



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 26 May 2020

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
11th Meeting 2020, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Angus MacDonald (Falkirk East) (SNP)

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

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

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Maurice Golden (West Scotland) (Con)

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

Colin Smyth (South Scotland) (Lab)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Virtual Meeting

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 26 May 2020

[The Convener opened the meeting at 09:00]

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: Stage 2

The Convener (Gillian Martin): Good morning and welcome to the 11th meeting in 2020 of the Environment, Climate Change and Land Reform Committee.

Today's business is consideration of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill at stage 2. We are joined by the Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, and her officials, whom I welcome. We are also joined by Colin Smyth MSP and Maurice Golden MSP. I welcome you both, too.

We have a lot to get through this morning, so the meeting will work well if we take things slow and steady. When I call someone to speak, please take a short pause before you start, to allow your microphone to be switched on.

Everyone should have a copy of the bill as introduced and the marshalled list of amendments, which sets out the amendments in the order in which they will be disposed of. Members also have the paper with the groupings of amendments.

I remind members that requests to speak should be made by typing "R" in the BlueJeans chat function, after I call each group of amendments. Please speak only when I have called your name.

Only committee members are eligible to vote. We will use the BlueJeans chat function to vote. If, when I read out the result of the vote, you think that your vote has been incorrectly recorded, please let me know that as soon as possible. I will pause to provide time for that. If we have tied votes on an amendment, as convener I will vote in the same way as I voted in the division. I will do that consistently throughout the process.

Should time be against us and we do not complete consideration of the amendments by 1 pm, we will continue consideration of the bill at our next meeting.

If we lose the connection to any member or to the minister, I will suspend the meeting until we reconnect. In the unlikely event that reconnection

is not possible, we will reschedule stage 2 consideration. I will suspend the meeting for five minutes for a comfort break at a suitable point—probably around 11 o'clock.

I strongly encourage short and succinct contributions from everyone who speaks, if that is at all possible.

Before section 1

The Convener: Amendment 65, in the name of Colin Smyth, is in a group on its own. I refer members to the correction slip that has been issued in relation to the amendment.

Colin Smyth (South Scotland) (Lab): Amendment 65 would extend the scope of the Animal Health and Welfare (Scotland) Act 2006 to include cephalopods and decapods—that is, animals such as octopuses, squids, crabs and lobsters—as protected animals. Such animals are not currently covered by the 2006 act and therefore receive no protection under it.

The Scottish Government has indicated its willingness to consider such a change, should appropriate scientific evidence become available. There is significant evidence that those animals are sentient, intelligent and capable of experiencing pain. In 2007, in his paper, "Cognitive ability and sentience: Which aquatic animals should be protected?", Professor Donald Broom concluded:

"There is evidence from some species of fish, cephalopods and decapod crustaceans of substantial perceptual ability, pain and adrenal systems, emotional responses, long- and short-term memory, complex cognition, individual differences, deception, tool use, and social learning. The case for protecting these animals would appear to be substantial."

Cephalopods, in particular, are known to be incredibly intelligent; octopuses have large and well-developed brains, and are known to be capable of learning, navigating mazes and solving puzzles.

Similarly, decapod crustaceans have been found to be capable of experiencing pain, and animals such as lobsters have advanced central nervous systems. In fact, a 2005 paper on the welfare of animals, by the European Food Safety Authority, designated cephalopods and decapods as category 1 animals, which are animals for which

"The scientific evidence clearly indicates ... that animals in those groups are able to experience pain and distress".

The Animal Health and Welfare (Scotland) Act 2006 provides a specific exemption for anything that occurs in the normal course of fishing, so I stress that amendment 65 would not have an adverse impact on the fisheries sector or other sectors. They would simply be required to

maintain the same safe standards of care as we do for all protected animals.

Making cephalopods and decapods protected animals under the 2006 act would reflect the evidence of their sentience and ensure that those animals would be protected from cruel treatment and inhumane slaughter methods. They are protected by animal welfare legislation in a number of other countries, so the change would simply bring Scotland into line with international best practice, and it would reinforce our reputation as a world-leading country for animal welfare.

If the minister is not willing to support amendment 65 and is not convinced by what I believe is clear evidence, I hope that she will clarify what would be considered to be sufficient evidence to make the change. I also hope that she will assure us that the Scottish Government will make the change as soon as evidence emerges that satisfies her.

I move amendment 65.

Mark Ruskell (Mid Scotland and Fife) (Green): I welcome amendment 65 from Colin Smyth. I was on the predecessor committee, which dealt with the Animal Health and Welfare (Scotland) Act 2006. We heard a lot of evidence that some species that do not have backbones—vertebrates—can, nevertheless, feel pain and distress, and can show complex behavioural patterns. Amendment 65 would bring us up to speed and into line with European Union and United Kingdom legislation on scientific procedures. That legislation recognises that decapods and cephalopods are sentient and need to be protected under animal welfare legislation. It would be a welcome catch-up. The evidence exists, so we should be bringing such species into line with the protection that exists for vertebrates.

The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon): The purpose of amendment 65 is to expand the definition of “animal” as it is in section 16 of the 2006 act. However, the 2006 act allows for such a change to be made under regulations. That is why I will not support amendment 65.

A scientific review of the evidence for sentience in cephalopods and decapods will be held in the near future. The outcome of that can then be considered by the UK animal welfare committee and our new Scottish animal welfare commission. If that review illustrates that cephalopods and decapods require such protection, I will, of course, be happy to introduce the necessary consultation and potential statutory instrument for the committee’s consideration under the affirmative procedure.

I will not support amendment 65, so on the basis of what I have said, I ask Colin Smyth to seek to withdraw it.

Colin Smyth: I welcome the Government’s willingness to consider the issue and am happy not to press amendment 65 on that basis. However, I reiterate the point that there is already sufficient evidence to merit an urgent review of the scope of the 2006 act. I understand that, as the minister said, the Department for Environment, Food and Rural Affairs is undertaking research into the sentience of cephalopods and decapods. I hope that it will confirm what other research shows—that they are sentient animals.

I will not press amendment 65, but I hope that we get an update on the outcome of the research from the minister, posthaste.

The Convener: Thank you. Can you confirm that you wish to withdraw amendment 65?

Colin Smyth: Yes.

Amendment 65, by agreement, withdrawn.

Section 1—Prevention of harm to animals: penalties for offences

The Convener: Amendment 67, in the name of Colin Smyth, is grouped with amendment 99.

Colin Smyth: My notes say that amendments 66 and 63 are next, but that could be wrong.

Amendment 67 seeks to create more consistency in use of disqualification orders. During stage 1, a number of stakeholders highlighted the need for greater clarity on when those orders should, or should not, be used.

Amendment 67 seeks to introduce an automatic lifetime disqualification order for those who are sentenced to the maximum penalty for animal cruelty. It calls for the Scottish ministers to create regulations that set out where those orders should otherwise be used, in order to support consistency and proportionality in their use.

I appreciate that a disqualification order is not always appropriate or useful, so my amendment 67 also calls for regulations that would clarify when disqualification orders should be waived, while making it clear that, in such instances, the convicting court must state the reasons for doing so.

Amendment 67 would create a crucial way of achieving transparency. I have chosen to take a largely enabling approach, in order to acknowledge the need for flexibility and to give ministers the opportunity to fulfil prior fishing regulations.

Amendment 99 by Maurice Golden similarly aims to address concerns that have been raised

about use of disqualification orders. It calls on the courts to consider a lifetime disqualification for those who receive the maximum penalty, and would require the courts to provide a reason when they do not do so. I do not disagree with Maurice Golden's amendment; I believe that it would be an improvement on the current law. However, it is not as comprehensive as my amendment 67 and would not do anything to clarify use of disqualification orders outwith the rare instances in which the maximum penalties are issued.

Maurice Golden (West Scotland) (Con): Amendment 99 would provide a duty on courts to consider a lifetime disqualification from owning animals for people who receive the maximum penalty for relevant offences. In such circumstances, the court will almost certainly be dealing with the worst cases of animal cruelty. As such, I believe there would be an intention among the public—

The Convener: I am sorry, Maurice: I have to stop you. I turned two pages instead of one, earlier. I had two pages stuck together. I hope that it will be the only mistake that I make today. I am going to go back. Colin Smyth was correct to say that I should have called amendment 66. The clerks have now corrected me. I will allow Colin a few seconds to get himself together. I apologise to everyone.

Amendment 66, in the name of Colin Smyth, is grouped with amendment 73.

Colin Smyth: Thank you, convener. The good news is that when we get to amendment 67 I will be able to refer members to my previous comments.

Amendments 66 and 73 aim to make breaches of laws related to licensing subject to new higher maximum penalties. The introduction of five-year sentences for animal cruelty is a key aim of the bill. As the bill stands, that applies to only two offences. All other offences remain subject to only six months' imprisonment or maximum fines of £5,000.

My amendments 66 and 73 would make the new maximum penalties cover any offences that are created in regulations that are made under section 27 of the Animal Health and Welfare (Scotland) Act 2006. The enabling powers in section 27 are very broad and could underpin the creation of a wide range of very serious offences and unlicensed activities in settings including breeding, animal sanctuaries and pet shops.

The case for higher penalties is as clear in this matter as it is in any in which there is the potential for harm on a mass scale. Such offences could involve profitable businesses, which means that fines should be high enough to act as a deterrent. Amendments 66 and 73 would increase the

maximum penalty for those offences, while maintaining the options of summary conviction and lower penalties. The amendments would not mandate a higher penalty, but would simply give flexibility to issue one where appropriate.

I move amendment 66.

The Convener: No other member has indicated that they wish to speak, so I call the minister.

09:15

Mairi Gougeon: Amendments 66 and 73 would set the maximum penalties that would be available under animal licensing regulations at the same level as the increased penalties that the bill makes available for the most serious unnecessary suffering in animal-fighting offences. Setting a maximum penalty of five years in prison and an unlimited fine for all possible future licensing infringements would not be proportionate. There are other issues.

Amendments 66 and 73 would prevent Parliament from treating each piece of future licensing legislation on its merits, and from considering at that time what the most appropriate penalty regime would be. That would bind the hands of future parliamentary decision making, which would not be proportionate because future licensing regimes are likely to include offences that are of varying degrees of seriousness. It would therefore not be appropriate to dictate that the highest penalties should apply in all circumstances.

For example, the proposed licensing legislation on animal sanctuaries, dog, cat and rabbit breeding and pet sales is currently being drafted, and it seems likely that many of the associated offences will be relatively minor and technical, and will not directly involve harm to animals. They could include failing to renew a licence or not complying with all the conditions of a licence. A maximum five-year prison sentence for someone who fails to renew a dog-breeding licence would clearly be excessive.

Another important point is that, as the committee knows, the bill will introduce the power to develop new fixed-penalty notice regimes, which will cater for a wide range of scenarios. That development will be subject to affirmative procedure and will devise the most suitable penalties for each regime. Licensing legislation is likely to be particularly suitable for future FPN regimes under which, as I have said, the offences might be relatively minor and technical, and might not involve direct harm to animals. It will be possible to develop FPN regimes only for offences for which the maximum penalty is no more than six months' imprisonment or a level 5 fine.

Setting the maximum penalty for all future licensing legislation at a higher level would deprive the Scottish Government of opportunities to develop such regimes in an area where they would be particularly suitable, and where they would provide a proportionate and cost-effective way of improving compliance with the legislation. That is why I cannot support amendment 66, so I ask Colin Smyth to seek to withdraw it.

Colin Smyth: I believe that the broader and potentially very serious nature of the offences that can be created under section 1 of the bill means that it is important to provide as much flexibility as possible on fines, and to have a more robust and higher penalty, if that is required. The potential for making profit in licensed activities means that higher fines must be on the table so that they are a strong enough disincentive. Sentencing guidelines can be used to clarify whether higher penalties would be appropriate in order to ensure that they are not applied unfairly, just as for offences under sections 19 and 23 of the 2006 act.

However, I acknowledge that someone can be charged with minor breaches of the conditions of licence. Also, the minister said that regulations on dog, cat and rabbit breeding are in the pipeline. Other licensing regulations are due on pet vending, performance animals and so on. The minister has emphasised that more minor offences might be committed in those areas, but I ask her to make it absolutely clear ahead of stage 3 whether the Government will consider stronger penalties as an option as it develops regulations. I will not press amendment 66, but I note that I could bring the issue back at stage 3, if the Government does not do that.

Amendment 66, by agreement, withdrawn.

The Convener: As previously trailed, amendment 67, in the name of Colin Smyth, is grouped with amendment 99.

Colin Smyth: I will keep my comments very short. Amendment 67 seeks to create more consistency in the use of disqualification orders.

I am happy to support amendment 99, in Maurice Golden's name, which similarly aims to address the concerns that have been raised about the use of disqualification orders. I do not disagree with his amendment; however, my amendment 67 is more comprehensive, as it does not do anything to clarify the use of disqualification orders outwith the rare instances when the maximum penalties have been issued. I will leave it at that, convener.

I move amendment 67.

Maurice Golden: Amendment 99 relates to the provision of a duty on the court to consider a lifetime disqualification from owning animals for those who receive the maximum penalty for

relevant offences. In such circumstances, the court will certainly be dealing with the worst cases and, as such, I believe that there will be a public expectation that those involved are not fit to own or care for animals and that the best way to ensure that future offences are prevented is to disqualify those people from animal ownership.

That position is broadly shared by animal welfare organisations such as the Scottish SPCA, the Dogs Trust and OneKind. In such cases, the court would be mandated to consider a lifetime disqualification and, if one is not imposed, to state the reasons for declining to impose one. I believe that that is a balanced approach that allows the court some leeway to take account of exceptional circumstances while retaining the welfare of animals as a consideration in sentencing decisions.

I welcome the spirit in which Colin Smyth lodged amendment 67, but I believe that amendment 99 is a more workable and practical solution to broadly the same issue.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I will make a technical point. Amendment 67 addresses only the issue of ownership of animals, which would create, if it were to be agreed to—and I am not likely to support it for other reasons—the option for people whom we would not wish to have care of animals to have animals in their care. Restricting the issue to ownership is not an adequate way to achieve the intention of the amendment.

Mairi Gougeon: I completely understand the motivation behind the amendments, and I am absolutely mindful of the concerns that have been raised about whether disqualification orders should be used more frequently and consistently by the courts than they currently are.

However, I cannot support either amendment. They would impose a requirement on the courts to consider a lifetime disqualification from keeping animals for those people who receive the maximum available penalty for animal welfare offences or, in the case of Maurice Golden's amendment 99, the full range of animal health, wildlife and wild plant offences.

Although there are some fundamental problems with the drafting of both amendments, that is not my principal objection to them. Members will be aware that, under section 40 of the 2006 act, courts are already able to issue a disqualification order to ban someone who has been convicted of an animal welfare offence from keeping or owning animals or from being involved in a wide range of activities that involve animals. That disqualification can be for any time period, up to and including a lifetime ban, which rightly provides the courts with the flexibility to address the particular

circumstances of each case and the likely risk that each offender could pose to animals in future.

Further, section 40(5) of the 2006 act already requires the courts to state their reasons if they decide not to make a disqualification order for the relevant offence. That puts the onus on the courts to consider imposing a disqualification order and to then explain any decision not to impose such an order, which encourages the use of such orders where appropriate.

Disqualification orders are routinely raised in animal welfare cases. In recent years, more than half the court cases in which the Scottish SPCA has been involved have resulted in a disqualification order, with most being for five years or more.

I know that the Scottish SPCA has concerns about the apparent lack of consistency in the lengths and types of disqualification orders that the courts have issued in different cases. However, the Scottish SPCA understands and accepts the important and long-established principle that sentencing in any given case is a matter for the courts, which take into account all the facts and circumstances of the case before reaching a decision within the overall legal framework that is provided by the Parliament. Any new requirement for the courts to follow as they undertake their sentencing responsibilities has to be a matter for the judiciary or the independent judicially led Scottish Sentencing Council. If Parliament were to place new obligations on sentencing, that would run the risk of threatening that judicial independence, so such moves should be resisted.

It is worth noting that, if and when the changes to the overall legal framework for sentencing that are proposed in the bill are enforced, the Scottish Sentencing Council will look at the area, with a view to considering the guidelines. That seems an appropriate way to proceed that does not threaten judicial independence.

In saying all that, I recognise that the area is of concern, particularly for Colin Smyth and Maurice Golden, who have lodged amendments. I am willing to work with them to consider whether it will be possible to lodge a stage 3 amendment to section 40 of the 2006 act, in order to strengthen the existing requirement on courts to explain their reasons for deciding not to impose a disqualification order for a relevant offence. If both members are content with that, I invite Colin Smyth to withdraw amendment 67 and Maurice Golden not to move amendment 99, because, for the reasons that I have outlined, I cannot support the amendments.

Colin Smyth: Both amendments in the group try to address a clear issue that exists in the use of

disqualification orders, and I believe that both would be an improvement.

My amendment 67 looks to create as much consistency and clarity in the process as possible, while recognising the need for flexibility. Given that the issue is complex and requires proper consultation, I have opted for a largely enabling amendment to allow that work to take place. My aim is to set out clearly when it is appropriate and proportionate to use disqualification orders, right up to an automatic lifetime ban for the most serious convictions. However, I recognise that a one-size-fits-all approach will not work, and my amendment 67 is clear that there must be a mechanism for waiving a disqualification order when appropriate, provided that an explanation is given.

As there are two amendments on the issue, I am happy to discuss changes to the specific wording of my amendment ahead of stage 3. Given the Government's assurances about the general aim of my amendment and its willingness to discuss the matter further, I will not press amendment 67. However, I make it clear that I intend to lodge an amendment at stage 3, and I hope to work with Maurice Golden and the Government ahead of that stage, so that they can have input into the final wording.

Amendment 67, by agreement, withdrawn.

The Convener: Amendment 68, in the name of Colin Smyth, is grouped with amendments 69 to 72.

Colin Smyth: As with the amendments in group 2, all the amendments in this group aim to expand the offences that are covered by the increased maximum penalties that the bill will introduce. I fully support the introduction of five-year sentences and unlimited fines for the most serious animal welfare crimes but, as it stands, the change will not be applied widely enough.

The amendments in the group seek to expand the offences to which the new maximum penalties will apply. Amendment 68 would increase the maximum penalty for offences relating to mutilation; amendment 69 would do the same for offences relating to the performance of cruel operations on animals; amendment 70 would do so for poisoning offences; amendment 71 would do so for offences relating to the failure to ensure the welfare of animals; and amendment 72 would do so for offences relating to abandonment.

There is clearly scope for serious harm to have been done under all those offences, and the current maximum penalties of six months' imprisonment or a fine of up to £5,000 simply do not reflect that. Increasing the maximum penalty for such offences while retaining the options for a summary conviction or lower penalties will give

flexibility to ensure that proportionate sentences can be issued, depending on the severity of the crime that has been committed.

The amendments shine a light on the diverse nature of cruelty offences, and highlight that not all of them are given the prominence that they should have in sentencing. For example, I cannot understand why abandonment is anything other than a cruelty offence; it should be placed in a higher category than in the 2006 act. The bill brings in fixed penalties for lesser offences, but a fixed penalty for abandonment, for example, would be totally unacceptable, given the potentially serious outcome of such an offence.

If the Government is not prepared to accept amendments that would bring in those stronger sentences for a wider range of offences, I hope that consideration might be given to the question whether an offence such as abandonment should still be seen as a lower-level offence in the categorisation of offences.

I move amendment 68.

09:30

Mairi Gougeon: By taking action to increase the penalties for the worst forms of animal cruelty, the Government is setting out clearly our commitment to properly protect the welfare of animals in Scotland.

We are taking bold action with the bill. If passed, it could mean imprisonment for up to five years for those who commit the most extreme offences, which involve unnecessary suffering, animal fighting and the worst sorts of wildlife crime. Fortunately, such horrific cases are rare, but they rightly attract considerable public interest as well as concern that suitable penalties should be available.

I acknowledge that some animal welfare groups believe that all animal welfare offences, of any sort, should attract the strongest possible penalties. However, as we take bold action to increase penalties, it is vital that we do so in a way that does not undermine long-established legal principles, which include the need for proportionality between the offence and the sentence.

Before setting out why it is not proportionate to include all those offences within the new penalty regime, I highlight from the outset that the most important feature of the 2006 act is that, if the circumstances of any offence involve unnecessary suffering, they can be prosecuted under section 19, which sets out the maximum penalties available under the act. That important feature already provides robust protection across the board. As we clamp down on animal cruelty, I am

keen to ensure that we retain the long-established and proportionate two-tier approach of lesser offences continuing to be subject to a lesser penalty.

The offences in sections 20, 21, 22 and 29 of the 2006 act are rarely prosecuted. I completely understand that their terminology is very emotive, but it is important that we consider that what that amounts to in practice tends to relate to some of the lesser, more technical offences.

For example, a more accurate description of the offence that is described as “mutilation”—a very emotive term—is that it relates to the carrying out of any procedure that interferes with sensitive tissues or the bone structure of an animal. That might include routine procedures such as micro-chipping or ear tagging, which are permitted by regulations that control the way in which they are done. Accordingly, a failure to carry out procedures in accordance with the regulations is an offence under section 20, which could include incorrectly inserting an identification ear tag in a farm animal, for example.

Regarding abandonment, which Colin Smyth mentioned, an offence under section 29 could include temporarily leaving an animal unattended without making adequate provision for its welfare, which could include situations in which no harm is caused to the animal. In those circumstances, a five-year prison sentence would, quite clearly, be disproportionate.

The offence in section 24 of the 2006 act of failing to take reasonable steps to ensure that the welfare needs of an animal are met

“to the extent required by good practice”

is most commonly used in prosecutions for behaviour that might affect the welfare of an animal but which does not amount to causing unnecessary suffering. That can often occur due to ignorance or misunderstanding, rather than intentional neglect or cruelty. That distinction is very well understood and accepted by the enforcement authorities, which include the Scottish SPCA, local authorities and the Animal and Plant Health Agency. They know that, if the circumstances of an offence involve unnecessary suffering, they can be prosecuted under section 19 of the 2006 act, and can attract the higher penalty.

Although the offences that we are considering have the potential to involve harm to animals, it is vital that our penalty regime is proportionate. In any case, where unnecessary suffering is actually caused, the new, higher maximum penalties will already be available.

Another important point to remember is that, if Colin Smyth's amendments in this group are agreed to, they would—as was the case with

amendments 66 and 73, which we discussed earlier—prevent ministers from using the powers in section 2 that relate to fixed-penalty notices, because FPNs can be exercised only in relation to offences for which the maximum penalty on conviction does not exceed six months' imprisonment. Colin Smyth's amendments would remove our ability to deal with those lesser offences, so I cannot support them, and I urge the committee not to support them, either.

The Convener: I invite Colin Smyth to wind up.

Colin Smyth: Strengthening penalties for the most serious animal welfare crimes is one of the key aims of the bill. However, in my view, if any serious crimes continue to carry a maximum sentence of just six months, that aim will not be achieved. It does not make sense that some animal welfare crimes will carry a sentence of up to five years in prison or an unlimited fine, while offences such as that of mutilation, which can be severe, will carry a maximum sentence of six months or a fine of £5,000.

My amendments would not mean that minor crimes under the provisions in question would have to be dealt with differently—when a short sentence or a small fine was appropriate, that would still be what was issued. They would simply mean that, when a higher sentence was needed, the scope would exist to issue one. As I indicated in relation to amendments 66 and 73, clear guidance would need to be provided to clarify when higher penalties would be appropriate to ensure that they would be used appropriately.

However, I recognise that the most severe offences can be charged on the ground of causing unnecessary suffering. The challenge is ensuring that that would continue to be the case and that such offences would become subject to the new maximum sentence. It is equally important that we ensure that offences such as abandonment are not covered only by the issuing of fixed penalties; I do not share the minister's view that abandonment can be seen as a relatively minor breach of the law. I would therefore welcome further discussion with the Government about how that can be achieved.

On that basis, at this stage, I will not press amendment 68 or move my other amendments in the group, given that we have a period of time to discuss the issue before stage 3.

Amendment 68, by agreement, withdrawn.

Amendments 69 to 73 not moved.

Section 1 agreed to.

Sections 2 and 3 agreed to.

Section 4—Fixed penalty notices for offences relating to animal health

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 4 and 5.

Mairi Gougeon: Section 4 of the bill at introduction provided for a general power to make provision in regulations for fixed-penalty notices to address animal health offences. The aim is to provide an additional level of enforcement that could be delivered without the intervention of Scottish courts while still providing a meaningful penalty for those who breach animal health rules.

The bill contains provisions to allow the Scottish ministers to create such a scheme for minor and technical animal welfare offences. We consider that similar provisions should be available for appropriate animal health offences. That uniformity in approach will provide clarity and consistency and send an important message that we expect all animals in all circumstances to be protected from harm. We held a consultation last autumn to test those proposals further, and the majority of respondents to it were supportive of the principle behind section 4.

Amendment 4 sets out the detail of how those powers will work in practice. The provisions are subject to strict limits but also allow sufficient flexibility to take account of any future changes to animal health legislation. Amendments 3 and 5 extend the provisions to include offences under the Bees Act 1980 and offences in any order that are made under that act. That ensures that fixed-penalty notices can be used, where appropriate, in respect of offences relating to the control of diseases of kept bees.

Prior to the bringing forward of secondary legislation to introduce a fixed-penalty notice scheme, further stakeholder consultation will be undertaken to help develop the details of the scheme and the range of offences to which it would apply. Any future regulations that make provision for the issuing of FPNs will be subject to the affirmative procedure and, as such, scrutinised by Parliament before being made, as is the case with animal welfare FPN provisions.

I move amendment 3.

Mark Ruskell: I have a brief question. I should probably declare an interest, as I am a beekeeper. In relation to the Bees Act 1980, as I understand it, amendment 3 increases the level of fine on summary conviction from level 3, which is £3,000, to level 5, which is £5,000. The minister outlined the issues about disease control. Does the Scottish Government have any concerns that compliance with the Bees Act 1980 is not high?

The Convener: I invite the minister to address that question, and to wind up.

Mairi Gougeon: I would be happy to get back to the committee with more information on Mark Ruskell's question. Certainly, I have not been made aware of any particular issues with compliance with that act. Nonetheless, it is important that compliance is covered by any regime that we bring in to ensure that we have it.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[Mairi Gougeon]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Wildlife and Countryside Act 1981: penalties for offences

The Convener: Amendment 6, in the name of the minister, is in a group on its own.

09:45

Mairi Gougeon: In the course of considering the bill's provisions, it was brought to my attention that there is an anomaly in section 15A(2) of the Wildlife and Countryside Act 1981, which governs the use of pesticides and biocides. The purpose of amendment 6 is to address that anomaly by extending the defence in section 15A(2) of the 1981 act to include European Union regulation (EC) 1107/2009, which governs the use of plant protection products—in essence, to extend the legitimate defence to the offence regarding plant protection products.

Currently, section 15A(3) of the 1981 act empowers the Scottish ministers to prescribe, by order, ingredients of pesticides that it is an offence to possess. The power was used to make the Possession of Pesticides (Scotland) Order 2005, which prescribes a list of eight active ingredients that it is an offence to possess. Although the 2005 order refers to pesticides, the banned ingredients relate to substances that can be used in plant protection products.

PPPs are used to protect plants from pests, diseases and weeds and might be agricultural pesticides or biocidal products that control harmful or unwanted organisms through chemical or biological means. Examples of biocides are disinfectants, food preservatives, hand sanitiser and insect repellents.

Under section 15A(2) of the 1981 act, a defence is available to the offence of possession of pesticides

“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) Regulation (EU) No 528/2012 of the European Parliament and of the Council.”

Let me give an example. Some of the ingredients in the 2005 order can still be used in rodenticides, so a professional, trained pest controller could show that their possession of a product was in accordance with the regulations, if they were using the product for its permitted purpose and in full compliance with the conditions that governed its use.

Amendment 6 will extend section 15A(2) of the 1981 act to ensure that a defence is also available if the person can show that the offence was for the purpose of doing anything in accordance with regulation (EC) 1107/2009 of the European Parliament and Council.

Amendment 6 will have no immediate effect, because the 2005 order does not currently list any substances that are approved for use in plant protection products under the EU PPP regulations. However, our adding a reference to the PPP regime at this time will enable us to add any substances that are covered by that regime to the 2005 order through secondary legislation, should the need arise. That is important, because it will allow a fast policy response, should it be discovered that new pesticides are being used for wildlife crimes, for example.

Amendment 6 will also allow us to add pesticides to the 2005 order while preventing the unintended consequence of criminalising a person who legitimately uses a plant protection product under the EU plant protection regime.

I move amendment 6.

Amendment 6 agreed to.

The Convener: Amendment 74, in the name of Claudia Beamish, is grouped with amendments 75 to 78, 95 and 96.

Claudia Beamish (South Scotland) (Lab): I will speak to my amendments and, briefly, to Mark Ruskell's amendment 95.

My amendments in this group are intended to ensure that wildlife crimes and crimes against wild mammals can be considered for vicarious liability prosecution, where there is evidence of a prosecutable crime. It is important that the landowner or occupier who has the legal right to carry out management activities on the land can be prosecuted under vicarious liability. That might act as a deterrent to those few landowners who do not respect the law. The amendments apply to offences that are found in the Wildlife and Countryside Act 1981 and the Wild Mammals (Protection) Act 1996.

I will talk about my amendments briefly. They would mean that vicarious liability would be

applicable to various offences under sections of the 1981 act, including those on the “Sale etc of live or dead wild birds, eggs etc”; the “Registration etc of certain captive birds” and their eggs; the “Protection of captive birds”, which relates to ensuring that they have a sufficient cage size; the “Protection of certain wild animals”, which includes the protection of shelters and the prevention of poaching; the “Protection of wild hares etc” in the close season; the “Prohibition of certain methods of killing or taking wild animals”; the “Prevention of poaching: wild hares, rabbits etc”; the “Protection of wild plants”; the “Prohibition on keeping etc of invasive animals or plants”; and the “Prohibition on sale etc of invasive animals or plants”. Finally, the amendments would also cover offences under section 1 of the Wild Mammals (Protection) Act 1996, which lists the ways in which causing unnecessary suffering to any wild mammal can occur.

I took the decision not to include marine mammals in the list not because they are any less precious, but because ownership of them is such a complex issue, as they are at sea. The minister has now indicated that she will lodge amendments at stage 3 in relation to the killing of seals. Therefore, it might be appropriate to discuss the application of vicarious liability to that with her between stages 2 and 3. However, I ask the minister whether at this stage she is in a position to comment on a possible Scottish Government amendment, and how that can be consulted on and scrutinised by our committee.

I also decided that it was not appropriate to include the protection of deer in my amendments, as deer management will continue to demand appropriate culling. Therefore, in my view, it would be too complex to include them in the section that is being considered on vicarious liability.

I have made individual amendments for each species—and I hope that that was the correct way to do it—to give members and the minister the choice as to which ones they wish to take forward, if any. If passed, the amendments should send a strong statement of deterrence across Scotland to all those concerned.

I will listen with care to Mark Ruskell's remarks on his amendment in this group.

I move amendment 74.

Mark Ruskell: Amendment 95 would introduce vicarious liability for offences relating to badgers. I appreciate and support Claudia Beamish's attempt to apply vicarious liability more widely. However, I believe that the case for extension is strongest for badgers. Vicarious liability is about landowners taking responsibility for the actions of those who are working on their property, and badgers face a

huge amount of persecution through the destruction of their setts.

I have heard of a number of cases—including some in Fife, which is in the region that I represent—in which it has been difficult to pin down liability because there are contractors, sub-contractors, agents and landowners all passing the buck. Perpetrators can get away with damaging badger setts because landowners are not liable and penalties are too low. In one case that took place in my region, a factor was simply given a warning letter that was written by the court following the damage of a sett.

Badger setts are being damaged and destroyed through building works or forestry operations, and I have heard of horrific cases in which tunnels have been blocked by soil, rocks, trees and brush, which has then caused the animals below to suffocate.

There are also examples of estates on which multiple “doughnuts” have been discovered. A doughnut is a large circular area of disturbed ground that is typically dug by a badger when it is caught in a snare and dies while it is struggling to break free. In one case, eight doughnuts were found on an estate, stretching back over a number of years. The landowner had clearly avoided taking action to prevent that from happening time after time.

Badgers are territorial animals that settle in particular areas. Their presence is easily identifiable because of their visible setts; it is virtually impossible for a landowner not to know that badger setts are there. Law-abiding landowners have nothing to fear from vicarious liability being applied to offences relating to badgers. However, those who allow sett destruction and persecution to take place need to know that the buck stops with them.

Mairi Gougeon: Vicarious liability was widely discussed during stage 1. I said at that point that, although I had not been able to identify any further offences to which I thought it would be useful or appropriate to extend vicarious liability, I would absolutely welcome the committee's suggestion on any particular offences that members felt warranted such an extension.

I have given close and careful consideration to all the amendments that Claudia Beamish and Mark Ruskell have lodged, and I have a number of significant concerns with them, which I will lay out for you now.

Amendments 74 to 77 would extend vicarious liability to a range of offences, but I simply do not believe that the evidence is there to justify that extension. When vicarious liability was introduced under sections 18A and 18B of the Wildlife and Countryside Act 1981, it was because we believed

that there was clear evidence that demonstrated the need for it in relation to offences against wild birds and their nests and eggs, and the use of banned pesticides. Extending vicarious liability to poaching, for example, would not make sense, because it is often the landowner or manager who is the victim of that kind of crime.

Likewise, I have heard no compelling reason why vicarious liability is needed for offences that relate to the protection of wild plants or the keeping or sale of invasive animals, and I have heard nothing that demonstrates the type of employer-employee relationship that would make it reasonable to hold the employer criminally liable for the acts or omissions of their employee in relation to such offences. I do not feel that we have evidence to show that landowners and managers have been complicit in those types of crimes.

We need to remember that vicarious liability is a type of strict liability. Where vicarious liability applies, it is sufficient to show that an employee committed an offence in the course of their employment for their employer to be held criminally liable for the acts or omissions of their employee, unless they are able to demonstrate a due diligence defence. It would therefore be a significant step to open up vicarious liability to other offences and extend the situations in which it applies.

Amendments 78, 95 and 96 open up the possibility of a vicarious liability prosecution to be taken against owners or occupiers of land who have a legal right to provide "management activities" on that land. "Management activities" has a wide-ranging and non-exhaustive definition in amendment 78 and opens up the possibility of a vicarious liability prosecution being brought against a host of individuals who would not be liable under the existing provisions in the 1981 act. Although we discussed during stage 1 the possibility of extending the offences to which vicarious liability could be applied, there were no discussions on widening the definition of to whom it could be applied. It would be inappropriate to make such far-reaching changes without first engaging in proper consultation or undertaking full impact assessments so that all the implications and ramifications of such a change could be fully understood.

It is also important to remember that it is already an offence for someone to knowingly cause or permit an offence under sections 6, 7, 9, 11 and 13 of the 1981 act and sections 1 to 4 of the Protection of Badgers Act 1992. Admittedly, that does not go as far as vicarious liability, but it means that, should an employer or land manager instruct an employee to commit one of those offences, they would be liable for that offence.

Having said all that, I think that there are some things in amendments 78, 95 and 96 that we could consider ahead of stage 3, but I cannot support the amendments as they are currently drafted.

Claudia Beamish raised a point about seals and referred to the letter that I sent to the committee about lodging a stage 3 amendment in relation to seals. This is not an ideal situation and that is not something that I would ordinarily do. In that letter, I offered the committee the opportunity to discuss this further with officials, if that is something that the committee wishes to do. I hope that you take up that offer so that officials can give you more detailed information about the potential for that amendment.

10:00

Finlay Carson (Galloway and West Dumfries) (Con): We strongly disagree that the new provisions of vicarious liability add anything to existing laws. We do not accept the extension in the bill because it would appear to make the landowner liable for the actions of third parties, irrespective of whether he or she has paid due care and attention.

We accept the legal principles of liability, and agree that landowners can and should be held responsible in certain circumstances, but these amendments appear to make the landowner liable for the actions of third parties, irrespective of whether he or she has taken due care and attention. We will not support the amendments.

The Convener: Minister, I give you the opportunity to come back on any of that.

Mairi Gougeon: I am happy to move on, convener.

The Convener: I call Claudia Beamish to wind up and press or withdraw amendment 74.

Claudia Beamish: I thank those members who have contributed to the debate. If it is appropriate, convener, before I tell the committee my decision on my amendments, I want to comment briefly on Mark Ruskell's amendment 95.

A landowner would definitely know about the existence of badger setts on their land, or they could easily be informed of it by those who manage their land. As Mark Ruskell said, there have been some serious cases of sett destruction. I would simply state that I support amendment 95.

I note what the minister said about poaching and invasive plants, and I take that point on those amendments.

As amendments 78 and 96, on those with the legal right to carry out management activities, widen definitions, I do not want to move them today because the minister said that consultation

will be needed. On the section on traps and snares, I hope that it might be possible for the minister to consider something in relation to vicarious liability before stage 3. Convener, is it possible for the minister to comment on that, or have I left it too late?

The Convener: I am happy for the minister to answer that.

Mairi Gougeon: That is one area that I would certainly be happy to discuss with Claudia Beamish ahead of stage 3.

The Convener: Claudia, do you wish to press or withdraw amendment 74?

Claudia Beamish: I wish to withdraw it.

Amendment 74, by agreement, withdrawn.

Amendments 75 to 78 not moved.

The Convener: Amendment 7, in the name of the minister, is grouped with amendment 9.

Mairi Gougeon: It was brought to my attention that the bill needed to be updated to bring it into line with recent amendments to section 21 of the Wildlife and Countryside Act 1981, which provides the penalties for the offences in that act. Without this update, there would be a discrepancy in the section that provides penalties for all the offences in part 1 of the 1981 act.

After the bill was laid in Parliament, in September last year, the Wildlife and Countryside Act 1981 was amended by secondary legislation in order to enact the new EU invasive alien species regulations. The Scottish statutory instrument made changes to some sections in the 1981 act concerning the control and release of invasive non-native species, and it inserted a new offence of contravention of regulation (EU) 1143/2014, which covers the prevention, management, introduction and spread of invasive alien species.

As the bill was drafted prior to the SSI being laid, it does not include penalties for the offences inserted by those regulations. The present drafting of the bill is based on how section 21 of the 1981 act was set out prior to its being amended by the 2019 regulations. If these amendments were not made, the provisions would not make sense.

At the same time, we will increase the maximum penalties for the new offences so that they attract the same maximum penalties as the similar existing offence in section 14 of the 1981 act, which also deals with invasive alien species. That will allow sheriffs to issue equivalent sentences in cases in which multiple offences have been carried out across the 1981 act.

I move amendment 7.

Amendment 7 agreed to.

The Convener: Amendment 8, in the name of Claudia Beamish, is grouped with amendments 10, 79 to 90, 11 and 91.

Claudia Beamish: These amendments are about increasing maximum penalties and focus on offences relating to breeding sites and resting places, as found in section 1 of the Wildlife and Countryside Act 1981, and offences relating to illegal pesticides, as found in section 15A of the 1981 act.

I thank RSPB Scotland, the Scottish Wildlife Trust and, for their evidence on these amendments, Scottish Environment LINK and the Bat Conservation Society. The designated offences would now have a new penalty on summary conviction of imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000, or both, or, on conviction on indictment, of imprisonment for a term not exceeding five years or a fine, or both.

Members may note that amendment 10 differs from the rest in terms of sentencing. I lodged the amendment in error, for which I apologise, and I will not move it.

The offences that I wish to include relate to the intentional or reckless damaging, destroying or obstructing of nests that are habitually used; taking or destroying eggs of certain wild birds; possession of certain dead wild birds or their eggs; disturbing nest building or nests with eggs or young, or birds with dependent young; disturbing lekking, which I found out is competitive displays to attract mates; harassing any wild bird in schedule 1A to the 1981 act, which is a list of specific birds of prey; damaging, destroying or obstructing the shelter of certain wild birds; disturbing certain wild animals while they are occupying shelter; possession of pesticides containing one or more proscribed active ingredients; and knowingly causing or permitting the possession of said illegal pesticides.

In its stage 1 report, the committee recommended that the Scottish Government

“reconsiders its approach to ... resting places and breeding sites”,

as crimes involving those can “have equivalent outcomes”. The report says that

“the destruction of a habitat could be as fatal as directly harming or killing an animal.”

The unlimited fine is vital, because there are cases in which offenders can benefit financially from not following the law, through the development of land and so on, and in which providing alternative roosting sites would have a greater cost than the existing fine.

I appreciate the Government’s comments on a potential further amnesty on illegal pesticides.

However, I consider that enough time has passed since those substances were banned and that the illegality of their possession, or of causing someone else to possess them, is well known. Those should be considered serious crimes, with a penalty that would properly deter. Such crimes can be a source of immense suffering in wild animals, and an increase in penalties will appropriately recognise their sentence and help to better deter the known harm to them.

I move amendment 8.

Mairi Gougeon: Given the extremely toxic nature of some of these substances, the continued illegal use of pesticides to poison animals poses a danger not only to domestic and wild animals but also to human health. As Claudia Beamish highlighted, during stage 1 the committee raised the matter of the appropriate level of penalty for the possession of banned pesticides. I said then that I was open to considering an increase to the maximum penalty.

Following careful consideration of the evidence, I am happy to support amendments 8 and 11, to increase the maximum penalties for the possession of proscribed pesticides to 12 months' imprisonment or a £40,000 fine, or both, by summary procedure, and five years' imprisonment or an unlimited fine, or both, by solemn procedure.

Turning to the amendments on the disturbance of nests and habitats, I will first make a technical comment. I draw the committee's attention to the fact that, as drafted, the amendments do not repeal the penalties for the offences that are set out in the bill as introduced. Therefore, should the amendments be agreed to as they are currently drafted, the offences will have two conflicting maximum penalties—which would, of course, make the legislation unworkable.

On the amendments' purpose, I share Claudia Beamish's concerns about the impact that offences involving the disturbance of nests and habitats can have on wildlife, which is why I initially proposed to increase the maximum penalties for those offences to 12 months' imprisonment or a £40,000 fine, or both. However, I appreciate that some committee members, as well as many other MSPs and stakeholders, hold the view that those proposals do not go far enough and that the impact of some of the offences can be significant, thereby warranting a higher penalty.

I am willing to listen to, and work with, the committee and Parliament to ensure that the bill affords the best protection for our wild and domestic animals. Although I cannot support all the amendments in the group as they stand, due to the technical issue that I have highlighted, I am prepared, after listening to the arguments that have been put forward, to give further

consideration to the amendments relating to the disturbance of nests and habitats ahead of stage 3.

I support amendments 8 and 11, and I give Claudia Beamish a commitment that I will work with her on drafting an amendment for stage 3 should she be willing to not move the other amendments in the group.

Claudia Beamish: I am relieved to hear what the minister has said about illegal pesticides. The time has come to recognise that there is no excuse for storing or making use of those chemicals, which are dangerous to animals and our environment. I therefore press amendment 8.

I will be pleased to work with the minister and other members and stakeholders who have expressed an interest in and concerns about nests and resting places. I recognise that we will need to look again at the amendments before stage 3, because those that do not repeal previous provisions would, of course, not be appropriate—I thank the minister for her useful comment, as I was not aware of that. I will, therefore, not move those amendments today.

Habitats and resting places are fundamentally important to many animal species, and I look forward to working with the minister at stage 3 to provide better protection to animals.

Amendment 8 agreed to.

10:15

Amendment 9 moved—[Mairi Gougeon]—and agreed to.

Amendments 10 and 79 to 90 not moved.

Amendment 11 moved—[Claudia Beamish]—and agreed to.

Amendment 91 moved—[Claudia Beamish].

The Convener: The question is, that amendment 91 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Carson, Finlay (Galloway and West Dumfries) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Wells, Annie (Glasgow) (Con)

Against

MacDonald, Angus (Falkirk East) (SNP)
Martin, Gillian (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 91 agreed to.

Section 5, as amended, agreed to.

Section 6—Protection of Badgers Act 1992: penalties for offences

The Convener: Amendment 92, in the name of Colin Smyth, is grouped with amendments 93 and 94.

Colin Smyth: All the amendments in the group would increase the maximum penalties for interfering with or damaging a badger sett, in order to bring them into line with the penalties for harming a badger directly. Interfering with a badger sett can cause at least as much—and often more—damage as killing a badger directly, because it can cause elongated suffering and more drawn out and painful deaths, and it can harm entire groups of badgers and risk local extinction. The disruption of badger setts causes badgers to be crushed, suffocated and drowned, and dependent cubs are left vulnerable when adults desert damaged setts. Because the fines for such offences are currently so much lower than those for killing a badger directly, people can often choose to damage setts with the aim of killing badgers. Indeed, there is no reason for damaging a badger sett other than to harm the animals, and that needs to be reflected in the penalties.

It is clear that the current penalties are not acting as a strong enough deterrent. Scottish Badgers receives up to 100 incident reports a year, about 80 per cent of which can be considered potential offences, and the majority of those are offences against setts rather than against badgers. As drafted, the amendments would retain the option of summary convictions and lower penalties. There is a case to be made for removing that option altogether, but, in the interests of compromise and seeking agreement on the issue, I am not suggesting that we do so at this point. If the amendments were to be agreed to, a great deal of flexibility would still be available in how such cases could be dealt with, depending on the severity and impact of the crime, which is an important point.

Increasing the maximum penalties for such crimes and bringing them into line with the penalties for offences against the animal will reflect the significant scope for damage from such crimes, and it will send a clear message that disrupting a badger sett is a serious wildlife offence. That will ensure that serious crime receives appropriate penalties, and it will act as a deterrent for those who see badger setts as an easy target compared with the animals themselves.

I move amendment 92.

Mark Ruskell: I very much welcome amendment 92. We need to see the increase in penalties for the destruction of badger setts as a package alongside the provisions on vicarious

liability, and we must ensure that the penalties are in line with those for other offences.

It is worth bearing in mind that some of the landowners and others who are responsible for sett destruction are particularly wealthy. We are talking about commercial and corporate interests. Even if we can get a conviction—which, again, raises the issue of vicarious liability—the fines that are attributed for sett destruction are so low that, in many cases, they would barely register on a business's balance sheet. We need to increase those penalties and vicarious liability in order to bring an end to the destruction of badger setts, which is happening across Scotland.

The Convener: As no other members have indicated that they wish to speak, I invite the minister to respond.

Mairi Gougeon: As I said when I was considering Claudia Beamish's earlier amendments, I absolutely appreciate the impact that offences involving the disturbance of habitat and resting places, including badger setts, can have on wildlife. That is why I proposed at the outset of the bill to increase the maximum penalties for those offences to 12 months' imprisonment or a £40,000 fine, or both.

I have listened to the concerns that have been raised today, and I am prepared to give Colin Smyth's amendments 92, 93 and 94 further consideration ahead of stage 3. I would simply ask him, as I asked Claudia Beamish, to withdraw or not move the amendments in the group, and I will look to work with him on an amendment for stage 3.

The Convener: I call Colin Smyth to press or withdraw amendment 92.

Colin Smyth: It is simply not right that crimes against badger setts are not subject to the same penalties as crimes against animals when, in reality, crimes against setts are crimes against animals. The amendment would close the loophole that allows people to kill an entire group of badgers in a cruel and inhumane way with less severe consequences than if they had killed an individual badger.

Amendments 92 to 94 would retain the option of summary conviction with lower maximum penalties, so that, where appropriate, such crimes could continue to be dealt with as they currently are. The amendments would, however, allow for stronger penalties to be applied where necessary, as we know that there are circumstances where that is necessary. The amendments do not go any further than bringing an offence against badger setts into line with offences against badgers, and doing so would reflect the true impact of such crimes.

I take on board what the minister says, although I am happy with the text of my amendments. I want to make very clear that the aim of any amendment at stage 3 must be to bring crimes against badger setts into line with crimes against the animal. I am happy to work with the Government on a stage 3 amendment in order to resolve any wording issues, so I will not press or move the amendments at this stage. However, I certainly intend to pursue the matter at stage 3.

The Convener: I put on record my support for the policy intention of the amendments. I spoke on the matter in the stage 1 debate, and I agree with all the comments that have been made about the impact of destruction of badger setts on the animals.

Amendment 92, by agreement, withdrawn.

Amendments 93 and 94 not moved.

Amendment 95 moved—[Mark Ruskell].

10:30

The Convener: The question is, that amendment 95 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
MacDonald, Angus (Falkirk East) (SNP)
Martin, Gillian (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 95 disagreed to.

Section 6 agreed to.

Sections 7 and 8 agreed to.

Section 9—Wild Mammals (Protection) Act 1996: penalties for offences

Amendment 96 not moved.

Section 9 agreed to.

Section 10 agreed to.

After section 10

The Convener: Amendment 12, in the name of the minister, on wildlife offences and fixed-penalty notices, is grouped with amendment 64.

Mairi Gougeon: The aim of the bill is to create a suite of measures to deal with offences against

animals. The bill at introduction contained provisions to allow the Scottish ministers to create a fixed-penalty notice scheme for minor and technical animal welfare offences.

Amendment 12 seeks to introduce the same provisions, but for wildlife offences, bringing the protections of wildlife into line with those of domestic animals. It will enable the Scottish Government to introduce secondary legislation in future to create a fixed-penalty notice scheme for minor and technical wildlife offences. The amendment limits the offences to which fixed-penalty notices can be applied to those that carry a maximum penalty of six months' imprisonment or a level 5 fine.

The bill already contains provision to confer a power on the Scottish ministers to make regulations for the use of fixed-penalty notices in relation to animal welfare offences.

The merits of that regime were discussed at stage 1, and the committee welcomed the proposal. Amendment 12 seeks to extend the agreement to wildlife offences. I note again that, before laying secondary legislation to introduce an FPN scheme, we will undertake further stakeholder consultation to help to develop the details of the scheme and the range of offences that it will apply to.

Any future regulations that make provision for the issuing of fixed-penalty notices will be subject to the affirmative procedure and, as such, will be scrutinised by the Scottish Parliament before being made, as is the case with the existing animal welfare FPN provisions.

I move amendment 12.

Amendment 12 agreed to.

The Convener: Amendment 1, in the name of Mark Ruskell, is grouped with amendment 98.

Mark Ruskell: Amendment 1 follows up one of the many recommendations from Professor Poustie's review that we are discussing today. It recognises that the causes of violence against animals may be deep-rooted in a person's upbringing and that their lack of empathy could be a result of fear and violence in their life.

Rehabilitation and reintegration into society are important outcomes for the criminal justice system, but no empathy training courses are available in relation to animal welfare offences, despite intervention programmes such as the SSPCA's animal guardians programme being available for young people who are starting to show offending behaviour. Courts want to apply restorative justice approaches. There was a recent case where two young people had put a lizard into a kitchen blender and killed it. The judge wanted to send

them on an empathy course, but unfortunately no courses were available.

My amendment 1 would simply require ministers to

“take such steps as appear to them to be required”

to facilitate the development of programmes. That could involve providing funding and guidance, as is specified directly in Claudia Beamish’s amendment 96, but under my amendment 95 it would be at the minister’s discretion.

I move amendment 1.

Claudia Beamish: Amendment 98 would place on the Scottish Government an obligation to ensure that guidance was developed and funding made available as appropriate to enable sentence disposals of empathy training and restorative justice services to be available to the courts for use where it is judged to be appropriate for those who are convicted of animal crimes under the listed acts. Such programmes could well break what have in some cases been intergenerational negative and inappropriate behaviour patterns towards animals. The amendment requires the guidance to be laid before Parliament.

My other amendments that we have discussed have concerned deterrence and dissuasive sentencing. Amendment 98 proposes an approach that could be used alongside sentencing to develop empathy in offenders, which may prevent future offending and thereby better protect animals.

We must recognise that violence against animals and violence against humans can on occasion be linked. That is addressed in other amendments, such as those that are about letting other groups and statutory organisations know of an offender’s behaviour.

Amendment 98 could mean that the offender has to face the reality and consequences of his or her actions in order to better understand the wrongness of those actions. Members will remember that, at stage 1, parallels were raised with speeding offences, but there are also parallels with domestic abuse offenders, who have in some cases been able to take part in the Caledonian system while in prison. That has been part funded by the Scottish Government.

I thank OneKind for its work on the issue and its help with amendment 98. Animal cruelty convictions must effect changes in attitudes. OneKind has highlighted the Scottish Government’s 2007 report, which suggested that, in some cases, community sentencing can have more effect in preventing recidivism. OneKind is working in that area and, if amendment 98 were agreed to, it hopes to promote the development of a suitable programme or course.

I support Mark Ruskell’s amendment 1 and how it relates to the discretion that the Scottish Government and the courts could have in relation to restorative justice and empathy training.

The Convener: As no other members have indicated that they would like to speak on the amendments in this group, I will go to the minister.

Mairi Gougeon: At first glance, amendments 1 and 98 look similar, but they differ in the detail. After careful consideration, I cannot support them for three main reasons. The first and primary reason is that I understand that local authorities already have the powers to organise a range of community payback order requirements, and the courts already have the ability to order such requirements as part of sentencing.

Secondly, I am not sure that it is necessary, or that it would be a justifiable use of resources, to oblige the Government to make community payback order programme requirements of the detailed type that is described available to all offenders who are convicted of the full range of animal welfare or wildlife offences.

Thirdly, I cannot support the amendments because of the extent to which they could constitute interference with the long-established principle that Government should not interfere in judicial decision making.

To take the first point, we should consider what the community payback orders that are run by local authorities involve at present. Before a sheriff or judge can sentence someone to a community payback order, they must first obtain a report from a criminal justice social worker. That report will give the sheriff or judge background information on the person, such as any offences that they have previously committed, their risk of offending again, their health and living situation and so on.

The criminal justice social worker is assigned by the local authority to supervise the different requirements of the community payback order. Nine different requirements can be imposed, and it is for the sheriff or judge to decide which ones should be selected for each sentence. Examples of possible requirements are an unpaid work requirement, a drug treatment requirement or a programme requirement, which is what we are considering here.

If a programme requirement is attached to the community payback order, the person who is convicted of the offence could be ordered to attend a programme arranged by a social worker. Such programmes deal with offending behaviour and can cover a range of issues, but there is very little evidence that specific animal welfare empathy programmes are beneficial in such circumstances. Without that crucial evidence on effectiveness, I am not convinced that it would be a good use of

national or local authority resources to develop and provide the highly specific programmes that amendments 1 and 98 would require.

The powers already exist for local authorities to develop relevant programmes on a non-statutory basis, and it could be argued that that is a more appropriate approach. Evidence could be gathered on the impact on the organisations involved and their capacity to deliver, as well as on the priority and effectiveness of such measures. Such programmes would be designed and offered by local authorities in collaboration with partners, and their use would remain a matter for the courts, which consider the individual circumstances of each offender.

Such programmes could already include the restorative justice approach that is referred to in Claudia Beamish's amendment 98, whereby the offender and the victim—or, in animal-related cases, the animal's owner or other representative—agree to participate voluntarily to understand and acknowledge the harm that the offence has caused. In that regard, the Scottish Government has already set out a clear vision for having restorative justice services, with the interests of victims at their heart, widely available across Scotland by 2023. The Government provided £300,000 to support the delivery of such services when the restorative justice action plan was published in June last year, and additional funding will be available in the current financial year.

In any case, a person who is sentenced to a community payback order with supervision as a result of conviction for an animal welfare offence—or indeed most other offences—will have a risk assessment and an action plan that focuses on addressing the offending behaviour, attitudes to offending and so on, without the requirement for a programme as such.

10:45

The Scottish Government strongly supports the provision of empathy training as a preventative measure—that is an important area on which to focus. There are a number of initiatives that teach children empathy and are centred on kindness to people and/or animals. In particular, we have supported the Roots of Empathy programme in some Scottish schools, which is an evidence-based classroom programme that has shown significant effects in reducing aggression levels in schoolchildren, by increasing social and emotional competence and empathy. Scotland was the first country in the world to deliver the Roots of Empathy programme in every council area, through funding of £1.2 million.

The Scottish SPCA has done significant work in the area, through school visits and programmes that intervene with children and young people who are starting to display potentially offending behaviour towards animals. I am thinking of the Scottish SPCA's animal guardians programme, for example.

The point that I made about judicial interference is particularly relevant in relation to Claudia Beamish's amendment 98, which would require guidance to be issued to the courts. It is a long-established and important principle that sentencing, in any case, is a matter for the court alone. The court takes account of all the facts and circumstances of a case before it reaches a decision, in the overall legal framework, and guidance to the courts about how they undertake their sentencing responsibilities should be a matter for the judiciary or the independent, Scottish judiciary-led Scottish Sentencing Council. The placing of an obligation on the Scottish ministers to provide guidance to the courts on sentencing matters would run the risk of threatening judicial independence and should be strongly resisted.

It is worth noting that the independent Scottish Sentencing Council has indicated that, as part of its current business plan, it intends to consider sentencing guidelines in the area of wildlife and environmental offending. If and when changes to the overall sentencing legal framework proposed in the bill come into force, the Scottish Sentencing Council will consider issuing guidelines. That is the correct order in which matters should be considered.

Having said all that, I think that there is scope for us to give further consideration to restorative justice in the context of animal welfare and wildlife cases. We could undertake a project to look at the most recent evidence from other countries in that regard. I do not know whether Mark Ruskell and Claudia Beamish will be content respectively to seek leave to withdraw amendment 1 and not move amendment 98 on the basis that we can commit to further investigation, so that we can discuss what that would look like.

Mark Ruskell: I listened carefully to that, and I am certainly interested in hearing more from the minister at some point about what such a project might look like.

The problem is that we are stuck in a bit of a chicken-and-egg scenario. Yes, there is no direct evidence on the success of empathy training in a restorative justice approach, but that is partly because there are no empathy training and restorative justice programmes available for offenders to attend.

The minister was right to point out, as did I, that some empathy training is available for young

people in schools, but such an approach is not being rolled out under CPOs, and we have to question why that is. The minister mentioned resources. We are talking about specialist rehabilitation and bespoke courses, which a single local authority might not be able to pursue in an area where a low number of offenders might attend such courses. A nationally co-ordinated approach is needed and I hope that the Government can move on that.

I take on board the minister's comments about guidance in the context of Claudia Beamish's amendment 98, which is why my amendment 1 attempts to put a light-touch approach in legislation, while ensuring that the Government takes action on the matter.

I look forward to further discussion with the minister ahead of stage 3. I will not press amendment 1. I will have a look at what the scope might be for action to be taken on a non-statutory basis. I will look at the specification for that and consider whether, on the back of that discussion, it would be worth lodging another amendment at stage 3.

Amendment 1, by agreement, withdrawn.

The Convener: I invite Claudia Beamish to move or not move amendment 98.

Claudia Beamish: I will not move amendment 98. I have noted the minister's comments about possible discussions.

Amendment 98 not moved.

The Convener: Amendment 97, in the name of Colin Smyth, is in a group on its own.

Colin Smyth: Amendment 97 is intended to create a framework for more efficient information sharing on animal welfare and wildlife related crimes in response to concerns that were raised with the committee on that issue at stage 1.

A number of stakeholders noted that the lack of information sharing in relation to those offences limited investigations and made it difficult to track offenders and identify patterns of behaviour. Indeed, the committee's stage 1 report concluded:

"information-sharing on convictions ... may help track patterns of offending, including animal welfare and other forms of offending such as domestic abuse and criminal activity."

It also recommended that the Scottish Government

"set out proposals to establish a registration system or a means of effectively sharing information between authorities."

My amendment seeks to underpin the creation of such a system. I have taken an enabling approach that calls on the Scottish ministers simply to issue guidance on the matter, in order to

give us as much flexibility as possible on the specifics of the system. However, the aim is incredibly important, and I hope that we can agree on this straightforward amendment as a first step towards addressing the problem.

I move amendment 97

Stewart Stevenson: This is probably a question for the minister as much as it is for Colin Smyth, although it would be proper for Colin to comment as well.

The amendment leaves me uncertain about how it would interact with the operation of Disclosure Scotland, in particular in relation to community payback orders and disqualification orders and so on. Were the amendment to be moved, I am not minded to support it. I wonder how Disclosure Scotland fits in. For example, the amendment's proposed new subsection (9), on the meaning of an "enforcement authority", does not list Disclosure Scotland. That may or may not be correct. There are issues with the drafting of the amendment, besides any that may arise in the policy.

Mairi Gougeon: I state at the outset that I absolutely support the aims of the amendment in principle, because the Government recognises the importance of improving information sharing and co-ordination between the various bodies that have a role in animal health, welfare and wildlife enforcement. Those include local authorities, APHA, Food Standards Scotland, the Scottish SPCA, Police Scotland and others.

Our officials are involved in on-going discussions with enforcement bodies on that subject. I have been informed that there are current moves to standardise the databases that are used by Scottish local authorities and others and to agree protocols for greater sharing of information between the various bodies that are involved in the wide range of animal health and welfare enforcement. That includes many forms of information and intelligence and is not limited simply to the outcome of criminal cases. However, we will have to carefully consider whether the proposed amendment would, in fact, produce the improvements that we would like to see, and whether it would be legally feasible, because there are various legislative competence issues that would need to be worked through.

A particular issue is to what extent it would constitute a direction from the Scottish ministers to Police Scotland, which would be contrary to the proper process and could amount to unacceptable interference by the Government in the independent system for the investigation and prosecution of crime in Scotland, which is headed by the Lord Advocate.

Any guidance that is issued to enforcement authorities would also need to take account of data protection legislation, for example in ensuring that personal data was processed lawfully, fairly, and in a transparent manner, and was collected for specified, explicit and legitimate purposes only.

We would also need to consider whether anything should be added to the provisions to ensure that they comply with article 8 of the European convention on human rights, which concerns the sharing of information about the private lives of individuals.

Stewart Stevenson also highlighted a couple of points.

For those reasons, I cannot support the amendment as currently drafted, because there are fundamental and complex legal issues involved. However, I offer again to work with Colin Smyth on whether the aims, which we both share, of in general improving information sharing and co-ordination between enforcement authorities can be progressed more effectively but in other ways.

Colin Smyth: [*Temporary loss of sound.*]—welfare and wildlife offences is a significant issue, which the committee agreed needed to be addressed as part of the consideration of the bill.

It is not clear to me from the minister's comments whether the Government supports an amendment to the bill to ensure that that happens, because, frankly, so far it has not done so. I would be deeply concerned if we did not have an amendment that gave some legal underpinning to a requirement for the better sharing of information.

I am happy not to press amendment 97 at this stage, but I intend to lodge it at stage 3, and I hope that the Government will be happy to work with me on the wording. I do not think that we can simply leave it to discussions; it needs to be given the very clear direction of Parliament to make sure that the desperately needed improvements in information sharing happen. That is why it needs to be in the bill. We will have another opportunity at stage 3.

I do not agree with a number of the points that the minister made about some of the wording of the amendment—it was very carefully considered, and any tweaks could happen at stage 3 if the amendment were agreed to today. However, in the spirit of discussions so far, I will not press the amendment and I hope that the Government will work with me on appropriate wording for stage 3.

Amendment 97, by agreement, withdrawn.

The Convener: Members will be pleased to know that at this point we can have a short break.

10:58

Meeting suspended.

11:10

On resuming—

The Convener: Amendment 99, in the name of Maurice Golden, has already been debated with amendment 67.

Maurice Golden: On the basis of—[*Temporary loss of sound.*]—and the intention behind amendment 99, I am happy not to move it.

Amendment 99 not moved.

The Convener: Amendment 2, in the name of Mark Ruskell, is in a group on its own.

Mark Ruskell: I hope that it is clear to the minister and most members of the committee that we have yet to put in place the right resources to successfully detect and prosecute wildlife crime, especially in our most remote areas. A pilot involving special constables was run in the Cairngorms, but it was found that that was not the solution. There is a glaring need for a team of professionals who can work to assist the police in evidence gathering and enforcement.

The SSPCA is working successfully in most areas of animal welfare enforcement, but as we heard in evidence at stage 1, there is a mismatch in its powers. For example, an SSPCA inspector can visit an illegal trap that has a live bird inside it, gather evidence and intervene, but they would have no jurisdiction over a trap with a dead bird inside it, even if it was just 2m away.

I am aware that the minister knows that that needs to be fixed, and soon, and I am aware of the Government's work with stakeholders including the SSPCA to discuss the extension of the powers that are needed. However, I am concerned that, despite the consensus on what needs to change, we could wait a long time before the Parliament has another opportunity to pass primary legislation. The last time that we had primary legislation that could have fixed the issue was in 2006. We cannot wait another 14 years while our bird of prey populations continue to be decimated.

Amendment 2 would allow ministers to act, when the time is right, to confer further powers on wildlife inspectors through regulations under the affirmative procedure. That would enable the Parliament to move at pace, but with proper scrutiny. The SSPCA's offer to extend its role in wildlife inspection has been on the table for years. We need a robust route to make progress on the issue, which is what I am proposing.

I move amendment 2.

Mairi Gougeon: Mark Ruskell's amendment would allow the Scottish Government to make broad changes to the function of wildlife inspectors through secondary legislation. I have concerns about that, because the amendment does not place any caveats or limitations on what the powers could be, and it is not clear why the powers would be needed or what they are for.

11:15

I appreciate that the committee has raised concerns previously about the resourcing of wildlife law enforcement and that it is keen to explore whether it would be possible to extend the powers of SSPCA inspectors to undertake investigations in that area. The committee will be aware that the First Minister has given a commitment that the Government will look at the issue further. I can confirm that I plan to convene a task force later this year to consider the matter in detail. I will write to the committee to provide more information about the purpose and remit of that group and the timescales that it will work to. I intend to do that ahead of stage 3.

It would be inappropriate to pre-empt the findings of that task force by doing anything in the bill that could be viewed as paving the way to extend further powers to persons who are involved in the investigation of wildlife crime. We should first have a clear view of what those powers could and should be, as well as any potential wider implications. I understand that the Scottish SPCA is happy with the approach that I propose.

Therefore, I cannot support amendment 2. I ask Mark Ruskell, rather than pressing the amendment now, to withdraw the amendment and allow the task force the time to complete its work.

Mark Ruskell: I am tempted to seek to withdraw the amendment. I take on board what the minister is saying about the task force and the commitment that she has given to write to the committee about its purpose and remit. However, I still have a concern about the legislative timescale, which is the point that I made in my opening remarks. The SSPCA's offer to extend its powers has been on the table for many years and we have been going round the houses on the matter for a long time. If feedback on the remit and work of the task force is to come to the committee, I would like that to include a clear indication of a legislative approach and a legislative timescale for the issue.

I take on board the minister's comments about the amendment being quite broad, but I need to see more detail on how the Government intends to take on board the task force's conclusions and deliver them in legislation. Otherwise, we could be waiting for years and years for the next piece of

primary legislation to come through in order to make a change that we all want and that is logical.

I will not press amendment 2. I will look carefully at the letter that the minister sends, and I hope to have further discussions with her ahead of stage 3. I will consider options at that point.

Amendment 2, by agreement, withdrawn.

The Convener: Amendment 100, in the name of Maurice Golden, is in a group on its own.

Maurice Golden: Amendment 100 relates to the requirement to conduct a general review of the provisions of the bill after it is enacted to ensure that, in overall terms, it is sufficient to safeguard animal welfare and protect wildlife.

Animal welfare should never have an end point; we must constantly strive to improve it. As such, a review would be an opportunity to test and strengthen the legislation. Such a review would be required to consider—in particular, but not exclusively—the inclusion of pet theft as a specific offence, as well as to follow up on previous statements in Parliament against wearable electric shock training aids for dogs. Both of those positions have received considerable support both within and outwith Parliament; as such, a serious appraisal of both should be conducted.

I move amendment 100.

Mairi Gougeon: Amendment 100 calls for the Scottish ministers to conduct a review of the provisions of the act as soon as practicable after the bill receives royal assent, and I cannot support that for a number of reasons.

First, it would be highly unusual and arguably pointless to review an act so soon after royal assent. Reviews are generally done after several years. Undertaking a review so quickly would be meaningless, because there would have been no time for practical issues that are associated with the new provisions to arise or be fully considered. We cannot formally review the new provisions effectively, because there will be no evidence about how they have operated in practice. We need time for that.

Secondly, amendment 100 raises the issues of pet theft and electronic training collars. I know that they are matters of particular concern to members, as they are for me. However, the amendment is not necessary to deal with those issues, because they are being looked at anyway and can be pursued through the Scottish animal welfare commission, which I hope we will discuss later in today's meeting.

The commission will be able to consider a wide range of specific animal welfare issues, including companion animals and wildlife, and it will be able to provide independent expert advice on how

those issues should be prioritised and taken forward. I hope that we will be able to discuss that in more detail after this debate, but for now I am content that the commission will be the most appropriate forum for dealing with the important issues that have been mentioned.

Finally, I reassure members that many of the important improvements that are contained in the bill have been developed through close and co-operative working relationships with those at the front line of enforcing legislation, and through ongoing consideration of the operation of their powers. I have no doubt that that will continue and so I am comfortable that a formal review would be of no value at this time.

Maurice Golden: I respect the minister's views about amendment 100 and appreciate her efforts to improve animal welfare in Scotland. However, for too long in Parliament, we have heard warm words and I believe that amendment 100 will help to strengthen animal welfare in Scotland, which is an aim that we all share. I will therefore press amendment 100.

The Convener: The question is, that amendment 100 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Carson, Finlay (Galloway and West Dumfries) (Con)
Wells, Annie (Glasgow) (Con)

Against

MacDonald, Angus (Falkirk East) (SNP)
Martin, Gillian (Aberdeenshire East) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 100 disagreed to.

Section 11—Taking possession of animals: additional powers

The Convener: Amendment 13, in the name of the minister, is grouped with amendments 14, 18, 20 to 22, 32, 37 and 40.

Mairi Gougeon: The next six groups of amendments all relate to the new powers for dealing with animals that have been seized for welfare reasons, which are found in section 11 of the bill. Section 11 inserts a number of new provisions in relation to those new powers into the 2006 act. The new powers to deal with animals are found in proposed new section 32A of the 2006 act; related provisions and procedures are found in proposed new sections 32B to 32L.

The first group of amendments addresses a number of technical issues regarding appeals, under proposed new section 32D of the 2006 act, in relation to decisions to deal with animals made using the new powers. The bill as introduced provides that a court may order different relevant steps from those originally specified in the notice that is served on the owner prior to exercise of the new powers. The provisions assume that the step that is taken is the step that is specified in the notice. However, the court may direct that another step be taken if an appeal is made under proposed new section 32D.

Accordingly, amendment 21 provides that, when a court makes an order on appeal that is in addition to or instead of the original decision, that is to be achieved by varying the notice. That change overcomes the difficulties that are posed by any steps being ordered in an appeal that were not specified in the notice. There are also a number of minor and consequential amendments.

Amendment 20 qualifies one of the grounds of appeal in proposed new section 32D(5) that are available to owners in relation to the proposed exercise of the new powers, so that any error of fact must have materially affected the decision to serve a decision notice or to specify any relevant step in it.

The purpose of the group of amendments is to ensure that the new process works correctly.

I move amendment 13.

Amendment 13 agreed to.

Amendment 14 moved—[Mairi Gougeon]—and agreed to.

The Convener: Amendment 15, in the name of the minister, is grouped with amendments 15, 19, 23, 25 to 31, 33, 34, 36, 38, 39 and 41.

Mairi Gougeon: The amendments rectify issues regarding the circumstances in which the ability to seek a release order or a disposal order under the existing provisions of the 2006 act should be reinstated after a decision notice has been served using the new procedure.

Specifically, the amendments allow a release order to be sought when a decision notice is served and an application for a release order under existing provisions in the 2006 act is then made but ultimately rejected by the court. The right to seek a release order will be reinstated a year after such a rejection.

Other associated amendments are housekeeping measures in proposed new sections 32E and 32F and relate to other consequential matters that arise from the main amendments that I have described.

I move amendment 15.

Amendment 15 agreed to.

The Convener: Amendment 16, in the name of the minister, is grouped with amendments 54, 58 and 62.

11:30

Mairi Gougeon: This group of amendments deals with the implications of the receipt of proceeds of sale where animals are sold using the new powers.

Amendment 58 has the effect of inserting a new section into the 2006 act, which provides for what happens to any proceeds of sale arising from exercise of the new powers. The amendment provides that any proceeds of sale must be applied first to meet any liability of the owner to pay relevant expenses and secondly to meet any liability to pay the compensation amount. The same amendment clarifies that the owner's entitlement to compensation is instead of any entitlement any owner has to any proceeds of sale of the animal. That clarification rules out the possibility that the owner would be entitled to the proceeds of sale in addition to the compensation amount provided for under the new procedures.

Amendment 62 makes provision in relation to the proceeds of sale in the event that a court orders the forfeiture of the compensation amount. The amendment gives the court the power to make an order as to the disposal of the proceeds of sale. It also confers a power on the Scottish ministers to make provision for, or in connection with, the disposal of such proceeds of sale. For example, the power could be used to specify bodies to which the proceeds of sale could be paid.

This group of amendments includes a clarification that, when exercising any of the new powers to deal with animals in new section 32A of the 2006 act, the owner has not only the powers but the rights that an owner of the animal would have in taking the relevant step. Amendment 54 clarifies that the definition of "relevant expenses" that is found in new section 32H(5) also applies to new sections 32HA and 32K.

I move amendment 16.

Amendment 16 agreed to.

The Convener: Amendment 17, in the name of the minister, is grouped with amendments 24, 35, 46, 51, 56 and 61.

Mairi Gougeon: This group contains various minor amendments that have little legal effect on the workings of the new process for dealing with animals that have been taken into possession. They relate to consistent use of terminology,

including the use of the term "protected animal" throughout the provisions.

I move amendment 17.

Amendment 17 agreed to.

Amendments 18 to 41 moved—[Mairi Gougeon]—and agreed to.

The Convener: Amendment 42, in the name of the minister, is grouped with amendments 43, 44 and 63.

Mairi Gougeon: The amendments in this group address the particular scenario in which, following service of a decision notice and exercise of the new powers to deal with animals, it is difficult or impossible to serve a compensation notice by the methods of service currently provided for in new section 32G of the 2006 act. For example, it may not be possible to serve a compensation notice when the owner has moved address following service of the decision notice and cannot otherwise be traced to an alternative address.

Amendment 43 provides some flexibility regarding the service of compensation notices by permitting service by any method that is directed by the court. The authorised person will be able to apply to the court for such a direction where there is difficulty with serving the notice by the methods that are specified in section 32G of the 2006 act.

The other amendments in the group make related changes, including placing a duty on the authorised person to carry out certain investigations before they serve a compensation notice.

I move amendment 42.

Amendment 42 agreed to.

Amendments 43 and 44 moved—[Mairi Gougeon]—and agreed to.

The Convener: Amendment 45 is grouped with amendments 47 to 50, 52, 53, 55, 57 and 60.

Mairi Gougeon: The amendments in this group concern the calculation of the amount of compensation to which the owner of the animal might be entitled after the exercise of the new powers to deal with animals. They will ensure that compensation is calculated fairly and without giving rise to unintended results where multiple events give rise to compensation.

Under the bill as introduced, compensation is calculated in the context of treatment, with reference to the decrease in the value of the animal when it was taken into possession and the value of the animal immediately after the treatment. Amendment 47 revises that approach so that the compensation is measured with reference to the decrease in the value of the

animal that is caused by the administration of the treatment. That change will avoid anomalies occurring when multiple compensation notices are served in relation to consecutive treatments.

In order to avoid double counting, amendments 48, 52, 53, 55 and 57 revise and reorder the provisions in section 32H that specify the sums that are deducted when a compensation award is calculated.

Amendment 50 provides for the proceeds of sale to be taken into account when the animal is valued for the purpose of calculating compensation. That will ensure that the proceeds of sale are used as the starting point for calculating compensation in the unlikely situation in which they exceed the market value of the animal.

Amendment 60 provides for the scenario in which the compensation amount cannot be paid to the owner of the animal. It allows an application to be made to the court for an order as to disposal of the compensation in those circumstances. That will ensure that funds do not need to be held indefinitely for the benefit of the owner when they are unclaimed.

The other amendments in the group—amendments 45 and 49—make technical changes to the compensation provisions in order to avoid unintended inferences about the exercise of calculating compensation.

I move amendment 45.

Amendment 45 agreed to.

Amendments 46 to 58 moved—[Mairi Gougeon]—and agreed to.

The Convener: Amendment 59, in the name of the minister, is in a group on its own.

Mairi Gougeon: Amendment 59 adds three categories of persons who are entitled to be heard in an appeal in relation to compensation under proposed new section 32I to the 2006 act. The bill as introduced was silent as to who, other than the owner, would be entitled to be heard in such an appeal, and amendment 59 ensures that authorised persons and certain inspectors and constables can be heard during an appeal, if the owner of the animal makes an appeal regarding the compensation relating to that animal.

I move amendment 59.

Amendment 59 agreed to.

Amendments 60 to 63 moved—[Mairi Gougeon]—and agreed to.

Section 11, as amended, agreed to.

Sections 12 to 15 agreed to.

Long Title

The Convener: Amendment 64, in the name of the minister, was debated with amendment 12.

Mairi Gougeon: Amendment 64 is a technical amendment that modifies the long title of the bill to include a reference to fixed-penalty notices in relation to wildlife offences.

Amendment 64 moved—[Mairi Gougeon]—and agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Printed copies of the bill, as amended, will be available from Wednesday 27 May 2020. I thank everyone for their succinct arguments and for their co-operation. I am delighted that we have got through all the stage 2 amendments.

We will take a short break before we move to agenda item 2.

11:42

Meeting suspended.

11:51

On resuming—

Subordinate Legislation

Scottish Animal Welfare Commission Regulations 2020 [Draft]

The Convener: The second item on our agenda is to take evidence on the draft regulations on the Scottish animal welfare commission.

I welcome back Mairi Gudgeon, the Minister for Rural Affairs and the Natural Environment, who is joined by her officials Andrew Voas, veterinary head of animal welfare, and Alison Leighton, lawyer for the Scottish Government.

I will open the questions. In the material that has been sent to us, there is no role for Parliament in appointing the chair or members. What is the reason for that? Is that level of parliamentary involvement in the commission not needed?

Mairi Gudgeon: The Animal Health and Welfare (Scotland) Act 2006 does not specify any role for Parliament when it comes to member appointments, including the chair.

As the minister responsible, I was directly involved in the recruitment and appointment of the chair. Members were independently selected and appointed purely on the basis of their animal welfare expertise and qualifications. That approach is not unusual; I believe that the just transition commission was set up in a similar fashion.

The Convener: You alluded to expertise as a criterion on which the commission's representatives have been chosen. Will you outline the expertise in the commission and give a flavour of who is involved?

Mairi Gudgeon: Absolutely, and I would be happy to write to the committee with more information about each of the commission's members.

The expertise that is needed, and that might be needed in future, depending on the issues that the commission looks at, is dictated by the commission's work plan, and by vacancies, where those arise; members cannot be appointed for more than four years.

All members would be expected to have a sound knowledge and grasp of animal welfare; their skills and expertise might be, for example, in animal welfare law, wildlife management, practical enforcement or veterinary care. I believe that the commission's membership at the moment broadly covers all those vital areas.

The commission will be able to co-opt experts who are not members to work on particular issues—for example, on working groups that will be established for specific projects. If there is an area where expertise is missing on the commission, it will be able to co-opt that as and when it is needed.

The Convener: Therefore, the commission has flexibility to move with regard to issues as they come up, which is reassuring.

Mairi Gudgeon: Provided that the regulations are approved today, the commission will also cover companion animals and wild animals, so it is important that it has flexibility and is able to get differing expertise as and when required.

The Convener: Thank you. Angus MacDonald has a question on the budget.

Angus MacDonald (Falkirk East) (SNP): We have just heard that Parliament has no role with regard to appointments. Nor does it have a role in setting the budget. Should it have such a role? If not, why not?

Mairi Gudgeon: Members of the commission will not receive any financial remuneration for their time. The travel and accommodation expenses that are attributed to the work of the commission will be reimbursed in line with the current Scottish Government travel and subsistence policy.

I emphasise that the roles are not full time. It is anticipated that the full commission will probably meet three times a year and that most of the work will be done via email and smaller working groups on specific topics, between those meetings. That means that the cost associated with the running of the commission is not expected to be great. The animal health and welfare division has allocated and holds the budget to cover those expenses and the costs of publishing reports. Scottish Government animal welfare officials are also providing the secretariat, so there will not be direct costs for the commission in that regard. There is no particular role for the Parliament in setting the commission's budget.

Angus MacDonald: Is no money set aside at all? If there is a minimum budget, could you give us a rough idea of it?

Mairi Gudgeon: The budget will cover the expenses, and there is money set aside to be able to deal with them. The animal health and welfare division has allocated about £50,000 to cover members' expenses and the publication of papers. If the regulations are approved today and the commission comes into being, I think that we will review the budget and revise it accordingly, once the commission has been operational for a year.

The budget is based on what has been allocated to the equivalent United Kingdom Animal

Welfare Committee, which was formerly known as the Farm Animal Welfare Committee. Based on the operating costs that we have seen, the budget for the Scottish animal welfare committee appears to be realistic—it is minus the daily rate that is paid to members on the equivalent UK body. When the commission is in operation, we will of course keep the budget under review.

The Convener: Does Claudia Beamish have questions on parliamentary accountability?

Claudia Beamish: My questions have been answered, convener. I had concerns because some other commissions, such as the Scottish Land Commission, have parliamentary accountability, but I understand the distinction; the Scottish Land Commission was set up through legislation. I wish the Scottish animal welfare commission well with its significant and important work.

The Convener: Finlay Carson has questions on the overall duty of the commission.

Finlay Carson: The regulations set out the function of the commission, which is to provide advice on matters that concern the welfare of protected animals, but they do not impose any duty on the commission to seek to further animal welfare. In contrast, the Scottish Human Rights Commission has a general duty in primary legislation to promote human rights. Will you give the background as to why no such duty is required or appropriate?

Mairi Gougeon: I reassure the committee that part of the commission's remit will be the furtherance of companion animal and wildlife welfare in Scotland. Although it might not be explicitly stated in legislation, I have absolutely no doubt that the promotion of animal welfare will be implicit in everything that the commission does. The commission has sufficient flexibility to provide advice on a range of matters concerning the welfare of animals—I reassure the committee on that point.

12:00

Finlay Carson: Perhaps, but why is that not stated in the legislation, as is the case in the SHRC legislation?

Mairi Gougeon: I come back to the point that, although it is not specifically stated in the Animal Health and Welfare (Scotland) Act 2006, that does not mean that the commission will not undertake such work. It is not explicitly stated but, as everybody would expect, that will be one of the core pieces of work that the commission will undertake, and a core value that it will seek to implement in carrying out its work. I see that as being vital to the commission's role, as would a lot

of people with regard to any animal welfare commission. The furtherance of companion animal and wildlife welfare in Scotland will be a core component of the work that the commission takes forward.

Mark Ruskell: I will ask about what is on the commission's work programme at this point. We have just got through stage 2 of the Animals and Wildlife (Penalties, Protection and Powers) (Scotland) Bill and a number of issues have been parked, such as performance animals—beyond those in travelling circuses—and greyhound racing. There is concern about the lack of neutering of cats and the positive role that that could play in restoring wildcat populations in Scotland. There is on-going work in the European Union around the definition of animal sentience, and there are issues around seal welfare and culling, which I know that you are hoping to bring into the scope of the Animals and Wildlife (Penalties, Protection and Powers) (Scotland) Bill at stage 3.

Those are some of the issues that spring to mind; what are your priorities for the commission's work, or is it for the commission to set its priorities and reflect on what Government has worked on and what there is still to do?

Mairi Gougeon: It will probably be a bit of a mixture. As you said, we have just gone through stage 2 of the bill today and I mentioned a couple of issues that we will perhaps ask the animal welfare commission to look at further. One such area relates to Maurice Golden's amendment, in relation to which he talked about electronic training collars. That is an issue on which we committed to undertake a review of the guidance, which we are doing at the moment. That is potentially an issue that we could ask the animal welfare commission to consider.

I believe that the commission is looking at its work plan at the moment and will have the flexibility to look at issues that it feels are important to consider, to determine whether there are any legislative changes or non-legislative issues that we need to look at. If there are pressing issues that we feel need the commission's expert and independent consideration, we will be able to refer them to the commission. There will be flexibility.

The regulations will require the commission to prepare an annual work plan, which will have to be published, as well as an annual report, which will be laid before the Scottish Parliament and will set out how the commission has delivered on the work plan. Therefore, there will be opportunities for the Parliament to be updated on the work that the commission is undertaking.

Mark Ruskell: You said that, from your perspective, shock collars are a priority for the commission. I mentioned several other issues, such as performance animals, the neutering of cats and animal sentience. What are your views on those matters? Will you ask the commission to look at other priorities?

Mairi Gougeon: Yes, there will likely be other priorities. As the member knows, there are a whole host of issues in my portfolio. Obviously, we have to prioritise which issues we want to refer to the animal welfare commission—issues that could be pressing to us in relation to particular legislation, or areas on which we feel that we need its advice. The commission will, of course, have to prioritise its workload. It will be a case of trying to ensure that we get that right and give the commission issues to consider that need its consideration.

Mark Ruskell: What are your priorities?

Mairi Gougeon: I cannot today give you a definitive list of issues that I am looking to give to the animal welfare commission, but I would be happy to update members on particular issues of interest. It will be up to the commission to prepare an annual work plan, which will be published, as well as an annual report, in which you will see all the information.

The Convener: You alluded to the commission working and co-operating with other bodies. How will the commission work with such bodies as the Animal and Plant Health Agency?

Mairi Gougeon: I imagine that the commission will work closely with other organisations. The commission will have a close working relationship with the committee that I mentioned—the Farm Animal Welfare Committee, which is now the UK Animal Welfare Committee and which looks at the welfare of farm animals. I know that the commission is keen to foster a close working relationship with such bodies and to ensure that they share their knowledge.

It is also about ensuring that resources are best utilised so that there is no duplication of work. The commission will undoubtedly engage with bodies such as APHA, because there are a lot of similarities and crossover in the issues that such bodies deal with.

The Convener: No members have indicated that they wish to ask more questions. I thank the minister and her officials for that evidence. I ask the minister to move motion S5M-21671, in the name of Fergus Ewing.

Motion moved,

That the Environment, Climate Change and Land Reform Committee recommends that the Scottish Animal

Welfare Commission Regulations 2020 [draft] be approved.—[*Mairi Gougeon*]

Motion agreed to.

The Convener: I thank the minister for her time. The committee will report its decision on the regulations in due course. I ask members to confirm that they are happy to delegate authority to me to sign off on the report.

Members indicated agreement.

The Convener: That concludes the committee's business today. I thank everyone for their professionalism and time. The next meeting of the committee is anticipated to take place on 2 June.

Meeting closed at 12:10.

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