



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 24 February 2021

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE
7th Meeting 2021, 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)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Emma Harper (South Scotland) (SNP)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Angus MacDonald (Falkirk East) (SNP)
*Mike Rumbles (North East Scotland) (LD)
*Colin Smyth (South Scotland) (Lab)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP) (Committee Substitute)
Ben Macpherson (Minister for Rural Affairs and the Natural Environment)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Virtual Meeting

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 24 February 2021

[The Convener opened the meeting at 09:30]

Dogs (Protection of Livestock) (Amendment) (Scotland) Bill: Stage 2

The Convener (Edward Mountain): Good morning, and welcome to the Rural Economy and Connectivity Committee's seventh meeting in 2021. I ask members to ensure that their mobile phones are in silent mode. The meeting will be conducted in virtual format.

The first item on the agenda is stage 2 consideration of the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill. I welcome Emma Harper, the member in charge of the bill; Christine Grahame, the committee substitute for Emma Harper, who is attending for this agenda item; and Ben Macpherson, the Minister for Rural Affairs and the Natural Environment.

Before we go any further, I ask members whether they wish to make a declaration. I will start. In my entry in the register of members' interests, I have recorded that I am a member of a family farming partnership in Moray.

Peter Chapman (North East Scotland) (Con): I, too, am a member of a farming partnership.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I jointly own a very small registered agricultural holding from which I derive no income.

Jamie Halcro Johnston (Highlands and Islands) (Con): I, too, am a partner in a farming business.

The Convener: Before we begin, I will recap how the stage 2 process works in a virtual setting. Members, the member in charge and the minister will be called to speak to their amendments in the usual way. Members who have not lodged amendments in a group but who wish to speak should indicate such by inserting an R in the chat function. I will ensure that they are called to speak.

Voting on amendments will be carried out electronically, using the chat function. I will separately call members to vote yes, no or abstain. Committee members should type their vote into the chat box—Y for yes, N for no, A for abstain—and the result will be read out in full, with the names of who voted for each option and the

vote result. It is vital that that is done to ensure that the correct vote is recorded.

As has happened before, if we lose connection to a member or to the minister during stage 2 proceedings, I will suspend the meeting until the connection is re-established. In the unlikely event that reconnection is not possible, we will need to reschedule our stage 2 consideration.

If a member loses connection at the point at which he or she is required to move an amendment and the connection cannot be restored after a brief pause, another member from the same party group will move the amendment. That member will have an opportunity to speak to the amendment if it has not already been debated. If the member who is required to move the amendment loses their connection and does not have a party group member present to move their amendment, I will suspend the meeting to allow the connection to be restored.

If a committee member loses their connection at the point at which a division is called or when it is taking place, I will suspend the meeting for up to 10 minutes to allow the connection to be restored. During that period, the clerks will contact the member who has lost their connection and clarify whether she or he is content for the vote to proceed without them, if the connection is still lost. The vote will be delayed beyond 10 minutes only in the likelihood of a close division.

I hope that that adequately explains the process. We now move to consideration of amendments.

Section 1—Offence under section 1 of the 1953 Act: name, definition and penalty

The Convener: Amendment 1, in the name of John Finnie, is in a group on its own.

John Finnie (Highlands and Islands) (Green): Amendment 1 is about an exemption in the fine piece of legislation that is before us. I think that many people would be surprised that there are any exemptions, given that the protection of livestock is a significant animal welfare issue—the clue is in the bill's name.

My proposal is simple. I think that we all readily accept that it is a bad idea to have a dog loose among livestock, with the notable exception of the stockperson's dog to deal with sheep, cattle or whatever. It is an even worse idea to have a number of dogs loose—I would say that regardless of whether we were talking about sled dogs, greyhounds, terriers or whatever.

The existing exemption for police dogs is appropriate—I declare that I am a former police dog handler—for the circumstances in which a police dog handler finds themselves among

livestock. Ideally, the aim would be to encourage the relocation of livestock if a search was being conducted for stolen property or if specialist dogs were looking for explosives, drugs, firearms or human remains. That is a key role in the protection of life or property; a police dog would be properly controlled, so that exemption is appropriate.

There is no logic in continuing to allow livestock to be subject to the intrusion of a group of dogs for whatever reason, not least because of the impact that that could have—as a farmer, the convener will know about that. That could cause livestock distress, which is compounded if the animals are pregnant or nursing—if that is the correct term. Trauma is associated with that. For all those reasons, I will move my reasonable amendment.

I move amendment 1.

Mike Rumbles (North East Scotland) (LD): I disagree with amendment 1. The legislation already makes exemptions; as John Finnie said, police dogs are exempted. There is an exemption for a dog that is lawfully used in pest control, but John Finnie would remove the exemption for such lawful activity. There is no need to do that. I will not rehearse the arguments about hunting with dogs that we have had over the past 22 years. The legislation is about dogs that are used for pest control. If John Finnie's amendment was agreed to, it would lead to a lot of problems.

I do not support John Finnie's amendment, which I know was lodged with good intention, and I ask him not to press it. I do not think that it will have committee members' support, but I am willing to listen.

Jamie Halcro Johnston: I will not rehearse the position that Mike Rumbles described, which summed up my concerns. The exemption is for pest control, and the dogs are used with the permission of landowners and farmers for them to be there. Amendment 1 is more ideologically based than about the welfare of livestock, so I will not support it.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I will not support amendment 1. When we talk about using a group of dogs, let us be honest that that is fox hunting by another name—that is all that I can think of. I totally oppose fox hunting and I have no problem with banning it, to be frank. However, that is not what we are talking about today, and this is not the place for such an amendment.

I do not recall the issue being teased out in stage 1 evidence. I am old-fashioned and I think that evidence should be teased out at stage 1 on things that are to be proposed at stage 2. That allows the parties on both sides, or a group of people who are interested, to give their evidence.

I wholly support what John Finnie is trying to do, but this is the wrong place for it. We have not taken evidence on the issue, so I will not support the amendment.

Colin Smyth (South Scotland) (Lab): Amendment 1, in the name of John Finnie, is entirely reasonable and would remove the exemption that allows dogs to be at large in a field with sheep provided that they are part of a hunt. It would remove what is a totally unnecessary loophole that we know causes sheep a great deal of distress. The exemption legitimises what is a cruel so-called sport that should rightfully have been banned almost a decade ago. Although I appreciate that the exemption does not allow dogs to attack or chase sheep, the distinction between such behaviour is not at all clear.

Christine Grahame said that the matter was not teased out in evidence and that we did not take evidence on it. We did. In its evidence to the committee, the UK Centre for Animal Law Scottish steering committee raised the issue and pointed out that

“numerous incidents have been observed in Scotland where packs of foxhounds have been hunting in proximity to flocks of sheep”,

which causes sheep to panic and run, even if the dogs are not strictly chasing them.

Similarly, OneKind called for the exemption for hunting to be removed altogether, highlighting that, even if dogs do not attack or chase,

“Packs of hounds in the vicinity of sheep can cause them considerable stress.”

It also highlighted the crucial point that, unlike with other exemptions in the section, the dogs are not providing an “essential” service. I highlighted that point in the stage 1 debate, so we have discussed and debated the issue.

There is good reason for the law requiring that dogs be kept under control in the countryside. Frankly, I can see no practical reason why the exemption should continue. There are practical exemptions for sheep dogs, given the specific nature of their role, and for guide dogs. However, the exemption for hunting turns a blind eye to the problem that is caused to livestock by hounds hunting foxes. The exemption means that there is one law for blood sports and one law for families walking their pets. I can see no justification for the exemption continuing.

Frankly, there is no justification for hunting continuing, but the very least that we can do is hold hunts to the same basic rules that we ask the general public to follow. As I said, I highlighted the issue in the stage 1 debate.

I thank John Finnie for raising this important issue, and I urge members—particularly those

who claim to oppose fox hunting—to support amendment 1. Actions speak a lot louder than words.

The Convener: I would like to comment on amendment 1 before we hear from the minister. Given the wide area of ground that can be farmed and used for grazing in Scotland—which includes, on the margins of hill ground, areas of juniper and gorse bushes—it is entirely proper that dogs can, under the legislation, be used to flush out foxes from cover. The law allows that; it does not allow hunting. I regret to say that I think that Colin Smyth has misunderstood the legislation on hunting in Scotland, which is entirely proper. It would be improper to try to contain and move sheep to allow such activity to go on. Therefore, amendment 1 is faulty and I will not support it.

I like to allow members to come in once and then move on, but I see that Christine Grahame wants to come in again.

Christine Grahame: [*Inaudible.*]—by Colin Smyth. I defer to no one in my position on fox hunting, but I do not think that we should slide such provisions into a bill that is called the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill. If we are to ban fox hunting—which I want us to do—we should do so through a stand-alone piece of legislation. That is my position. I want to defend myself. It is not the case that I approve of fox hunting, but I do not approve of the particular amendment to this particular bill.

The Minister for Rural Affairs and the Natural Environment (Ben Macpherson): Good morning. Thank you, convener, for the opportunity to respond on amendment 1.

The Scottish Government has made it clear that the legislation that was introduced in 2002 to protect foxes from unnecessary hunting has not had the desired effect. We have therefore committed to acting on many of the recommendations in Lord Bonomy's review to clarify and strengthen the Protection of Wild Mammals (Scotland) Act 2002.

09:45

Although I understand why John Finnie might wish to try to advance the agenda of protecting foxes through this bill, there are a number of issues with amendment 1. Currently, it is an offence for a dog to be at large—not on a lead or otherwise under close control—in a field or enclosure in which there are sheep. One exception to that is when the owner of the dog is there with the permission of the owner of the sheep. There is another exemption for police dogs, guide dogs, trained sheep dogs, working gun dogs or a dog lawfully used to hunt.

The last part of the definition could include situations in which a dog is being used to control rats or rabbits at the request of a neighbouring farmer or landowner, as well as dogs being used to support people on foot who are carrying out legitimate fox control. It would seem completely disproportionate to make it an offence, in those situations, to do something that does not actually cause harm to livestock and that may be incidental to a perfectly legitimate use of a dog.

The bill will extend the exemption to include other assistance dogs while adding the condition for all types of dogs that the exemption will apply only if, and to the extent that, the dog is

“performing the role in question”.

Amendment 1 would, unhelpfully, remove that added condition for all types of dogs, including police dogs and trained sheep dogs.

Regarding the issue of fox control, we are strongly committed to safeguarding animal welfare, including that of wild animals—notably, foxes. It is disappointing that, owing to the need to prioritise our response to the unprecedented challenges of Covid-19, we have not been able to introduce a bill on fox control in the timetable that was originally planned. It is because of the practical implications of our response to Covid, which has been necessary to save lives, that the Parliament has been physically unable to operate as planned.

We remain absolutely committed to introducing legislation on fox control, and we intend to do it during the next Parliament if we are re-elected to Government. The bill that we are debating today is not the place to attempt to introduce new controls on hunting with dogs. I acknowledge the intent behind Mr Finnie's amendment, but it is neither needed here nor helpful, as it could affect a wide range of legitimate work that is carried out by dogs. I am sure that that is not the intention, and I hope that Mr Finnie will withdraw amendment 1 accordingly. Should he not withdraw amendment 1, I hope that the committee will not support it.

Emma Harper (South Scotland) (SNP): Mr Finnie has set out his reasoning for lodging amendment 1. In essence, the Dogs (Protection of Livestock) Act 1953 makes the owner of a dog criminally liable if the dog is “at large” in a field of sheep, but it includes an exemption for specific categories of dog, including a dog that is “lawfully used to hunt”.

Amendment 1, in the name of John Finnie, would do two things: it would remove hunting dogs from the exemption and it would remove the new provision, added by the bill, that all the categories of dogs listed in the 1953 act, including those added by the bill, are exempted when they are working by

“performing the role in question”.

I do not support either of the effects of amendment 1. On the first point, I do not consider that my member’s bill is the right vehicle through which to pursue hunting-specific concerns. As the minister has just said, it is likely that the issue of hunting will be considered in the next session of Parliament—such issues should be considered then, in their full context and with a full debate with stakeholders and the public.

I also do not support removing the qualification that is added by the bill, that the exempted dogs are exempt only when

“performing the role in question”.

That qualification was not criticised during the stage 1 process, and there have been no suggestions that it should be removed. It adds a helpful qualification to the 1953 act and ensures that, for example, a guide dog is exempted only when performing the guide dog role and otherwise should be treated like any other dog—for example, when being exercised by a sighted person. That provides added protection for livestock owners, and I do not support weakening the bill by removing the provision.

On Monday, I spoke with one of the inspectors in the Scottish partnership against rural crime, and they have not had any evidence of livestock being attacked or worried by dogs used in the control of foxes.

For those reasons, I urge the committee to reject amendment 1.

John Finnie: I thank all the members who have taken part in the debate. We are debating the protection of livestock and that is what I was talking about. Members have chosen to take a different approach to the discussion and that is a matter for them. The debate has been peppered with euphemisms, starting with Mike Rumbles, who used the term “pest control”. I take great exception to Mr Halcro Johnston’s pejorative comment that I am being ideological and am not interested in the welfare of livestock. That is a shameful thing to say. I hope that he will reflect on that comment and offer an apology.

I have a great regard for Christine Grahame, our Deputy Presiding Officer, particularly when it comes to parliamentary procedure. Of course, it would have been helpful if Christine Grahame had been aware of all the evidence that has been offered on the topic. I do not accept her reprimand and I most certainly do not accept that the amendment is incompetent. If the amendment were incompetent, convener, you would have ruled it as such. Amendment 1 is perfectly competent and has a sound basis.

As is frequently the case, I am grateful to my colleague Colin Smyth, who made a detailed résumé of the evidence that we have had on the matter.

In your comments, convener, you talked about the margins and juniper bushes. That is the sort of territory that I am very familiar with and, in fairness, you accurately outlined the law as it is supposed to operate. However, as we then heard from the minister, it is not how it is operating in practice.

Members have said that I am trying to “advance an agenda”. I have never once mentioned foxes in relation to the amendment. The minister mentioned safeguarding. The bill that we are discussing is about safeguarding livestock. I hear the member in charge of the bill suggesting that a proposal that I am not putting forward should be the subject of full debate. For the avoidance of any doubt, I say that of course I would like to see a ban on fox hunting and, although I will not be around in the next session, I wish the incoming Government—if indeed it is the minister’s Government—the very best of luck in securing such a ban. We know that livestock have been harmed. Of course, the inducement of compensation paid to the owner of land that hunts go over has been seen as some way of offsetting those concerns. However, my concern in amendment 1 is simply the wellbeing of livestock.

I go right back to what I said at the beginning. It is not a good idea to have any dog loose among livestock. It is an even worse idea to have several dogs loose. That can have a negative impact on the wellbeing of livestock, which is my simple concern.

The Convener: Before we vote on the amendment, I point out that Christine Grahame is here as a member of the committee. Although she has another role in the Parliament, that is nothing to do with her role on the committee—that is just an observation

The question is, that amendment 1 be agreed to. Are we agreed?

We are not agreed, so there will be a division. In the chat box, please type Y to vote for the amendment, N to vote against the amendment, or A to abstain.

For

Finnie, John (Highlands and Islands) (Green)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Mountain, Edward (Highlands and Islands) (Con)
 Rumbles, Mike (North East Scotland) (LD)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine)
 (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 1 disagreed to.

The Convener: Amendment 2, in the name of the minister, is grouped with amendments 3 to 5.

Ben Macpherson: It is important that the range of penalties for offences under the bill is sufficient to be proportionate but also appropriate for the seriousness of the offence committed. Throughout the bill consultation and during stage 1, we heard about horrific instances of the impact on farmed animals and farmers and crofters and their families when animals had been killed or horribly injured by dogs that were out of control on their land. We have considered the proposed penalties carefully, and we have considered the recommendations of the committee's stage 1 report. We have also considered the Animals and Wildlife (Penalties, Powers and Protections) (Scotland) Act 2020, which has now been commenced. The maximum penalties for many wildlife crime offences as well as offences specified in regulations that are made under part 2 of the Animal Health and Welfare (Scotland) Act 2006—aside from the regulations for fixed-penalty notices—are now 12 months' imprisonment or a fine of up to £40,000, or both.

Accordingly, it is important to ensure consistency of approach to penalties in the bill with the increased maximum penalties in the 2020 act for animal welfare offences and a wide range of wildlife crime offences. My amendments therefore propose to increase the maximum penalty in the bill from six months' imprisonment and/or a level 5 fine—currently £5,000—to 12 months' imprisonment and/or a £40,000 fine. That would, rightly, still allow for courts to impose appropriate penalties, depending on the particular facts and circumstances of the case.

Amendments 2 and 3 are the substantive ones in the group; amendments 4 and 5 are consequential and technical.

I hope that committee members agree with that approach and support amendments 2 to 5.

I move amendment 2.

Mike Rumbles: I have no issue about raising the level of the fine. If damage is done to stock to that extent, that is absolutely correct. Does the minister think that there is any difference in the deterrent effect or level of punishment of imprisoning somebody for six months or for 12 months? I would imagine that sending somebody to prison would be enough of a deterrent or a

punishment. Why set those levels—other than just for the sake of tidying up legislation? I was listening very carefully to what the minister said about making the fines in the bill the same as those in other pieces of legislation. I am concerned that we are increasing the period of imprisonment because it sounds tough. What is the evidence for these levels, other than just tidying up legislation? Is there any evidence to suggest that increasing the period of imprisonment from six to 12 months is reasonable?

The Convener: That was a question. I am not sure that this session is a time for taking evidence but, minister, if you would like to respond to that, I will be delighted to let you in; if not, I will move on to the member in charge of the bill.

10:00

Ben Macpherson: Perhaps I can address it in my summing up.

The Convener: Thank you very much. No one else has indicated that they wish to speak, so I call the member in charge of the bill, Emma Harper.

Emma Harper: As the minister has explained, the bill increases the maximum penalties that are available. That was a key part of my policy. I wanted to increase the maximum available penalties significantly, so that they could act as a greater deterrent, while setting them at an appropriate level in order to acknowledge that, in most instances, the owner has no intent to cause harm.

At stage 1, the then Minister for Rural Affairs and the Natural Environment noted that there might be a case for increasing the penalties even further, to match those available under the Animal Health and Welfare (Scotland) Act 2006, as amended by the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020. The 2020 act had not been passed when my bill was consulted on or drafted. The committee's stage 1 report supported the Government's view and recommended amending the bill accordingly. I am content to support amendments 2 and 3, in the name of the minister, to further increase the maximum available penalties in the bill to a maximum prison sentence of 12 months and a maximum fine of £40,000.

Amendments 4 and 5, which were also lodged by the minister, have the effect that the increased maximum penalties in the bill and the order-making powers under section 2 will apply only to offences that are committed after those provisions have come into force. I agree with that policy intention and am therefore content to support those amendments.

Ben Macpherson: I thank Mike Rumbles and Emma Harper for their comments. The action that the amendments seek to undertake is in line with the recommendations of the committee and the discussions that we had collectively in the stage 1 debate. The intention of the amendments, as I put forward in my opening remarks, is—quite rightly, in the Government’s view—to ensure consistency of approach between the penalties in the bill and the increased maximum penalties that are now available for a wide range of animal welfare and wildlife crime offences.

On Mike Rumbles’s specific questions about the effect of sentencing on the propensity to offend, I think that that is a wider question that is perhaps for others in the Justice Committee or elsewhere to consider. The point is that our approach to sentencing is based on the seriousness of the crime in question. It was deemed by the committee—and by the Government, in bringing the amendments—that, in order to emphasise the seriousness of the crime that we are discussing, it was right and appropriate to bring in amendments to ensure that the approach to penalties was consistent with the increased maximum penalties that are, in effect, now available for a wide range of animal welfare and wildlife crime.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed? If you do not agree, type N in the chat box.

We are not agreed. There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
 Finnie, John (Highlands and Islands) (Green)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against

Rumbles, Mike (North East Scotland) (LD)

The Convener: The result of the division is: For 10, Against 1, Abstentions 0.

Amendment 2 agreed to.

Amendments 3 and 4 moved—[Ben Macpherson]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Power to make order in respect of person convicted

Amendment 5 moved—[Ben Macpherson]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Power to seize etc dog suspected of attacking or worrying livestock

The Convener: The next group is on removal of power to appoint inspecting bodies and inspectors. Amendment 6, in the name of Emma Harper, is grouped with amendments 7 to 14, 16 to 24 and 27. I draw members’ attention to the information on pre-emption in the groupings document. If amendment 15, which seeks to remove the ability to search without a warrant, is agreed to, I cannot call amendment 14.

Emma Harper: The bill currently allows the Scottish ministers, by regulation, to appoint inspecting bodies, which, in turn, can appoint inspectors. The policy intention was to allow for the provision of more formal support to the police if that was thought necessary. However, evidence at stage 1, including from the police and the Scottish SPCA, stated that the provisions may not be required and that no organisation seemed willing to take on the role of inspecting body.

I acknowledge the committee’s stage 1 report, and its recommendation that the provisions be removed. In order to achieve that, I have lodged amendment 22, which will remove section 5 in its entirety. The other amendments in the group will remove all reference to inspectors, and cross-references to section 5 or to the provisions that it would insert into the Dogs (Protection of Livestock) Act 1953.

I move amendment 6.

Colin Smyth: The amendments in this group, which I support, reflect the calls that the committee made in its stage 1 report. In that report, we noted our

“fundamental concerns about the principle of inspection bodies taking the lead in any circumstances in which a criminal offence of livestock worrying has taken place”,

and we made a clear recommendation that

“the Member in charge should remove the inspecting bodies provisions from the Bill during the amending stages of the Bill, should it proceed.”

That recommendation was made after a number of stakeholders raised concerns about the role of the new body, and the lack of clarity about its intended role and whether the enabling powers would be used at all. There was widespread agreement among stakeholders and committee members that the police remain the most appropriate body to lead investigations on the issue.

There is a need for more specialism when it comes to investigating animal welfare and wildlife crimes and a discussion remains to be had about the best way of achieving that. The vague

enabling powers that are proposed in the bill are not the best way to go about it. I asked the bills team to draw up amendments to remove those provisions but felt it fair to wait to see whether the member in charge would take a similar approach and lodge such amendments. I am pleased that Emma Harper has done so. I support the amendments and strongly urge other members to do so.

John Finnie: I have a brief comment. Like Colin Smyth, I will lend support to these amendments, which are entirely appropriate. Following the comments of the member in charge, I would not want any inference to be drawn that it was the absence of any bodies coming forward that had any influence on my decision to reject this provision. Parliament has to be extremely cautious when giving policing powers to any bodies and it is for that reason that I was always opposed to the proposal in the bill to do that. I entirely welcome the member lodging the amendments in this group to remove this provision.

Ben Macpherson: The Scottish Government supports these amendments to drop the provisions regarding inspecting bodies, including the power of the Scottish ministers to appoint inspecting bodies and the powers of search, entry and seizure so far as they relate to the powers of inspectors. I assure the committee that I have given this matter careful consideration and have noted the concerns that the committee expressed in its stage 1 report.

I understand the intention of those who seek a role for bodies other than the police to investigate potential crime offences under the bill but, on balance, there are important reasons why it is the police that are the investigating body across the full panoply of criminal law in Scotland. I am also not convinced that other inspecting bodies are generally able or willing to take a leading role in investigations of livestock worrying.

I therefore agree with Emma Harper that responsibility for investigating the criminal offence of livestock worrying should remain with the police, with assistance from local authorities or the Scottish SPCA as appropriate in the circumstances. I hope that the committee supports Emma Harper's amendments.

Emma Harper: For clarification, my intention was always that the police would be the leader in any investigation. The intention of the original provision in the bill was so that the police could obtain support, if necessary, from a local authority or an inspecting body that would be appointed. Based on the evidence that we had at stage 1, I was happy to press these amendments to remove references to inspecting bodies.

Amendment 6 agreed to.

Amendments 7 to 9 moved—[Emma Harper]—and agreed to.

Section 3, as amended, agreed to.

Section 4—Powers to authorise entry, search, seizure etc

Amendments 10 to 13 moved—[Emma Harper]—and agreed to.

10:15

The Convener: Amendment 15, in the name of Emma Harper, is in a group on its own. I draw members' attention to the pre-emption information on the groupings list: if amendment 15 is agreed to, I will not be able call amendment 14 from the group on the removal of the power to appoint inspecting bodies and inspectors.

Emma Harper: The bill gives the police specific new powers to enter and search premises. That currently includes—under new section 2A(6) of the 1953 act—a power to do so “without a warrant” in specific circumstances. Evidence was given at stage 1 by the police that that power would be very unlikely ever to be used, and it is not one that the police are seeking.

I acknowledge the committee's concerns on the issue during stage 1 and the recommendation to remove the provision that was made in the committee's stage 1 report.

I move amendment 15.

Mike Rumbles: I thank Emma Harper for lodging amendment 15. She is, of course, quite right that the point that it addresses was one of the major issues that the committee was concerned about; I was particularly concerned about it. I had experience of dealing with the same issue as a member of another committee that considered the UEFA European Championship (Scotland) Bill. Ben Macpherson, who was Minister for Europe, Migration and International Development at the time, recognised that the proposed provision was not appropriate. I am very pleased that he has done so again. The committee feels the same way, and so does Emma Harper.

Amendment 15 removes something that I thought was contrary to common law in Scotland. It is important that, when the police are required to search premises, as they have to do, they obtain the appropriate warrant from the appropriate authorities, and that we do not allow the police simply to go on fishing expeditions. I noted from their evidence that the police did not want such a power and that they would hardly ever use it. The problem was that, if it was included in the eventual legislation, it could be used. I am pleased that Emma Harper has recognised that and lodged her

amendment, and I fully support her in having done so.

Colin Smyth: Amendment 15, lodged by Emma Harper and supported by me and Mike Rumbles, is important. In its stage 1 report, the committee stated:

“the Committee has very real concerns about the powers proposed in this section of the Bill and questions whether they are legally competent. It is therefore not persuaded that the powers of entry, search and seizure without a warrant are required.”

I am pleased that the member in charge of the bill has listened to those points and concerns, which were raised by a number of stakeholders during our scrutiny of the bill, and that she has lodged amendment 15.

Granting the police a new ability to enter a premises without a warrant is not a decision that should be taken lightly, and it should not be granted without a very clear need for it. The evidence that we received called into question what purpose the powers would serve in practice, and we could not find any real demand for the powers from law enforcement.

In the light of that, I asked for an amendment on the matter to be drawn up by the non-Government bills unit, but I held that back in order to see whether Emma Harper would lodge an amendment to the same effect. I am pleased that she did so, and I am therefore happy to support amendment 15.

Ben Macpherson: After further discussion with the Crown Office and Procurator Fiscal Service, it seems that the proposed power of entry, search and seizure without a warrant relating to non-domestic premises is unlikely to be required or to be used in practice if the police remain the investigating authority. Therefore, as members have already said, the Scottish Government supports amendment 15 to drop those provisions in view of the concerns that the committee raised.

Emma Harper: I acknowledge the committee's concerns, especially those that were raised when we took evidence, and I welcome the input from Mike Rumbles and Colin Smyth. The power to enter without a warrant was only for non-domestic premises, but I take on board all the evidence that was presented. During further engagement with the Scottish partnership against rural crime team, I was assured that the power to enter premises without a warrant was not required, so I am happy to press amendment 15.

Amendment 15 agreed to.

Amendments 16 to 21 moved—[Emma Harper]—and agreed to.

The Convener: Amendment 28, in the name of Peter Chapman, is grouped with amendment 29.

Peter Chapman: I will be very brief. Amendment 28 is very clear and simple. It is all about ensuring fairness. In any outbreak, if animals are injured and dying, the first person that the farmer will call is his vet; he may or may not phone the police, but he will certainly phone his vet. Therefore, the farmer's vet will be on site when the police arrive, and if a dog is being held that needs to be examined, that will be done by the farmer's vet, because he will be on site and available to do that work. All I want to ensure is that the farmer does not end up picking up the bill for the work of examining the dog. As far as I am aware, nowhere in the bill does it specifically say that the police will pick up the tab and pay for the examination of any dog that might be being held. Amendment 28 makes it absolutely clear that, if the farmer's vet does the work of examining the dog, that part of the vet's bill will be picked up by the police and not by the farmer.

Amendment 29 is about making arrangements for any more specialist investigations that might be needed that the local vet perhaps cannot provide, such as taking DNA samples. The vet labs of Scotland's Rural College are an example of where that kind of specialist work could be undertaken. Amendment 29 tasks the Government with having such specialist work done if necessary.

I move amendment 28.

John Finnie: I speak in support of Mr Chapman's amendment, which is entirely reasonable. My one caveat relates to what we discussed in our deliberations around the potential for securing the best possible evidence and avoiding cross-contamination of evidence. That does not take away from Mr Chapman's amendment, which is quite proper, but it perhaps needs to be underwritten by some sort of protocol. Although I am sure that vets would have regard to that anyway, the forensic aspect of acquiring evidence for a criminal case might not be the norm for a farmer's vet. I am happy to support amendment 29, but I think that it will need to be underpinned by protocols—perhaps between the Crown and the police—regarding the acquisition of evidence and avoiding cross-contamination.

Jamie Halcro Johnston: I support Mr Chapman's amendments, particularly amendment 28, which is a useful clarification that acknowledges some of the practical implications of the bill and the situations that we might find ourselves in as a result of it.

Ben Macpherson: I thank Peter Chapman for explaining the purpose of amendments 28 and 29. However, I do not agree that they are either necessary or desirable, and I urge him not to press amendment 28 and not to move amendment 29. I will explain why. First, Police Scotland will currently pay for the cost of the veterinary

examination of a dog that is suspected of livestock worrying in cases in which Police Scotland considers that that is appropriate to gather evidence for a potential prosecution. We have already supported amendments this morning that will ensure that Police Scotland remains the only investigating body involved, so there is no need to introduce a new requirement in law for Police Scotland to pay for the costs of gathering evidence.

The situation that Mr Chapman described is worth some consideration, though, and I would be happy to work with him, ahead of stage 3, to give him comfort that the situation that he described could be covered in guidance or otherwise. I would welcome such a discussion, were he to withdraw amendment 28. I do not support the amendment and ask that it be withdrawn. Should Mr Chapman press amendment 28, I hope that committee members agree that we should not be making law for the sake of it, especially when there is no deficiency that requires to be remedied. I encourage members to resist amendment 28.

Amendment 29 would place an unnecessary and onerous burden on the Scottish Government to provide additional veterinary services to examine any dog that was suspected of worrying livestock after it had been seized by Police Scotland. As we stated at stage 1, there are various possible scenarios in which it might be appropriate for forensic evidence to be collected from a live suspect dog to link the dog to a particular attack. Such cases are rare, and the need to collect and analyse evidence would be agreed in advance by Police Scotland with the Crown Office and Procurator Fiscal Service, depending on the potential relevance of that evidence to any possible prosecution case.

If it is appropriate to gather evidence from a live dog, there are different ways of arranging that, depending on the availability of suitably trained persons to handle the dog. That could involve Police Scotland officers, with the assistance of other enforcement authorities, the Scottish SPCA or local veterinary practices, as appropriate for the circumstances at the time.

To require a blanket approach in law whereby the Government would have to provide veterinary surgeons who were able to examine suspect dogs anywhere in Scotland and in all circumstances and cases would be disproportionate, not least in terms of the cost. It would also cut across current practice, in that it is currently quite straightforward for dogs to be presented to local veterinary practitioners for examination at the request of Police Scotland when that is necessary.

As I have just described, a new arrangement for veterinary services and specialist facilities is not required, nor is legislation in that respect.

Therefore, I do not support amendment 29 and request that it not be moved. However, should Mr Chapman move it, I encourage members to resist it, for the reasons that I have set out.

Emma Harper: The issue that amendment 28 deals with was raised by Mr Chapman during the stage 1 evidence sessions, in which I referred to an experience that I had of speaking to one 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.”—[*Official Report, Rural Economy and Connectivity Committee*, 28 October 2020; c 25.]

That would be the usual practice for a vet.

10:30

My understanding is that, as the police, as the investigating body, would arrange for examination, they would be responsible for paying for the examination in the first instance and would be able to reclaim that cost from someone else, such as the dog’s owner, only if they had statutory authority to do so. On that basis, I do not consider amendment 28 necessary and do not support it.

Amendment 28 would also introduce into the bill a new reference to an “inspecting body”, even though the committee has just agreed to remove the provision that allows inspecting bodies to be appointed.

With regard to amendment 29 and the need for support for examinations, again, it is normal practice for vets to take blood or swabs, and qualified vets are already competent to do so. Therefore, it is unclear what amendment 29 would add; it is also unclear what the “arrangements” that it refers to would consist of or what they would have to include. I agree with the minister’s view that no statutory power for the SRUC or local vets is required in the bill, because they can already be involved in collecting evidence from animals that are presented to them by the police. On that basis, I do not support amendment 29.

The Convener: I ask Peter Chapman to wind up and to press or withdraw amendment 28.

Peter Chapman: I welcome the comments from Emma Harper and the minister, as well as John Finnie’s support.

Amendment 28 is a simple and worthwhile amendment, but I accept what the minister has said. I also accept that, as we have just removed reference to other inspecting bodies from the bill, amendment 28 becomes less necessary, given that we have agreed that the police are the body that will prosecute the case. I have more

confidence now that other bodies have been taken out of the equation.

I welcome the minister's offer to discuss the issue further with him and accept his assurance that the police accept that they will have to pick up the tab for that work.

Given all that and the fact that the minister will work with me to ensure that the issue is absolutely clear, maybe we need something in the guidance rather than in the bill. If we can get something in the guidance, which the minister said that he might consider, I would be prepared to withdraw amendment 28.

The Convener: That sounded like a conditional withdrawal. Are you withdrawing amendment 28 or pressing it?

Peter Chapman: I am withdrawing it, given that the minister has said that he is prepared to work with me.

Amendment 28, by agreement, withdrawn.

Section 4, as amended, agreed to.

Section 5—Inspecting bodies and inspectors

Amendment 22 moved—[Emma Harper]—and agreed to.

After section 5

Amendment 29 not moved.

Section 6—Definitions

The Convener: Amendment 30, in the name of Jamie Halcro Johnston, is in a group on its own.

Jamie Halcro Johnston: Amendment 30 seeks to clarify that “agricultural land” includes woodland that is used for grazing, and would amend the interpretation provision in section 3(1) of the 1953 act. The definition of “agricultural land” in that act is already broad. However, woodland is increasingly being used for low-density grazing, which would not have been foreseen when the act was drafted.

Forest Research, which operates as part of the Forestry Commission, has noted that

“Cattle are thought to provide biodiversity benefits in woodlands when grazed at low density since they eat dense vegetation of a low digestibility and break up vegetation mats with their hooves.”

It has highlighted that

“Because of these perceived benefits there is increasing interest in the use of cattle as a tool for nature conservation management in woodlands.”

Done well, woodland grazing is something that a range of environmental bodies, including those involved in Scotland's forests, are working to

encourage. Amendment 30 would simply put beyond doubt that “agricultural land” would include that area of increasing interest and provide woodland grazers with the same protections that are available on other types of land.

I hope that members will support my amendment.

I move amendment 30.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): I welcome amendment 30, which is a helpful one. As Jamie Halcro Johnston said, grazing in woodlands is becoming increasingly common. That is because we know that, in many cases, bracken is a nuisance. We are not only talking about cattle grazing in woodlands, as pigs are quite good at turning up the ground in woodlands, as are wild boar and other livestock breeds. As has been said, to increase biodiversity and deliver better use of land, it is important that we agree to this amendment. I hope that everyone will support it.

Ben Macpherson: I welcome this discussion, although the amendment is probably unnecessary, as the definition of “agricultural land” in the 1953 act focuses on the use of the land in question and, if woodland is used for the purpose of grazing animals, it is likely that it would be considered to be grazing land and therefore agricultural land for the purposes of the 1953 act.

However, considering the increase in woodland planting and woodland grazing systems, which are becoming more common in Scotland—that is a good thing—I can see that the amendment might in future be helpful to confirm that woodland that is used for grazing is considered to be agricultural land for the purposes of the legislation that we are discussing today. Therefore, the Scottish Government has no objection to the amendment and welcomes the clarity that it will bring.

Emma Harper: The definition of “agricultural land” in the 1953 act includes grazing land, but what is meant by that is not expanded on. Amendment 30 would ensure that woodland that is used for grazing counts as agricultural land.

I welcome Jamie Halcro Johnston's comments on the use of agricultural land and Maureen Watt's comments on bracken, wild boar and pigs. I have no strong views on whether the change is needed but, if the minister and the committee believe that the change would help, I will not oppose the amendment at this stage.

Jamie Halcro Johnston: I am grateful to Maureen Watt, Emma Harper and the minister for their comments and to the minister for the “However” at the end of his comments and the recognition that the amendment provides potential

future proofing for the bill. I will press amendment 30.

Amendment 30 agreed to.

Amendments 23 and 24 moved—[Emma Harper]—and agreed to.

The Convener: Amendment 25, in the name of Emma Harper, is in a group on its own.

Emma Harper: With the removal of inspection bodies provisions from the bill, it now contains only one delegated power, which is a power for the Scottish ministers to make regulations to amend the definitions in section 3(1) of the 1953 act. The bill states that such regulations

“are subject to the negative procedure.”

However, the Delegated Powers and Law Reform Committee recommended in its stage 1 report that the affirmative procedure be considered, given that

“The change of a definition could have an impact with regards to whether an offence has been committed”.

That recommendation was supported by the Rural Economy and Connectivity Committee in its stage 1 report.

I move amendment 25.

The Convener: As no other member has indicated that they wish to speak to the amendment, we will move straight to the minister.

Ben Macpherson: I thank Emma Harper for lodging amendment 25 and explaining its purpose.

The bill allows for future changes to the definition of “livestock” and, indeed, to all other definitions that are contained in the 1953 act. Amendment 25 will ensure relevant and proportionate parliamentary scrutiny of any changes of definitions by requiring future regulations to follow the affirmative process. That is in line with the recommendations of this committee and the Delegated Powers and Law Reform Committee, and the Scottish Government is happy to accommodate that. I hope that members will support amendment 25.

Emma Harper: I have no further comments to make, and I am happy to press amendment 25.

Amendment 25 agreed to.

Section 6, as amended, agreed to.

Section 7—Minor and consequential amendments to the 1953 Act

The Convener: Amendment 26, in the name of Emma Harper, is in a group on its own.

Emma Harper: Amendment 26 is a minor, technical drafting amendment to section 7. Currently, the section refers only to section 1; it

does not specify the act, which is made clear only in the section title. I understand that it would be normal drafting practice to specify the act in the body of the section as well as in the section title.

I move amendment 26.

The Convener: As no other member has indicated that they wish to speak to the amendment, we will move straight to the minister.

Ben Macpherson: I am happy to support amendment 26.

The Convener: I ask Emma Harper to wind up, if she needs to, and to press or seek to withdraw the amendment.

Emma Harper: There is no need to wind anybody up, convener. I am happy to press amendment 26.

The Convener: I am delighted that you are not going to wind me up.

Amendment 26 agreed to.

Section 7, as amended, agreed to.

Section 8 agreed to.

Section 9—Commencement

10:45

Amendment 27 moved—[Emma Harper]—and agreed to.

Section 9, as amended, agreed to.

Section 10 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The bill will be reprinted as amended at stage 2. I believe that it will be published tomorrow morning. The Parliament has not yet determined when stage 3 will be held. Members will be informed of that in due course along with the deadline for lodging stage 3 amendments. In the meantime, stage 3 amendments can be lodged with the clerks in the legislation team.

I formally thank Emma Harper for her attendance, but she should not disappear. I also thank the minister and Christine Grahame for their attendance. I think that Christine Grahame will now disappear to allow Emma Harper back on to the committee.

Subordinate Legislation

M8 and M9 Trunk Roads (Newbridge to Hermiston Gait) (Actively Managed Hard Shoulder and Speed Limit) Regulations 2021 (SSI 2021/43)

Forestry and Land Management (Scotland) Act 2018 (Consequential, Saving and Transitional Provisions) Regulations 2021 (SSI 2021/44)

Scottish Road Works Register (Prescribed Fees) Regulations 2021 (SSI 2021/48)

10:46

The Convener: Item 2 is subordinate legislation. We will work through items 2 and 3 and take a brief pause before we discuss the climate change plan letter in private.

Under item 2, we will consider three negative instruments. The Delegated Powers and Law Reform Committee considered the three instruments, and no issues were raised. No motions to annul have been received in relation to the instruments.

Does any member wish to make any comment on the instruments? I do not see that any member does, so I propose that the committee does not wish to make any recommendations in relation to the instruments. Does any member disagree with that? No member disagrees, so that is agreed.

European Union (Withdrawal) Act 2018

Approved Lists (Animals and Animal Products) (Amendment) Regulations 2021

10:47

The Convener: Item 3 is the European Union (Withdrawal) Act 2018. We have received a consent notification in relation to one United Kingdom statutory instrument. The Approved Lists (Animals and Animal Products) (Amendment) Regulations 2021 are being laid in the UK Parliament in relation to the European Union (Withdrawal) Act 2018. The instrument has been classified as type 1. Does any member have any comments to make on the regulations? No member appears to have any comments to make.

Does the committee agree to write to the Scottish Government to confirm that it is content for consent for the UK SI referred to in the notification to be given? No member objects, so that is agreed.

We will now move into private session to discuss our climate change plan letter.

10:48

Meeting continued in private until 11:40.

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

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