems keeping their stock. You said that you will think about the issue and that it is important, but what will you do? How will the bill address such situations? Will there be guidelines or whatever on how to deal with individual farmers?

**Mairi Gougeon:** Again, that is something that we need to look at separately from what we can put in primary legislation. I know that it is an important point—I think that the Animal and Plant Health Agency raised it in oral and written evidence to the committee. We engage with the

agencies involved, including the enforcement agencies, so we are well aware that it is an issue.

I am more than happy to get back to the committee with more information on the matter, but we are hoping to engage with the enforcement agencies to make sure that it is all taken into consideration. There is a process. People will be—they need to be—made aware. As you said, it is about looking at the wider issues and making sure that we fully consider them.

**The Convener:** Our next theme is on compensation, on which Stewart Stevenson has some questions.

**Stewart Stevenson:** Because of what I am about to say, the lawyers should pay particularly close attention.

Section 11 makes substantial additions to the Animal Health and Welfare (Scotland) Act 2006. I will start with proposed new section 32H(3) of the 2006 act, which is about how much compensation will be paid. It says:

“the compensation amount is the greater of—

(a) the market value of the animal at the time it was taken into possession ... and

(b) the market value ... at the time immediately before the last relevant step ... in the compensation notice was taken”.

The relevant steps in the compensation notice are described in proposed new section 32G(1) of the 2006 act, paragraph (g) of which says that the notice must specify

“whether the authorised person is electing to defer payment of the compensation amount”,

which moves the end of the process further out to the horizon. There is then a reference forwards—I hate these references backwards and forwards; that is a drafting issue that I have long had—to proposed new section 32J(3) of the 2006 act, which says:

“The authorised person may defer payment where—

“(a) relevant criminal proceedings have been commenced ... or

(b) in the opinion of the authorised person”

they may be commenced.

We are looking at the calculation of the compensation amount being moved into the distance. Given that the amount is the greater of the value at the time that the animal is taken and the value at the time that compensation is paid, by the time that it is paid, one would hope that the welfare status of the animal concerned has, since being seized, improved rather than deteriorated, so the value of the animal is very likely to have increased. I really want to challenge whether that is, in policy terms, the right thing for us to do,

albeit that there are further provisions that allow for the costs of looking after the animal in the meantime—veterinary treatment and so on—to be deducted.

As a matter of principle, should it not be the case that the compensation amount should be the lower of the market value at the point of seizure and the market value before the last relevant step is taken, rather than the greater of those two values?

As I say, you have to go backwards and forwards several times to come to that conclusion. I am not a lawyer—I am a layperson—and I am waiting to be told that I have totally misread the bill, but that is the way that I read it. Am I right and, in policy terms, is it the right thing to do?

10:00

**Mairi Gougeon:** Yes, you are right. I would agree that the cross-referencing in the bill is particularly difficult, especially with regard to the wildlife sections. Convener, you talked about the property rights of the person who owns the animals. Grant McLarty can elaborate a bit on that—

**Stewart Stevenson:** I am very happy to hear from the lawyers, but before we do, as a matter of policy—which I think lies at your desk rather than that of the lawyers—should it not be the case that any increase in the value of the animal after seizure should not be attributed to the person who has been deprived of ownership of the animal, given that it arises from the state intervening and not from any action on the owner's part?

**Mairi Gougeon:** I completely understand that point, which I know came up in the committee's evidence sessions. Anybody looking at the issue would entirely agree.

Although I talk about balancing up the property rights of the owner of the animals, this is also about trying to take away what could be perceived as a profit element when the animals are eventually sold on. That is why the bill is phrased in that way.

**Stewart Stevenson:** Forgive me, minister, but if there is a profit from having seized the animals that would not have existed if they had not been seized, should the profit not accrue to the state rather than to the animal's previous owner? That is the principal point that I am pursuing here.

**Mairi Gougeon:** I am not sure whether that profit would go to the state or to the enforcement agency that has been caring for the animal.

**Stewart Stevenson:** I see that Mr McLarty may have a powerful torch to shine on the legalities.

**Grant McLarty:** Perhaps the policy justifications could be elaborated on first, and then I can explain the legal justifications.

**Andrew Voas:** It is important to understand that the current arrangements are that when animals are sold by the enforcement agencies, that income goes back to the owner, minus relevant expenses. There are a couple of examples of that in the financial memorandum. In many cases, the enforcement authority's expenses will be quite substantial, so the amount of money that goes back to the original owner will not be all that much.

Until a person is found guilty of an offence, it is important that we treat them as though they are not to blame in legal terms. No matter what we may think of them or what prejudices we may have about the circumstances, it is only fair that we treat them as innocent until they are convicted of an offence. That is an important principle. The enforcement authorities have to preserve the value of the animals and get a suitable return from those animals. The bill acknowledges the current arrangements and allows for them to continue, but with the important new proviso that compensation can be deferred if there is a relevant criminal case, and not paid all if the person is convicted and the court decides that compensation should not be payable. It is properly for the court to decide what the penalty for the convicted person should be, rather than that being something for the enforcement authority to deal with when the animals are taken into possession.

The new arrangement allows for the value to be determined at the time that the animals are taken into possession, which in turn allows for situations where the enforcement authority may want to dispose of the animals, move them on or rehome them at a lower market value for the sake of the welfare of the animals. However, it preserves the value of the animals at the time that they are seized for the owner who, at that point, has not been convicted of any offence.

**Stewart Stevenson:** I may be being exceptionally dim, but I have just heard that there is a whole set of essentially administrative or court provisions that mean that the previous owner might not capture the enhanced value. However, the bill provides, through the two alternatives in proposed new section 32H(3) of the 2006 act, for the possibility that they might. I do not understand, as a matter of principle, why those provisions should be there. Any increase in value after the animal is seized would seem to rest on the intervention of the state rather than on any action by the owner. I understand that the owner should be entitled to compensation for the value of the animal at the point of seizure—I am not picking at that at all—but I cannot see why they should be compensated for any increase in value.

It may be that there is something in the European convention of human rights that means that the provision has to be phrased in that way. If that is the case, I would like to hear about it, so that I can shut up and stop boring the committee on the subject, as there is a severe danger that I might otherwise continue to do so for some time to come.

**Andrew Voas:** That raises an important policy point, which we touched on earlier when we acknowledged that some of the welfare cases result from owners lapsing into ill health or experiencing mental problems. In many circumstances, the owners are vulnerable people, and in such circumstances it is right that we try to support them.

As I said, the financial memorandum gives an example of a case in which animals in poor condition were taken away from an owner. They were kept for several months, during which time they increased in value. The increase in value was given back to the original owner, minus the relevant expenses. In a way, the provision protects the interests of somebody who is vulnerable and who may not have been convicted of an offence. There may have been mitigating circumstances, such as ill health or another reason why the person was particularly vulnerable. In those cases, the enforcement authorities are protecting the interests of the person.

That is the policy background—Grant McLarty may want to expand on the legal aspects.

**Grant McLarty:** It is correct to say that rights under the ECHR are engaged. The provisions in the bill have been designed to take into account the rights under article 1 of protocol 1 to the ECHR, which provides that:

“Every ... person is entitled to the peaceful enjoyment of ... possessions. No one shall be deprived of”

these

“except in the public interest and subject to the conditions provided for by law”.

For these purposes, an animal is regarded as a possession.

Where article 1 of protocol 1 is engaged, a fair balance has to be struck between the demands of the public interest and the property rights of the individual. The bill seeks to pursue the legitimate aim of protecting the welfare of animals, which is in the public interest. Exercise of the new powers in the proposed new section 32A to transfer ownership of, or destroy, an animal will engage the property rights that are protected by article 1 of protocol 1 to the ECHR. Likewise, treatment of an animal using the powers in proposed new section 32A may also engage those property rights. The new powers conferred by the section are

nonetheless considered appropriate when they are considered alongside the right to appeal, in respect of both the decision that is made in relation to the animal and the entitlement to compensation. Those are two crucial elements that we have built into the system to take account of concerns around property interests.

It is important to remember that the existing powers under section 32 of the 2006 act, which are used by inspectors or constables to take possession of an animal, are exercised without any judicial intervention. There has been no civil or criminal determination of guilt or blame, or responsibility. On that basis, we have approached the legislation by building in the ability to provide for reasonable expenses, in caring for the animal after it has been taken into possession and in implementing the decision that is taken in relation to the animal, to be deducted from any sum that is paid—if there is value in the animal—to the owner. There is also the ability to defer payment of compensation, and for compensation to be forfeited in future criminal proceedings. In a legal analysis, that is the rationale for those provisions.

**Rachael Hamilton:** I go back to the point that Andrew Voas made with regard to whether the reasonable costs are taken into account and fair compensation is paid. You specifically mentioned the legal definition. Obviously, it is up to those involved to make a decision on whether a welfare issue has arisen as a result of an owner's mental health condition or problems with stress, as we have discussed today.

Does the bill give the ability for that to be taken into account, or would that be the role of the people who make the decisions about reasonable cost or fair compensation at the time? Does that need to be set out in the bill?

**Mairi Gougeon:** It is up to the authorised person, as defined in the existing legislation. They can make a judgment, and they must lay out why they believe that compensation should be deferred. They have the relevant powers to take all those factors into account.

**The Convener:** We will now move on to discuss Finn's law.

**Angus MacDonald (Falkirk East) (SNP):** I welcome your remarks on Finn's law in your opening statement, and I am glad to hear that you have met Finn in person.

The committee has heard that there is broad support for the proposal, which would enhance protection for service animals. It is worth noting that we heard from Police Scotland last week that attacks against service animals have been rare in Scotland in recent years, which I am sure is welcomed by all of us.

Some stakeholders have suggested that the provisions of Finn's law could be extended to other animals that are put into potentially vulnerable positions through providing assistance to people, such as guide dogs and other assistance animals. Why is it appropriate for the provisions to be limited to service animals, and not to be extended to other animals that provide assistance to people, such as guide dogs? Has the Scottish Government considered broadening the definition?

**Mairi Gougeon:** Thank you for making those comments. This is another vitally important part of the proposed legislation, which will keep us in line with other changes across the rest of the UK.

I should point out that the bill is not really about changing a definition in the legislation; it is about recognising service animals and giving them the same recognition as other animals in legislation, recognising them as sentient beings rather than property. It is important to highlight that, because we are removing a defence of self-defence as it exists in the legislation—in section 19 of the 2006 act, I think. That has enabled people to claim that they attacked a service animal in order to defend themselves. However, by the nature of the work that the service animals do, that is what they are there for. The bill is not really about changing or adding to a definition; it is about giving service animals the same protections that other animals in Scotland have—and that involves the penalties that we are increasing for section 19 offences.

**Angus MacDonald:** We heard from stakeholders who raised the possibility of treating attacks on service animals as an aggravating factor in relation to an offence. For example, if a person is charged with a public order offence, an attack on a service animal could be an aggravating factor as part of that offence, resulting in a higher penalty. Has the Scottish Government considered whether an attack on a service animal could be treated as an aggravating factor in relation to an offence such as a public order offence?

**Mairi Gougeon:** We had not considered that. The bill is essentially about increasing penalties and powers and examining the offences that we already have; it is not really about creating new offences, which an aggravating factor would be. In order for us to do that, we would need to consult on and consider the matter further. We are not creating any new offences in the bill, so I would be reluctant to pursue the suggestion at this stage.

It is important to note that an attack on a service animal can also be prosecuted as part of a public order offence at the moment. To include such an offence under the bill, however, would mean doing a whole host of other work.

**The Convener:** We will move on to talk about fixed-penalty notices. Could you be nice and succinct, please, Mr Stevenson?

10:15

**Stewart Stevenson:** I will do my best, convener.

The bill's long title makes two references to fixed-penalty notices. In the minister's introductory remarks, she said that the bill is about the worst cases. However, I presume that fixed-penalty notices are about the least worst cases. I note from the consultation paper that you have just published on fixed-penalty notices that marine enforcement officers—interestingly, they are not constables—can issue FPNs of up to £10,000. It is clear that, in some circumstances, FPNs can be more substantial than we might normally think. The bill does not set any limits on FPNs. It would be useful to get on the record an idea of what the Government thinks the limits will be. Should the bill state what the limits are, as I understand the Aquaculture and Fisheries (Scotland) Act 2007 does in relation to FPNs that can be imposed by MEOs?

**Mairi Gougeon:** As I said, the aim of introducing fixed-penalty notices is to add to the suite of available options. That is why we are introducing FPNs for animal welfare issues. We have a consultation out at the moment in relation to animal health as well as the consultation that you mentioned, which I think is open until 19 January, with the potential to introduce fixed-penalty notices for wildlife crime. It is important that we consider making the suite of options available right across the three areas.

The regulations to introduce those measures would be subject to the affirmative procedure, and I fully intend to work with the committee as the regulations are developed. We need to allow some flexibility in that. I envisage fixed-penalty notices being used for technical and administrative offences. I do not want them to be used for any offences relating to animal suffering, for example—FPNs would not be appropriate for that. All that work is coming further down the line. I commit to working with the committee on that, because I want to ensure that any measures that we introduce work, are suitable for what we want them to do and are agreed to by everyone.

**Stewart Stevenson:** But—

**The Convener:** I want to bring in Mark Ruskell.

**Stewart Stevenson:** Can I just deal with one point first?

**The Convener:** Okay.

**Stewart Stevenson:** I note that neither the consultation that I mentioned nor the bill makes any reference to an upper limit on what can be levied. The seven questions in the consultation do not include a question on that. Is it envisaged that you will set an upper limit to the FPNs, whatever level it might be? Of course, I may have missed something.

**Mairi Gougeon:** In relation to animal welfare, I think that the FPNs would be available for offences up to those that attract a six-month imprisonment or a level 5 fine, but I stand to be corrected by officials on that.

**Andrew Voas:** That is a provision in the bill. Fixed-penalty notices for animal welfare issues would not apply to offences that have a penalty of more than six months' imprisonment or a level 5 fine, which is currently £5,000.

**Grant McLarty:** That limitation also exists for the animal health power.

**Mark Ruskell (Mid Scotland and Fife) (Green):** I have a technical question about the fine income from fixed-penalty notices. The financial memorandum suggests that any increase in fine income will go to the Scottish Government but will in effect be deducted from the Scottish block grant. However, I am not sure whether that is the case. I have been working on a member's bill that has a potential implication involving fixed-penalty notices, and the lawyers who worked on that bill suggested that any increase in fine income would be held in Scotland and would not be deducted from the block grant. That differs from the information in the financial memorandum. I just want to put that out there. Have you considered that issue? If not, please do.

**Mairi Gougeon:** That is what I have come to understand, but I will ask Andrew Voas to answer that.

**Andrew Voas:** There is a subtle difference between fines for criminal offences and income from fixed-penalty notices. The main point with regard to the bill is that the provisions on fixed-penalty notices will be developed in future and, as you have heard, will be subject to affirmative procedure. Therefore, the time to make decisions about where income from FPN regimes can go will be when we develop the specific FPN regimes. My understanding is in line with Mr Ruskell's—it is that income from fixed-penalty notices that are served by enforcement authorities would not necessarily be counted in the same way as fines that are paid to court in relation to criminal offences. I ask Grant McLarty whether that is correct.

**Grant McLarty:** Yes. The detail would need to be developed, but I know of no legal barrier to that happening.

**Mark Ruskell:** Okay. I might seek clarification on that ahead of stage 2, because I think that the matter is dealt with differently in the financial memorandum. However, I realise that time is moving on.

**Mairi Gougeon:** In the meantime, I would be happy to look at that, get information, and feed it back to the committee.

**Mark Ruskell:** Okay. Thanks.

**The Convener:** I brought up the issue of a database of offenders that agencies could access. If people repeatedly got FPNs, would such information be available? If people had fixed-penalty notice after fixed-penalty notice or even had one in the past, could that information be shared or accessed by agencies that might go to their door for other reasons? If somebody had been involved in actions that resulted in a fixed-penalty notice, that could inform judgments on other issues. An individual might have a pattern of behaviour.

**Mairi Gougeon:** That is what I am thinking. Earlier, we talked about disqualification orders. I suppose that it would be helpful if we were able to see a pattern emerging with fixed-penalty notices and whether disqualification orders were in place. To be honest, I do not know what databases we currently have and whether all of that information is logged and stored. There would be resource implications for us if it were suggested that we should set up such a database, but I am open to looking at how that information would be stored. I am sure that we will come to those conversations as the regulations are introduced. I would be happy to discuss the issue again with the committee so that we can see whether there are opportunities for better information sharing.

**Finlay Carson:** The issue is important. Do you intend to have any proposals at stage 2 about a national database for fixed-penalty notices or disqualifications? It is important that we know that you will consider that at stage 2.

**Mairi Gougeon:** I am sorry; to clarify, I am not talking about us setting up or looking to establish a database. We would have to fully consider that, because there would be massive resource implications. I am talking about how we can share information better. I do not think that we need that in the primary legislation. It is about looking strategically at what databases already exist, how information is shared among enforcement agencies, and whether there are ways in which that information sharing can work better.

**The Convener:** A record of all those things will exist. It is simply a case of who has access to that record and whether information is being shared.

**Finlay Carson:** We have a lesson to learn from the Control of Dogs (Scotland) Act 2010 and banning orders or restrictions on dogs for local authorities. If owners moved between local authority areas, there was no recognition that they had a ban. The current approach is failing. Ensuring that we stop people with disqualifications or whatever owning dogs is important, and it is very clear—other committees have heard evidence on this—that one of the failures of past acts has been that they have not included a national database. There have been general data protection regulation issues and so on. It is really important that you address that in the bill, because the voluntary process is obviously not working.

**Mairi Gougeon:** I take that point and understand the concerns. That is why we will look at the issue. However, there would be massive resource implications for us if we were looking to set up a national database to encompass that. We do not intend to introduce that in the bill. If there are databases already in operation, we need to ensure that they operate as effectively as they can in relation to the work of enforcement agencies. That is what we will look at.

**The Convener:** Okay. I want to move on to wildlife crime, which a number of members want to ask about. When do you expect the Werritty report to be published, and when will you release the animal wildlife crime report for this year?

**Mairi Gougeon:** I think that the First Minister said during a First Minister's question time last month that the Werritty report would be published by the end of the year. That is still the timescale that we are looking to.

I am sorry, but what was your second question?

**The Convener:** My second question was about the animal wildlife crime figures.

**Mairi Gougeon:** That report will be available by the end of the year.

**Mark Ruskell:** That response is very welcome.

Why do wildlife crimes in relation to breeding and resting places not attract the maximum sentence? The committee has heard horrific examples. For example, a property developer's destruction of a badger sett led to a fine of £800—the price of a door, in effect—and the developer went on to sell a house for £350,000. Is there scope to increase the maximum penalty for people who wilfully destroy breeding sites?

**Mairi Gougeon:** It would be best if I tried to explain the rationale behind the proposals as they are. There are more than 300 wildlife offences, so there was an attempt to harmonise the approach. There are penalties for the worst offences, that is, the killing or harming of protected species, but if the committee makes recommendations about

other offences and thinks that our approach should be changed, based on the evidence that you have heard, we will be open to having that discussion.

**Mark Ruskell:** Okay. A recommendation of the Poustie review was that there should be a requirement in legislation to consider impact statements, particularly in the context of a species' conservation status. For example, if a habitat or an animal is destroyed and there is a big impact on the population, in ecological terms, there should be an impact statement. What is your view on that? If someone kills the last two white-tailed eagles in a particular part of Scotland, the impact on the breeding population is devastating.

**Mairi Gougeon:** I absolutely agree. We have not put such an approach on a statutory footing or included it in the bill because, from what we hear from our stakeholders—I think from both sides—the system that is currently in place works well and impact statements are used when it is felt that they are needed. No stakeholder has approached us to say that impact statements are not being used when they should be used. We understand from the Crown Office and other stakeholders that they are used when they are needed. We keep the issue under review, but, as far as we are aware, people feel that the information that should be put forward is presented.

**Mark Ruskell:** Why, then, did Poustie come to a different conclusion and recommend that consideration of an impact statement should be a legislative requirement?

**Mairi Gougeon:** I do not know whether the system operated differently prior to that recommendation being made. Leia Fitzgerald might have more information about whether that spurred on any changes. As I said, we have heard nothing from our stakeholders that indicates that the system is not working.

**Leia Fitzgerald (Scottish Government):** I think that, when Poustie made his recommendations, impact statements were not used as widely as they are now. We revisited the issue with stakeholders recently, and they told us that the approach that is now in place is working well. As the minister said, we will continue to keep the matter under review.

**Mark Ruskell:** Last week, the committee heard about the use of other sanctions. In particular, we heard about the effectiveness—or otherwise—of general licences. It was concerning to hear stakeholders say that an estate that loses its general licence will simply apply for individual licences, and nothing will change. What are your views on other sanctions being deployed in relation to wildlife crime? Are such sanctions having any impact at all?

**Mairi Gougeon:** It is important that other deterrents are available. I am aware that, in evidence last week, people said that some options are not as effective as they could be. We are actively considering the need for an additional level of enforcement, which would not require referral to the procurator fiscal or involvement of the Scottish courts but would still provide a penalty that would act as a deterrent. We will be happy to consider the evidence and consider whether measures are as effective as they can be.

**Mark Ruskell:** What about the withdrawal of a firearms certificate, for example? Is that something that you would be interested in discussing with the Westminster Government?

10:30

**Mairi Gougeon:** Absolutely. I know that there were two recommendations around that in the Poustie review, so we will happily engage in discussions with the UK Government. I believe that the matter falls under the justice portfolio, so I would also be happy to raise it with justice colleagues and see how we can get some movement on the recommendations with the UK Government.

**Rachael Hamilton:** I will go back to the categorisation of wildlife offences and the different tiers of the penalty system. We heard evidence that perhaps possession of illegal pesticides should be categorised as a tier 1 offence, because they are currently illegal anyway. Do you have any comments on that point and do you have any plans to have an amnesty on illegal pesticides prior to the bill being passed? People should not possess illegal pesticides anyway, so using them in connection with animal crimes should attract the highest and severest category of penalty.

**Mairi Gougeon:** That has been the feeling behind that issue. As you said, possession of such pesticides is already illegal and there are offences in place to deal with that individual issue separately. Using such pesticides as part of another offence would attract the higher penalty. As they are already illegal and there are offences attached to them, using them in relation to any other offences could well attract severe penalties.

In relation to your amnesty point, I would be happy to consider looking at the matter.

**Leia Fitzgerald:** Just to clarify, there was a previous amnesty, which was quite successful and resulted in a lot of pesticides being handed in. We could speak to stakeholders about whether that is something that could be done again. We would hope that we got all of what we needed after the last amnesty, but we can look at the matter.

**Mairi Gurgeon:** I will happily get back to the committee and let you know how we get on with that.

**Rachael Hamilton:** I completely agree with the points that you made. Having an awareness-raising campaign alongside the bill, which is obviously attracting a lot of attention, could be very effective in that regard.

**Mairi Gurgeon:** Yes.

**Claudia Beamish:** I will go back to the general licence situation that Mark Ruskell raised. As you and the lawyers will know, Scottish Natural Heritage withdrew a general licence from Leadhills estate. That is a civil issue, but I am perplexed about it so I am seeking clarification of the legal position. The estate has appealed, so the licence has been reinstated. Why is that? As I understand it, under criminal law, reinstatement would not happen during an appeal. I would like that clarified, as it is relevant to the bill.

**Mairi Gurgeon:** I will pass the question on the legal point on to Hazel Reilly.

**Hazel Reilly (Scottish Government):** It is quite a technical area so, to get it right, we would be happy to write to the committee.

**Claudia Beamish:** That would be helpful. Constituents who have approached me are concerned that the licence has been reinstated while an appeal is on-going. I do not understand why that is, so a response would be most helpful, thank you.

**The Convener:** We can have the response sent to us.

**Claudia Beamish:** I was very pleased and relieved that, in the previous parliamentary session, vicarious liability was introduced for wildlife crime. As you will have seen, the committee has heard quite a lot of evidence on the matter and, outside of the committee, I have received correspondence in my role as a South Scotland member of the Scottish Parliament—as have other members, I am sure. Are you satisfied with the uptake to date of vicarious liability with respect to wildlife crime and have you looked at the potential of expanding it to further wildlife offences in the context of the bill?

**Mairi Gurgeon:** We had not considered opening up the bill to other offences, but I look forward to the committee's report and to seeing what evidence you have taken and whether there are any particular views that the bill should be expanded to include any other offences. I know that there is a lot of concern about the matter and that, in its evidence, RSPB Scotland said that the impression was that the initial deterrent effect of vicarious liability had been lost.

There is a high evidence threshold that has to be met for vicarious liability. We cannot change that as part of this legislation. It is an important tool that we have available, but it will always be quite a hard thing to prove, given the requirements that must be met for someone to be prosecuted using that piece of legislation.

**Claudia Beamish:** I asked the bill team this question, but I seek final clarification from you. Is it the case that, with regard to vicarious liability proceedings, there need only be evidence of an alleged crime on a landowner's or company's land, and that the actual perpetrator of the crime does not have to have been arrested? That is an important consideration, because the crimes often take place in remote and rural areas where it is difficult to know exactly who might have perpetrated any given crime—we will come to the issues around evidence gathering later.

**Mairi Gurgeon:** I am prepared to be corrected by officials but, as I understand it, the perpetrator of the alleged offence does not need to be prosecuted in order for a charge of vicarious liability to be pursued, but they have to be known. I think that that is one of the tests, but I will double check whether that is correct.

**Hazel Reilly:** That is correct. In order to bring a charge of vicarious liability, it must be established that an offence has been committed, who it was committed by and the relationship between that person and the person who is vicariously liable. However, a prosecution does not need to be taken against the principal offender.

**Claudia Beamish:** My understanding is different, so I would really appreciate clarification. I may have misunderstood the issue, and I apologise if I have, but I understood that there had to be evidence of a crime on a landowner's land, not that the person who committed the crime had to be known.

**Hazel Reilly:** The relationship between the offender and the person who is vicariously liable has to be proved, so there must be sufficient evidence about who has committed the offence. However, a prosecution does not have to be taken against that person.

**Claudia Beamish:** So, in legal terms, evidence of a crime having taken place on a person's or company's land is not sufficient for a vicarious liability prosecution to proceed.

**Hazel Reilly:** That is correct, but we can clarify that in writing, just to be absolutely clear.

**Claudia Beamish:** That is helpful.

I have a further question on vicarious liability. Should nature conservation or welfare organisations have a right to request a review of any decision by the Crown Office not to bring a



prosecution against a landowner in relation to a wildlife crime, in a similar way to a victim's right to review? Transparency in these issues is extremely important, and that might be one way in which the public and groups that have concerns about animal welfare could be reassured.

**Mairi Gougeon:** I completely understand that, and I know that concerns have been raised about people not understanding how or why certain decisions have been taken.

As I understand it—again, I am prepared to be corrected—under current legislation there are some ways in which an organisation would be able to request a review if it was the victim of the crime in question. For example, if an incident occurred on RSPB land, the RSPB would be the victim of the crime, and it could ask for a review.

**Hazel Reilly:** That is correct. Under the policy, businesses, companies and other organisations that are victims of crime are entitled to ask for a review of decisions.

**Claudia Beamish:** That is helpful.

**The Convener:** Mark Russell has questions on enforcement.

**Mark Ruskell:** One of the strands of the Government's work in this area has been the trialling of special constables in the Cairngorms. We do not have a full evaluation of that yet, but the early indications are that that pilot did not result in any detection of wildlife crime or enforcement of penalties. Will there be a full evaluation of that, and will it come during the passage of the bill, so that we can reflect on whether that approach has been of use?

**Mairi Gougeon:** A full evaluation of that pilot will be available early in the new year, so members will be able to consider it while the bill is being considered. Obviously, I will write to the committee and make you aware of that information when it is published.

**Mark Ruskell:** Do you have a view on the effectiveness or otherwise of the pilot? Will it be rolled out across Scotland, or will you draw a line under it?

**Mairi Gougeon:** Again, I have not seen the full evaluation. We will have to see what comes out of that and how effective it has been. There have not been any prosecutions as a result of the trial, but we need to be open to looking at it and saying, "Okay, if this has not been as effective as we hoped, what else do we need to do and what other means can we use to improve the situation?" As Claudia Beamish said, such crimes, by the very nature of where they take place, are hard to detect and we need to do what we can to improve detection rates and tackle the problem effectively.

**Finlay Carson:** We heard evidence that wildlife crime detection needs more resources. It is all very well to increase penalties, but there is little point in doing that if there is no increase in the chance that criminals will be caught. What plans do you have to further resource the detection of wildlife crime?

**Mairi Gougeon:** There are a few other things that we can look at. Some interesting suggestions came out of last week's evidence session, when Detective Chief Superintendent Cunningham made some valuable points and suggestions that we need to consider. He talked about better intelligence sharing and potentially setting up a short-life working group to see how organisations can work together better. It is about trying to pursue all the options and attack this from all angles. I would like to think that, from one end, we have a strong deterrent effect as a result of the increased penalties that we are introducing, but it is also about agencies working together better and sharing that valuable intelligence. We are happy to look at any recommendations that the committee has in relation to that, as well as what has come out in evidence.

**Finlay Carson:** In Dumfries and Galloway we have an issue with poaching, but the response from Police Scotland is that it has priorities elsewhere, and incidents are often not investigated in a timely manner. What reassurance can you give people in rural areas that Police Scotland will be able to address an increase in reporting, or whatever?

**Mairi Gougeon:** The point about what staff it has, and where, is for Police Scotland and it is not for us to direct it. I will say, however, that wildlife crime is a huge priority for us: that is why we are introducing these proposals, why we are making a full suite of options available to all enforcement agencies, and why we are looking at how we can work better and what more we can do to crack down on these horrendous crimes.

**Claudia Beamish:** One of the tools that can be used is covert video surveillance. We keep highlighting the remoteness of areas, but that is very important in this context. As you will know, minister, stakeholders generally welcome the increase in maximum penalties, for a range of reasons, but partly because that increase will enable police to apply to use covert video surveillance more ably and effectively. Obviously, we recognise the issue around the infringement of privacy rights that was highlighted earlier. Do you have any comment on the possible use of that tool? Could you also comment on the RSPB's position that non-statutory bodies should be able to use cameras if they are not infringing privacy rights? As you will know, there is a history to that.

**Mairi Gougeon:** Yes, I am aware of that. That is one of the really important things about what we are proposing: we now recognise that wildlife crimes are defined as serious, and we are increasing the penalties. That then enables intrusive surveillance to be used. Detective Chief Superintendent Cunningham gave evidence that the police already have the power for direct surveillance, but that the increased power for intrusive surveillance will be important.

We are not able to affect the admissibility of evidence. That is entirely up to the courts to decide and will always remain within their remit, so there is not much that we can do, or would want to do, to that effect. However, what we are proposing would have a positive impact on the type of surveillance that can currently be used.

10:45

**The Convener:** We will move on to questions on Scottish SPCA powers in relation to wildlife crime.

**Mark Ruskell:** Minister, has the SSPCA approached you to request more powers in relation to wildlife crime?

**Mairi Gougeon:** It has done so in recent weeks.

**Mark Ruskell:** What is your view on that?

**Mairi Gougeon:** I am open to considering that and having further discussion with the SSPCA. Nothing about that proposal features in the bill or was even considered as part of the bill, because in all the time that I have been in post and had meetings with the SSPCA, it has not been a live issue. It was not something that we discussed until the last couple of weeks. I do not rule anything out and will happily consider any options.

However, I come back to some of the evidence that the committee heard last week. There are some things that we can be doing in the meantime, such as intelligence sharing and looking at some of the other suggestions for getting enforcement agencies to work better together. We have to exhaust all those options.

**Mark Ruskell:** Do you mean that you want to exhaust them first or that you will consider extending the SSPCA's powers alongside that?

You mentioned the comments that DCS Cunningham made last week. I noticed that the police comments in relation to the extension of the SSPCA's powers had a different tone last week, in comparison to previous evidence sessions, and there now seems to be a willingness to consider such an extension. However, the clock is ticking on the bill and if we were to do anything in relation to SSPCA powers, this bill is the place to do it.

**Mairi Gougeon:** We are looking at what we can do in the meantime, but I see that consideration as being longer term, rather than something that we could do under the bill. One of the academics that the committee heard from—perhaps Mike Radford—talked about the SSPCA possibly becoming a public body. If that were to happen, the SSPCA would have to have substantial discussion in the organisation to see whether that was the road that it wanted to go down. It would not be fair to try to cram that into the bill in the timescale that we are planning and I would hate to see us delay introducing the provisions that we are already proposing.

I have committed to examining that proposal, but we need the time and space to fully evaluate that option. I would not want that to be constrained by the timelines of the bill.

**Mark Ruskell:** Is there an issue in relation to the SSPCA's current powers under the 2006 act?

**Mairi Gougeon:** Again, I could not bottom out all the issues involved today because we have only just started that conversation. There could be many obstacles and we need the time to tease out all that information and get a chance to fully discuss the issue.

**Mark Ruskell:** Are there certain extension powers that could be granted under the bill that would be relatively uncontroversial? For example, we heard evidence of situations where an SSPCA inspector goes and visits a trap that contains a live animal that is fighting for its life. Tackling that is within the powers of the SSPCA inspectors under the Animal Health and Welfare (Scotland) Act 2006. However, if there is a trap with a dead animal next to the first trap, it is not within the powers of the SSPCA to protect that evidence or investigate any illegality in relation to that, because the animal is dead, rather than alive. Does that not strike you as odd and absurd? Is there not a way to deal with that in the bill?

**Mairi Gougeon:** I completely understand the point and where you are coming from. However, it is not as straightforward as adding a power that would allow the SSPCA to do that—we would have to look at the implications of that. That is what I mean when I say that we need the time and space to properly tease out all the information and assess the ramifications of increasing those powers.

It seems as though it would be a straightforward change or addition to the bill, but we really need to consider fully what all the ramifications might be.

**The Convener:** You are having the conversation now.

**Finlay Carson:** Are you ruling out any additional powers for the SSPCA at stage 2 of the bill?

**Mairi Gougeon:** It is not something that we are considering as part of the bill.

**Finlay Carson:** Okay. Do you agree that the bill should include appropriate safeguarding to ensure that we have stringent and strong policies and procedures when we are considering rehoming, enforcement and the additional penalties introduced by the bill? Are you satisfied that the safeguarding is adequate?

**Mairi Gougeon:** All the relevant powers and the issues that you raise are covered by what we are proposing. The bill is quite comprehensive in relation to some of the safeguards, including in relation to rehoming, the right of appeal and the right of appeal for compensation. I hope that the committee will agree that we have struck the right balance. Rehoming is particularly important and we have switched the onus so that it now falls on the owner. That will massively benefit the rehoming agencies while ensuring that owners still have the proper rights throughout the process. We have been comprehensive in our approach to that.

**The Convener:** I thank members for their questions and I thank the minister and her officials for giving us their time.

At our next meeting on 14 January 2020, the committee expects to take evidence on environmental governance issues.

10:51

*Meeting continued in private until 12:40.*



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

---

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

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba