



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 28 October 2020

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

26th Meeting 2020, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)

*John Finnie (Highlands and Islands) (Green)

*Emma Harper (South Scotland) (SNP)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Angus MacDonald (Falkirk East) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

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

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP) (Committee Substitute)

Nick Hawthorne (Scottish Parliament)

Charles Livingstone (Brodies LLP)

Andrew Voas (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 28 October 2020

[The Convener opened the meeting at 09:00]

Subordinate Legislation and Document Laid for Approval

Mandatory Use of Closed Circuit Television in Slaughterhouses (Scotland) Regulations 2020 [Draft]

Welfare of Farmed Animals (Scotland) Amendment Regulations 2020 [Draft]

Code of Practice for the Welfare of Laying Hens (Revocation) (Scotland) Notice 2020

The Convener (Edward Mountain): Good morning, and welcome to the 26th meeting in 2020 of the Rural Economy and Connectivity Committee. I ask everyone to ensure that their mobile phone is in silent mode. I am always nervous about ensuring that mine is, having been caught out before.

The meeting will be conducted in hybrid format, with some committee members and all the witnesses participating remotely. I have received no apologies from committee members, although Angus MacDonald will not be joining us until slightly later, due to other parliamentary business. I remind members who are attending remotely that they will need to type an "R" in the BlueJeans chat function to make a request to speak.

Agenda item 1 is consideration of subordinate legislation. We will consider two instruments that are subject to affirmative procedure and one notice that has been laid under the affirmative procedure, as detailed on the committee's agenda. The committee will take evidence from the Minister for Rural Affairs and the Natural Environment and her officials, who are all participating remotely, as I said.

Before we go any further, it is important that members declare any farming interests.

Peter Chapman (North East Scotland) (Con): I declare an interest in a farming partnership that I am involved with.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am a part-owner of a very small

registered agricultural holding on which sheep regularly graze. I take no income from the holding.

The Convener: I, too, declare an interest in a farming partnership, which is in Moray. The declarations of interest will remain in place for the whole meeting, as we will deal with other agricultural matters later.

The motions seeking approval for the affirmative instruments and the notice will be considered at items 2 to 4. Members should note that there have been no representations to the committee on them.

From the Scottish Government, I welcome Mairi Gougeon, the Minister for Rural Affairs and the Natural Environment, Andrew Voas, veterinary head of animal welfare, and Grant McLarty, who is a solicitor.

Minister—would you like to make a brief opening statement on the two Scottish statutory instruments and the notice?

The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon): *[Inaudible.]*

The Convener: Minister, you are still muted.

Mairi Gougeon: I will start with the—

The Convener: Please start again. You were muted.

Mairi Gougeon: That is fine. I am sorry—I hope that you can hear me now. I was saying that if you want me to talk about the two SSIs back to back, I am happy to do that.

I will start with the draft Mandatory Use of Closed Circuit Television in Slaughterhouses (Scotland) Regulations 2020. CCTV offers benefits through increasing the public's trust that processes are carried out properly and in accordance with legal requirements; as a means of identifying animal welfare issues or incidents that might be missed by physical observation; as a source of evidence in cases of reported wrongdoing; as a management tool to assess and evaluate slaughterhouse operations; and as a valuable tool in staff training on handling and welfare of animals.

The instrument will ensure full coverage of all slaughtering operations in areas in Scottish slaughterhouses in which live animals are present, in order that we can achieve fully the welfare benefits that are associated with CCTV monitoring. The desired full coverage will be ensured by the requirement on food business operators to install and maintain CCTV equipment that complies with the regulations.

Food businesses will also be required to arrange for retention and storage, for a period of 90 days, of images and information that are

captured by the compliant CCTV equipment. That time period is considered to be proportionate because it will allow sufficient time for footage to be reviewed, and for unreported events to come to light and footage of them not to be destroyed before potential use as evidence for court and non-court proceedings, and because it will allow footage to be used for staff training purposes.

The CCTV footage will also enable official veterinarians to observe animals that are in high welfare-risk areas, as well as those that are dangerous or are inaccessible to people, and to identify animal behaviours that might be hidden from human observers.

The regulations will provide Food Standards Scotland with powers of unrestricted access to CCTV output, for the purpose of monitoring and verifying animal welfare standards in approved slaughterhouses. That will be similar to current provisions in the Welfare of Animals at Time of Killing (Scotland) Regulations 2012, whereby FSS can request any footage that covers parts of a slaughterhouse. The welfare of animals will be improved by the power to access data immediately, rather than having to wait for a request to be fulfilled.

The regulations will also give Food Standards Scotland enforcement powers to check compliance with CCTV requirements. Those include powers of inspection, and powers to seize CCTV equipment. If necessary, seized equipment can be used as evidence of non-compliance. However, the regulations require Food Standards Scotland to return to the food business operator, as soon as is reasonably practicable, any seized equipment, images and data that are not required in court proceedings. That requirement should ensure smooth operation for the industry.

The enforcement authority is also given the power—again, it is similar to what is currently in operation under the Welfare of Animals at Time of Killing (Scotland) Regulations 2012—to issue enforcement notices to remedy any contravention of the regulations. The food business operators are provided with an appeals mechanism for enforcement notices that are served. In relation to such appeals, a sheriff may uphold or deny the appeal, and change the enforcement notice.

Do you want me to move directly on to comment on the next SS1? I am happy to take questions on the first one, at this point.

The Convener: I think that we will see whether there are any questions, if that is all right, minister. Peter Chapman has a question.

Peter Chapman: I note from the business and regulatory impact assessment that there are 30 slaughterhouses in Scotland—24 on the mainland, which already have in place at least some CCTV,

and six on the islands, none of which have any CCTV. I am sure that the island slaughterhouses are quite small and would all say that they are not making large profits. Are they content, willing and happy to go ahead, or is there a funding issue for the six island slaughterhouses in finding the necessary cash to install CCTV?

Mairi Gougeon: Some of the smaller island slaughterhouses have raised that issue, which is why I wrote to the six island slaughterhouses last week to say that we are looking to provide them with financial assistance for installation of CCTV equipment, because they do not have it. We have offered up to £5,000. We are willing to help and to provide that assistance for island slaughterhouses because we acknowledge their circumstances and realise that it might be more difficult for them to install that equipment.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning, minister. We do not currently have any mobile slaughterhouses, but in the event that we do, would they be covered by the regulations? Would a mobile slaughterhouse have to have CCTV?

Mairi Gougeon: We would have to look at that. As the member has rightly said, we do not have mobile abattoirs at the moment. We have done a study of whether they should be an option, or are something that we should investigate further. We are actively considering the matter. They would, of course, be factored into future decisions, if we were to decide to pursue their use.

John Finnie (Highlands and Islands) (Green): Good morning, minister. I would like to follow up on Peter Chapman's question on island slaughterhouses.

You are introducing an important animal welfare provision that I warmly welcome and will support. I also welcome the fact that the Government is looking at providing some support. Will you keep the committee advised about that, please, because it is an issue that causes concern? Given that it is an animal welfare issue, we most certainly want to retain the island slaughterhouses, rather than having beasts moved off the islands for slaughter. Will you keep the committee apprised of how that goes, please?

Mairi Gougeon: Absolutely—I would be happy to keep the committee informed of that. I recognise the importance of having the facilities on the islands, which is why we want to offer financial help to enable them to comply with the regulations. When issues were raised in the initial consultation on the regulations, we worked to take them on board, and we have worked with facilities as much as possible to ensure that they can comply. I am more than happy to keep the

committee apprised of discussions, as we move forward and implement the regulations.

The Convener: Christine Grahame, who is attending the committee as a substitute member, would like to ask questions.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I have just a quick one. I campaigned on the issue for years, so I want to know what the timescale is for making sure that CCTV is installed in all areas in slaughterhouses, including lairage and so on.

Mairi Gougeon: The regulations will come fully in force on 1 July 2021, when we look to have all slaughterhouses compliant.

Christine Grahame: Thank you very much.

The Convener: I have a question to ask as well, if I may. How did you settle on 90 days as the right length of time for film to be stored? As you know, incidents could come to light after that length of time.

Mairi Gougeon: As I said in my opening statement, it is felt that 90 days is sufficient time for film to be stored, because that will allow enough time should incidents come to light and CCTV footage be needed. I do not know whether my officials have anything to add; I believe that that might be the length of time that is in operation elsewhere. As far as I am aware, there have not been any issues raised in relation to the 90-day time frame.

The Convener: I have one more question. Coming from a farming background, I know how important farmers feel it is that livestock be treated properly in slaughterhouses. What opportunities are there for farmers to check footage to ensure that their animals have gone through the process correctly? I think that it is very important to the majority of farmers in Scotland that the process be as humane as possible.

Mairi Gougeon: You are absolutely right, but we have also been careful about data and who will have access to the information. Under the regulations, Food Standards Scotland would have access to the footage, which I think is most appropriate given what is being looked at. When it comes to CCTV and who can see footage, that would be up to Food Standards Scotland.

The Convener: Could farmers go to Food Standards Scotland if they felt that there was an issue?

Mairi Gougeon: I would have to ask officials about how things would work in that particular circumstance. If a farmer believed that there was an issue and reported it to Food Standards Scotland, and Food Standards Scotland then investigated, it would FSS that looked at the CCTV

footage; it would be obliged to investigate. Perhaps Andrew Voas has more to add.

The Convener: Andrew, I do not know whether you have anything to add. Do you want to come in?

Andrew Voas (Scottish Government): I am sorry—I have been having connection problems, so I have not caught the last couple minutes of that conversation. I did not catch the question.

The Convener: There is a connection issue. I am satisfied with the answer that the minister has given me, but I wanted to give you the opportunity to come in, if need be. I am satisfied, so I will not rehearse the arguments. Thank you, Andrew.

I will move on to asking the minister to speak to the notice.

Mairi Gougeon: Do you mean in relation to the laying hens guidance?

The Convener: I mean the other SSI, on welfare of animals.

09:15

Mairi Gougeon: The purpose of the draft Welfare of Farmed Animals (Scotland) Amendment Regulations 2020 is to amend the Welfare of Farmed Animals (Scotland) Regulations 2010 to put a statutory duty on those who are responsible for looking after laying hens to be acquainted with our new laying hens guidance. The committee will remember that the regulations were amended last year, following publication of our guidance for the welfare of meat chickens.

Among other things, the 2010 regulations require that those who are responsible for farmed animals be acquainted with any relevant animal welfare code, and that they have access to that code while attending to the animal. They also require that anyone who is employed or engaged by the person responsible for the animal be acquainted with, has access to, and has received instruction and guidance on the code. The regulations make non-compliance with those requirements an offence.

Following publication of the guidance on welfare of meat chickens last year, we amended the 2010 regulations so that the requirements in relation to codes of practice would also apply in relation to animal welfare guidance documents. Anyone who is responsible for a farmed animal must also be acquainted with any relevant animal welfare guidance.

The advantage of guidance documents is that they can be revised and updated quickly, and so can be more easily kept in line with new thinking on good practice. However, the fact that they can

be revised and updated at any time means that it is necessary to define in the regulations exactly which guidance documents those who are responsible for farmed animals should be acquainted with. That is why, when we amended the regulations last year, we defined “animal welfare guidance” as the new guidance for welfare of meat chickens, which we had just published.

As the committee will be aware, we published new guidance for welfare of laying hens and pullets on 21 August 2020. We now need to widen the definition of animal welfare guidance in the 2010 regulations to include that guidance, too. The effect will be that anyone who is responsible for looking after laying hens, and anyone whom they employ to look after their hens, will be required by law to be acquainted with the new laying hens guidance, and to have access to it when they are attending to the hens.

The revocation notice that we will also look at today is to revoke the existing code of practice on laying hens. That will avoid there being any confusion as to which guidelines should be followed by stock keepers, and what they have a statutory duty to be acquainted with.

The combined effect of the documents that we are looking at today will be that the old code of practice on laying hens will no longer be in force, and the requirements that had been in force in relation to that code will now apply in relation to the new laying hens guidance.

I am happy to take questions from the committee.

Peter Chapman: How will you get the message out to the industry that the regulations have changed? Is there a budget for relaying that information to the industry? It is important that folk know what the changes are.

Mairi Gougeon: Peter Chapman is absolutely right—it is vital that industry is aware. We work very closely with industry anyway, when we are developing guidance. Many in the industry are already working to the standards that are in the guidance. The guidance covers a wide range of people in the industry, including commercial producers, smallholders and hobby farmers, which is why we are setting out to communicate directly with as many people as possible to make them aware of the new guidance that will be in force, if it is agreed to. We will make them aware that the guidance has been published.

Most people in the industry know that the guidance exists and will be working to it. However, using our various media and social media channels to get the message out, we will do what we can to engage with and raise awareness among as many people as possible.

The Convener: There are no further questions, so we move to item 2, which is formal consideration of motion S5M-22891.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Mandatory Use of Closed Circuit Television in Slaughterhouses (Scotland) Regulations 2020 [draft] be approved.—[*Mairi Gougeon*]

Motion agreed to.

The Convener: Item 3 is formal consideration of motion S5M-22766.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Welfare of Farmed Animals (Scotland) Amendment Regulations 2020 [draft] be approved.—[*Mairi Gougeon*]

Motion agreed to.

The Convener: Item 4 is formal consideration of motion S5M-22820.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Code of Practice for the Welfare of Laying Hens (Revocation) (Scotland) Notice 2020 be approved.—[*Mairi Gougeon*]

Motion agreed to.

The Convener: Minister, I thank you and your officials for attending the meeting. I will suspend the meeting briefly to allow a changeover of the remote witnesses.

09:21

Meeting suspended.

09:24

On resuming—

Dogs (Protection of Livestock) (Amendment) (Scotland) Bill: Stage 1

The Convener: Item 5 is to take evidence on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill. I welcome Christine Grahame, who is joining the committee for this item as Emma Harper's substitute. Emma is participating as the member in charge of the bill and not as a committee member. Members have already made declarations of interest in relation to farming, and those remain extant.

I welcome the panel: Emma Harper, who is the member in charge of the bill; Nick Hawthorne, who is a senior assistant clerk in the non-Government bills unit; Kenny Htet-Khin, who is a solicitor at the Scottish Parliament; and Charles Livingstone, who is a partner at Brodies LLP.

I ask Emma Harper to give a three-minute opening statement. As a member of the committee, you will know how strict I am on my timings. The floor is yours, as it were.

Emma Harper (South Scotland) (SNP): I welcome this opportunity to attend the committee to discuss the bill. As members know, the bill aims to strengthen the existing legislation, allow for better protection of livestock, and improve understanding of the issue of livestock worrying in Scotland.

I have been working on the bill since early 2018, when I announced my intention to introduce it. Since then, I have carried out a formal consultation on the bill, which received more than 600 responses, and informal consultation through stakeholder engagement, round-table meetings in Parliament, a meeting with people from all sides of the issue, and meetings with constituent farmers and stakeholder organisations. Organisations who have been consulted include NFU Scotland, the National Sheep Association, the Scottish SPCA, Police Scotland, the Dogs Trust, the national access forum and the British Veterinary Association, to name a few. Throughout the process, I have tried to encompass all organisations, individuals and interested parties.

The bill has a key policy objective, which is to inform, through formal and informal consultation, with the aim of improving the legislation on livestock worrying. If passed, the key change that the bill will implement is an increase in the maximum penalty for the offence of allowing out-of-control dogs to chase, attack and kill livestock, up to a fine of £5,000 or a six-month suspended sentence. It will also allow courts to ban a

convicted person from owning a dog or allowing their dog to go on to agricultural land; indeed, it also provides the ability for courts to ban a convicted person's household from owning a dog.

The bill will also give police greater powers to investigate and enforce the offence, and it provides greater clarity to Scotland's legal bodies, such as the Crown Office and Procurator Fiscal Service, on how to deal with the offence. That is particularly important because, during the consultation, it was identified as an issue with the current legislation.

Additionally, the bill extends the definition of livestock in Scots law to include farm animals such as camelids—llamas and alpacas.

The changes proposed by the bill have been welcomed by Scotland's leading animal welfare and agricultural bodies, including the NSA and the NFUS.

The bill provides clear protection to Scotland's hard-working farming community from loss and damage to their livestock—a crime of which the consequences can be not only financially but emotionally devastating. As a result of the consultation, I know that it is also a crime for which the consequences are often limited and insufficient.

I welcome the opportunity to answer members' questions and look forward to working with members as we move forward.

The Convener: Thank you for sticking to the time so assiduously.

Maureen Watt: In your opening statement, you said that you received responses from a wide variety of stakeholders. How did your consultation with all those various people and groups affect the legislative avenue that you arrived at to tackle the issue?

09:30

Emma Harper: When gathering the information, we looked at various approaches. One of the main things that people wanted was the ability to make the fines higher on the levels 1 to 5 scale, so we looked at that and included it in the bill. We also looked at education and how or whether we could put it in the bill, but other education opportunities are already being delivered, and the Scottish partnership against rural crime is engaging in work to tackle livestock worrying as part of its other rural crime issues. We looked at lots of ways of taking the legislation forward; ultimately, we took the keep it simple approach, because the Dogs (Protection of Livestock) Act 1953 is 67 years old and we wanted to bring it up to date as simply as possible.

Colin Smyth (South Scotland) (Lab): I turn to the current legislation and how it ties in with what we already have on statute. Work is on-going to review a number of areas of dog control legislation. As you know from the evidence, although they do not oppose the principles of the bill, some stakeholders feel that a more co-ordinated approach to dog control legislation should be taken. Why did you choose to introduce that particular legislation, rather than waiting for the results of on-going reviews and trying to incorporate some of your work into what might be coming?

Emma Harper: Lots of work is going on; we talked about the bigger issue and the potential for consolidation legislation, but consolidation legislation would take between five and 10 years. From the chair of the National Sheep Association, as well as NFU Scotland and many members that I have spoken to over the past couple of years, I got a sense of urgency; they do not want to wait another five to 10 years while the number of incidents of livestock worrying continues to increase. For the past 10 years, the number of incidents has increased year on year, so that sense of urgency made me want to focus on this piece of legislation, which, ultimately, can be used as preparatory work if further consolidation legislation is taken forward. Again, I wanted to do something now.

Colin Smyth: To follow up on that question, some people have proposed a complementary measure to align the bill with the Control of Dogs (Scotland) Act 2010 and, in particular, consider extending the use of dog control notices to police and potential inspecting bodies for use in the cases of livestock worrying. Do you have any views on that?

Emma Harper: We considered dog control notices, but they are already available as part of the civil process in the 2010 legislation, and we wanted to focus on updating the old legislation. We thought about it, but my understanding is that those notices are already out there and, rather than muddy the waters, that legislation could still be used and is also currently used for livestock worrying offences.

John Finnie: I will touch on the issue of penalties. The majority of stakeholders and those who responded want a robust penalty regime. They are also concerned that it should be proportionate. What is your rationale for the level of penalty that is outlined in the bill?

Emma Harper: The 1953 legislation has the highest penalty at level 1, which is £1,000. In modern farming practice, the value of some sheep in particular can be really high. We saw recently that some tups have been valued at 250,000 guineas.

As I compared the old legislation with the new legislation, I wanted to apportion reasonable penalties from levels 1 through to 5 so that the maximum penalty could be £5,000 and the minimum—I think—£200. That would give prosecutors the flexibility to assess cases based on individual incidents and to apply the level of fine that would fit each individual incident of livestock attack.

John Finnie: We know from the Law Society of Scotland—which confirmed what you said in evidence previously—that a compensation regime is already in place in the Scottish justice system. We also heard about the significant cost of some beasts, but also the relatively modest cost of some. Mike Flynn of the SSPCA talked about £70, but also mentioned the figure of £30,000 for a particular tup. A number of the stakeholders highlighted compensation as being particularly important, and that tool is already available to the courts.

Is that sufficient, or should compensation provisions be in the bill? Clearly—perhaps—you do not think so. However, if you do think so, do you have a view on how that could be determined and what could be done if a convicted person cannot pay? One of the other issues around the question of insurance is the uncertainty about what is being insured—whether it is the £70 or the £30,000. Will you comment on that, please?

Emma Harper: Compensation orders already exist, but we learned from the evidence conducted by Flock Health that only 9 per cent of farmers claimed compensation. When she gave evidence, the minister said that we might need to do more to raise awareness of the fact that compensation orders already exist. I know from discussions with the non-Government bills unit that the mechanism is already in place and that we might have to raise awareness of it.

My understanding is that compensation orders would be part of it if somebody who was required to pay compensation could not afford it; that would be borne by the proceeds of crime financial availability. If I am not being clear enough, Kenny Htet-Khin might be able to respond directly about how compensation orders already work and how they are in current legislation.

I chose not to put that in the bill, because it is probably bigger than what could be proposed and taken forward by a member's bill. I know that financial resolutions would have to be processed by the Parliament if a wider financial issue were associated.

Nick Hawthorne (Scottish Parliament): To add to what Emma Harper has said, it is the case, as Mr Finnie said, that compensation can be given at the moment. As the committee heard, that can

be done through the civil route and other legislation. The bill would improve that situation, as it would increase the maximum penalty to include a six-month custodial sentence, which would allow the courts to make, under a community payback order, a compensation requirement in lieu of the custodial sentence, which cannot happen at the moment. That is linked to the Criminal Justice and Licensing (Scotland) Act 2010. By including a custodial sentence, the court would have an extra mechanism for requiring compensation to be paid.

John Finnie: Emma Harper, have you had any engagement with the Crown Office and Procurator Fiscal Service? You talked about awareness, and the procurator fiscal might need to make a request of the bench about that in individual cases. Has that been discussed?

Emma Harper: The Crown Office responded to the initial consultation and, since then, the minister has met its representatives. Ahead of today's committee meeting, I sent an additional letter to the Crown Office seeking a response on various issues that have been brought up; I am waiting to receive a response. I am happy to pursue that with the Crown Office and to feed back the response to the committee when I get it.

Oliver Mundell (Dumfriesshire) (Con): I thank Emma Harper for her helpful input. A few weeks ago, I asked stakeholders about the possibility of introducing a standard compensation scheme, although that might not fix all the problems. Did Emma hear that evidence and would she support such a scheme? The idea that we will find hundreds of thousands of pounds from some dog walkers to compensate landowners is probably unlikely. It would be an important gesture to ensure that at least some of the cost was recovered.

Emma Harper: Compensation is obviously really important to farmers—it was one of the big issues that the NFUS raised—because of the amount of money that they have to spend on vets' bills when their sheep are attacked and so on. I will need to discuss that in my continued engagement with the minister, because it will be up to the Scottish Government to introduce a standard, capped approach to compensation. It is worth continuing to explore that and I am happy to do so.

Oliver Mundell: Would Emma Harper be happy for something such as that to be included in the bill and for it to be open to amendment later in the legislative process?

Emma Harper: I am not opposed to putting something in the bill, but compensation schemes already exist and I want to keep my bill as simple as possible. As there is other animal welfare

legislation, as well as the working group that the minister spoke about during her evidence session, I would prefer to consider compensation schemes and other methods separately from the primary legislation and look at pursuing that aspect in different ways in the future.

Richard Lyle (Uddingston and Bellshill) (SNP): Many people are dog lovers and like to own dogs. In what cases would you consider it to be appropriate for a person to be disqualified from owning a dog? Would the bill ensure that any such orders were proportionately applied?

Following John Finnie's question about the Crown Office and Procurator Fiscal Service, I want to know whether you have spoken to the Scottish Sentencing Council about issuing sentencing guidance.

09:45

Emma Harper: The bill proposes flexibility in any approach.

During the consultation process, we heard a wide range of examples, such as of people thinking that their dog was simply having a bit of fun chasing sheep in a field, but the sheep happened to be pregnant at the time; how would people know that that simple chase resulted in pregnancies being aborted?

Other incidents involved blatant disregard. One man's Labrador attacked five sheep one day and four the next, and when he was approached about it he said, "So what? I will just pay the fine."

We have wide-ranging examples of livestock incidents. I wanted to make sure that there was flexibility, so that prosecutors could decide, case by case, how they wanted to take things forward. A disqualification would be very rare.

We have heard of repeat offences. Very few individuals would be disqualified, but we have heard some pretty harrowing stories, whereby some people should just not have a dog. The provision would allow the Crown Office to move for disqualification of that person.

Richard Lyle: As a former dog owner, I agree that anyone who owns a dog should be responsible and ensure that the dog does not do the things that you have mentioned.

Legal stakeholders have suggested that, based on provisions in animal health and welfare legislation, it might be inappropriate to disqualify an owner from owning a dog, if the welfare of the dog is otherwise well provided for. What are your thoughts on that?

Emma Harper: The evidence that was presented by the Kennel Club and Scottish Kennel Club talked about that—the welfare of a dog might

otherwise be fine, and a particular incident might just be an incident.

Again, it would be very rare for a person to be disqualified from having a dog, and that is why we built into the bill the provision that we could ban somebody from having their dog on agricultural land. One example was of a core path through a farm in Ayr, where a particular farmer was met with verbal abuse on multiple occasions. He would know that particular person, and if that offence could result in his being banned from that land, the farmer would not have to face verbal abuse when he is out doing his work on the core path that goes through his land.

Angus MacDonald (Falkirk East) (SNP): Good morning, Emma.

I will stick with the issue of disqualification orders. How do you intend disqualification orders that aim to prevent a person from bringing a dog on to agricultural land to work in practice? Had you in mind any particular circumstances in which such an order would be appropriate and practically feasible?

Emma Harper: In the example that I just talked about, the farmer would know the person who was coming on to the land—for example, he would recognise the dog and the person; the disqualification would relate to that piece of land.

It may be that we need to look at a further definition around that, but, again, rather than going for a person and disqualifying them, I wanted a bit of flexibility to allow the police and the Crown Office to make individual assessments of individual incidents and to make adjustments, so that the person could be required not to go to a particular place.

Another example is of somebody who was on holiday, who might have had no idea that they were in an area that might be risky or that livestock would be on that land. The approach would allow for a process to make them aware that disqualification from a particular place would be part of a requirement on them in the future.

Angus MacDonald: That is fine, thank you.

Peter Chapman: Good morning, Emma. You have proposed that additional inspecting bodies might be involved in enforcing the bill. Can you outline your reasoning behind the approach to the appointment of additional inspecting bodies? In what scenarios do you foresee that being of assistance? Who do you have in mind for that role? Given that local authorities and the Scottish SPCA have both said that they are not keen to get involved in that way, what would happen if a suitable or willing body could not be found?

Emma Harper: When we started the process of looking at how we could support the police in the

investigation of livestock worrying incidents, we knew that dog control wardens, community safety teams and the Scottish SPCA already support the police in such investigations.

One issue that came up was that the police do not have to hand wands for microchip detection. My local police headquarters has a microchip wand, but all dog control wardens and community safety teams should have the ability to identify a dog that has a microchip. That could assist the police in tracking a dog that is running free without an owner nearby.

In evidence, we heard that 50 per cent of incidents involve latchkey dogs or dogs running free. Once a dog is apprehended, inspecting bodies, or people who have experience of dog behaviour, would be able to support the police and detain the dog. They have the equipment: the cages in the back of the car, the wands for microchip detection and all the kit that is needed to seize or apprehend a dog. That is where the thought of having additional support to help the police in their investigation came from.

Peter Chapman: I appreciate that and I understand the thinking behind it, but the problem is that both the local authorities and the SSPCA have said to the committee that they do not particularly want that role. How do you square that circle?

Emma Harper: Well, the bill does not say that we are going to create inspecting bodies, but it would allow ministers to consider whether that would be necessary. When we engage in the process, further conversation with ministers would need to take place to see whether there was any inclination to do that.

My understanding is that the SSPCA already helps the police if it is invited to do so, and one of the dog wardens in Argyll is already well embedded, with the support of the police, to assist with incidents. Therefore, such measures are currently undertaken. The provision in the bill would enable ministers to appoint inspecting bodies if that were determined to be needed in the future.

Peter Chapman: You have made that quite clear, but I would like to explore the relationship between Police Scotland and any potential inspecting body. Would the police lead the investigation, with the inspecting body assisting? If so—that is what you just outlined—does that need to be clarified in the bill, along with the development of specific guidance on the subject?

Emma Harper: My goal would be that that would not be in the bill because we do not even know whether ministers would want to create inspecting bodies. My intention is that the police would always be the lead in any investigation of

livestock worrying or livestock attacks because the police are the experts in the process and protocols. My goal would be that guidance would be created or standard operating procedures set out so that if ministers decided to have inspecting bodies, they would be subordinate to and supportive of the police. Ultimately, the police would be in charge.

Mike Rumbles (North East Scotland) (LD): The bill says:

“The Scottish Ministers may by regulations authorise one or more persons, organisations or bodies to appoint inspectors for the purposes of this Act.”

It goes on to say that

“An inspecting body may appoint an employee”—

or somebody else—and that

“Before appointing a person, organisation or body as an inspecting body, the Scottish Ministers must first consult”.

That is quite a departure from what the Parliament has done in relation to other legislation.

Last year, I was on the committee that considered the bill that became the UEFA European Championship (Scotland) Act 2020. We talked about enforcement officers, which is similar to the situation here. We were quite clear that, if enforcement officers had powers similar to those of police officers, they must be specified in the bill.

Section 17 of the 2020 act says:

“(1) An ‘enforcement officer’ is an individual designated as such by Glasgow City Council.”

That person must be:

“(a) ... an inspector of weights and measures (appointed under ... the Weights and Measures Act 1985),

(b) ... authorised by a local authority to enforce the provisions of ... the Trade Marks Act 1994, or

(c) ... employed by Glasgow City Council”.

In other words, we agreed that there should be enforcement officers but that those people should be specified in the legislation.

In the case of your bill, there would be inspecting officers. At the moment, the way in which the bill is written means that there is tremendous opportunity for anyone to be appointed without their having any specific qualifications. That is my concern. Can you reflect on that?

Emma Harper: I take that concern quite seriously. The purpose of the supporting inspecting bodies would be to offer assistance and guidance to the police. Inspecting bodies would not be required to have the same judicial knowledge as the police, who would investigate an incident. It would be up to the Scottish ministers to appoint inspecting bodies. After their own

consultation and process, the ministers would determine that any person appointed would have to have necessary qualifications or experience. It would be up to ministers to propose that, should they decide to go in that direction.

Mike Rumbles: My point is that our job as MSPs—as I am sure that you understand—is to look at the proposed law as it is written, and what you have written gives tremendous power to Scottish ministers to appoint anybody, and those people would not have to have qualifications.

I am concerned because another provision in the bill—section 4—gives powers to authorise entry, search and seizure. I will come on to that in a moment, but I want to refer to it just now. Section 4 includes a tremendous power to enter premises—in some cases without a warrant. We have to be really careful that Parliament scrutinises that. I am fully supportive of the bill, but I want to ensure that we get it right. I am concerned that it gives too much power to an inspecting body and that we will end up with real problems.

Could you look at the UEFA European Championship (Scotland) Act 2020 to see whether the provision in your bill can be amended in similar terms?

The Convener: Before I bring you in to answer that, Emma, I know that Nick Hawthorne wanted to come in. I could bring him in now, unless you want to speak first.

Emma Harper: I was going to say that when the bill was drafted, the drafter, Charles Livingstone, looked at other legislation that was already in force. I am not a lawyer, so perhaps Nick Hawthorne or Charles Livingstone could explain from a legal perspective how we came to the position on inspecting bodies, such that they have not yet been assigned and that, if ministers chose to create them, that would be developed in a proportionate way. I would be happy for Nick or Charles to help support my ramblings.

10:00

The Convener: Charles Livingstone has kept his head down, so we will go to Nick Hawthorne.

Nick Hawthorne: I will address some of Mike Rumbles’s comments. Obviously, it is for members to debate the policy aspects of the bill, but I thought that it would be helpful to clarify a point about the inspecting bodies. The power would be given to the Scottish ministers, and it would be up to ministers to decide whether to use the power at all. If they decided to do so, there would be a requirement for them to consult the body that they had in mind. If a body did not want to be

appointed, there would be an opportunity for it to say so.

In considering the delegated powers memorandum, the Delegated Powers and Law Reform Committee wrote to Emma Harper to ask her to consider whether the affirmative procedure would be more appropriate. The bill currently suggests that the negative procedure be used for the regulations surrounding the appointment of inspecting bodies. As Emma Harper will be able to confirm, she replied to say that she would consider amending the bill so that the affirmative procedure would be used. That would lead to an enhanced level of parliamentary scrutiny in relation to the appointment of inspecting bodies.

The Convener: That has clarified the position quite a lot. I will bring in Stewart Stevenson before I come back to Emma Harper.

Stewart Stevenson: [*Inaudible.*]

The Convener: Hold on a moment, Stewart. You are muted. Could you start again?

Stewart Stevenson: [*Inaudible.*]

The Convener: Unfortunately, you are still muted. Do not touch anything, Stewart—let broadcasting staff see whether they can sort it out. If they cannot, we will come back to you later.

I will give you one more attempt to say something.

Stewart Stevenson: [*Inaudible.*]

The Convener: We will come back to you.

Does Emma Harper want to add anything? If not, I will go to John Finnie.

Emma Harper: I am happy for you to move on. I am keen to address any issues with the committee. When we consider the process for affirmative instruments, I am happy to engage and to look at whatever we need to do in order to make the best and strongest legislation.

John Finnie: I very much align myself with the comments of my colleague Mike Rumbles. I note that the bill gives the Scottish Government the opportunity to appoint, but we are talking about significant police powers. As those who are charged with scrutinising legislation, we should be very cautious about granting, in effect, police powers, which is what they would be.

I have asked these questions previously. Have you consulted the police on the powers that would be granted? Have you discussed the issue with the Crown Office and Procurator Fiscal Service? If so, were any concerns expressed?

Emma Harper: I wrote to the Crown Office following the evidence, but I am still waiting on a response. I agree that scrutiny and approval by

Parliament are extremely important. I am happy to respond after I have gone back and looked at that issue. Ultimately, the goal is that we improve the bill so that a flexible approach can be taken to dealing with livestock attacks.

John Finnie: Thank you for that, Emma. I am sorry, but I need to press you on the issue, because giving people the suggested range of powers is an important aspect of the bill. Thus far, has there been anything on that from the Crown Office or the police? I also have a final question: who would do the reporting to the Crown Office on any offences that were detected?

Emma Harper: My preference is for the police to take the lead on that, because I agree that it is important that the police are in charge. Ultimately, if the ministers choose to move forward, it would be up to them to consult on having inspecting bodies and on the level of support that those inspecting bodies should offer, and then there would be scrutiny of that and agreement to it—or not—by the Parliament.

The Convener: At this stage, I will bring in Charles Livingstone, because he has something that he would like to add. I will come back to John Finnie after that.

Charles Livingstone (Brodies LLP): Thank you, convener; I hope that I can add a bit to that. To explain to the committee, my role is as the drafter of the bill rather than as someone who had anything to do with the policy.

With regard to the drafting and how this is all intended to fit together, it is worth noting that the appointment of the inspectors and their powers broadly mirror the position of inspectors under the regime in the Animal Health and Welfare (Scotland) Act 2006. Under that regime, the Scottish Government has a relatively unqualified power to appoint inspectors directly. The difference in the bill is that inspecting bodies would have an intermediary role, so an inspecting body would be appointed, and it could then appoint inspectors. It is a subtle distinction, but one of the reasons for it relates to the provisions in respect of who would meet the costs, and could be reimbursed for the costs, of seizing any dog. One of the reasons why the bill refers to inspecting bodies rather than inspectors is so that the body could meet any costs and the individual inspectors would not have any liability in that regard.

With regard to what inspectors can do, it has been noted that the bill would create powers for inspectors but would not impose any duties on them. Therefore—although it seems unlikely—if, for some reason, somebody was appointed against their wishes, there would be no obligation on them to do anything to use the powers.

The thinking is that somebody from the SSPCA or a dog control officer in a local authority might be the person on the scene in respect of a dog worrying offence. In particular, we might expect the SSPCA, rather than the police, to be called out for a stray dog. Therefore, to a large extent, some of the powers are about allowing them to react to a situation that they find themselves in, as opposed to the SSPCA going out to investigate a criminal offence, which I am sure that it would not want to do. It is important to give the committee that context and say how it all fits together.

We might come back to that issue with regard to warrants, but if the person on the ground is dealing with evidence—the dog—that is mobile and has a mind of its own, it is possibly appropriate for them to have the same powers as police officers, even if they would not investigate the criminal offence themselves.

John Finnie: I thank Mr Livingstone for that; it was helpful. I will leave it there at the moment.

The Convener: I think that Stewart Stevenson wants to come in; let us hope that his microphone is fixed.

Stewart Stevenson: Thank you, convener. With regard to the previous difficulty, my elbow pressed a button on the cable, which switched off the microphone.

I will address the old chestnut about secondary legislation. I ask the member to confirm that, whether it is subject to the negative or affirmative procedure, Parliament has the power to reject secondary legislation.

The Convener: Emma Harper, do you want to come back to that, or do you want to press the button? *[Laughter.]*

Emma Harper: I always defer to Stewart Stevenson's knowledge, which is superior to mine. I agree that whatever scrutiny process we decide to adopt will be based on the agreement of the committee and, ultimately, the Parliament. I am happy to defer to the expertise of others.

Mike Rumbles: This is a really important point. You have maintained that the matter can be dealt with through secondary legislation, and we even had a discussion about whether the affirmative or negative procedure should be used. However, the Parliament will have to decide whether it wants to give away tremendous powers to ministers to authorise such powers and deal with the issue through secondary legislation. When considering previous legislation—I am again referring to the UEFA European Championship (Scotland) Bill that we passed last year—members were not content to do that. We made it so that enforcement officers—the equivalent in this bill is inspection

officers—had to be appointed specifically and had to have qualifications.

It has been said quite rightly that inspecting bodies can appoint their own inspectors. It was also said that that is about money. I am afraid that it is about a lot more than money; it is about the fundamental principles of Scots law. All that I say to Emma Harper is that we need to revisit the issue.

Emma Harper: I am happy to take all that on board and to discuss the issue with the non-Government bills team and consider the best way to progress matters. If I need to lodge amendments, I am happy to do whatever is proportionate in order to make the bill successful. I am happy to work with Mike Rumbles to better understand what he wants me to change.

Mike Rumbles: That is great—thank you for that helpful response.

The Convener: I, too, have huge concerns about the use of investigating bodies outwith the police, and I agree with Mike Rumbles and John Finnie's comments. As a member of the committee, I, too, would appreciate the opportunity to work with Emma Harper on the issue. However, I would also like some confirmation from you at this stage that you are listening to the concerns that have been raised by quite a few members. Given the importance of getting the bill passed, you might have to reconsider section 5 quite considerably.

Emma Harper: I am definitely happy to work with everybody, to listen and, potentially, to reword the bill, because it seems as though everybody has concerns.

The Convener: Does Mike Rumbles want to ask any questions on the use of warrants, or is he satisfied that the answers have been sufficient?

Mike Rumbles: I would like to flag up a really important issue about search warrants, which I ask that Emma Harper looks at again. The way in which the bill is framed is a departure from the established legal norm in Scots law. Normally, a person would apply for a warrant in order to search for evidence—it says that in section 4. However, the proposed new section 2A(2) to the 1953 act says:

"This subsection is complied with ... if ... either ... admission to the premises has been refused, or ... such a refusal may reasonably be expected",

so what is the point in applying for a warrant in the first place? It worries me that that provision seems to give a power of entry to search for evidence. No other act of Parliament does that, so it is a major step away from where we are. Again, we had the same issue with the UEFA European Championship (Scotland) Bill last year. I ask

Emma Harper to look at that aspect as well as the one that we have just been discussing.

10:15

The Convener: It appears that Charles Livingstone has views on the issue of warrants, as he wants to come in on that matter.

Charles Livingstone: I am not commenting on the policy at all—that is not my role, as the drafter—but I want to flag up that the provision in question is basically lifted directly from the provision on powers that are given to inspectors and constables under paragraph 4(2) of schedule 1 to the Animal Health and Welfare (Scotland) Act 2006. That includes the ability to enter non-domestic premises without a warrant. The 2006 act says that an inspector or constable is able to

“enter the premises, and ... search for, examine and seize any animal (including the carcase of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence.”

The provision is narrower in the bill, because a warrant can be granted in order to

“identify the dog ... ascertain ... the owner ... and examine, seize and detain the dog”,

rather than to seize documents and other things. The drafting comes from the 2006 act.

Stewart Stevenson: Is Emma Harper aware that the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 provides warrantless access to water bailiffs under circumstances that are a bit wider than those that she is proposing and which are rather similar to the ones that have just been described by Charles Livingstone?

Emma Harper: Yes, I saw the earlier evidence session in which Stewart Stevenson mentioned water bailiffs. The 1953 act allows the police to obtain a warrant to enter and search premises if there are “reasonable grounds” for believing that a dog on the premises was involved in an offence. That relates to the point that 50 per cent of livestock offences are carried out by unaccompanied or latchkey dogs.

The 1953 act does not allow dogs to be seized if there is a warrant. My understanding is that it is about enabling a dog to be picked up and taken to a place of security and safety in order that evidence can be gathered. When we say “evidence”, we are talking about wool in between a dog’s teeth, or blood. We need to ensure that we secure any evidence in order to help prosecutions.

Again, I am happy to look at the language and make changes, if they are needed, in order to make the bill clearer and more appropriate.

The Convener: You have understood the concerns that have been raised by the committee on the subject. I understand that Mike Rumbles has a supplementary question.

Mike Rumbles: I want Emma Harper to appreciate that we understand that there is a difference, as Charles Livingstone said, between entering premises to seize evidence and entering premises to search for evidence. That is a fundamental difference.

The Convener: Emma Harper is nodding, so she has taken on board that point. I will stick to what I have said. Serious concerns have been raised by committee members, and Emma Harper has agreed to go back and look at those issues.

The next questions are from Christine Grahame. Do not look surprised, Christine; your time has come.

Christine Grahame: I am not surprised; this is my normal expression.

We are back to the issue of the gathering of evidence. There is a possibility of criminal prosecution, so evidence must be gathered properly to survive any prosecution. I am looking at the question of consent to examining what we might call “the offending dog”. Who is going to give consent for that dog to be examined? Is it the police? Is it the owner? The owner will probably not be there, so who will give consent? In law, a dog is property. You cannot go on a fishing expedition, which is what that would be if you had no consent to examine the dog but did so anyway. It is a serious question because it is one on which a prosecution might fail.

Emma Harper: The police would direct any examination that was carried out. I understand that current practice is for the police to take photographic evidence or witness statements. If further evidence was needed, such as wool from the dog’s teeth, or—I have heard of this happening—the dog had to be given an emetic, that would be done by the police, as it is currently. That would not be different to the current process.

Christine Grahame: I think that you have had discussions with the Crown Office, which would be carrying out the prosecutions. What is its view on the gathering of evidence and the issue of consent to the getting of evidence?

Emma Harper: I have not spoken directly to the Crown Office; it fed into the consultation. I have written to the Crown Office and am awaiting a response. I am aware that the minister has met the Crown Office and I am seeking a response on the outcome of that. I will chase up the response and feed back to the committee.

Christine Grahame: Let us say that we overcome the issue of consent, although I do not

think that we have overcome it. I am presuming that a vet would have to examine the animal. Who will pay the vet to do that? I also suspect that vets would need some education or training on how to obtain forensic evidence. I think that we could overcome the question of the training, but who will pay for the vet's time?

The Convener: Emma, Nick Hawthorne wants to come in. I am happy to let you lead off, or I can bring him in now—whichever suits you.

Emma Harper: I am happy for you to bring in Nick, and I can follow up with the notes that I have regarding vets.

Nick Hawthorne: I have a quick point in response to Christine Grahame's questions. The bill provides the legal authority to have a dog examined. That rests with the police or with the inspector, if one has been appointed. You can find that power in section 4(2) of the bill, which inserts new section 2B into the 1953 act.

The Convener: We have found out who can instruct the examination of a dog, but who will pay for it? That is what Christine Grahame is asking.

Emma Harper: We have looked at scenarios. A dog is not usually taken to a vet, although that could, theoretically, happen. If a vet is on site, examining or looking after sheep that have been attacked, that is when the examination would take place. The costs are currently covered by an inspecting body; in future, those would be incurred by the Crown Office or, ultimately, by the Scottish Government. That is being explored in discussions with the minister, but if there is a direct payment to the vet that would initially be covered by the Government.

Christine Grahame: I know that I am getting down to little details, but they are important. Do you have in mind a fee structure so that vets know what the position is? Vets already have fees—if a person takes their cat to a vet to get something done to it, there is a fee structure for that. Alternatively, is the approach based on time?

Emma Harper: I recently spoke to a local vet, who said that, if he was taking evidence for a livestock-worrying case, what he would normally do would be similar to what he does in his usual work—for example, he would take blood, use swabs and give an emetic to the dog. He would normally have a fee structure in place for that.

I have not looked at the real detail of that, but I think that operating protocols or procedures could be established in order to make the structure fair and reasonable. Detailed forensic evidence is not normally gathered, but the bill allows for that, particularly in the case of latchkey dogs. I can look at that issue in more detail and get back to the committee on it.

Christine Grahame: I support your bill, although it does not sound as if I do by the way in which I am questioning you. However, the issue is the practical operation of the law.

Another issue crossed my mind. Vets are busy people. Imagine that you are in a rural area, that there is no vet to hand and that nobody says, "Yes, I admit it was my dog". There must be an examination by a vet, so who would detain the dog? What would happen if a vet simply will not be around for hours or perhaps even a whole day?

Emma Harper: Local authorities have different ways of detaining unleashed or unaccompanied dogs. Some areas have local authority-run dog centres, and the Scottish SPCA has its own centres, too. An unaccompanied dog would be detained in the way that stray dogs are currently detained. If that was required, I would envisage that process being used. I think that an accompanied dog would go back to its owner's place. However, if there was an evidentiary issue, the vet would need to gather evidence on site or the police would take photographic evidence on site. The dog could then be returned to its owner pending the investigation and its outcome.

There are various models across Scotland for where dogs can be detained. For example, the local police in Dumfries and Galloway use a privately run canine rescue centre. However, there are other places where dogs can be held pending an investigation.

Currently, the Scottish SPCA uses its own premises for the seizure of puppies that are used for illegal puppy trafficking or puppy farming. It works with the police in order to hold dogs pending investigations and their outcomes.

Christine Grahame: I have no further questions about that.

The Convener: Before we move on, perhaps Emma Harper can clarify something that slightly concerns me. If a vet inspects a dog, they may wait for months to get the money back for the costs of that inspection from the police or the courts. Is it right that vets should be asked to carry that charge when they are probably in the difficult financial situation of having to ensure that all bills are paid on time? How will it be ensured that they are paid quickly?

Emma Harper: That is a reasonable question to ask. The process of gathering forensic evidence has not been a relatively big issue up until now, but I would be concerned about courts taking excessive time to pay vets. I would be happy to look at what process could be developed so that vets would be remunerated quickly. I would support that.

10:30

John Finnie: Legislation should be the final step in dealing with an issue after other measures have been considered. Did you consider any provisions other than higher fines and greater powers of investigation that might have a deterrent effect in preventing incidents of livestock worrying?

Emma Harper: Among the issues that have come up during the process is that of education. That is a huge issue, but we found it difficult to figure out how to legislate for it. I am aware that education is already provided. Mike Flynn said in evidence that the Scottish SPCA has been educating for 30 years, yet the number of livestock worrying incidents is still increasing.

The bill will educate by raising awareness of the offence and showing the severity of it, and NatureScot's Scottish outdoor access code provides a number of educational modules and tools. Rather than providing for education in the bill, I am keen for the awareness raising to continue and for us to use all the tools that we have to support the updating of the 67-year-old legislation. The outdoor access code website has great videos for people on how to train their dog to come back and to listen. I support any opportunity to continue to use education as part of the process of raising awareness of the severity of the offence that should go along with the bill.

John Finnie: Notwithstanding the excellent education that is provided, the outdoor access code videos and all the rest of it, livestock worrying remains a problem. Is part of the plan to update some of the guidance to reflect the higher penalties, should the bill be successful? Would you encourage the revisiting of what is already there?

Emma Harper: Higher penalties were sought by the NFUS and the National Sheep Association Scotland because of the severity of such incidents and the extent to which they affect farmers financially and emotionally. I am keen to ensure that awareness is raised of the penalties and of the severity of the offence, as the number of incidents has increased year on year for the past 10 years. I would be happy to support any way in which we can raise awareness of the bill.

One of the challenges is that although the farming magazines and newspapers are happy to print stories about livestock worrying, the non-farming print media have not engaged with the issue at all. That would be a way to educate the general public and the folk who use the outdoors. I would support any further raising of awareness in that way.

John Finnie: I acknowledge your work in fighting illegal puppy trading. Puppies are cuddly,

whereas the remains of a savaged sheep are not. However, this is fundamentally an animal welfare issue, and I want to ensure that you have fully explored options short of legislation.

Emma Harper: The 1953 act, which is predominantly the primary legislation that is used in dealing with livestock worrying offences, is 67 years old. You are right that livestock worrying is an animal welfare issue—for instance, I have heard of calves being chased until they died of exhaustion.

It is a question of education and awareness raising, in tandem with updating a law that dates from 1953. Farming practices have changed since then, and I wanted to reflect modern farming practices and to reflect the cost of sheep now, compared with what it was in 1953. We can do other things in tandem with the bill, but the legislation needs to be updated.

John Finnie: I will conclude by commenting that old legislation is not necessarily bad legislation but, of course, it must reflect current need.

The Convener: John, were you going to ask about the issue of a database for dog control notices? I am sorry—it is Oliver Mundell who wants to ask about that.

Oliver Mundell: Yes, I want to ask about that, but first I want to ask about the proposal that Scottish Land & Estates made in its submission that

“a legal obligation should be placed on any dog owner”

to report any incidents to the police and to assist with any investigations. Would it be helpful to include such a provision in the bill?

Emma Harper: We have thought about such issues. If, as a dog owner whose dog had attacked sheep, I were to report that to the police, there might be an issue of self-incrimination. How would that be followed up? A bunch of questions were raised about that. We found that it would be unworkable to put such a provision in the bill, because it would add complexity. Therefore, I did not pursue the inclusion of a provision on self-reporting in the bill.

Oliver Mundell: I will move on to my next question, but I would be grateful for any more information that you can provide on what you looked at in coming to that conclusion. I would be happy to look at that separately.

Emma Harper: I can do that.

Oliver Mundell: Would it be helpful if the proposed dog control notices database included more information on dog control? If so, would the bill be the right place to provide for such information to be collected and stored? Do we need to do more work on standardising the

collection of data? We have heard from stakeholders that the collection of data on dangerous dogs is not always consistent across the country.

Emma Harper: I have looked through my notes and found the information about whether there should be a legal duty on owners to report suspected incidents, so I can send that to you, if that would be helpful.

On the database issue, we found through the consultation process that data on livestock worrying incidents—on the number of sheep that were attacked; whether a vet was involved; whether sheep had had to be euthanised; what type of dog was involved; and how many dogs there were—was not being collected in a consistent way across Scotland. There were some issues with data gathering on specific incidents.

However, during that time, the Scottish partnership against rural crime launched its awareness-raising campaign on livestock worrying and other rural crime, and I am aware that SPARC is now collecting data that is more consistent across the whole patch, which is encouraging.

There is a potential opportunity to collect further data. I know that the minister's team is looking at that and at the gathering of information on dog control notices and other specific data as part of its wider work on dogs and animal welfare legislation. Therefore, rather than providing for that in the bill, I am keen to see what future proposals the minister has as regards data processing and management. Future Government legislation will be able to address those data management issues.

Oliver Mundell: I am happy with that for now, convener.

Christine Grahame: On that issue, unfortunately, the database for dog control notices that has been discussed is being dealt with by the Minister for Community Safety, and Emma Harper's bill is being dealt with by the minister who is responsible for animal welfare. I ask Emma Harper to check which minister will deal with the database system and everything else, because the subject crosses two portfolios, which is causing an issue.

The Convener: The member is nodding to indicate that she has noted that. I do not think that she is indicating that she has worked out who is going to deal with the issue—or who is going to refuse to deal with it.

Emma Harper: The civil servant who accompanied the Minister for Rural Affairs and the Natural Environment when she gave evidence to the committee is also working with Ash Denham's communities team. It is true that there are cross-

portfolio issues, but I understand that the civil servant who is looking at data and additional data management is part of the justice portfolio team.

Christine Grahame: That is the problem—there are two portfolios involved.

Richard Lyle: Emma, what conversations have you had with the Scottish Government regarding resourcing for additional investigation, including for the inspecting body that you were asked about earlier, as well as enforcement and prosecution that might come as a result of the bill? How would the inspecting body be resourced? Can you give us any information on that?

Emma Harper: Yes. From my engagement with the ministers, my understanding is that, initially, the resourcing for what is required in the bill would be covered by the Scottish Government; in the financial memorandum, the Scottish Government expresses support for the bill and agrees to future processes. If the ministers decided that they wanted an inspecting body, as things stand, that would also be financed through the Scottish Government. Therefore, from my conversations with the minister, my understanding is that the Scottish Government would meet any requirements to finance aspects of the bill.

Richard Lyle: That is fine; thank you.

Peter Chapman: Christine Grahame kindly explored the issue of the costs for the vets and who will pay the vets. The vets have said that they might need additional resources for training in forensic procedures and evidence handling. Who will pay for that?

Emma Harper: Again, the Scottish Government would support any necessary education for vets. The vet I spoke to said that taking blood or swabs is normal procedure that qualified vets are already competent to do. There might be additional issues around labelling samples, the chain of custody and securing evidence. That work would be developed through processes and procedures that could be delivered digitally via education modules. If much further education was required, the Scottish Government would work with stakeholders, such as the British Veterinary Association, to deliver it.

Peter Chapman: We have also heard from the vets that there is a potential serious conflict of interests. If a vet is on site because he is there to treat the livestock—the sheep—that have been injured, and, at the same time, the dog is presented to the vet, who is asked to investigate whether it did the worrying, there is a serious chance of a conflict of interests. The dog owner might say that the vet was influenced, because the farmer asked—and paid for—him to be there, so they might not accept that the vet's evidence is clear, concise and fair. How can we address that? The likelihood is that, if there is a vet on site, he

will examine the dog as well as treating the animals.

10:45

Emma Harper: Peter Chapman is absolutely right. The vet who dealt with the sheep on site would deal with the dog. In the conversation that I had with my vet last week, I was told that vets are professionals, in the same way that doctors and healthcare staff are, and they treat everything impartially. I was assured that, like doctors, vets carry out all their work impartially. They would treat a dog that might have been involved in livestock worrying in the same way that they would treat a dog that had fought another dog. I do not believe that the professionals would see that as a conflict of interests.

Angus MacDonald: I will stick with the issue of resources. You have touched on the fact that public awareness is desirable. What conversations have you had with the Scottish Government about resourcing for the prevention of livestock worrying?

Emma Harper: Discussions are on-going. I am keen to analyse the financial implications of the bill. The financial memorandum reported that we might see an increase in the reporting of incidents, which would lead to an initial increase in costs, but that ultimately, as the bill is used and as people become more aware of it, there would be a reduction in the costs to deliver the outcomes that the bill seeks. In my work with the minister, I am looking at the financial aspects of the bill and at what the ultimate costs would be and who would bear the brunt of those.

If the bill is successful, we should see the cost to farmers and to everybody reduce as the incidence of livestock worrying reduces.

Angus MacDonald: Have you had specific discussions about prevention?

Emma Harper: The prevention aspect is important: I would prefer to prevent offences. In my conversations with the Scottish Government, we are looking at the Scottish outdoor access code and working with the national access forum to look at how we can continue to raise awareness through education. The SSPCA already goes into schools to educate kids about responsible ownership. Part of that is to make sure that, if people have a dog and are around livestock, they do not go into a field in the first place.

My conversations with the Government will focus on additional preventative measures. I would like to see an awareness-raising campaign to give everybody more information. We know that the NFUS and the National Sheep Association Scotland already do education ahead of the

lambing season. The Government might have to support a more joined-up stakeholder approach with a national public messaging campaign. I will have conversations with the minister to see whether that is possible.

Angus MacDonald: That is good to hear.

What conversations have you had with the Scottish Government about the timeframe for implementing the bill? Does six months after royal assent give sufficient time to appoint inspectors?

Emma Harper: Six months is the normal timeframe for enacting a bill after royal assent. At that point, the Government might not even have decided whether to have inspectors. The act's implementation should not be impeded by processes that the Government might not choose to enact now. The six-month period is normal for an act to take effect. If delays were deemed necessary by the Government, we might need to consider delaying the implementation for a further period. I would seek further confirmation from the ministers if they thought that the six-month period should be extended.

Angus MacDonald: That is good—thank you.

Oliver Mundell: I want to go back to Richard Lyle's question. In some of the evidence sessions—I have also picked up on this in my constituency work, although my question is not a constituency one, convener—we heard that the police are sometimes seen to put a lot of resource into policing wildlife crime but are not seen to be as quick to act on livestock worrying. This is not about new resources for the bill. Rather, are you hopeful that there might be a reprioritisation of resource in Police Scotland to ensure that, through the bill, livestock worrying is taken more seriously and that the police resource in rural communities is used to tackle the issues that are of most importance to those communities?

Emma Harper: The initial feedback from farmers was that there is no point in reporting an incident because the police do not care. However, in my work with Alan Dron—the chief inspector for the Scottish partnership against rural crime—John McKenzie and our local police officers, I have found that they are absolutely committed to the issue and take it seriously. The work of SPARC has been phenomenal. Before Covid, I saw SPARC representatives at a lot of cattle and agricultural shows, including the Royal Highland Show and the Turriff Show. My understanding is that the police take livestock worrying seriously as part of their rural crime work. As we move forward and people become aware that the law is being updated, I believe that farmers will gain confidence that the police take the issue seriously.

John Finnie: I have previously declared my support for Emma Harper's proposal in broad

terms, so I am somewhat dismayed to see the number of exemptions that exist. Why should there be exemptions for working dogs, which we could argue are trained to a higher level than other dogs?

Emma Harper: The exemptions are for working dogs, such as an assistance dog for somebody with mental health issues. If such a dog worried livestock in the course of its work, there would need to be an exemption in order to support equalities issues. We considered other ideas, such as possibly widening the exemption to support dogs. In the original 1953 legislation, the exemption covered dogs that assisted people who were visually impaired, but now we have dogs that provide support in many other ways. The exemption is—

John Finnie: Could I perhaps interrupt you there? I should have made it clear that I have no issue with assistance dogs, hearing dogs or dogs for people with visual impairments. I am thinking about gun dogs and fox hounds, which presumably are trained to a higher standard than other dogs. Why should there be exemptions for those dogs? What happens if a farmer has his livestock worried by such dogs? Who determines that they are performing a role? Is there a definition of that? Is that matter not best left to mitigation in a court? To me, the exemptions that are outlined send a very weak message about the overall direction of the proposal.

The Convener: Nick Hawthorne would like to come in, so I will give Emma Harper the option of letting him come in now or answering those questions first.

Emma Harper: I will answer quickly before Nick Hawthorne comes in. Hunting dogs are supposed to be used for flushing. If a dog is not acting with an intended purpose—flushing out a fox, for example—it is not in control any more. Ultimately, the Crown Office or prosecutors would be able to make determinations on a case by case basis. I am not suggesting that we exempt hunting dogs completely. What happened in a particular incident would be taken on board.

I am happy for Nick Hawthorne to expand on that.

Nick Hawthorne: I will be very brief, because Emma Harper has covered some of what I was going to say. My general point is that the exemptions are not new, in a basic sense; they are included in the 1953 act. However, the bill makes changes in relation to assistance dogs and “the extent that the dog is performing the role in question”.

That relates to gun dogs and the other things that John Finnie mentioned. The broad policy in the bill is untouched from the 1953 act.

John Finnie: There have been representations from the UK Centre for Animal Law, which I would have thought Emma Harper would have been keen to refer to on such matters. Is her view that the matter would be reported and that, in the first instance, the COPFS should determine whether there should be a prosecution? Would the mitigation be presented to a sheriff? I am unclear about the position, because the bill seems to create an extremely unfortunate precedent. I appreciate that the provisions might well have been in the 1953 act, but the legislation is being updated, so there is the opportunity to right an inconsistency.

The Convener: Charles Livingstone wants to come in. In order to help Emma Harper, I will bring him in first, because he might be able to shed some light on the issue.

Charles Livingstone: I have one technical point. The exemption is only to section 1(2)(c) of the 1953 act, which is the offence of

“being at large ... in a field or enclosure in which there are sheep”.

If a police dog, a guide dog or a pack of hounds were to attack or chase livestock, an offence would still be committed. The exemption is only to the offence of “being at large”.

As Nick Hawthorne said, the provisions are in the 1953 act. The intention is that if, in the course of a hunt, a pack of hounds were to cross a field in which there were sheep, because that was where the hunt took them, that would not be an offence because, by definition, a pack of hounds would not be on a lead or under close control. The exemption is only to the “being at large” offence. That is what informed the original parliamentary intention.

The Convener: John, are you happy with that answer?

John Finnie: I am grateful for Mr Livingstone’s clarification. It is important that there is absolute clarity about the range and scope of the bill.

Emma Harper: We will ensure that the explanatory notes and the guidance that supports the bill have very clear and defined information about the subsections that Charles Livingstone has described perfectly. I will take that on board and go back and look at additional supporting documents.

The Convener: In relation to exemptions for assistance dogs, are you happy that the equalities groups feel that their concerns have been answered?

Emma Harper: In my engagement with the national access forum, I received words of support indicating that, according to the forum’s

engagement with equalities groups, my proposals were proportionate and appropriate and they were satisfied with how I was taking the bill forward.

11:00

The Convener: We move to a question from our deputy convener, Maureen Watt.

Maureen Watt: When we heard the minister's evidence, we all got the impression that there were still a lot of areas of the bill in which further discussions between Emma Harper and the minister were required. Since we took that evidence, has she had any meetings with the minister or her officials to tidy up those areas? I can see already that a lot of amendments might come from her, and possibly from the minister.

We have talked about issues such as the lack of police wands for reading microchips. This might be my mistake, but I do not think that I have seen a financial resolution for the bill. Would there be a cost to it? If so, what would that be?

Emma Harper: I continue to have conversations with the minister. I had a brief catch-up discussion with her before this evidence session. Because the Government's research happened while my bill was being drafted, and because that work overlaps with the minister's work on other legislation, issues have now been raised that I must address. I am happy to consider those and then respond.

The issue about police wands was interesting to me, because I assumed that the police would already have microchip detection devices. Depending on the type, some wands cost less than £50, but others cost about £190. That needs to be considered. We might, for instance, be able to support identification of latchkey dogs very easily if the police were enabled to have wands in their vehicles.

I would have to dig out my papers on the question of a financial resolution, but my proposal was such that the cost would not exceed the level at which a member's bill would require its funding to be approved by the Parliament through a resolution. The information was looked at and it was considered that the bill would not require an extortionate level of funding. If necessary, I can find the specific information and send it to the committee.

The Convener: That brings us almost to the end of our meeting.

My final question is about making people aware of the legislation should it come into force, which will be important. What discussions have you had with the minister about having a publicity campaign, should your bill get through all the

required processes, so that no one is caught by surprise by its requirements?

Emma Harper: As I said earlier, last year, the Scottish partnership against rural crime carried out an extended campaign, from which we can see that loads of stakeholders are really interested in taking forward my proposals. My goal is to engage with the minister to see whether Government support can be provided to engage all the stakeholders under one message, so that we could have a national campaign along the lines of the take the lead campaign. I am happy to ask the minister whether the Government would support a public awareness campaign ahead of the date for the bill to go live.

The Convener: That brings us to the end of our questions.

I thank Nick Hawthorne, Kenny Htet-Khin and Charles Livingstone for giving evidence. I also thank you, Emma. It must be odd for you to sit on the other side of the committee table, being grilled rather than doing the grilling. Thank you very much for the answers that you have given.

We now move into private session.

11:04

Meeting continued in private until 11:34.

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