



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs, Islands and Natural Environment Committee

Wednesday 1 June 2022

Session 6



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RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE
18th Meeting 2022, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Alasdair Allan (Na h-Eileanan an Iar) (SNP)

*Ariane Burgess (Highlands and Islands) (Green)

*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)

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

*Jenni Minto (Argyll and Bute) (SNP)

Mercedes Villalba (North East Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hugh Dignon (Scottish Government)

Leia Fitzgerald (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Islands and Natural Environment Committee

Wednesday 1 June 2022

[The Convener opened the meeting at 10:06]

Hunting with Dogs (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning, and welcome to the 18th meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind members who are using electronic devices to switch them to silent.

Our first item of business is an evidence session on the Hunting with Dogs (Scotland) Bill, with the Scottish Government bill team. I welcome Hugh Dignon, who is the head of the wildlife and flood management unit; Leia Fitzgerald, who is the team leader of the wildlife legislation team; and solicitors Hazel Reilly and Amy Hogarth. We have about 75 minutes. I will kick off the questions.

We have had a huge response to the survey and to the questionnaire, but it would appear that views are mixed, with 50 per cent of those who responded saying that they are for the bill and 50 per cent saying that they are not. It looks as though there is almost a perfect split between those who wish to continue with the legislation as it is and those who wish to see changes. Does that mean that you have got this bill wrong?

Hugh Dignon (Scottish Government): I sincerely hope not. This has been an issue that has been in the Government's mind for a long time. It goes back to when we asked Lord Bonomy to review the existing legislation, in 2015, which was against a background of fairly widespread concern that, although people in Scotland largely thought that fox hunting was banned, activities were taking place that looked very much like fox hunting. Alongside that, there were very few prosecutions. So, there were some big question marks around that.

Lord Bonomy carried out the review and then reported in 2016. When we consulted on Lord Bonomy's proposals at the time, a large majority of people were in favour of them.

We know that it is a very polarising issue—there are people who feel very strongly against further restrictions and people who feel very strongly in favour of them. The response to any consultation is likely to pick up the strong views on either side. Our suspicion is that the large majority of people in

Scotland are concerned about the use of dogs to hunt mammals and want that to be tightly controlled and the activity of chasing and killing mammals to be banned. Most people probably think that that is what the law already does, but perhaps not as effectively as it should. I think that we have got the bill right, and our ministers think so, too.

The Convener: You mentioned the Lord Bonomy review. Why have you not followed its outcomes, given that it was an independent and fairly wide-ranging and robust review? Why have you strayed away from Lord Bonomy's recommendations?

Hugh Dignon: I think that, for the most part, we have followed his recommendations, especially around the key issues that we asked him to look at in relation to how effective the bill is in its use of language and its drawing up of the offences and how usable it is by prosecutors, police officers and so on. You will be well aware that we did not pursue his recommendations in some areas—such as the introduction of vicarious liability and the reverse burden of proof—and that we have added elements that we developed independently of his thinking.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): I appreciate that you are not here to speak on the political or wider ethical issues, so I will concentrate on some of what has gone into the bill. Specifically, what are the Government's aims in terms of the loopholes in the Protection of Wild Mammals (Scotland) Act 2002 that it seeks to plug? I am not looking for a comprehensive list, but we are at the point at which this has to be explained to, and debated with, the public.

Hugh Dignon: As I mentioned, there are a number of issues with the language that was used in the 2002 act. I will ask my colleague Leia Fitzgerald to talk about those in a minute. However, as I also said, with the benefit of having reflected on that legislation, which was the first of its type in the United Kingdom—having looked at how things developed in other parts of the UK and at our own experience of operating it in Scotland—we thought that there were further things that we could build in, such as the two-dog limit and the associated licensing scheme.

Leia Fitzgerald can talk about the specific way in which we changed the wording to deal with some of the offences.

Leia Fitzgerald (Scottish Government): As you know, instead of seeking to amend the original legislation, we took the approach of producing a new bill, which allowed us to tackle the issues of language and to modernise the legislation overall. For example, Lord Bonomy raised issues about the word "deliberately", which potentially was

preventing successful prosecutions from being brought, because of the threshold and the uncertainty as to what constituted deliberate action.

We have introduced the phrase “using a dog” to make it clear that we are talking about the person who is doing the hunting and not the dog. That will make it clear that, if somebody is just out walking their dog and the dog runs off, they are not guilty of an offence that would constitute hunting. We also updated some of the language, in order to make such things clear.

In his report, Lord Bonython acknowledged that, in spite of the fact that, under the 2002 act, hunting with dogs was banned, evidence suggested that up to 30 per cent of foxes that were hunted were still being chased and killed by dogs. That shows clearly that there were issues with the act.

It was clear from the responses to the original consultation that, even among stakeholders, there was a lot of uncertainty about what certain provisions in the act meant and what it allowed them to do. We have sought to address that from the top down, through clear provisions that set out what is or is not permitted.

Alasdair Allan: In relation to those points, in seeking to address welfare concerns in that piece of legislation, is a distinction being drawn between mounted and other types of hunts, given that those are different activities, or are both being treated in the same way?

Leia Fitzgerald: No. It is clear from all our development work that the bill is about the use of dogs for hunting any wild mammal. A lot of people look at the 2002 act just through the lens of foxhunting, but that is only one type of wildlife management that is undertaken with dogs. In developing the bill, we needed to make sure that it addressed all the welfare concerns—for example, with deer stalking and the use of dogs to search for and locate wild mammals. The bill is very much about addressing how a person uses dogs in any permitted activity in which dogs are used. Some people will conduct that activity on quad bikes, others on foot, others on horses—people do it in various ways. The bill addresses the situation in which dogs are involved in those activities—how dogs can be used and what people are permitted and not permitted to do with the dogs.

10:15

Alasdair Allan: Thank you. I am thinking again about welfare concerns and the aims behind the legislation. You mentioned how the existing legislation relates or does not relate effectively to police officers and the judicial process. How will the new legislation make it more justiciable—if that

is the right word—or more appropriate when it comes to how it is dealt with by the police?

Leia Fitzgerald: When we spoke to the police, some of the issues that they identified that we have addressed in the bill relate to the definition of “cover”. The intention is that, as soon as an animal is flushed from cover, it is humanely dispatched. The area of the existing act about what constitutes cover is open to a lot of debate. If that was disputed, it could be hard to establish whether somebody was illegally hunting, because they could say, “The animal is still in cover, so I’m still flushing.” Other people would have a different view and say that the person should have taken steps to have shot the animal at that point, because it had emerged from cover.

We also address some of the welfare issues and issues for Police Scotland by redefining the term “wild mammal” to include rabbits. The issue of excluding rabbits from the act was raised on welfare grounds, but that exclusion also provided a loophole for hare coursers to exploit. If police had very strong suspicions that someone was hare coursing, the person could say, “No, I was hunting rabbits and my dog got confused and accidentally killed a hare instead of a rabbit.” Now, we are making it clear that it is an offence for someone’s dog to kill a hare or a rabbit.

Ariane Burgess (Highlands and Islands) (Green): You have broadly responded to most of my questions. The minister Màiri McAllan stated that

“chasing and killing a mammal with a dog, for sport or otherwise, has no place in modern Scotland”,

and that view is shared by 77 per cent of the Scottish public, who, in response to a 2019 poll, said that the existing legislation to protect animals from hunting needs to be strengthened. It is important to remember that protecting animal welfare is a key concern for people, and it is a key driver of the bill. Why is the title of the bill the Hunting with Dogs (Scotland) Bill when the title of the previous act—the Protection of Wild Mammals (Scotland) Act 2002—better reflects the animal welfare motivation?

Leia Fitzgerald: We had a great deal of debate about that. My Scottish Government legal directorate colleagues might want to say more, if I miss any of the key points. It came down to how we define “hunting”. Hunting includes elements of chasing and killing but also stalking and flushing. Therefore, we have taken the approach that hunting is permitted but that we are setting out the parameters within which it may be done. If you are using dogs, chasing and killing is not part of hunting wild mammals, but other elements, such as stalking and flushing, are. I understand that some people have concerns about that, but we are

clear that the bill is being brought forward to ensure that, where dogs are used to search for or flush out wild mammals, it is done in a humane way and that hunting—the elements that involve chasing and killing—is not permitted. Those elements are not permitted under the existing legislation, and they are certainly not permitted under the bill.

Ariane Burgess: That seems odd to me. We have an act that is about protecting wild mammals, and the bill will replace it entirely—is that the case?

Leia Fitzgerald: Yes.

Hugh Dignon: It is important to realise that there are a number of acts of Parliament that are about protecting wild mammals—

Ariane Burgess: That is what I was wondering about.

Hugh Dignon: There is the Wildlife and Countryside Act 1981, the conservation regulations, the Protection of Badgers Act 1992 and so on. The bill is specifically about the use of dogs, so it is important that it is clear to people that, if they want to know about how they can use dogs in that context, this is where the appropriate legislation sits.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): If you do not mind, Leia, I want to go back to what you said about flushing. In paragraph 21 of the policy memorandum, Lord Bonomy is quoted as saying:

“in general 20% or more of foxes disturbed by hunts are killed in this way by hounds”.

The policy memorandum also states that Lord Bonomy

“noted that there were legitimate grounds for suspicion that the present arrangements were providing cover for the unlawful use of dogs, contrary to the intention of the 2002 Act, and that such illegality raised concerns about the welfare of foxes and other wildlife.”

It is mentioned that a fox will sometimes be killed before it has been flushed from cover.

I want to get an understanding of what you mean. If the intention is to stop foxes being chased through open countryside, does that not defeat the point? If people are finding a loophole—if foxes are being killed while they are still in cover—there is very little that you can do about that.

Leia Fitzgerald: We have tried to look at how hunting is done. The purpose of using dogs is to flush an animal from cover. If it was not in cover, you would just be able to shoot the animal. If you can see the animal clearly, you do not need to use dogs, because you can take a clear shot.

The point about flushing from cover is to address the issue when the fox is concealed in such a way that you cannot take a shot. People who are carrying out wildlife management will take the first opportunity to safely and humanely dispatch the animal. When people are carrying out illegal hunting—as with hare coursing, for example—they want the chase element of it, so they will seek to flush the animal from cover.

Jim Fairlie: That is my point—they are not really breaking the law by deliberately allowing a fox to escape.

I will continue with the example of foxes, because that is where a lot of the concern lies. People are not breaking the law if a fox is killed before it escapes, because the purpose—as you have just said—is to prevent the hunt. I fully understand the problem that we have if a fox escapes and people shout, “Tally-ho! We’re off!” and they start chasing the fox around the countryside. Would that problem not be alleviated by having more guns and making sure that there is a minimum number of guns so that the fox never gets past the line of guns? Would that not cover that problem?

Leia Fitzgerald: Just to make it clear, what we are trying to eliminate is the chase element. If you can dispatch a fox that is sitting in front of you without that chase element—

Jim Fairlie: Let me give you this scenario. If you had a pack of dogs hunting through a copse and a fox was flushed, and if you had two guns 75 yards either side and the fox went through the middle of them, you would have to go after it. I understand that that is a loophole, and I understand that that would cause genuine concern. However, if you have dogs hunting through a copse, most foxes will never see the hounds, because they are on the way out the other end. If you have 10 guns along the top, the fox is not going to get past the guns, therefore it is dead before the hounds are anywhere near it. Would that not solve the problem of chasing across open countryside?

Leia Fitzgerald: That suggestion has been brought up. I am not sure how you would practically mandate a set number of guns. I am not saying that it could not be done—

Jim Fairlie: If you are licensing a hunt to control a predator, surely part of the licence should set out that the hunt must have a minimum number of guns for a specific area. That could be worked out by practical land managers, and the loss of hounds or horses—or anything else—would be the penalty for the hunt failing to do that. I would have thought that, if the measures were that strict, hunts would comply with the law.

Leia Fitzgerald: We are still developing the licensing scheme, so we can certainly take a note of that and consider whether it would be possible to have something along the lines of what you have suggested as one of the conditions of the licensing scheme. We can look into that.

Jim Fairlie: Thank you. I will move on from there.

Under what circumstances would the Scottish Government consider it appropriate to make use of exceptions in relation to the two-dog rule? What circumstances would constitute “serious damage” to livestock, woodlands or crops, and under what circumstances would it be appropriate to use the exception for “protecting human health” and “preventing the spread of disease”? Basically, why would there be exceptions? What would be the grounds for exceptions? Can you give us a broad outline of what you are trying to achieve there?

Leia Fitzgerald: I can. Where we did not have a specific definition in the eventual act, we would rely on the ordinary meaning of the word. “Serious damage” would be damage that was considered not to be minor or negligible. One issue that we are all aware of in Scotland is the serious damage that deer can do to woodland. Deer are controlled, and dogs can sometimes be used. When it comes to serious damage to woodland, deer would be a good example.

Jim Fairlie: Hugh, you clearly want to come in.

Hugh Dignon: I was just going to say that the licensing provisions in the bill are clearly designed to mirror the licensing provisions that already exist in section 16 of the Wildlife and Countryside Act 1981, where the term “preventing serious damage” is used. It is a concept that the licensing authorities are already familiar with. Ultimately, it is a matter of judgment for them.

In the past, I have been involved in discussions about potential licensing for the control of buzzards around pheasant pens. That did not really get anywhere in the end, but there was a benchmark figure that was accepted at the time by land managers and the licensing authority: it was something like 10 per cent of losses. I am not saying that that would inevitably be the figure, but work will be done by the licensing authority to consider specific cases, bearing in mind that the concept is used across the whole range of licensing to assess what constitutes serious damage.

Jim Fairlie: Okay.

I will look at this from a sheep farmer’s point of view, given my background as a sheep farmer. To a sheep farmer, serious damage is when a fox is coming in and lifting lambs—killing lambs and taking tails and ears as trinkets for cubs, killing

lambs to feed young cubs or just killing for its own food. For a sheep farmer, 10 per cent is a colossal figure to lose to a fox kill. Having been on the receiving end of that kind of killing, I am well aware of the distress that it causes not only to the lambing percentage, but to the shepherd or sheep farmer who has to go out every morning and deal with those kills.

One thing that slightly concerns me about this area relates to the licence being granted. To me, serious damage is anything when a fox is predating hens, for example. We will come on to environmental issues later. Who decides what “serious damage” is? If NatureScot comes back to the person who is in the position of looking after the livestock in their charge, whatever it is, and says that it does not consider something to be serious damage, how do we come to a balance?

Hugh Dignon: As I say, ultimately it will be a decision for the licensing authority. Those decisions can, of course, be challenged through the court process, but I am not saying that that is a route that people will actually want to go down. It will be a matter for discussion between the licence applicant and the licensing authority.

For example, if there are losses that mean that someone’s business is unsustainable, that is clearly serious damage. On the other hand, some losses may be considered to be part of usual business risk. Those things will need to be worked out in the process of setting up the licensing scheme. What amounts to serious damage for a particular type of business in particular circumstances? I do not think that it would be appropriate for us to give a hard and fast rule or to pre-empt the decisions of the licensing authority at this stage.

What we are trying to get at is that this is a serious step. We believe that the use of more than two dogs presents a real danger not only to the mammal that is being hunted, pursued or controlled, but to other wildlife. We want to ensure that that serious step is taken only when it can be justified. We are therefore considering other conditions—for example, that other potential avenues be explored before the licence is granted and that the licence is granted in circumstances that amount to a serious situation.

I fully accept that what constitutes a “serious” situation may vary from business to business and from one circumstance to another. That is why I do not think that it is possible for us to say, at this stage, what that might be. Any definition would need to reflect the fact that we think that the licensing of the use of more than two dogs is a serious step, not a default step, and something that would require proper consideration by the licensing authority.

10:30

Jim Fairlie: Thank you, convener. I would like to come back in later, on the timing of licences.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I want to pick up on something that Hugh Dignon said to Jim Fairlie. You mentioned an appeals process, but there is no provision in the bill for that. You may argue that it will be part of the consultation to do with licensing. However, the financial memorandum says:

“There are no costs on other bodies, individuals and businesses arising from the provisions of the Bill.”

Why, therefore, have you separated that element out? You made that comment in relation to the bill, but you have omitted to include—or perhaps it was an oversight in drafting the bill—an appeals process for farmers, for example. As we have heard from Jim Fairlie, farmers are going to experience severe loss.

Hugh Dignon: I am sorry if I misled you there. There is no appeals process in the bill. I was talking about the fact that there are processes by which a decision can be challenged—through judicial review or through NatureScot’s internal complaints procedure. There is not an appeals process in the bill, in the same way that there is not for any other licensing procedures that appear in legislation, such as the Wildlife and Countryside Act 1981 or the Nature Conservation (Scotland) Act 2004.

We are following that precedent at this stage. Nevertheless, it is fair to say that the whole range of licensing operations and the way in which licensing is carried out by NatureScot are the subject of a major review as part of the Bute house agreement and the programme for government.

The Convener: I will bring in Alasdair Allan, who wants to go back to sections 1 and 2 of the bill, on offences.

Alasdair Allan: I want to ask about rabbits, as they got a mention earlier, and about how the bill has been drafted to avoid any unintended consequences in that regard. The obvious example is where a dog slips its lead and chases after a rabbit. Is that captured by the bill? Does it deal with that scenario?

Leia Fitzgerald: As I said earlier, as we have framed the bill, the definition of “hunting” refers to “a person”

who hunts

“using a dog”.

It is the person, not the dog, who hunts.

We have not structured the bill in such a way that it would cover accidental chasing. We accept that that will happen with dogs—we have all seen pet dogs in the park take off occasionally. That will not be an offence under the bill.

If somebody was out walking their dog and it started chasing a wild mammal, and if they just let that happen and sat down and took no steps to call their dog or stop it carrying out that action, it would potentially—it would be up to the courts and the prosecution service—be deemed to be deliberate hunting. Although the person did not set out with that intention, a hunt developed and they took no actions to stop it. However, that would not apply when it was a genuine accident. As you said, a dog can slip the lead and catch a rabbit before anybody can do anything to stop it.

Alasdair Allan: Again on rabbits, I would like an indication of why the bill is framed as it is with reference to rabbits and how you will ensure that unintended consequences are avoided. I am thinking of pest control and how we avoid leading people to think that they have other options, which are probably less palatable in welfare terms. I am curious to know why the bill is framed as it is around rabbits, with pest control in mind.

Leia Fitzgerald: Rabbits were excluded from the 2002 act. That meant that, although it was not permitted to allow a dog to chase and kill a hare, it was permitted to allow a dog to chase and kill a rabbit. That obviously has welfare implications. Rabbits and hares are very similar, and if we say that there are serious welfare reasons why we would not allow a dog to kill a hare, it would seem illogical to exclude rabbits. As I have also said, we have evidence that people were carrying out hare coursing under the guise of rabbit control. Obviously, hare coursing is a serious crime, and we are seeking to close any loopholes so as to stop that activity. Those were the reasons for bringing rabbits within the definition of “wild mammal” although they were previously excluded.

The Convener: So, the only reason you have brought in rabbits is to stop hare coursing. Across the country, on every day of the year, young farmers go out hunting rabbits, maybe with their dogs, not only as pest control—in many places, rabbits can be defined as a pest, whereas hares certainly cannot—but as a source of income. Will that type of hunting feel the impact of this, just in order to close a loophole over hare coursing?

Leia Fitzgerald: No, not at all. As I said, it is also about welfare.

There is nothing in the bill to stop people using dogs to control rabbits. The only thing that the bill will prevent them from doing, which they could do previously, is allowing the dog to kill the rabbit. They will have to shoot the rabbit or use another

permitted method of dispatch. They can still do what you talked about, for example—they can go out and take a rabbit home for the dinner pot, and they can still take their dog with them; they just need to shoot the rabbit.

Jim Fairlie: I will press you on that point. Specifically, are we talking about guys who ferret rabbits and then allow lurchers to kill them? Is that what you are trying to stop?

Leia Fitzgerald: No. As I said, we are trying to close down a loophole whereby people will go out hare coursing and claim that they were hunting rabbits, and to acknowledge the welfare implications. However, legitimate rabbit control is still permitted. We are just caveating that by saying that, when people are carrying out that control, they have to make sure that, if dogs are involved—not everyone who hunts rabbits uses dogs—the dogs are not permitted to chase and kill the rabbits. It is that one element.

Jim Fairlie: Okay. I am slightly confused, now. There is a genuine method of controlling a warren. If a warren is sitting beside an arable plantation, people will want to clear it out, to avoid crop damage. Quite often, a keeper will have, for example, a couple of lurchers or a terrier. Ferrets will go down and will flush the rabbit out. With the best will in the world, rabbits can come out three or four at a time, and the dogs will get them. No one is going to stand there with a gun and go bang, bang, bang, because that is just not feasible. Would that become illegal under the bill?

Hugh Dignon: That question occurred to me at the time, and I had some discussions with the British Association for Shooting and Conservation. Its view was that the sort of activity that you are talking about is very rare nowadays and that most people would use guns. They would put ferrets down into a warren, or into rabbit holes, and—

Jim Fairlie: So, they would either net or gun, rather than do it with dogs?

Hugh Dignon: Yes. Killing rabbits with dogs would not be lawful.

Jim Fairlie: Thank you. I just wanted us to be clear on that point.

Rachael Hamilton: I, too, am confused about this. When it comes to people carrying out hare coursing on land without permission, would it not have been simpler to have kept the existing exclusion for rabbits but required landowner permission? Under the bill, if a hare courser was caught, would they be able to use that defence of hunting for something else?

Leia Fitzgerald: Anybody can go out and say that they are hunting for something else, but if that hunt is deemed not to have been conducted—if their dog is found to have chased and killed a

rabbit or hare—they will, potentially, be guilty of an offence.

As I have said, it is about not just the hare coursing but the welfare element. In the bill, we have sought to address welfare issues. It seemed anomalous that people were not permitted to use dogs to kill hares but could use them to kill rabbits.

Rachael Hamilton: Are you worried about the intention to sort out hare coursing in a bill that is called “Hunting with Dogs” instead of looking at the Wildlife and Countryside Act 1981?

Leia Fitzgerald: Prosecutions for hare coursing are brought under that act. As I said, we have had discussions with the Crown and the police. It was Police Scotland that raised the issue of rabbits being excluded from the definition of mammal, as that can sometimes frustrate their efforts to deal with hare coursers. We listened to the views of stakeholders and we sought to address the welfare issues as well.

Rachael Hamilton: Okay. I know that I am going on, but I just want to make this point. To deal with the issue of hare coursing—for which there are not many prosecutions in Scotland whatsoever—we are rolling it into this bill. We are also bringing in rabbits, which are killed as an effective measure for protecting livestock and to be used for the pot. I just think that that is really strange and that we need more clarification on it—although not now, because we do not have time.

Ariane Burgess: On part 1, and still around the definition of “wild mammal”, I am interested in why rats and mice are not included in that definition, given that all animals are sentient.

Leia Fitzgerald: We considered that issue and had discussions with stakeholders on it. In the responses on the bill that the committee received, the Scottish Animal Welfare Commission made the point, which other stakeholders have made, that, although it might seem quite unpalatable, because of the physiology of rats and mice, a well-trained terrier is probably capable of dispatching them in a more humane manner than some of the other legally permitted methods, such as rodenticides. A lot of research has been published on that, and the different ways of killing rodents were recently ranked in terms of what was deemed to be humane. I think that rodenticides were at the bottom. Accepting that it is sometimes necessary for people to control rats and mice, particularly for reasons of public health or to protect agriculture, we came to the view, after reflection, that continuing to exclude them would not cause the same welfare concerns that it would with regard to the animals that are included in the definition.

Ariane Burgess: Thanks very much. That is helpful clarity.

The Convener: We will move to questions on section 3 of the bill.

Beatrice Wishart (Shetland Islands) (LD): Good morning. I would like a bit of explanation of the reasons for introducing the two-dog limit—that would be useful—and an indication of how that limit has worked in England and Wales.

Hugh Dignon: As you will be aware, we talked and thought about that matter after the Bonomy review. We reflected on how the legislation had worked in Scotland and on the fact that there is a perception that hunting is still going on despite the fact that it was apparently banned by the 2002 act. We were concerned not only that there are issues around the language of the legislation and the consistency of how it is framed, but about the potential exploitation of loopholes by people who are determined to frustrate the legislation. We were also aware that there are genuine issues around the ability of anyone to significantly control a pack of dogs.

A number of those issues came together, and we freely admit that we looked at how things worked in other countries. We thought that the two-dog limit would be a way of dealing with some of those issues, as it would greatly reduce the risk of a pack of dogs not being under sufficient control and, in effect, being allowed to chase and kill mammals. We also thought that, where dogs were used, it would reduce the potential impact on other wildlife—whether other mammals in a piece of woodland or birds, or nesting birds, and so on—because there were issues around that.

The two-dog limit was introduced primarily to address the welfare issues that Lord Bonomy identified when he said that dogs still killed a significant number of foxes despite the fact that the legislation had attempted to put an end to that. We thought that that additional measure was necessary to address that issue.

I do not know whether you want me to go on and say how it has worked in other countries. We are aware that the limit has not been hugely popular at all, particularly with upland sheep farmers in other parts of Great Britain. Farmers in the north of England and in Wales have complained about it. We developed the licensing scheme with that in mind so that, when there were no other realistic options for farmers to protect livestock, we would have the ability to license the use of more than two dogs when the conditions that are set out in the legislation in relation to preventing serious damage were met.

10:45

Beatrice Wishart: Thinking of predator control and the issues that Jim Fairlie has already raised, what consideration was given to the welfare of

farm animals in deciding the limit? Getting the licence might not always be possible in situations that need immediate attention. What consideration was given to that?

Hugh Dignon: It is clearly a primary consideration. The purpose of preventing damage to livestock is one of the key issues in allowing the use of dogs to control predators. We recognise that it is very important from a business point of view, and we know how distressing it is for farmers to lose stock. The point has been made to us not just in this context but also in that of dealing with other sorts of predators—avian as well as mammalian—so we are well aware of the issue.

With regard to how quickly one can get a licence, NatureScot has greatly improved its systems and it is now pretty decent at turning around licence applications quite quickly. I was thinking the other day about the raven licensing scheme, which some farmers who have lost stock—lambs and calves—to ravens will be familiar with. At the time of its introduction, there was a lot of criticism about the speed with which NatureScot was able to produce licences for that scheme. However, NatureScot has really reduced the time that it takes by encouraging people who expect to have a problem to apply early and by ensuring that it is familiar with the circumstances on particular farms—particular environments and situations, and what forms of predator control are likely to be available.

There is good reason to think that NatureScot will be able to produce licences where they are justified, in good order and in time to prevent serious damage, rather than as a reaction to serious damage. The prevention of serious damage is, after all, the main objective here.

Leia Fitzgerald: It is also worth making the point that the licence will be required only if people wish to use more than two dogs. If people need to take immediate action, they have the option of other permitted methods—in fox control, for example, there is lamping, or they can use two dogs. They might want to apply for a licence, but they will still be able to undertake other methods of predator control while they wait for their licence application to be considered.

Beatrice Wishart: Thank you.

The Convener: I have some supplementary questions on that point. It has been suggested that the only reason for bringing in a two-dog limit is to absolutely stop traditional hunting with packs. That is the only reason; it is not actually down to animal welfare. First, are you confident that there is enough expertise in NatureScot to decide whether, for example, three, five, six or 11 dogs is the most animal-welfare-friendly number of dogs to use in relation to individual licence applications?

Secondly, where will the licences apply? In some places, you might find that it is appropriate to use three dogs; in other places, it might be appropriate to use 11 dogs. Will individual landowners have to apply for multiple licences to cover different types of land, to ensure that the best method of humanely controlling pests is undertaken?

Leia Fitzgerald: The bill sets out the overarching principles of how the licensing scheme will operate, and those principles will be built on—there will be detailed accompanying guidance, and further operational and administrative elements of the scheme will be developed. That work will be done in conjunction with stakeholders. We want a licensing scheme that is simple and straightforward, so that people understand how to apply for a licence and what it allows them to do.

The next step of the process is for NatureScot to sit down with people who are seeking to apply to the licensing scheme and work through those questions with them, to identify whether there are evidence gaps that need to be addressed and to give consideration to what evidence should be brought to bear. We very much see that as being a collaborative approach with stakeholders, so that we are making a licensing scheme that not only meets the objectives of the bill but works for the people who apply for a licence to operate under the scheme.

The Convener: Jim Fairlie has a short supplementary question.

Jim Fairlie: It might not be that short, convener.

The Convener: It will need to be—we are running out of time fast, I am afraid.

Jim Fairlie: Okay.

I very much take Hugh Dignon's point about the raven licensing scheme. I had a severe problem with ravens. When the licensing process started, it was clunky and it took too much time to grant a licence, meaning that too much damage was done in the interim. However, NatureScot quickly got its act together and the scheme worked a treat.

That said, the method for controlling ravens is different from that for controlling foxes, and the important period in which to grant a licence for fox control is prior to lambing, not during lambing. We do not need proof that foxes kill lambs—they do. We do not need proof that the damage that they will do is anything other than a reality.

The licensing period should not be for a short, 14-day period but for a season, to allow landowners, farmers and tenants to ensure that they have the numbers under control as much as they can. With the best will in the world, Leia—I do not mean this to be derogatory—lambing foxes is

not easy. It takes a lot of skill and time, and you have to know the foxes' movements.

If we have a licensing scheme in which we can control an animal that we know will predate stock prior to the start of lambing, we will already be halfway there. If we wait until after lambing has started to grant a licence, there will be disruption to lambing fields and parks. I urge you to consider how you will create the licence. It should not last for just 14 days, and it should not be issued during the lambing period but prior to it.

The Convener: Would you like to comment briefly on that, or shall we just take that as a statement?

Leia Fitzgerald: We will listen to what is said in all the evidence sessions. Different people have different views on the appropriateness of the 14-day period. As we have said, the licensing scheme cannot continue to allow what has been happening; there need to be clear parameters around its use. You are right to say that farms will already have good evidence of the damage that foxes can cause to sheep. I would hope that, in those situations, people would be able to produce that evidence, which would allow NatureScot to make decisions quite quickly.

We feel that 14 days is a reasonable period that strikes a balance between having a licensing system that is practical and preventing people from exploiting the system and using it as a way of carrying on the activities that are happening at the moment, which we know are resulting in wild animals being killed with dogs, whether accidentally or otherwise. We want to have good, strong controls on that. However, as I said, we know that there are different views on what the date should be, and we will listen to what is said in other evidence sessions.

The Convener: I genuinely accept and absolutely take on board the need to consider both wildlife management and the welfare of animals, but there must be a practical solution to the issue.

We will move on to Jenni Minto.

Jenni Minto (Argyll and Bute) (SNP): I will briefly continue with the same line of questioning, because concerns have been raised with me, too, about the licensing system.

People accept that there has to be a balance. The application process for a licence needs to be difficult enough to prevent people from abusing the licensing system but easy enough for farmers to use at an incredibly busy time, as Jim Fairlie said.

We also need to listen to the different needs across Scotland. Not everybody walks their dog in a park, for example; they could be walking their dog in a woodland and raise a hare or a rabbit. It is about recognising that, across Scotland, there

are different terrains and people have different ways of working.

I am continuing on from Jim Fairlie's plea about the need to listen to the welfare needs of farmers and to balance those with the needs of animals.

My question is specifically on section 3(3)(e), on bringing in birds of prey to kill wild mammals. I am interested to know what you had in mind when you were writing that part of the legislation.

Leia Fitzgerald: We have talked a lot about the use of dogs, especially in fox control. However, dogs are used in a variety of wildlife management situations. All the provisions in the bill and all the licensing provisions have to address when people are using dogs—for example, in deer stalking or falconry.

Falconry is a permitted method of hunting as long as people adhere to the Wildlife and Countryside Act 1981 and the various other bits of relevant legislation. I did not have a lot of knowledge about this before I embarked on the bill, but a falconer will go out with their bird of prey and take a couple of dogs along with them. You have probably all seen a bird of prey waiting patiently in a field for a rabbit or a hare to emerge from cover. Such a bird can wait for hours and hours. If you were to go out with just your falcon, you could be stuck out there for a very long time with nothing happening. The purpose of bringing along one or two dogs is to flush the prey from cover, meaning that the bird has immediate sight and can swoop down and kill the target prey. In Scotland, rabbits and hares are the main prey mammals in falconry.

The bill does not seek to address any issues in relation to hunting. People have different views on hunting. We are looking purely at how people are using dogs when they are carrying out a legitimate activity, be that deer stalking or falconry, and setting out how dogs are permitted to be used.

All the references to falcons are in the context of people going out to do falconry. As far as we are aware, nobody out there is using birds of prey to catch foxes or as part of fox control; they are using them in the art of falconry, and that is what we are addressing.

Jenni Minto: Thank you for that clarification.

Section 3(3)(e) finishes with the phrase, “as soon as reasonably possible,”

whereas I believe that, in the 2002 act, there was a mixture of “as soon as possible” and “once it is safe to do so”. I am interested in why “reasonably” has been inserted.

Leia Fitzgerald: There were a lot of inconsistencies, which made it difficult and made people question whether different provisions were

setting slightly different bars. We sought to have clarification and to use the same words when we were talking about the same thing. With “reasonably possible”, we were seeking to use language that was as modern and as easy to understand as possible and that aligned with other wildlife legislation. That was the formulation that we felt best met the objectives.

Jenni Minto: I suppose that “as soon as possible” is a clear statement, but if “reasonably” has been used to align the bill with other acts, that is reasonable.

The Convener: We will move on to questions on section 5 of the bill.

11:00

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning. I have a couple of questions on the management of wild animals below ground. What is the Scottish Government's understanding of the circumstances in which it might be appropriate or necessary to use a dog below ground?

Leia Fitzgerald: The use of dogs below ground is probably one of the most polarising issues in the bill. As we tried to do throughout the bill, we considered whether, where the activity is going on, there are still reasons why we might want to permit it and, if so, how we can ensure that it is done as humanely and effectively as possible. Stakeholders have told us that there are instances in which a fox will go to ground. In those cases, terriers might be used to flush the animal from below ground in order that it can be humanely dispatched.

Lord Bonomy addressed the issue. We followed his recommendations in that we have sought to allow the practice to continue because we recognise that, in some circumstances, it helps to facilitate legitimate predator control and deal with some of the fox predation issues that we have discussed. As Lord Bonomy recommended, we sought to introduce a one-dog limit to address the welfare concerns that have been raised about sending a dog underground. We have set out in the bill the circumstances under which a dog could be used underground and how that should be done.

We sought to find a balance between stakeholders who were very much opposed to the practice on welfare grounds and other stakeholders who made the case that it is a necessary part of predator control. We have tightened up the provisions to say how it could be done in a way that, we hope, meets both of those objectives.

Karen Adam: You touched on introducing a one-dog limit. What were some of the welfare concerns?

Leia Fitzgerald: The concerns were that, the more dogs you send underground, the greater the risk is that one or more of them might break from its training and, rather than the dogs alerting the handlers to the location of the fox, a fight might break out. To limit the risk of a dog killing a fox, we introduced the one-dog limit. As I said, that was Lord Bonomy's recommendation.

The Convener: There is no provision for a licence to allow more than one dog. However, if there were a situation in which NatureScot considered it more humane or safer, because of animal welfare considerations, to use more than one dog, why would that not be possible? It seems prescriptive to say that people can use only one dog. If there were such situations, why would a licence not ensure that the highest welfare standards were upheld?

Leia Fitzgerald: One dog is the limit in England and Wales. It has been the limit since 2004. The code of practice for terriers says that, in pretty much all circumstances, only one dog should be used, and Lord Bonomy recommended that. Many stakeholders say that there are welfare considerations in relation to sending even one dog underground. Taking all of that into account, we went for the hard one-dog limit.

Rachael Hamilton: There is a contradictory element in the bill. You are prohibiting the involvement of two dogs in an accepted activity but you envisage that more than two dogs could be involved. The important word there is "involved". Would it be possible for you to explain what is understood by a dog being "involved in" an activity and why those provisions are contradictory?

Leia Fitzgerald: Sorry—which provision are you referring to?

Rachael Hamilton: I do not have the reference to the section, but it is in the bill. The bill prohibits the involvement of more than two dogs in an accepted activity, but it envisages that more than two dogs could be involved and that "reasonable steps" can then be taken to ensure that more than two dogs cannot come together "to form a pack". I am talking about the bit about dogs coming together as an unintended consequence.

Leia Fitzgerald: If somebody goes out with two dogs to flush foxes and they go into a field and happen upon somebody else who is there with their own two dogs, they have to take

"reasonable steps ... to ensure that"

those dogs do not

"form a pack".

We have that provision in the bill to prevent people from seeking to circumvent the two-dog limit by claiming, "I was out with two dogs and my friend was out with two dogs. We were all just out with two dogs," when there were actually 10 people and 20 dogs together—that is a pack. The provision makes it clear that, if someone is not acting under a licence, they are permitted to use only two dogs, and then they have to take

"reasonable steps ... to ensure that"

their dogs do not join up with other dogs and inadvertently

"form a pack".

Rachael Hamilton: Through land reform, the Countryside (Scotland) Act 1967 allows people to walk. What if there were two people walking across a hill and they each had one dog? Would they be taken to court if they joined other dogs?

Leia Fitzgerald: No, because they would not be hunting. The provisions apply only in the context of hunting.

Rachael Hamilton: What about if the dog is acting in its natural state? Evolution has taken us to the domestication of pets, and dogs are obviously bred in that sense, but they have a natural instinct. What would happen in a court of law?

Leia Fitzgerald: It would ultimately be up to the police and the prosecution service to determine whether somebody had acted in contravention of the bill. The intention of the bill is not to stop two people who are out walking their dogs. We have already said that, if a dog was to accidentally slip the leash and chase a wild mammal, we would not consider that to be an offence. However, when people go out with the intention of hunting and they take two dogs with them, they have to ensure, if they do not have a licence, that if they come across other hunters who are also out with their dogs, they do not accidentally or deliberately end up working together. There might then be a situation involving six people and six hunting dogs.

Rachael Hamilton: Do you want me to ask my actual question, convener?

The Convener: Jim Fairlie has a short question.

Jim Fairlie: I promise you that it is very short.

Rachael Hamilton: That is okay.

Jim Fairlie: I think that I understand what the bill is trying to do there. There will be people who try to circumvent the law. If some of them say, "We're going to this bit over here and we'll have two dogs," and the others say, "Well, we'll go to that bit over there, and we'll have two dogs," they might say that they just happened to get together,

but they would be deliberately trying to circumvent the law. Is that what the bill is trying to prevent from happening?

Leia Fitzgerald: That is what we are trying to prevent. We are trying to close that loophole.

The Convener: Jenni Minto has a question on section 6.

Jenni Minto: Further to my questions about using birds, I note that Leia Fitzgerald highlighted the exceptions with regard to falconry. I am interested to hear the reasons behind the exceptions for game shooting and deer stalking and how the way that dogs are used in those contexts makes them exceptions.

Leia Fitzgerald: In deer stalking—this is set out in the code of practice that NatureScot has produced, and in the best practice disseminated by the likes of BASC—people go out with the intention of shooting the deer. That should happen, but occasionally, despite best efforts, a deer may be injured rather than killed outright. In those circumstances, the deer stalkers will use the dog to track the injured deer so that they can find it and humanely dispatch it. Dogs are used in those contexts very much to ensure that deer stalking is done in a way in which deer welfare is the utmost concern. As I said, that is considered best practice. Most—pretty much all—deer stalkers will take dogs with them, so the exception is primarily for the purpose of dealing with a deer that is injured.

On other game shooting, you are allowed, if you wish, to hunt certain mammals in Scotland. Rabbits and hares are the traditional game mammals in Scotland, and people will hunt them for food purposes. Sometimes, they will take a dog or two dogs out with them to locate and flush those mammals so that they can shoot them. Those are permitted activities, and we are not seeking to address any issues with them through the bill. We are saying how people have to conduct themselves in situations where hunting is permitted and the people who are carrying out hunting activities are using dogs.

Jenni Minto: Are you saying that it supports the welfare of the injured deer to put them out of their suffering as humanely as possible?

Leia Fitzgerald: Yes, and dogs are obviously much more effective at finding and following those trails. Using dogs allows people to find the deer much quicker than they could if they did not have the dogs with them.

The Convener: Rachael Hamilton has questions on section 7. Rachael, can you also cover your questions on sections 4, 8 and 9?

Rachael Hamilton: I will try my best, convener.

To pick up on Jenni Minto's point and what you just said, Leia, 11,000 out of the 30,000 deer that are shot in Scotland through Scottish Government schemes are shot at night, with lamps. How do police look at that activity in terms of injury? With all the forests that we have, we need to control deer. How do the police monitor that, particularly if in only one season out of a whole year there is ample sight to ensure that there is no injury?

Leia Fitzgerald: That question would be better put to Police Scotland, as it is about how it monitors those activities. We have very clear guidance and regulations on night shooting of deer and the requirements for that. That was done for the Deer (Scotland) Act 1996, but—

Rachael Hamilton: But it is part of the bill. Jenni Minto just asked about it.

Leia Fitzgerald: The activity of taking dogs with you to locate injured deer is covered in the bill, but the more general hunting of deer is covered by other legislation.

Hugh Dignon: I do not think that we have any evidence that people are using dogs to pursue and attack deer. Dogs in deer stalking are used primarily, or exclusively, for the sort of welfare purposes that Leia Fitzgerald is outlining.

I am sure that there are poachers who use lurchers and things to attack deer. That is and always has been an offence, and it will continue to be. We do not have concerns about forest rangers and people carrying out deer management activities using dogs unlawfully. We are being clear in the bill that the way that they currently use dogs is lawful and will continue to be lawful.

Rachael Hamilton: I will move on to section 7. Why is the licence to protect livestock limited to a maximum of 14 days in a consecutive 14-day period but a licence in respect of a scheme for environmental benefit can be granted for up to two years in a consecutive two-year period?

Leia Fitzgerald: When we were consulting on the bill's environmental purpose, we were thinking of the types of schemes that we have given examples of in the policy memorandum.

For example, a stoat eradication programme is currently going on in Orkney, in which dogs are being used. It is a long-running scheme that is expected to run for the next five years, initially. We were thinking of established, long-running schemes with an environmental purpose such as that one. We thought that it would not be practical or effective to have the people who were carrying out that programme—who might be out on a stated day, or potentially every other day, looking for stoats—to have to apply for a licence every 14 days. That is why we felt that two years was reasonable, and that ties in with other licensing

provisions, under the Wildlife and Countryside Act 1981, that allow licences to be granted for up to two years.

We think that a 14-day licensing scheme is reasonable for the control of foxes, hares and other mammals for the other purposes set out in the act. Those are more bespoke: for such activities, you will not necessarily be doing the same things at the same time every year. The need for a licence will depend on circumstances and on what is happening, instead of being part of a long-term programme. That is why we made the distinction.

11:15

Rachael Hamilton: Are you saying that controlling foxes to protect ground-nesting birds such as curlews and lapwings is not part of a long-term project in the way that stoat control would be?

Leia Fitzgerald: The stoat eradication programme is a long-established project undertaken by NatureScot in conjunction with partners. That is not to say that a future scheme that might be set up to protect a different species could not be considered under those licensing provisions, but, at the moment, the stoat scheme is an example of the sort of scheme that we are thinking of.

Hugh Dignon: If someone was to come and say that, as part of the Working for Waders project, they wanted to carry out systematic predator control to protect wading birds, it is entirely possible that NatureScot would see that as a relevant scheme.

Rachael Hamilton: NatureScot could grow arms and legs, which could be a really positive conduit to ensuring that we increase biodiversity. As you know, curlew numbers are in huge decline. The Government could consider that to be part of a long-term environmental project, particularly because there is to be a change in support for agriculture and farmers will be paid to be conservationists—not that they are not conservationists now.

I feel that what I have heard from Leia Fitzgerald suggests an almost discriminatory approach to animal welfare and biodiversity protection.

Hugh Dignon: We certainly recognise that predator control is an important part of wader conservation. If a project put to NatureScot was described as being an important element of a wider project on a certain piece of land, I do not think that there would be any objection to that in principle. It would be important to look at the circumstances of each particular case.

One of the key points about the 14-day period is that we envisage it applying to things such as visits involving a pack of dogs. After discussion with a farmer, people might think that a licence is needed so that they can come and clear a piece of land with a pack. The provision is about giving a 14-day window for that arrangement, as it might not be possible to make the visit on a given day, because of weather or for some other reason. That is a different proposition from someone saying that they will be controlling stoats on or removing hedgehogs from some land throughout the life of a project.

The Convener: Jenni Minto has a supplementary question on that point.

Jenni Minto: I would like you to expand on that. In the constituency that I represent, such work is done not by foot packs but by groups of farmers getting together. There are concerns that having a window of only 14 days might not work. Also, as Rachael Hamilton said, there is a difference between a larger organisation such as the RSPB, which would, in the stoat example, be able to apply for a two-year licence, and farmers who have to do such work much more regularly to manage the welfare of their livestock without—as they might argue—the resources of a larger organisation.

That goes back to my earlier point about remembering that we are not one Scotland. There are lots of different needs across Scotland.

Hugh Dignon: The issue is that, on that piece of land—I must admit that I do not know enough about the sort of circumstances that you are talking about—I would envisage that farmers would be able to plan: “We’ll do farm A in these couple of weeks, and we’ll do farm B whenever,” and so on. Therefore, the licence would apply so that there would be a licence period for doing farm A and so on. Now—

Jenni Minto: Yes, that is one side of it. The other side of it is having the resources to be able to continually apply for the licence and how that would work.

Hugh Dignon: Again, I hope and expect that, once NatureScot understands the circumstances that apply to a particular farm—the particular terrain and problem with predation and the livestock that it is managing—a lot of that licence application could be done more quickly, instead of starting afresh every time. Farm records about the losses that the farm had suffered and previously undertaken activities would all contribute to a licensing process that, I hope, would be fairly smooth and reasonably quick.

The Convener: Rachael Hamilton will wind up with questions on sections 4, 8 and 9.

Rachael Hamilton: Was any consideration given to a general licence rather than individual licences? Why can pest bird species be managed under a general licensing regime when foxes, mink and so on cannot be?

Leia Fitzgerald: We gave a great deal of consideration to licensing. As I said, we need to bear it in mind that the licence is only for people who want to use more than two dogs. People can still apply for a general licence, other forms of licensing or other forms of wildlife control that are permitted. The licence is about an exception to an exception: it is an exception under the bill to use dogs to hunt. If a person wants to use more than two dogs, that is a further exception. Therefore, we felt that individual licences were fair because it is set out in the bill that, in order to get the licence, the applicant must demonstrate that there are no other reasonable methods that they could use.

That will be dependent on circumstances. It will not necessarily follow that somebody who needs a licence in one year will need one in the next; they might not. People who have foxes living permanently in their territory will probably apply regularly. Other people might need to apply for a licence as a one-off.

The system is designed to recognise the fact that there are lots of different reasons and circumstances that could lead people to apply for a licence. It is very much about ensuring that the situation that we have at the moment—namely, as the Bonomy review said, that 20 per cent of the foxes that are killed are still being killed by packs of dogs—does not continue. In our view, that needs to be regulated via a strict but fair licensing system.

Rachael Hamilton: Therefore, to go back to Jim Fairlie's earlier point, farmers will be able to apply for licences all year round, whether they are lambing or not.

Leia Fitzgerald: Yes. There will be nothing to prevent them from doing that.

Rachael Hamilton: A licence can be granted for a maximum of 14 days. Does NatureScot have the capacity to administer the scheme if some people have to apply every 14 days?

Leia Fitzgerald: We spoke to NatureScot and it said yes—it is content that it has the resources to administer the scheme.

Ariane Burgess: I have a supplementary question on the licensing scheme. I am keen to explore the transparency and accountability of the scheme. I would appreciate your views on Alison Johnstone's proposal in the previous parliamentary session for a member's bill on the protection and conservation of wild mammals. The proposal was:

"Any use of a licence must be conditional on reporting how many animals have been killed/hunted and that they have been killed in accordance with the licence. This information should be published by the licensing authority."

Leia Fitzgerald: The bill allows NatureScot to put conditions on the licence, including reporting conditions. We would seek to work with stakeholders on all sides to consider what reasonable reporting requirements would be. I expect that, for example, a requirement to report the number of foxes killed and the locations would be included in the licensing scheme.

As the committee will be aware, we also have a wider review of licensing. Bearing that in mind, the approach that we have taken in the bill is to set out broad parameters. We do not want inadvertently to put something in the bill that will be superseded by the outcome of the licensing review. We are mindful that the review might impose further conditions. We have the flexibility for that to be done, so we did not want to set further conditions at this stage, because that work will be undertaken in the future.

Ariane Burgess: When you had your discussions with NatureScot about granting licences for a maximum of 14 days and its capacity for doing that, did you discuss accountability and transparency?

Leia Fitzgerald: Yes. We have been mindful of the fact that many people who apply for the licences will also apply for licences for various other things. For example, there has been talk of ravens today. The process should be made as user friendly as possible and should mirror practices for application for other kinds of licence, so that people broadly know what to expect. However, if necessary and appropriate, bespoke elements can be added.

All those things have been discussed initially, but they will continue to be discussed. We know that stakeholders will give us lots of suggestions for what they think should be included in a licensing scheme.

Hugh Dignon: NatureScot is open to that. It is keen on transparency in that area, subject to general data protection regulation requirements and other data protection stuff, such as on privacy. It has made such information available for a long time in its reporting to the European Union, and it is looking at alternative processes to make it available in the public domain. For example, there is a lot of public interest in beaver licensing, and NatureScot is very open about the number of animals that are taken under that scheme. I have absolutely no doubt that that will continue with the new licensing arrangements.

Ariane Burgess: I would like a bit of clarity on licensing for environmental benefit, which you may

have touched on a bit. Section 8 states that a licence in connection with section 7

“must not be granted unless the relevant authority is satisfied ... that killing, capturing or observing the wild mammal will contribute towards a significant or long-term environmental benefit”.

In order to balance the need to protect certain species and enhance biodiversity with the need to protect the welfare of all sentient animals and manage wildlife ethically, will guidance be published on how to determine what meets the criteria for

“significant or long-term environmental benefit”?

Leia Fitzgerald: Yes. We intend to publish guidance for the licensing regime and to do lots of publicity when it goes live. All of that will be set out.

NatureScot produces other guidance, the most recent of which is on the new licensing regime relating to mountain hares. There is a lot of guidance on that, which sets out what the parameters are, under what circumstances and with what evidence NatureScot would grant a licence, and where it would feel that evidence would not fall within the parameters of the scheme. It is the same situation with the habitats regulations. There is lots of guidance out there about the tests for licensing regimes.

The Convener: For licences to be granted, NatureScot needs to be satisfied that there is

“no other solution which would be effective in achieving the purpose”.

There might be alternatives that would be effective but are wholly impractical or undesirable. If an alternative practice is impractical, is it by definition ineffective, or is effectiveness to be understood without regard to practicality?

Leia Fitzgerald: In order for an alternative to be effective, people have to be able to do it. If it was so impractical that it could not be done, it would, as you said, not be deemed to be effective. For example, if stoats were preying on chickens, a reasonable and practical alternative might be to build a decent enclosure. However, it is not necessarily practical to put a fence around many acres of land, for example. Those things would be taken into account. The situation will vary depending on the person who is applying for the licence.

The Convener: Thank you. That is useful.

Jim Fairlie: I will—because it had not occurred to me at all—go back to something that Ariane has just raised. You talked about recording numbers. When I had a licence to control ravens, we knew that the purpose of the bag number that we were allowed every year—which was increased—was for us to know that numbers were limited. With

beavers for example, we know more or less what the national numbers are. If we are to record the number of foxes that are killed, is there concern that foxes are becoming a rare species in Scotland?

11:30

Hugh Dignon: No.

Jim Fairlie: What, then, would be the purpose of recording numbers?

Hugh Dignon: That is just in order to understand how many licences are issued and what they are used for.

Jim Fairlie: It is not, then, to show the number of foxes that would be controlled.

Hugh Dignon: I am not prejudging what conditions people will ask for, but there will be some public interest in how the licensing scheme is operating, in the number of licences that are granted and in the number of foxes that are killed under it. Recording numbers does not necessarily reflect that we think that foxes are an endangered species—we do not think that they are. It is in order to provide transparency around how the licensing scheme is operating.

If people say to us that providing that information is in some way harming people who are operating the licences, we will listen to those arguments. However, I do not see any particular reason why we would want to withhold that information, and I am pretty sure that there will be public interest in it. On that basis, we will probably look to provide it.

Jim Fairlie: Another thing that was mentioned was getting a licence for environmental reasons, which would have to be done under a scheme. Again, I will give my personal experience. I watched wading bird numbers plummet with the increased number of ravens. Nobody was paying attention to that, but the by-product of my being able to control ravens to protect sheep was that it helped to maintain wading bird numbers. Who is the best person to tell NatureScot of an environmental or ecological issue on land that it is managing? Who makes that decision?

Leia Fitzgerald: Ultimately, when somebody is applying for a licence, it will be for NatureScot to make the decision. We are all well aware of the issues. I am sure that you know that NatureScot has recently launched an action plan to address the decline in capercaillie, and many land managers are actively on board and working with NatureScot to put in place action points to protect capercaillie. One of the strands of that action plan is effective predator control in areas where capercaillie live.

We are envisaging that those kinds of things would constitute a scheme, as opposed, for example, to me just saying, "I've decided that I want to clear all the wild mammals off my backyard because I want to protect my marigolds," which would not be a scheme. The capercaillie project and similar projects would meet the criteria for a scheme.

Jim Fairlie: There will have to be co-operation and trust between NatureScot and land managers.

Leia Fitzgerald: People will have to demonstrate that they meet the criteria that are set out in the bill. That will be up to individuals. A person who says that they need to control predators on their land for protection of agriculture, so they need a licence for that, will need to show the link between the two things and the evidence for it.

People who say that they need to control predators for a different purpose will need to provide evidence that will satisfy NatureScot, and the evidence that they will need to show will very much depend on the circumstances. We are aware of some very clearly established nature conservation issues to do with curlews and lapwings, for example. So, if someone said that their application was to protect something else, NatureScot might say that it does not necessarily have evidence that that species is in decline and might ask for more information on why the licence would be necessary.

The Convener: We will hear very briefly from Rachael Hamilton.

Rachael Hamilton: I am just trying to work this out. For a general licence, the person must still prove that they have looked at all other solutions of dispatch or predator control—whatever you want to call it. What are the solutions for controlling foxes—obviously, there is a high number of them in Scotland—that farmers could use other than a gun?

Leia Fitzgerald: Again, the solution would depend on circumstances. If someone is keeping enclosed birds—

Rachael Hamilton: What about sheep? How would you enclose them?

Leia Fitzgerald: That goes back to the point that Mr Carson made. Enclosing sheep might not be a practical solution, so the farmer might have to consider other approaches. The farmer might have had people out lamping but that has not worked, or the terrain is such that they need to use a pack to flush foxes because two dogs would just not be effective. It might be that they have deployed a shepherd and that has not worked.

Farms range massively in size and terrain. That is why we are not providing a list of all the things

that somebody must have tried first. It is up to people to decide what might be reasonable for them to try before they apply for a licence, when those options have not been effective.

Rachael Hamilton: So, a farmer would have to go to NatureScot and say, "I'm sorry, but my farm income is only £12,000 a year. Things are really tough. I don't want to employ a shepherd. I'm using EasyCare sheep on an upland farm. I'd like to control foxes. I have a declining population of wading birds." How easy will that be? The agri-environment climate scheme is very complicated to apply for.

Leia Fitzgerald: As I said, NatureScot will work with stakeholders on such matters as it develops the licensing scheme. However, when someone is applying for a licence to lethally control beavers, they have to show that they have tried all other methods that are open to them that do not require a licence. That test already exists in other wildlife legislation.

Hugh Dignon: To be clear, the statutory requirement will be for the licensing authority to be satisfied. That implies that it might have knowledge of its own about what is and is not practical.

Rachael Hamilton: However, on its website, NatureScot does not even suggest how to control foxes.

Hugh Dignon: The point that I am making is that it is not a requirement on the farmer, land manager or landowner to say that they have tried A, B, C and D. They can say it as part of their application and might be invited to say it but, ultimately, it is for NatureScot to say that the applicant does not have to demonstrate that it is not possible to put a fence around the land. It has to understand that already.

The issue is what is practicable, and widely understood to be practicable, in particular circumstances. NatureScot understands full well that, in managing and protecting livestock such as lambs in upland areas, there will be a number of options. The main options are likely to be snaring, lamping, using night sights or using dogs. Live trapping might be another option. NatureScot will understand what options are on the table and would understand well that, for a small crofter, employing a full-time shepherd on the hill is out of the question.

It is not a matter of having to go through each and every potential scenario. The "no satisfactory alternative" provision already operates across the gamut of licensing, but it never says that it is for the licence applicant to prove that there is no satisfactory alternative. It is always for the licensing authority to be satisfied that that is the case.

Rachael Hamilton: The same applies if a fox travels across upland of 3,000 acres to the next farm when the first farmer has applied for a licence. How does it work if the second farmer dispatches the fox over the march?

Hugh Dignon: Licensing applies only where more than two dogs are used. We are all pretty much aware that the vast majority of foxes are dispatched by shooting of one form or another. That will continue to be the case. I am not sure that I follow the question.

Rachael Hamilton: Unless, of course, the fox is injured. The Government is advocating laming, which in terms of welfare is relevant only in three seasons, where there is a proper site outwith vegetation and cover—and there is a lot of vegetation and cover in upland areas.

Hugh Dignon: We are not advocating laming. We are trying to prevent use of dogs to chase and kill wild mammals. That is what the bill is about. In that, we are recognising that there are alternatives for protecting livestock. Those alternatives include the range of approaches that I have mentioned—the most common of which, as we know, is shooting.

The Convener: Thank you. We will need to move on. Alasdair Allan and Beatrice Wishart will cover sections 11 and 12.

Alasdair Allan: Actually, convener, I am interested in the issue of trail hunting. Do you want me to wait until later to ask about that, or shall I ask my question now?

The Convener: Question 14 in our papers, which is on that issue, relates to sections 11 and 12, so you can ask about that now.

Alasdair Allan: Why is trail hunting included in the bill's scope?

Leia Fitzgerald: Trail hunting is where a person or a group of people lay an animal-based scent for dogs to follow. That activity really only came into existence after the Hunting Act 2004 was introduced in England and Wales. At the time, there were suspicions that that activity was being introduced as a cover for people who were not happy that traditional forms of foxhunting had been banned and they were using it as a way to circumvent the law. That has been shown to be the case in some circumstances. Last year, someone was prosecuted after clear evidence was shown that that is exactly what they were doing. Subsequently, the activity has been banned on land that is owned by the Welsh Government and the National Trust.

Even where people are not in any way setting out to carry out illegal hunting—they might be undertaking that as an alternative activity because they recognise that they are not permitted to

chase and kill wild mammals with dogs—that activity carries a very high risk that an animal will inadvertently be killed. Dogs are very clever animals, but if they are following an artificially laid trail that smells of a fox in an area where foxes are present, there is a high risk that they will end up chasing a fox instead. As we know, there is a real risk when that happens.

We are seeking to prevent that from happening in Scotland. That applies only where people are laying a trail that is designed to replicate a wild mammal. For example, in drag hunting, an artificial scent—aniseed—is used. That will still be permitted; people will still be able to carry out that activity. They will be able to go out with dogs and horses and follow on. We are seeking to take away the element of risk involved in laying mammal-based scents, which provides a loophole for people illegally hunting and causing serious welfare concerns. That is the reason for those provisions in the bill.

Alasdair Allan: Is there an analogy between that and what you said earlier about hares and rabbits, in which one thing can be done under the cover of another thing or can turn into something else? Did the public express concerns about such a situation in the consultation?

Leia Fitzgerald: Yes, stakeholders raised a lot of concerns about that. As I said, people had paid close attention to what had happened in England and Wales, including to the court cases and the concerns that National Trust members had raised, which led them to ban the activity on their land. I add that that activity is now banned on National Trust land in Scotland, for example. It is very much a case of listening to what people are saying about the issue.

Beatrice Wishart: Section 12 has an exception for training dogs to follow a scent, which

“applies if ... a person ... lays an animal-based scent for a dog to find and follow, in order to train a dog for a lawful purpose”.

Will you clarify what is meant by “lawful purpose”?

Leia Fitzgerald: We included that provision as we were mindful of the risk of inadvertently banning by the back door certain scent-based activities by hounds such as deer stalking or predator control, because, if we did not allow dogs to be trained to do those activities, they could not take place.

Where we have set out in the bill that it is lawful to use a dog to search for, stalk or flush from cover a wild mammal, people will be allowed to lay a trail to train a dog to do those activities. Perhaps the most obvious example of an unlawful action being undertaken with a dog is badger baiting. It is not a lawful activity for someone to train a dog to find and kill badgers. The distinction that we are

trying to make is that the bill permits the training of dogs to do those scent-based activities.

11:45

Jim Fairlie: I will go back a bit, because I forgot to ask you something earlier. In section 24, which is titled, "Crown application: criminal offences", subsection (1) says:

"Nothing in this Act makes the Crown criminally liable."

What does that mean?

Leia Fitzgerald: I will start off, but I might ask SGLD colleagues to come in if I mangle this.

There is a distinction between the Crown as in Government officials or MSPs and the Crown as in the Queen herself. People who operate in the service of the Crown can be held criminally liable but the Queen is treated differently for legal purposes. It is basically standard in most criminal justice bills to set out how the bill applies to the Crown or members of the Crown and how it applies to the Queen herself.

Jim Fairlie: So, if an illegal act took place on the Queen's land, the person who perpetrated the act, rather than the Queen, would be liable. Is that what that means?

Leia Fitzgerald: Yes. It means that someone who commits a crime on the Queen's land can still be considered as anyone else would be. They are not exempted and would be treated in the same way as anyone who committed a crime on non-Crown land would be.

The Convener: I have a final question about enforcement. The offence in the bill is one of hunting using a dog. Dogs are an absolutely essential ingredient throughout the bill. The mode of transport that is used to accompany the dogs should surely be irrelevant, yet the bill suggests that there could be disqualification orders for dogs and that horses could be seized. Why are those on horseback being singled out in the bill when, for example, the owners of quad bikes are not?

Leia Fitzgerald: The schedule attached to the bill talks about the seizure of vehicles and gives the police the power to seize vehicles. Legislation in the Proceeds of Crime Act 2002 would allow a quad bike that had been used in the commission of a hunting offence to be seized. We are not singling out people who use horses; we are just looking at the range of things that someone might use in the commission of an offence—whether those are dogs, horses or quad bikes—and ensuring that they are all covered. That gives the court the widest possible range of powers to consider what the most appropriate offence is.

Rachael Hamilton: On that specific point, where does it say that a deprivation order could be

given against, for example, a hare courser who had used a car or a motorbike to drive from somewhere such as Newcastle? Is that covered? I would like that to be clear. I am looking at page 16 of the bill.

Leia Fitzgerald: The attached schedule talks about the seizure of vehicles. If a vehicle is seized and is deemed to have been used in the commission of an offence, then, under the Proceeds of Crime Act 2002, the courts have the power to take those vehicles, or other equipment as is set out in the act, as forfeit if they have been seized as evidence and are deemed to have been used in a crime.

Rachael Hamilton: Okay.

The Convener: You will be pleased to hear that that brings us to the end of our questions. Actually, it probably does not, but you—particularly Leia—have put in a hard shift this morning. That is very much appreciated and the information that you have given us will certainly be helpful in our further deliberations.

I will suspend the meeting until 12 o'clock to allow for a change of witnesses.

11:49

Meeting suspended.

12:00

On resuming—

Subordinate Legislation

Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022

The Convener: We now move on to agenda item 2, which is consideration of a statutory instrument. I refer members to papers 3 and 4. Do any members have any questions or comments to make on the regulations?

As members do not, do members agree with the Scottish Government's decision to consent to the provisions set out in the notification being included in UK, rather than Scottish, subordinate legislation?

Members *indicated agreement.*

The Convener: I propose that the committee write to the Scottish Government to ask why it is now considered appropriate to make regulations amending the rules around checks on sanitary and phytosanitary—SPS—goods during the transition period; what the impact of those changes may be on stakeholders and the wider public, including further information about the outcome of the consultations between Governments and stakeholders; and about the outcome of discussions with stakeholders who have invested in preparations for the end of the transitional staging period.

Are members happy with those suggestions?

Members *indicated agreement.*

The Convener: That concludes our business in public. We will now close on BlueJeans, and we will meet in private session.

12:01

Meeting continued in private until 12:10.

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