



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs, Islands and Natural Environment Committee

Wednesday 7 December 2022

Session 6



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Wednesday 7 December 2022

CONTENTS

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HUNTING WITH DOGS (SCOTLAND) BILL: STAGE 2 1

RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE
33rd 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:

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

Liam Kerr (North East Scotland) (Con)

The Minister for Environment and Land Reform (Màiri McAllan)

Edward Mountain (Highlands and Islands) (Con)

Colin Smyth (South Scotland) (Lab)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Islands and Natural Environment Committee

Wednesday 7 December 2022

[The Convener opened the meeting at 09:01]

Hunting with Dogs (Scotland) Bill: Stage 2

The Convener (Finlay Carson): Good morning, everyone. Our single item of business today is consideration of the Hunting with Dogs (Scotland) Bill at stage 2. I welcome the Minister for Environment and Land Reform and her supporting officials.

I will briefly explain the stage 2 procedure, for members and the public. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. I will then call any other members who have lodged amendments in the group. Members who have not lodged amendments in the group but who wish to speak should catch my attention. If the minister has not already spoken on the group, I will then invite her to contribute to the debate. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment.

If a member wishes to withdraw their amendment after it has been moved, they must seek the agreement of other members to do so. If any member who is present objects, we will immediately move to the vote on the amendment.

If a member does not want to move their amendment when they are called to do so, they should say, "Not moved." Please note that any other member who is present may move the amendment. If no one moves it, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by show of hands, and it is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section

of the bill, so I will put a question on each section at the appropriate point.

It might not be possible to conclude our stage 2 consideration of the bill at today's meeting. In that case, we will do so at our meeting next week.

Section 1—Offence of hunting a wild mammal using a dog

The Convener: Amendment 131, in the name of Liam Kerr, is grouped with amendments 58, 63 to 68, 59, 60, 110, 61 and 62. I invite Liam Kerr to speak to and move amendment 131 and to speak to the other amendments in the group.

Liam Kerr (North East Scotland) (Con): Good morning, committee. I am very grateful to you for your consideration of amendment 131. I will explain the thinking that underlies it. Section 1 seeks to create offences that will replace the offences that are set out in the Protection of Wild Mammals (Scotland) Act 2002. Section 1 of that act says:

"A person who deliberately hunts a wild mammal with a dog commits an offence."

However, under the intended replacement provision in section 1 of the bill, someone will commit an offence if

"(a) the person hunts a wild mammal using a dog, and

(b) none of the exceptions in sections 3, 5, 6 or 7 apply."

What appears to have been lost in the bill is that it does not include knowledge of the intended use of the dog as part of the offence of hunting a wild mammal. My amendment 131 seeks to insert additional criteria for the commission of the offence, namely that the person knew or ought to have known that hunting a wild mammal was the intended use of the dog.

In my view, that will avoid the potential for members of the public to face prosecution for an offence in circumstances where the hunting of a wild mammal using a dog was not their intention—for example, when a dog gives chase to a wild mammal during a walk for exercise purposes. My amendment will provide a clear distinction between those with an intention to hunt wild mammals and those without such an intention. The requirement will enhance enforcement of the legislation by ensuring that Police Scotland can more readily identify perpetrators who have knowledge of the intended use of the dog via evidence gathering.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I welcome amendment 131, which is intended to provide clarity. However, I have received some feedback from stakeholders that the definitions that are referenced in the amendment could be clearer. I would like an assurance that what would and would not

constitute an offence under the bill will be made clearer. I am happy to work with Liam Kerr if he will consider lodging a stronger amendment with clearer definitions at stage 3. At this stage, I am minded not to vote with Liam Kerr on his amendment.

Liam Kerr: I am grateful for that intervention and for the clarity of my friend Rachael Hamilton. I will take that point on board as the debate progresses. I am, as usual, very grateful for her thoughts, which are valuable.

Amendments 58 to 62 seek to add to the bill new exemptions for rabbits. Amendment 62, which is the substantive amendment, provides that an exemption will apply to the offence of a person hunting a wild mammal using a dog if:

“(a) a person is using a dog to hunt rabbits, and

(b) permission for the activity has been given by the owner of the land on which the activity takes place.”

Amendment 63 seeks to insert “subsequently” after “and” in line 17, which says:

“‘hunting’ includes, in particular, searching for and coursing.”

My understanding is that the effect of that would be that, in the bill, the term “hunting” would mean searching for wild mammals first and then coursing afterwards. However, it is a technical amendment, and my colleague Edward Mountain will explain the detail.

Amendments 64 to 68 seek to exclude weasels, stoats, mink, polecats and ferrets from the definition of wild mammals that is set out in the bill. Those amendments were also lodged by Edward Mountain, and he will elaborate why those animals should not be included in the scope of the bill.

Amendment 110 seeks to add a line to section 2 of the bill so that any person who “reasonably believed” that their hunting would qualify for the exemptions in the bill would have to show evidence to support their position that their activity was exempt. That section of the bill pertains to

“Offences of knowingly causing or permitting another person to hunt using a dog”.

Amendment 110 would amend the defence that is available to a person who is charged under that section.

I am grateful to the committee for its consideration of my amendment.

I move amendment 131.

Edward Mountain (Highlands and Islands) (Con): I thank the committee for letting us participate in this debate, which is an important one. Many of my amendments in the group deal with rabbits, and I will speak to those first. I will deal with amendment 63 separately.

During the committee’s evidence sessions, which I heard, I found it really difficult to follow the reasoning behind the inclusion of rabbits in the bill. I think that people who carry out legitimate activities in the countryside fully understand the difference between hares and rabbits, which are significantly different animals. People who live and work in the countryside understand that hares and rabbits live in different sorts of habitats. Hares like to flee and will flee above ground, which is why they live in open fields and are so often seen in the spring in fields of growing crops, whereas rabbits tend to live on the edges of woodlands and fields. If someone is carrying out activities to control rabbits, they can identify them quite easily from the habitats in which they are working and the different size of the animals.

In my mind, it is rather lazy to include rabbits because, as I think the minister said, they might be used as an excuse to course hares. That is not the case. For someone who lives in the countryside, as I do, it is like people confusing hay and straw, or barley and wheat. They are substantially different, so there is no reason to conflate them. The only people who might do that are people who are trying to break the law, who will hide behind the fact that they are hunting for rabbits when they are clearly not.

Another reason that I have heard for including rabbits is that coursing is carried out at night. I am not sure how that happens, because coursing is carried out by sight. People might go out coursing at night-time and use lights, but they would be breaking the law and they should be prosecuted.

I do not believe that there is any reason to include rabbits. I have heard that they suffer more pain than other animals do, such as rats or mice, but I do not believe that that is the case. In this case, there is no evidence that rabbits suffer more than other animals. For that reason alone, I do not believe that it is necessary to include them. I therefore wish rabbits to be removed from the scope of the bill.

With regard to other animals, my amendments would exclude weasels, stoats, mink, polecats and ferrets. Polecats and ferrets will be domesticated animals that have gone wild, and stoats and weasels are accepted as a problem. I believe that members of the committee will understand the problems that mustelids cause on islands and the devastation that they can cause to breeding bird populations. They are animals that we are encouraged to control.

The Government encourages people to control mink. In the Cairngorms, there has been a mink eradication policy, and there was a mink officer who was responsible for encouraging landowners to kill and remove mink. Mink is a non-native species—they were introduced to this country and

escaped from fur farms. It seems perfectly sensible to allow mink, polecats, ferrets, stoats and weasels to be controlled, yet that would not be allowed under the bill.

Most of my other amendments in the group are technical, supporting amendments. However, amendment 63 seeks to ensure that, if somebody is hunting an animal and they flush it, they will commit an offence only if they “subsequently” course it. I do not believe that it should be an offence to flush animals from thick growth such as a bramble bush. You might have more than two dogs working to flush an animal. If you subsequently caught it, it could be argued that you have broken the law. You should not be breaking the law if you flush the animal; you should be breaking the law only if you subsequently course it.

I will be interested to hear what Colin Smyth says about amendment 110 and the evidence that would be required. It is not clear from his amendment what evidence would be required, who would adjudicate on it, or who would decide whether it was satisfactory. On that basis, I struggle to understand the amendment, but I look forward to hearing more detail when my colleague speaks to it.

Those are the amendments that I wish to speak to at this stage. I look forward to the opportunity to debate them.

09:15

The Convener: Thank you. I call Colin Smyth to speak to amendment 110 and the other amendments in the group.

Colin Smyth (South Scotland) (Lab): I thank the committee for considering my amendment 110, which relates to a defence for a person who is charged with the offence of hunting a wild animal with a dog.

The bill provides that

“It is a defence for a person charged with an offence ... to show that the person reasonably believed that any of the exceptions”

in the bill applied. In effect, that would require proof of the individual’s state of mind, which would on its own be difficult to evidence. My amendment 110 simply seeks to shift the emphasis on the grounds for that reasonable belief so that it is objective rather than subjective, and so that it is capable of being demonstrated by the landowner. As currently drafted, the bill would require speculation on the state of mind of a person who believed or claimed to have reasonably believed that the relevant exception would apply.

My amendment would change the emphasis from the person’s assertion of their belief to the

available evidence that gave them the grounds for that reasonable belief. The requirement for evidence would not be onerous and it would depend on the specific exception. For example, the evidence could be an email to the landowner or occupier from the person who was using the dog or dogs stating that the reason why they were carrying out fox control on the land was the identification of a high level of predation of lambs there.

The term “reasonably believed” is open to interpretation and difficult to quantify, so I believe that it should be backed by a requirement for evidence. My fear is that, if we fail to include that, it could allow an unnecessary loophole. Whatever position members take on hunting, I do not believe that my amendment is in any way unreasonable. I note that the Scottish Gamekeepers Association, NFU Scotland and the National Sheep Association Scotland do not oppose it.

Edward Mountain raised the issue of who would make the judgement. It would be dealt with in the same way that, under the bill, the term “reasonably believed” would be dealt with. It would be up to the courts and others to decide whether the evidence was sufficient to prove that the exception applied. In the same way, it would be necessary to prove that the landowner “reasonably believed” that the exception applied. My amendment would make it easier to prove than it will be if we rely on the phrase “reasonably believed”. I urge members to support amendment 110.

Rachael Hamilton: I ask Colin Smyth what he means by evidence of “state of mind”.

Colin Smyth: As the bill stands, we would have to interpret whether the individual “reasonably believed” that any of the exceptions applied. In effect, we would have to rely on that individual saying that they “reasonably believed” that the exception applied. Under my amendment, instead of simply relying on the individual, we would rely on evidence, which would make it clearer and easier to prove one way or the other.

Edward Mountain: I find that interesting. If the person wrote an email saying that they thought that fox control was necessary, that would justify the position. A paper copy of the email could become part of the process. Rather than it being argued at the time that there was a reasonable justification, it would just become a prerequisite that someone had sent an email. Is that what you are suggesting?

Colin Smyth: It would be necessary to prove that the exception existed. If there was an email from those who carried out the hunt that contained information about their belief that there was a high level of predation of lambs—that is the example that I gave—that would certainly be an argument

to be considered with regard to whether the exception applied. An email that simply said, "We were hunting on your land," would obviously not prove that an exception applied. The evidence would have to relate to the specific exception that the person argued was applicable. I presume that the individual would have to argue that under the bill as drafted. The only difference in what I am suggesting is that there would be some evidence to back up the claim.

The Convener: Because we have now heard from the three members who have lodged amendments, members are free to speak before I invite the minister to speak to the amendments in the group.

Ariane Burgess (Highlands and Islands) (Green): I will speak to Liam Kerr's amendment 131. I understand that the thinking behind the amendment is to avoid criminalising people who are genuinely walking their dogs and have lost control of them. However, as drafted, the amendment would make conviction for genuine offences even more difficult. The Scottish Society for the Prevention of Cruelty to Animals says that the amendment would create an obvious loophole, because every poacher could claim that their poaching was not the intended use of the dog.

The end of section 1 already makes clear what is required regarding the control of dogs. Rather than create clarity, amendment 131 would give offenders yet another excuse that they could hide behind. Even the Law Society of Scotland acknowledged in oral evidence in June 2022 that that can be used as a loophole. Police Scotland explained in written evidence that hare coursers will often claim that they let their dog off the leash for exercise or to go to the toilet and that it chased a hare of its own free will. We cannot afford to open another loophole, or the bill will soon consist of more loopholes than legislation, when it is attempting to close down loopholes from 2022. I urge members to vote against amendment 131.

Edward Mountain's amendments in the group, which propose the removal of protection for rabbits, weasels, stoats, mink, polecats and ferrets, would make it permissible to hunt those creatures with dogs. During stage 1 evidence, we heard from Chief Superintendent Flynn that the suffering of all animals that are attacked by a dog will be the same. They are sentient beings, so they will suffer. All animals deserve our respect and humane control methods. I cannot support the amendments.

Rabbits are specifically covered by amendments 58 to 62. The committee has considered the matter at length and I am satisfied with the evidence. We have heard that rabbits should be defined as wild mammals in the legislation in order to prevent the creation of a loophole for hare

coursing and for the welfare reasons that I have just outlined.

Edward Mountain: Will the member give way on that point?

Ariane Burgess: No, I will continue.

The SSPCA and the Scottish Animal Welfare Commission gave evidence about the distress that is suffered by hunted rabbits. I understand the concerns that have been raised about the impact on rough shooting, whereby multiple dogs are used to flush quarry species. We have taken additional evidence on the bill's impacts on that activity. I note that both Police Scotland and the League Against Cruel Sports highlighted the risk that including an exception for rabbits could create a smokescreen for illegal hunts with packs of dogs under the guise of rough shooting.

Mercedes Villalba (North East Scotland) (Lab): Will the member take an intervention?

Ariane Burgess: I will not take an intervention.

I think that the imperative is to ensure that the legislation, when it is passed, does not allow exceptions to become loopholes, which would undermine our intention to uphold animal welfare standards. For those reasons, I will not support amendments 58 to 62.

Mercedes Villalba: I thank all members who have lodged amendments in the group.

I will support amendment 110, in the name of Colin Smyth, and I urge other committee members to do the same, because I think that it would clarify the legislation.

I will not support amendment 131, which is in the name of Liam Kerr, because it would undermine the clarity of the offence.

I also cannot support amendments 58 to 62, which are in the name of Edward Mountain and seek to create an exception for rabbits.

I am concerned that amendment 63 would create a loophole for people who claim that they were not intentionally searching for animals.

Amendments 64 to 68 seek to exclude weasels, stoats, mink, polecats and ferrets from the definition of wild mammals and thus from the scope of the bill. I fear that that would leave those animals without any protection against being chased and killed by dogs.

Edward Mountain: I understand your concerns, but I do not necessarily agree with them. My concern is that, on one side, we have a Government that for very good reasons is trying to control an invasive species, in the form of mink. The Government is encouraging people to control mink and is funding people to do that. Similarly, it

is providing funding to control weasels and stoats when they have got into habitats where they are not welcome and are not used to being. On one hand, you are saying, "We don't think you should control them," but, on the other hand, the Government is saying, "We need to control them and we're financing people to do it." How do we strike a balance?

Mercedes Villalba: It is important that we are clear that there is a difference between wildlife control and the issue in the bill, which is hunting with dogs. I object to animals being chased and killed by dogs. There are other ways to control animals. I draw the member's attention to that point and have no further remarks to make about the group of amendments.

Ariane Burgess: I will pick up on the point about mink. The mink projects in Scotland do not use dogs, and the mink population should be controlled under the environmental benefit exception.

Rachael Hamilton: Do you think that removing rabbits from the group that are defined as being wild mammals would have an environmental benefit?

Ariane Burgess: I was making a point about mink.

Rachael Hamilton: You were, but I am trying to debate the points that you made earlier by using that idea as a link.

Ariane Burgess: Mink is the link.

Rachael Hamilton: Yes.

Ariane Burgess: As I said in my statement, rabbits are sentient beings and I think that they should be protected. We took a great deal of evidence on that during our committee hearings.

Rachael Hamilton: I know that you will not accept another intervention, but I did want to ask whether you think that a rat is a sentient being.

The Convener: I call the minister.

The Minister for Environment and Land Reform (Màiri McAllan): Thank you, and good morning.

I will begin with comments regarding amendment 131, in the name of Liam Kerr. I reassure Mr Kerr that a key concept of the bill is that hunting is an intentional act. A person cannot accidentally or unintentionally hunt, just as a person cannot accidentally or unintentionally run. That is important. Lord Bonomy described at length the complications that arose from the mental state provisions in the 2002 act, which Liam Kerr referred to, and the particular difficulty that arose from trying to prove a person's intent when enforcing legislation.

With that in mind, I cannot support amendment 131 for two reasons. First, it is unnecessary because intention is implied in the act of hunting. Secondly, the amendment would create uncertainty as to when intent would be assessed. For example, if a person allowed their dog to chase a wild mammal and, instead of recalling the dog, encouraged it to pursue and kill the mammal, that person could argue that they did not know that that was their intended use of the dog when they set off but that that had changed at some point. There is dubiety that could lead to the enforcement problems that Lord Bonomy talked about.

Ultimately, amendment 131 would weaken the principal offence and could take us back to the enforcement problems that are associated with the 2002 act. For those reasons, I ask Liam Kerr not to press amendment 131.

I will move on to amendments 58 to 62, which are in the name of Edward Mountain. As has been said, the amendments would insert a new exception that could allow the use of a pack of dogs to chase and kill rabbits if a person had permission from the landowner. Amendments 58 to 62 would do that by creating a new exception which, in effect, would remove rabbits from the scope of the bill. The proposed new exception is not subject to the same conditions that are found in the other exceptions, including the important two-dog limit. The only requirement would be that of obtaining landowner permission. It would then not be an offence to hunt rabbits, which would include chasing and killing rabbits with a pack of dogs.

I have spoken at length about why rabbits were purposely added to the definition of "wild mammal" in the bill for reasons of animal welfare. Edward Mountain said that rabbits do not suffer more than other animals. That is slightly beside the point—which is that they suffer in the same way as other animals and ought to have parity with other animals, such as hares. We also chose to include rabbits in the bill to close the loophole whereby persons engaging in hare coursing were claiming that they were hunting rabbits.

Edward Mountain: You will know, minister, as I explained earlier, that rabbits and hares hide in different locations. When someone flushes a rabbit, its first instinct is to go down a burrow, which is usually nearby and often within 20m of where it is feeding, whereas hares hide in open ground. That is not coursing, because the rabbit will probably go straight underground.

The problem is, therefore, that a person might have committed an offence simply by flushing the rabbit using three dogs. That would not be their intent—most people would want to call their dogs off before they chased a rabbit, because letting

them do so would be bad practice anyway. Do you accept that, on that basis, rabbits should not be included?

09:30

Màiri McAllan: No, I do not accept that, although I am grateful to Edward Mountain for his explanation. His description of a rabbit's behaviour is probably right, but that does not remove or take away from the two key reasons why we have included rabbits in the bill, which are parity in relation to animal welfare and the reality that people are hare coursing under the guise of hunting rabbits, which we need to try to stop.

We have spoken at length about why consistency in the conditions in the bill, especially the two-dog limit, is important. The exceptions in Edward Mountain's amendments would undermine the bill's aims and objectives, because ultimately packs of dogs would be able to kill and chase rabbits, so I cannot support the amendments.

I cannot support amendment 63, which would change the section 1 definition of "hunting" and conflate the activities of "searching" and "coursing" in a single activity. The effect would be that any act of searching for a wild mammal without coursing would not constitute hunting, which could remove a large amount of activity from the scope of the bill. It might mean, in essence, that unless a person was caught in the act of flushing or chasing a wild mammal, they could go out with a pack of dogs and claim that they were simply searching for wild mammals with no intention to flush or chase them.

There is legal precedent for the Government's position in that regard. In the first Scottish prosecution of the main offence under the 2002 act, in *Fraser v Adams*, the sheriff accepted that, as part of the meaning of "to hunt", it was not necessary for an animal to have been located or killed for hunting to have taken place. The definition of hunting in the bill is non-exhaustive, but amendment 63 could mean that searching for an unidentified wild mammal would not constitute hunting, which would undermine what we are seeking to achieve with the bill and would create a significant loophole.

Amendments 64 to 68, which are also in the name of Edward Mountain, are about removing weasels, stoats, mink, polecats and ferrets from the definition of "wild mammal", thereby allowing a person to hunt them, which would include chasing and killing them using a pack of dogs.

I ask the committee to note that those species are all included within the definition of "wild mammal" in the 2002 act, which means that it is currently illegal to chase and kill them. Edward Mountain's amendments would therefore take us

backwards, rather than forwards, as we hope to move. In addition, polecats are one of Scotland's rarest mammals—they are protected under the Wildlife and Countryside Act 1981 and can be controlled only under licence from NatureScot. I cannot see a rationale for excluding them from the bill, and I think that it would have negative welfare implications if we were to do so.

Amendment 110, in the name of Colin Smyth, seeks to require "evidence that supports" the position in a defence. That is opposed to the bill as currently drafted, which requires a person "to show" that they

"reasonably believed that any of the exceptions ... applied."

I listened carefully to Colin Smyth's view, and I do not disagree with him. However, in my view and that of the Government, the amendment is not necessary. In the context of a defence, the current requirement "to show" something would always require presenting some kind of evidence, which would be determined as part of the legal proceedings. The formulation of the statutory defence in the bill is consistent with the approach that is taken to statutory defences in other pieces of legislation, including the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 and the Hate Crime and Public Order (Scotland) Act 2021.

I understand Colin Smyth's position, and I reassure him that what is in the text of the bill will already require that evidence be shown. I therefore ask him not to move amendment 110.

Liam Kerr: I welcome the remarks, both general and specific. After listening to what I thought were very thought-provoking contributions from colleagues and the minister, I am content not to press my amendment 131, with the intention of seeking to revise it, perhaps in partnership with the stakeholders that Rachael Hamilton mentioned, and with members, such that it might be tightened up and provide the clarity that was originally intended. I note, in particular, the minister's comments on necessity, which I find interesting and on which I shall reflect.

Any amendment that seeks to give the public a clear message about conduct that is or is not permitted must itself be completely watertight and must not open loopholes of the sort that Ariane Burgess and others have talked about. From the feedback that I have heard today, I am not persuaded that my amendment is yet at that stage. Accordingly, I will not press amendment 131. However, I hope to work with colleagues, and perhaps the minister, to bring back a revised amendment at stage 3, in order to provide clarity without creating loopholes.

Amendment 131, by agreement, withdrawn.

The Convener: Amendment 1, in the name of Ariane Burgess, is grouped with amendments 3, 5, 7, 73 to 76, 162, 212, 213, 77 to 80, 163, 214, 215, 117, 81 to 84, 164, 216, 26, 217, 218, 27, 219, 28, 220, 85 to 88, 165, 221, 89 to 92, 166, 222, 224, 93 to 96, 167, 225 and 13.

Ariane Burgess: I will speak first to my amendment 13, which seeks to remove section 5, which is on the exception that allows one dog to be used for the

“management of foxes and mink below ground”.

I thank Colin Smyth for supporting the amendment.

Our committee received evidence from the Scottish Society for the Prevention of Cruelty to Animals on the consequences of sending dogs underground to flush foxes, which included pictures that show dogs and foxes with horrific injuries and disfigured faces, and written evidence about wild animals

“screaming in terror and pain as they were torn apart by dogs”.

How is that compatible with the bill’s pursuit of the highest standards of animal welfare? Dog fighting is illegal in Scotland, so it should be illegal to send a dog underground where there is suspected to be a fox.

My amendments 1, 3, 5 and 7 are consequential to amendment 13. They would simply remove all references to section 5 from sections 1 and 2.

Jenni Minto’s amendments in the group seek to remove mink from the exception, which would mean that it would be an offence to use a dog below ground to search for or flush mink. I will support her amendments 162 to 167, but I urge the committee to also vote for my amendment 13, which would remove the need for those amendments.

Colin Smyth’s amendment 117 stipulates that a fox or a mink that is brought or chased up from below ground by a dog must be shot immediately rather than killed in another way. I will support that amendment.

I will not support Edward Mountain’s amendments 73 to 76 and 81 to 96, or Rachael Hamilton’s amendments 212, 214, 216, 221, 222 and 225. Edward Mountain’s amendments seek to add four other wild animals to the list of animals that can be legally hunted by sending a dog below ground.

Rachael Hamilton’s amendment 220 specifies that

“a wild mammal which is being searched for or flushed is flushed as soon as reasonably possible after it is located”.

However, that could be used as a justification for using more than two dogs to flush the animal more quickly.

Rachael Hamilton’s amendment 224 would require, among other things, reasonable steps to be taken to prevent injury to the dog that is used underground. I am concerned that its provisions could be used as an excuse to send two dogs underground so that they could flush the fox more quickly.

Accordingly, I urge the committee to support amendments 1, 3, 5, 7 and 13. I also ask the committee to support the amendments of Jenni Minto and Colin Smyth, but to vote against the other amendments in the group.

I move amendment 1.

Edward Mountain: I believe that I have made the case for including weasels, stoats, polecats and ferrets. I understand what the minister has said about polecats, but there are domesticated polecats that have gone feral, which is why I have included them. I believe that we should have the ability to flush them from below ground and to search for them below ground.

As people will know, weasels often use mole burrows to hide, and using a terrier to move along a mole burrow to flush the weasel is an effective way of controlling it. Stoats, too, will hide in small holes, and it might be beneficial to use a dog to flush them.

I turn to the arguments on mink. It is important to keep mink in the section, because they are a predatory species that cause untold damage to the native fauna of Scotland. They damage important species that need to be protected, so they should be included in the bill.

On the other amendments in the group, I understand Ariane Burgess’s position on using dogs to flush animals from underground, but I do not believe that that is the case. There are times when that is important—for example, dogs are the only way of getting foxes out from stone cairns, and the foxes are subsequently shot.

On Jenni Minto’s comments, as I have stated, I believe that it is important to get rid of mink. You would not want mink on islands such as Orkney or Shetland, which Ariane Burgess represents, because they absolutely decimate ground-nesting birds, so controlling them by any means possible should be encouraged. I accept Ariane Burgess’s point that the mink officers were not encouraging the use of dogs underground, but they provided traps and rafts. They encouraged owners to kill mink.

I declare an interest. I have had a mink officer visit the bit of river that I am responsible for, and they encouraged me to kill mink by every legal

method possible. I am sorry, convener: I probably should have said at the beginning that I am a farmer. I have declared that to the committee before. If there are any interests that relate to farming and field sports in my entry in the register of members' interests, I should have declared them at the outset. I hope that the committee will forgive that oversight and accept my declaration at this stage.

I am not entirely sure what Colin Smyth's amendment 117 is trying to achieve. Any wild mammal that comes to the surface would immediately be killed by shooting, where that is possible and safe to do.

Finally, if I were allowed to vote, I would support Rachael Hamilton's amendment 225.

I would like all my amendments to be agreed to, because they are important for the control and management of the environment. I do not support Jenni Minto's amendment, I do not understand Colin Smyth's amendment and, sadly, I think that Ariane Burgess's amendments are wrecking amendments that would remove an important legal form of control for predators in the countryside.

Jenni Minto (Argyll and Bute) (SNP): It is clear that the use of dogs underground continues to be a contentious issue and, as we can see from the wide range of amendments that have been lodged, there is quite a split between members on the best approach to take in the bill. On the one hand, we have a set of amendments that, if agreed to, would place further restrictions on the use of dogs underground or ban the practice completely and, on the other hand, we have several sets of amendments that would widen the scope of section 5 by allowing more than one dog to be deployed underground for a broader range of purposes and to control a greater number of species than the bill currently permits.

I have listened to all the evidence that has been presented to the committee up to this point, and I have carefully considered all the amendments that have been lodged by my fellow MSPs. Because of the clear welfare issues that can arise from using dogs underground, I believe that the exception in section 5 of the bill should be drafted as narrowly as possible.

The bill currently allows for dogs to be used underground to control mink and foxes. I know that a complete ban on the use of dogs underground to control those species is supported by some members of the committee, but I am concerned that such a ban would seriously curtail the ability of land managers to undertake effective fox control in certain circumstances.

As we have heard, mink are classified as an invasive species because of the danger that they pose to native Scottish birds and mammals. I

agree that it is necessary to control their numbers, including by eradicating them from certain areas, but, during the course of the bill, I have become aware that the majority of mink control in Scotland does not involve the use of dogs underground. For example, the Scottish invasive species initiative does not deploy dogs underground in its mink control project. Instead, it successfully uses a combination of surveying, to confirm the presence of a mink population, followed by the setting of live-capture traps. I understand that, in the three years after the project started, it captured 371 mink from 172 sites.

09:45

Edward Mountain highlighted the issue with mink. In the Uists and perhaps in the wider Outer Hebrides, the Hebridean mink project seeks to eradicate mink from the islands and monitors North Uist and South Uist for mink activity. That project, too, uses traps instead of sending dogs underground to flush mink. As I understand it, the project started in 2001, and in 2016 only seven mink were caught on Lewis and Harris. No juveniles have been caught since 2015, but monitoring continues in the Uists.

It is clear that there are established and proven ways of managing mink that do not give rise to some of the same welfare concerns as the use of dogs below ground does. For those reasons, section 5 should be amended so that it is no longer permitted to send dogs underground to flush mink. I hope that members agree and support amendment 162 and the other amendments in my name in the group.

Rachael Hamilton: I will give an overview in relation to amendment 212 and the other amendments in my name in the group.

Section 5 limits the use of a dog below ground to the hunting of fox and mink, which reflects the existing provision in the 2002 act on the use of a dog below ground. However, there has been a failure to recognise that rabbits are excluded from the scope of the 2002 act but are included in the scope of the bill. If rabbits are to remain in the scope of the bill, that must be recognised in section 5. There is no logical reason to allow a dog to go below ground to flush a mink or a fox but not to flush a rabbit. In other exceptions in the bill, the term "wild mammal" is used; that term should be used in section 5.

It would be beneficial to avoid the anomaly of permitting someone to use a ferret but not a dog to go below ground to flush a rabbit. My proposed approach would future proof the legislation should it ever be necessary to control any other below-ground-dwelling mammal or non-native species.

Amendments 212 to 216, 221, 222 and 225 would retain some of the wording of the existing legislation. The Protection of Wild Mammals (Scotland) Bill was substantially amended during its parliamentary stages to reflect the evidence and reality when it comes to wildlife management on the ground. MSPs listened to evidence from people who undertook control on the ground. As a result, the 2002 act recognises that there are enclosed or secure places that might not technically be below ground level and in which dogs might need to be deployed in the same way as they would be if the wild mammal was below ground. Foxes frequently reside or seek refuge in places that it could be argued are above ground, such as on rock faces or in cairns or rock piles. My approach would provide additional clarity by ensuring that terriers could be deployed, where necessary and appropriate. Lord Bonomy was clear about the importance of terrier work, as was the Rural Development Committee in its 2001 report on the Protection of Wild Mammals (Scotland) Bill at stage 1.

On amendments 217 and 226, the purpose of allowing a person to use a dog below ground is to enable fox control and effective wildlife management. There is no reason why the use of a dog in those circumstances should be limited to the protection of livestock and should not be allowed for environmental purposes, such as protecting vulnerable ground-nesting birds—for example, curlew and capercaillie. If the activity is acceptable for one purpose, it should be acceptable for all purposes that are identified in the bill. That is the approach of the 2002 act, and there is no logical reason to change it. Amendments 217 and 226 seek to retain that aspect of the 2002 act.

It is worth recalling the conclusions of Lord Bonomy and Lord Burns on the importance of terrier work. Lord Bonomy noted:

“The material presented to the Review is persuasive of the need for the use of terriers to ensure the despatch of a fox gone to ground.”

He went on to say:

“there is no ... scientific evidence of the extent of the impact on the fox. Indeed it was observed in the Burns Report that the banning of hunting could have an adverse effect on the welfare of foxes in upland areas unless dogs could be used at least to flush foxes from cover. The same would apply in the case of young cubs orphaned below ground in a den.”

On amendments 218 and 227, clear evidence was provided to the committee that, although ordinarily only one dog should be used below ground at any one time, there are circumstances in which more than one dog is needed to flush a fox effectively. There can be good welfare reasons for that.

That is the reason why the National Working Terrier Federation code is worded as it is and why Lord Bonomy’s recommendation is worded accordingly. That is the wording on which the Scottish Government consulted ahead of the bill’s introduction. In its consultation on Lord Bonomy’s recommendation, the Scottish Government asked:

“Do you agree with Lord Bonomy’s suggestion that the legislation should impose a restriction in line with the Code of Conduct of the National Working Terrier Federation that, wherever possible and practical, only one terrier should be entered to ground at a time?”

Lord Bonomy’s recommendation was subject to the caveat that any restriction to one dog would apply wherever possible and practical. In contrast, the bill creates an absolute restriction to one dog, which goes beyond his recommendation.

Rule 3(c) of the NWTF code of conduct states:

“It is recommended, wherever possible and practical, that only one terrier is entered to ground at a time. Note: Typical exceptions would be for example if working large cairns, rock piles and similar structures with multiple entrances and exits and no clearly defined tunnel structures, or in the event of a locating equipment failure, or in order to facilitate a rescue.”

The intention of the 2002 act, just like the NWTF code, is to ensure that the quarry is flushed as quickly and safely as possible below ground so that it may be shot and to ensure that the terrier spends the absolute minimum amount of time below ground. That is why rule 3(c) is written in the way that it is. It is about the welfare of the dog and fox or mink.

In certain circumstances and in different types of earth, as described in rule 3(c), the most effective, safe and humane practice may be to enter more than one terrier. The same applies to large areas of wind-blown forestry, which are common in Scotland. Entering a single terrier into some of those places is rather like entering a single dog or two dogs into a large area of forestry. The fox can easily evade a single dog. It does not feel pressured and, instead, skulks about in the place all day long.

The change proposed in the bill would undermine the effectiveness of the use of terriers in some situations and represent a problem for animal welfare. It is worth recalling that Lord Bonomy was clearly supportive of terrier work and the important role that it plays in pest control.

Please bear with me, convener.

On amendments 219, 28 and 220, the revised and shortened definition of “under control” in the bill as introduced would, in effect, prevent the use of dogs below ground. It requires that the person who is responsible for the dog must be

“able to direct the dog’s activity by physical contact or verbal or audible command”,

which has no relevance to the activity that is taking place. Not only is that contrary to best practice but, if followed to the letter of the law, it would have negative welfare implications.

The most basic requirement in using dogs below ground is to ensure that silence is maintained at all times. The quarry must feel that it is more secure if it leaves its earth rather than staying where it is to be chided by a terrier dog. To engage in any form of “verbal or audible command” would only serve to destroy that illusion. It would discourage the quarry from leaving and create an underground stand-off. As the dog is below ground, “physical contact” is not possible either.

The issue could easily be resolved by reverting back to the definition that is used in the 2002 act, which includes the alternative:

“the dog is carrying out a series of actions appropriate to the activity undertaken, having been trained to do so.”

Alternatively, rule 11 of the National Working Terrier Federation code, which requires the use of electronic locating equipment whenever a dog is below ground, could be added as a condition. That equipment enables the handler to track the dog’s movements and location with pinpoint accuracy throughout the process. Today, no responsible terrier owner would even consider permitting their dog to go below ground unless it was wearing a locator collar.

Section 5(3)(b), which requires that

“the dog used in the activity is under control”,

should be deleted if the definition of “under control” is not amended and replaced so that the dog that is used is fitted with suitable electronic locating equipment. That is a far more desirable option, and it has significant additional welfare and practical benefits. Even if the definition of “under control” is amended, there would be merit in adding the fitting of locator equipment as one of the conditions for the use of the dog below ground.

On amendment 224, the bill has omitted provisions from the 2002 act that were included for the welfare of the quarry and the dog deployed. However, there is an opportunity to put in further measures to safeguard welfare by requiring the use of locating equipment and making it clear that, unless netting, nothing should be done to prevent the animal from leaving the place below ground.

Amendment 224 would protect welfare and ensure best practice. The requirement for locator equipment should replace the requirement for a dog below ground to be “under control”, as the current definition of “under control” is not workable in the context of dogs used below ground; the 2002 act recognised that in its definition of “under control”. If the definition is properly amended, the

requirement for locator equipment could still be incorporated in the bill.

The Convener: I call Colin Smyth to speak to amendment 117 and the other amendments in the group.

Colin Smyth: My standpoint on this group is that I do not support the use of dogs below ground to control wild animals. The bill seeks to limit the number of dogs to one, with the unrealistic idea that the dog would be controlled. However, if it is cruel to use two dogs underground, it is clearly cruel to use any dog at all. I am not surprised, therefore, that the committee, in its stage 1 report, stated:

“It is not clear ... that the use of dogs at all below ground is compatible with the Bill’s pursuit of the highest possible animal welfare”.

In my view, it is not compatible, and I hope that amendment 13, in the name of Ariane Burgess, which seeks to remove that exception, and which I support, is successful, along with consequential amendments 1, 3, 5 and 7.

Amendment 117, in my name, which would be relevant only if that exception were not removed, seeks to deal with the fact that the exception in the bill for the use of dogs underground applies to a person using a dog below ground to “search for” or “flush” a wild animal

“with the intention of killing it”.

However, it does not specify how they should intend to kill the mammal.

Amendment 117 specifies that the intention should be to dispatch the animal “by shooting”. It seeks to require explicitly that there is no intention for the dog to kill the wild mammal, although by specifying that the intention is to dispatch the wild mammal by shooting, it ensures that a more humane method of killing than being killed by a dog is used should the wild mammal emerge from under the ground. It also avoids a possible cover story should a wild mammal be flushed from underground and then a dog be used to kill the wild mammal. Edward Mountain says that he believes that the wild mammal would be shot. The amendment seeks to state in the bill that it should be shot.

Amendment 117 therefore seeks to avoid not only the deliberate killing of wild animals by dogs but the creation of another unnecessary loophole. I therefore urge members to support amendment 117.

Edward Mountain: I now understand the intention behind amendment 117. It could be made more understandable by adding the words “on being flushed” before the proposed wording about the mammal being immediately killed by shooting. That might be a better way of achieving

what Colin Smyth seeks to do. It would be clear that the person was not flushing the mammal to course it or to cause any pain and that their immediate intention was to shoot it.

If the bill were to say that, if the mammal came out, a person could in all circumstances shoot it, that might not be possible, in the sense that the mammal could go in the direction of a house or farm steading, which would make shooting dangerous; there could be tension with a group of people walking in the countryside or whatever. There are dangers in that regard, and I would feel more comfortable with adding wording to the effect of “with the intention of immediately shooting it”. I wonder whether the member would consider adding that wording, as it would make the amendment better.

Colin Smyth: I believe that the amendment is already clear, and I would find it quite disturbing if we were arguing that somebody would carry out shooting in any circumstances in a way that was in any way dangerous to anyone. I am happy to listen to the debate, if members believe that my wording is not clear, but I personally believe that it is.

It is important to note that the amendment would be an addition to section 5(1), which refers to using a dog

“to flush a fox or a mink from below ground”.

That is the context for the proposed reference to killing the animal “immediately by shooting” should it emerge. The key point of the amendment is that the current wording of the bill simply states:

“with the intention of killing it for one or more of the purposes set out in subsection (2)”.

It does not specify how that animal should be killed, and my concern is that dogs could be used in those circumstances, which goes against the whole purpose of the bill.

Mercedes Villalba: I thank the members who have lodged the amendments in this group. I will be supporting amendments 1, 3, 5, 7 and 13, in the name of Ariane Burgess, as they would remove the exception for management of foxes and mink below ground—an activity which I am not assured can meet high animal welfare standards for either dogs or wild mammals. As has already been stated, the committee’s stage 1 report said that it is not clear that the use of dogs below ground at all is compatible with the bill’s pursuit of the highest possible animal welfare standards.

10:00

I will also support amendments 162 to 167, in the name of Jenni Minto, which remove mink from the exception on the use of dogs below ground, so

that, if the exception does remain, at least that species will be protected from that activity.

I will also support amendment 117, in the name of Colin Smyth, because it would tighten the legislation by specifying that the intention should be to kill the animal by shooting, thereby ensuring that less humane methods are not used.

I cannot support amendments 73 to 96, in the name of Edward Mountain, as they would add weasels, stoats, polecats and ferrets to the exception, thereby widening its scope, whereas I would wish to see it removed altogether. Similarly, I cannot support amendments 212 to 219, 221, 222, 225 and 26 to 28, in the name of Rachael Hamilton, as they would widen the scope of the exception in one form or another.

I listened with interest to Ms Hamilton’s explanation of her amendments 220 and 224. I am not currently minded to support those amendments because, like Ariane Burgess, I have concerns that they could be used as an excuse to justify the use of more than two dogs. However, I would be interested in hearing the minister’s comments on those amendments in due course.

The Convener: Does any other member wish to speak before I invite the minister to speak to the amendments in this group?

Alasdair Allan (Na h-Eileanan an Iar) (SNP): I will come in briefly. Mr Mountain raised a point about the importance of eradicating mink in many parts of Scotland, and he cited the Hebrides. I merely want to confirm what Jenni Minto said, which is that I have visited those projects and they do not use dogs; as has been pointed out, they use satellite-positioned live traps.

Edward Mountain: Sorry—it is just that mink are not just an important problem on islands, where they are definitely an invasive species; they also cause problems on the mainland, where they are also invasive. Consequently, many of the riverine courses on the mainland have trees and roots underneath which the mink hide. If you are trying to track down a mink and remove it, it often helps to have a terrier working through the roots, which, technically, according to the definition, could be taken to be under ground. However, I believe that in doing so you would be legitimately trying to carry out a policy that the Government is trying to support. Although the use of dogs might not be important on the islands, it is important on the mainland.

The deputy convener might be able to help on this point, but I think that when stoats—or perhaps it was weasels; I always get the two confused—were on Orkney, people originally used terriers to track them down and sent down tracking dogs to find out exactly which holes they were hiding in, so that they got the right ones in subsequent

trapping. I think that I am right in saying that that was the practice for stoats, but I am sure that the deputy convener will correct me if I have got that wrong.

Beatrice Wishart (Shetland Islands) (LD): I am not sure that I can correct you. I think that you know more about that than I do.

Jenni Minto: I want to respond very briefly to Mr Mountain's comments. As I highlighted earlier, the Scottish invasive species initiative on the mainland, which stretches from Durness in the north to the Firth of Tay, does not use dogs; instead, it uses mink rafts with clay pieces to obtain the paw prints and then it uses live-capture mink traps.

Edward Mountain: Will you take a supplementary on that? I accept your point, but the fact is that those mink rafts are deployed with traps on them, which are given to landowners to trap the mink on river banks and not just on the rafts. Certainly in the Cairngorms national park, of which I have a lot of knowledge, they are encouraging us to kill mink in any way that is legally possible. I think it important that we do so if we are to protect the species in the Cairngorms that we need to, the populations of some of which are waning due to bad management.

The Convener: I invite the minister to speak to the amendments in the group.

Màiri McAllan: Like Rachael Hamilton, I ask members to bear with me as I go through the amendments.

I begin with amendments 1, 3, 5, 7 and 13, in the name of Ariane Burgess, which seek to remove section 5 entirely from the bill. In developing the bill, I have sought to balance the highest possible animal welfare considerations against the need for effective wildlife management, as I accept that the latter is necessary in our rural nation. I know, however, that the use of dogs underground is a very polarising issue, and Ariane Burgess spoke clearly to some of the live welfare concerns. I understand why she lodged her amendments, because I, too, have heard the evidence about the use of dogs underground and how that can pose a risk to the welfare of both the wild mammal and the dog.

That is why the bill places a strict limit on the purposes for which dogs can be sent underground and the species of mammals that they can be used to search for and flush. Ultimately, from the work that my officials and colleagues and I have undertaken in developing the bill, it has not been clear that there is a viable alternative when it comes to fox control. No more humane methods have been put to me that would fulfil the same function. In fact, it has been put to me that some less humane methods may be used, including

blocking up a den, which would result in starvation. I think that everybody would want to avoid that. After giving the matter a great deal of thought and weighing up all the evidence that has been put before me, I am therefore unfortunately unable to support those amendments.

Amendments 73 to 96, in the name of Edward Mountain, would—as we have discussed—add weasels, stoats, polecats and ferrets to the list of wild mammals that can be searched for or flushed using a dog underground. I have seen no evidence that it is necessary to allow the use of dogs underground to control those mammals. As I rehearsed earlier, the polecat is one of Scotland's rarest mammals and a priority species under the United Kingdom biodiversity plan.

The welfare concerns that are inherent in the use of dogs below ground mean that we must ensure, as I just said in responding to Ariane Burgess's amendments, that these provisions are drawn as narrowly as possible. As Jenni Minto described, projects on Orkney and throughout the country have used other effective methods, such as trapping, to ensure that those species can continue to be controlled in the best way possible. I will therefore not be supporting these amendments.

I turn to amendments 162 to 167, in the name of Jenni Minto. I have listened carefully to the arguments that have been put forward and, for all the reasons that Ms Minto outlined, I will support those amendments to section 5. We have seen plenty of evidence that other effective methods of mink control are available, and the provision on mink is in line with my desire to see the provision for dogs underground being drawn as narrowly as possible.

Amendments 212, 214, 216, 221, 222 and 225, in the name of Rachael Hamilton, would allow the use of dogs below ground to search for any species of wild animal by removing the reference to fox and mink in the bill and replacing it with a reference to any animal. As I said in response to Edward Mountain's amendments, I have not seen any evidence to justify the use of dogs underground to control other species of mammals. In fact, everything that I have heard about the welfare concerns around sending dogs undergrounds leads me to the conclusion that, as I said, we must draw these provisions as narrowly as we can.

Amendments 213 and 215, in the name of Rachael Hamilton, seek to amend the section 5 exception to include

"from an enclosed space within rocks or other secure cover above ground".

In my view, that would widen the reach of section 5 to include searching for and flushing wild mammals above ground as well as below ground.

Rachael Hamilton alluded to the wording in those amendments being taken from section 2(3) of the 2002 act, and she was right to quote Lord Bonomy's comments on terriers. However, I ask her to note his comments that

"Consideration should be given to framing section 2(3) more narrowly by removing reference to using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground."

The amendments in Rachael Hamilton's name could reverse the action that we have taken to implement Lord Bonomy's recommendations by separating the use of a dog below ground in a different section, which could create an unnecessary and confusing overlap between the exceptions. I therefore cannot support the amendments.

Amendment 117, in the name of Colin Smyth, would require a person using section 5 to intend to kill the wild mammal "immediately by shooting". Although the amendment may not appear to be problematic, and I have some sympathy with what Colin Smyth is seeking to achieve, it would create two anomalies, which I will share with the committee. The first is that a requirement to shoot "immediately" would be at odds with the consistent use of the wording

"as soon as reasonably possible"

throughout the bill. One of the main themes of Lord Bonomy's review was the need for consistent language.

The second anomaly is that, in practice, there is always the chance that, when a person is searching for a wild mammal underground, that mammal may not actually emerge. Although the person may have intended to shoot it, therefore, their intention cannot determine what happens in practice, so there could be a difference there. I understand Colin Smyth's concern, and I reassure him that section 5(3)(d) states that,

"if the fox ... is found or emerges from below ground, it"

must be

"shot dead, or killed by a bird of prey, as soon as reasonably possible".

I think that that achieves a lot of what his concerns are pointing to. That is before we consider the practical need to ensure that any dogs—or indeed people, as Edward Mountain suggested—are out of the line of fire before "immediately ... shooting". For those reasons, I cannot support the amendment.

I move swiftly on to amendments 26 and 217, in the name of Rachael Hamilton. As a result of

welfare concerns, section 5, which facilitates limited control underground, has deliberately been drawn as narrowly as possible. I have heard evidence that it is sometimes necessary to deploy dogs underground in the course of controlling foxes to protect livestock, but I have heard no evidence whatsoever on allowing the use of dogs underground for environmental benefit. The current legislation does not allow dogs to be used underground, for all the purposes that are set out in section 7, which is on environmental benefit. Those amendments would therefore go further than the law as it stands, and for that reason I cannot support them.

Amendments 218 and 27, in the name of Rachael Hamilton, seek to amend section 5 to allow the use of more than one dog underground. No strong evidence was brought forward at stage 1 to support amending the bill to enable the use of more than one dog underground. Restricting the number of dogs that can be used to one is in line with the recommendation that was made by Lord Bonomy. It also reflects best practice, as set out in the code of practice by the National Working Terrier Federation, which already suggests one dog. Moreover, animal welfare groups have said that, if dogs are to continue to be used underground, a one-dog limit should apply. In addition, I draw the committee's attention to the fact that the Hunting Act 2004, which governs the use of dogs underground in England and Wales, limits the number of dogs that can be used underground to one, albeit for different purposes. For those reasons, I do not support these amendments.

Amendment 219, also in the name of Rachael Hamilton, seeks to remove the section 5 requirement that a dog that is used underground must be "under control". Ensuring that dogs that are being used to control wild mammals are kept under control is a key tenet of the bill, and it is embedded in all the exceptions that set out when and how dogs can be used. I can see no justification for waiving that fundamental requirement in respect of dogs that are being used underground. In fact, given everything that we have discussed with regard to welfare considerations, it is vital for both the wild mammal and the dog that the dog can be controlled when it is underground. For those reasons, I cannot support the amendment.

Amendment 28, in the name of Rachael Hamilton, seeks to include the wording

"or dogs as the case may be"

after the word "dog" in section 5(3)(b). I do not support the use of more than one dog underground. However, even if I did, the amendment would still be unnecessary given the application to the bill of section 22(a) of the

Interpretation and Legislative Reform (Scotland) Act 2010, which provides that

“words in the singular include the plural”,

unless the context requires otherwise.

Amendment 220, in the name of Rachael Hamilton, seeks to add to section 5 the condition that the

“wild mammal ... being searched for”

must be

“flushed as soon as reasonably possible after it is”

found. I understand that the wording is imported from the 2002 act; I am always cautious about that. In drafting the bill, I intentionally did not include that in the exception because of the unpredictability of knowing what will happen when a dog is used underground, which is inherent in the practice.

During stakeholder engagement, those who work with terriers underground cited examples of where the terrier and fox would stand off, which would result in the fox not being flushed at all and would end up with both animals being dug out. I am sure that this is not what Rachael Hamilton intended, but amendment 220 would make such a situation, which is obviously important for the welfare of the animals, illegal by allowing a fox only to be flushed if it is found, not dug out or left underground without harm. Therefore, I cannot support it.

10:15

Amendment 224, also in Rachael Hamilton's name, amends section 5(3) to add a list of further conditions that must be met when using dogs underground.

The welfare of a dog that is being used underground is clearly important. It is already covered by the Animal Health and Welfare (Scotland) Act 2006, which came into force after the 2002 act, which we are amending. Section 19 of the 2006 act provides that

“A person who is responsible for an animal commits an offence if—

- (a) the person causes the animal unnecessary suffering by an act or omission, and
- (b) the person knew, or ought reasonably to have known, that the act or omission would have caused the suffering or be likely to do so.”

Despite that, I am open to it perhaps being helpful to clearly set out in the bill the specific conditions that we think should apply in this specialised and difficult area. For that reason, I am happy to accept the principle of amendment 224 but would like to consider the precise wording further and come back, if the member agrees, with

an amendment that achieves a similar effect at stage 3.

Ariane Burgess: I thank Jenni Minto, Colin Smyth, Rachael Hamilton and Edward Mountain for lodging amendments in the group. As I explained, I support Jenni Minto's and Colin Smyth's amendments, which would serve to improve animal welfare. However, to achieve the highest possible standards of animal welfare, we would need to remove section 5 completely, so I urge members to vote for my amendments in the group.

I cannot support Edward Mountain's or Rachael Hamilton's amendments in the group, the majority of which serve to expand the exception and loosen the loophole. The exceptions to the bill should be as few as possible and as narrowly defined as possible to avoid loopholes and situations in which wild animals might suffer.

The minister raised concerns that no other, more humane methods have been put to her. I am aware of the concerns that removing the exception for foxes could lead to an increase in other cruel practices that were mentioned, such as snaring, blocking up of holes or even poisoning. However, we should not be afraid to legislate against cruel practices for fear of other cruel practices being used. We should legislate against all of those cruel practices, ensure that the legislation is enforced and support land managers to adopt more ethical practices that are also more effective for the long term.

For example, the RSPB does not use dogs to flush foxes, and nor does it use snaring. Instead, it uses trained marksmen to shoot foxes, on the ground that it is the most humane and efficient method of necessary fox control. That is why the bill should encourage the use of wildlife management methods that align with the seven principles of ethical wildlife control. I will look to ensure that an amendment on that is lodged at stage 3.

Rachael Hamilton: Will Ariane Burgess take an intervention?

Ariane Burgess: I am just winding up.

I will press amendment 1.

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

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Minto, Jenni (Argyll and Bute) (SNP)
 Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 1 disagreed to.

The Convener: Amendment 2, in the name of Ariane Burgess, is grouped with amendments 132, 133, 4, 134, 135, 6, 136, 137, 8, 138, 139, 123, 227, 100, 146, 101, 102, 228, 14, 142 and 143.

Ariane Burgess: My amendment 14 removes the exception that would allow the use of up to two dogs as part of falconry, game shooting and deer stalking. I thank Colin Smyth for supporting it.

Falconry, game shooting and deer stalking are legal in Scotland, but that does not justify the use of dogs when that has such impact on animal welfare that the Scottish Government is introducing legislation to make it, by and large, an offence. Why should there be an exception from that offence for sport, of all purposes? I support the Scottish SPCA's calls for a complete ban on the use of dogs in sport, which would require removing section 6. Further, we cannot allow that exception to be another loophole for fox hunts, as in England, where hunts have been known to carry birds of prey as a token presence to circumvent the two-dog limit there.

I urge committee members to consider every amendment from that point of view. Could it be used as a loophole? If falconry, game shooting and deer stalking for sport must persist, those activities should have to be done without the use of dogs.

Amendments 2, 4, 6 and 8 are consequential on amendment 14. They would simply remove all references to section 6 from sections 1 and 2, which define the offences under the bill.

Colin Smyth's amendment 123 would remove falconry for sport but not game shooting or deer stalking from the field sports exception. I support the amendment and urge members to vote for it in case my amendment 14 is disagreed to. I also support Colin Smyth's amendment 146, which would remove the restrictive definition of "game shooting" from section 6 and would mean that using dogs while shooting game birds would be subject to the same conditions.

I will not support Rachael Hamilton's amendments 132 to 139, 227, 228, 142 and 143. I urge the committee to support amendments 2, 4, 6, 8 and 14, and Colin Smyth's amendments 123 and

146, and to vote against Rachael Hamilton's amendments.

I move amendment 2.

The Convener: I call Rachael Hamilton to speak to amendment 132 and the other amendments in the group.

Rachael Hamilton: Rough shooting has been very much in the spotlight during the past few committee sessions. From the outset, it has been abundantly clear that we need an exception for rough shooting. The British Association for Shooting and Conservation, the Scottish Countryside Alliance, the Scottish Gamekeepers Association and others have put forward credible, well-evidenced and legitimate points as to why rough shooting should continue, unhindered, through an exception.

During the round-table session, the issue of enforcement and proportionality was raised. BASC noted that there was a "good working relationship" with Police Scotland. However, Peter Clark from BASC and others noted that they felt that the drafting of the bill meant they could not conduct a rough shoot with confidence or without "vexatious allegations" over the breach of the two-dog limit. That is what amendment 142 and consequential amendments in my name seek to address.

I am mindful, as are BASC and others, that such an exception should never be a loophole, now or in the future. Those in the shooting community want to continue their lawful, legitimate activity without fear of vexatious allegations. They want to see the highest standards of animal welfare, and, by allowing an exception for rough shooting, they can continue that activity.

Amendment 142 recognises that, during a rough shoot, one, two or more dogs may be present; however, not all dogs are working simultaneously, due to the presence of a beating line and standing guns. Dogs do not form a literal pack as hounds do. Spaniels, Labradors and other gun dogs are not pack dogs, as the minister recognised in her response to the evidence at stage 1.

The word "intention" comes into play in the proposed new subsection (3). It has been made clear by the rural organisations that, during a rough shoot, there is no intention for dogs to form a pack, unlike in traditional hunting.

Amendment 142 provides an exception that cannot be used as a loophole, on the following basis. Flushing is the only activity during a rough shoot, involving the quick and humane dispatch of game birds and rabbits. BASC raised the point that

"there is no chasing or killing ... with dogs".—[*Official Report, Rural Affairs, Islands and Natural Environment Committee, 22 November 2022; c 3.*]

Hunting with a licence is an activity that requires more than flushing, and anyone who tried to use the exception as a loophole would therefore fall foul of its provisions at the first hurdle.

In the proposed new subsection (3) in my amendment 142, I make it clear that such an activity is a “mixed quarry” day. An illegal hunt would seek to kill only wild mammals; no birds would be taken during a hunt. That is a key differentiation, and, yet again, anyone who was seeking to hunt with more than two dogs illegally for the purposes of chasing would have to apply for a licence.

Taking all of that into consideration, I would welcome the minister’s thoughts on my concerns and the concerns of the organisations, and on how, if she will not support an exception, she might later amend the bill to ensure that rough shooting is protected. It is vital that we get the bill right for rough shooting.

Excuse me, convener—I just need to check that I am speaking to amendments 133, 135, 137, 139 and 143, too.

The Convener: That is correct.

Rachael Hamilton: With regard to those amendments, BASC, the Kennel Club and Scotland’s Regional Moorland Groups have all highlighted the bill’s unintended consequences for field trials. Gun dog trials test the working ability of such dogs in competitive conditions and follow strict regulations set out by the Kennel Club, a well-respected organisation that puts a large amount of resource into developing robust and rigorous guidance on the safe, lawful and humane operation of field trials. That is reflected in these amendments.

Similar to amendment 142, amendment 143, alongside its consequential amendments in my name, allows for field trials to continue unhindered and, for those who partake, confidence that they can carry out that activity unhindered. In response to a recent parliamentary question, the minister confirmed:

“Field trials which only involve the hunting of birds are not covered by the provisions of this Bill.

For field trials that involve the use of dogs to hunt wild mammals the participants will have to abide by the provisions of the Bill.”—[*Written Answers*, 10 November 2022; S6W-11800.]

However, we know that gun dogs are used to flush wild mammals during field trials, with the dogs not chasing or killing them. As with rough shooting, therefore, an exception would be required. Again, I would be grateful if the minister could put on record whether field trials fall under the bill’s scope and, if not, whether she and committee members would support my

amendment for an exception to allow this legitimate activity to proceed lawfully and unhindered.

On amendment 227, the minister has stated that she is unwilling to pursue an exception for rough shooting, despite my clearly setting out the various parameters ensuring that an exception would not or could not be used as a loophole for other illegal activity. I therefore direct members’ attention to amendment 227, which recognises that, during a rough shoot,

“more than two dogs ... are not working simultaneously”

and

“more than two dogs ... do not work together in a pack or in formation.”

I reiterate that, as has been made clear by rural organisations and others, there is no intention during a rough shoot for dogs to form a pack, unlike with other activities. One person uses their own dog or two dogs to flush their own quarry, working in proximity to others, but they do not allow their dogs to form a pack. An exception specifically for rough shooting must be sought for that legitimate activity to continue. It should not be licensed, as that is neither a practical option nor the intention of this bill; as a result, an exception or other mechanism to allow rough shooting to continue unhindered must be considered. I welcome the thoughts of MSPs and the minister on that.

On amendment 228, the wording used in section 6(3) is highly emotive, and the amendment would replace it with neutral language that rural stakeholders feel to be more appropriate. I would add that the objective is to kill the wild mammal for purposes set out in the bill, not simply for it to be “attacked”. The term “kill” is used throughout the rest of section 6, and the amendment would ensure drafting consistency.

Thank you for your forbearance, convener.

Colin Smyth: I support amendment 14, in the name of Ariane Burgess, and consequential amendments 2, 4, 6 and 8, which seek to remove the whole of section 6. I do not believe that we should be killing animals for sport or that removing the section would undermine the bill’s purpose and overall effectiveness. The minister has stated in oral evidence that, in the bill, the Scottish Government is

“pursuing the highest possible animal welfare standards”

and seeking to

“rectify what was supposed to have been done 20 years ago”.—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 29 June 2022 ; c 2, 11.]

If the bill is to rectify the flaws in the 2002 act, there must be the minimum of exceptions and they must not be made for sporting reasons.

If members do not support the amendment to remove section 6, I direct them to amendments 123 and 146, in my name, which seek to remove falconry as a permitted use of dogs. The RAINE Committee rightly questioned the inclusion of falconry in its stage 1 report, and members asked for further information on why such an exception had been included in the scope of the bill and raised concerns about section 6(2)(e), which requires that

“the wild mammal which is being searched for, stalked or flushed is shot dead, or killed by a bird of prey”.

The Scottish Government’s response does not adequately explain how the flushing of a wild mammal to be killed by a waiting bird of prey can be considered any more humane than its being killed by a dog, and its argument that falconry is a permitted activity is even less convincing. The question is, should it be a permitted activity? From the point of view of animal welfare, the answer is very much no. I therefore urge members to support the amendments to remove falconry, at the very least, from the bill’s exceptions.

10:30

Edward Mountain: My concerns in group 3 turn around the heading of “game shooting” and the definition of “game”. That is defined in various acts, and its use in the bill is unclear.

One definition of wild game is ungulates, lagomorphs and other land mammals that are hunted for human consumption. That definition is used in UK legislation. I am a little concerned about the use and definition of the term “game shooting” in the bill. That has prompted my amendments 100 to 102.

I do not believe that all deer stalking is done for sport. Much of it is done as a method of control. For example, in a large block of forestry where the fence had fallen down and deer had got in, dogs were used to move the deer around the plantation, to allow them to be eradicated so that the Caledonian pines in that block could flourish.

Deer stalking is also carried out on open ground and on Forestry and Land Scotland land. Somebody who is given a target for the year, as many rangers are, of shooting and killing 300 deer, which are classified as game, would say that that was not sport but purely deer control.

In addition, falconry, which may be used to control game, is not always carried out for sport. One has to look no further than outside the Parliament, where falcons are used to keep pigeons off the roofs, so that they do not block the

gutters, and to move them away from the Parliament. That it is not to do with mammals. It is not sport, and neither is the falconry that is used in some circumstances to keep mammals away.

I also suggest that, in the term “game shooting”, the definition of “game” is so wide that wild sheep and wild goats would be classified as game. I am not sure that I see them in that way. In most cases, the control of those is not for sport but for environmental reasons.

My amendments 100 to 102 would remove the words “for sport” from those definitions so that there would be no confusion—because “game” animals are not killed just for sport.

I understand the position of Ariane Burgess and Colin Smyth on the other amendments in the group. Suffice it to say that I do not believe that they are correct, and I would find their amendments difficult to support because they seek to ban activities in the countryside that provide jobs and the management of the environment of which we are so proud in Scotland, which is carried out by people such as gamekeepers and rough shooters.

Mercedes Villalba: I am grateful to all members who have lodged amendments in the group. I will support amendments 2, 4, 6, 8 and 14—that sounds like a song—in the name of Ariane Burgess, as those remove the exception for falconry, game shooting and deer stalking for sport. We have heard frequently from the Scottish Government about the need to balance animal welfare with wildlife management. It is not clear how any of the activities in that exception meet either of those categories, so I fail to see a place for it in the bill.

The primary reason for the exception seems to be so that the Scottish Government can avoid a row with the field sports lobby—although, clearly, that has not worked. Regardless of that, removing that exception altogether would strengthen the bill. Failing that—

Rachael Hamilton: What are the animal welfare implications of rough shooting? You seemed to say that the activities compromise animal welfare.

Mercedes Villalba: As I understand it, the intention of the bill is to uphold the highest standards of animal welfare while balancing that with the need to control and manage wildlife. My understanding is that the primary reason for the sporting activities is neither animal welfare nor wildlife management. In regard to rough shooting, we heard that the primary reason was enjoyment and pleasure. That is what I mean by my explanation for supporting amendments 2, 4, 6, 8 and 14.

Failing the removal of the exception altogether, the next most reasonable course would be to remove the exception for falconry, as it is not clear to me why it has been included in the bill. Therefore, I will support amendments 123 and 146, in the name of Colin Smyth.

I cannot support amendments 132 to 139, 142 and 143, in the name of Rachael Hamilton, as they would create additional exceptions for hunting with dogs and allow more than two dogs, which is inconsistent with the rest of the bill. I was interested to hear Rachael Hamilton's explanation of amendment 228 as regards avoiding emotive language, and I would be interested in hearing the minister's response to that point.

I was also interested to hear Edward Mountain's explanation for amendments 100 to 102. I am not currently minded to support them but would be interested in hearing the minister's response to them as well.

Màiri McAllan: Ariane Burgess's melodic amendments 2, 4, 6, 8 and 14 remove the exception at section 6 from the bill with the effect that it would be unlawful to use a dog to search for or flush a wild mammal for the purpose of providing quarry for falconry, game shooting or deer stalking.

Section 6 covers quite a wide range of recreational activities that make a significant contribution to the rural economy. They all may use dogs at some time to search for or flush wild mammals for the purpose of shooting or, in the case of falconry, killing by a bird of prey, and it is therefore right that they come within the scope of the bill and be regulated as other uses of dogs in hunting in the countryside will be. That consistency is important to the bill. However, they are lawful activities and the purpose of the bill is to ensure that, when dogs are used, they are used in a way that protects wild mammals' welfare. It is not to ban otherwise permitted and lawful activities.

Mercedes Villalba made a comment about the Government seeking to avoid a row. That is not the case at all. It is about us, as the Executive, and the Parliament, as the legislature, sticking within the remit of what is intended, has been consulted on and is expected from the bill. Therefore, I cannot support amendments 2, 4, 6, 8 and 14.

Amendments 132, 134, 136, 138 and 142, in the name of Rachael Hamilton, would insert a new section after section 6 that would allow for the use of any number of dogs for the purpose of rough shooting.

Rachael Hamilton is right that there has been a great deal of exchange on rough shooting. I spoke about it last week. I reiterate that the bill allows for

the majority of permutations of rough shooting to continue. Some events might need to adapt, as we discussed last week, usually by making a minimal change to how they undertake their activities. Minimal change is justified when set against the risk of creating a new loophole that would enable people to take as many dogs as they like, say that they were rough shooting and, in turn, besmirch the legitimate activity of rough shooting.

Equally, as I explained last week, the consistency of the bill is a strength and we could not justify creating an exemption for regulation of rough shooting—not an unimportant activity but, in essence, a recreational one—when, for example, farmers will have to change their behaviour and comply when seeking to protect their livestock or undertaking other essential purposes, such as environmental management.

Rachael Hamilton: I know that we will disagree on this, because I still do not believe that rough shooting can be used as a cover for other activities.

I made two clear points: that the only activity that is done in rough shooting is flushing, and that in rough shooting, the bag is mixed quarry. On that basis, there is almost no event for which a proposed exception for rough shooting could be used as a cover, because it is so different.

Màiri McAllan: I take on board the point. We discussed the issue a great deal last week, and in other exchanges. The concern about rough shooting becoming a cover for unlawful activity in the bill is one important reason why it needs to be included and why we cannot create an exception for it. I have also spoken about the other reasons. We cannot consistently ask farmers, on the one hand, to comply with regulations when they are seeking to protect their livestock, with very serious economic implications, while on the other hand not asking those who are involved in a recreational activity to comply with the same regulations. That would be unjustified. There is a combination of reasons why we cannot allow such an exception to be made.

Rachael Hamilton spoke of the perceived risk of "vexatious" claims. As I said last week, I understand that, but I do not think that we can allow any perceived risk of such claims to facilitate something that would, in the case of an exemption for rough shooting, significantly undermine the bill. However, I said last week that I would be content to work with the shooting industry on post-legislative guidance in order to try to manage down the risk of vexatious claims. I continue to consider how best to formulate the bill and whether improvements can be made to clarify our position, which I have explained. However, for the reasons that I have stated, I cannot support these amendments.

Amendments 133, 135, 137, 139 and 143 would create a new section and exception for field trials. Much of the reasoning here is the same as for the amendments on rough shooting. Again, we have discussed at length how rough shooting and field trials where mammals are pursued are included within, but can continue under, the bill. It does not actually matter how many dogs are present at the event as a whole or whether a dog is simultaneously carrying out a separate searching and flushing or retrieving activity. Provided that no more than two dogs ever join to find and flush quarry together, there is no reason to think that field trials are not compatible with the bill as it is currently drafted or that they could not continue.

Rachael Hamilton: For the record, am I correct in thinking that field trials fall under the scope of the bill?

Màiri McAllan: Yes—that is similar to the use of dogs in the course of hunting throughout the countryside. Again, there is a point about consistency.

For the reasons that I have set out, I do not support amendments 133, 135, 137, 139 and 143.

I turn to Colin Smyth's amendments 123 and 146, which would remove the ability of a person to use dogs to search for or flush wild mammals for falconry. As I set out in speaking to amendments in the name of Ariane Burgess, the bill is about regulating the use of dogs when they are used in the course of hunting wild mammals. Falconry is a lawful form of hunting and, as long as dogs are used in accordance with the requirements of the bill, it is not justifiable to single it out and apply additional restrictions, just as it is not appropriate to single out rough shooting and apply lesser restrictions.

We must guard against anything that would ban an otherwise lawful activity by the back door, not least because there has been no consultation on any proposal to effectively ban falconers from hunting, and that does not fall within what is intended by the bill.

I move to amendment 227, in the name of Rachael Hamilton. I do not support this amendment, because it is not necessary and because it risks creating uncertainty and inconsistencies throughout the bill. We have worked very hard to avoid that, and we have been praised by Lord Bonyon for so doing. However, I seek to reassure Rachael Hamilton that what she is attempting to achieve is already provided for by the bill. In my view, therefore, the amendment is not necessary and would create inconsistencies in expression.

In addition, as I mentioned previously, creating special arrangements for a single recreational pursuit would open up the bill to abuse by those

who are looking for loopholes to get around the law—

Rachael Hamilton: Will the minister take an intervention on that point?

Màiri McAllan: Yes, I am happy to.

Rachael Hamilton: I would like you to put on record your comments with regard to the types of dogs that are working in a rough shoot and my specific points on dogs forming a pack. As has been discussed in previous evidence sessions, the types of dogs that are used in rough shoots, such as spaniels and other working dogs, are not trained to work in a pack as is the case with other dogs that are trained specifically to work as a team. There are quite a lot of anomalies here with regard to the differences in the activities. To my mind, the provision is not proportionate, because there is no definition of a pack, and working dogs do not work in a pack.

Màiri McAllan: To pick up on the last point, I think that we discussed last week that, for the purposes of the bill, a pack is defined: it is more than two dogs. As I was happy to put on the record last week, I understand that dogs that are generally used in rough shooting, such as gun dogs, are well trained and do not chase or form packs.

10:45

However, as I said last week, that gives me confidence that rough shoots will be able to comply with what is a minor adjustment under the bill in order to provide consistency of application to all uses of dogs in the countryside in the course of hunting in Scotland. I hope that that clarifies the member's point and puts on the record what she was hoping to draw out.

Amendments 100 to 102, in the name of Edward Mountain, seek to amend the section 6 definitions of deer stalking and remove the word "sport", for the reasons that have been explained.

Edward Mountain mentioned the different purposes of deer stalking, but I reassure him that, although section 6 covers recreational pursuits, we absolutely acknowledge that there are other reasons for pursuing deer stalking. For example, deer stalking for tree protection or other environmental reasons would be covered under section 3 or section 7. I understand that, for some, the motivation for taking part in those pursuits may not always be sport; we discussed last week that the provision of food may be involved, and that deer stalking could be undertaken for a combination of reasons. However, the use of the term "sport" is helpful in this context—

Edward Mountain: Will the member give way on that point?

Màiri McAllan: I will just finish my point. The term “sport” distinguishes between the recreational nature of these pursuits and wildlife management for economic or environmental reasons.

Edward Mountain: Although I am slightly mollified by what the minister has said, my concern is the definition of “game” and how it might be used in the bill. If we look back at the Wildlife and Countryside Act 1981, as amended, we see that the definition has not changed from that in the Game Act 1831.

I therefore wonder whether, in the hope of finding a solution, the minister might find time for her officials to work with me to further explore the matter and see whether these amendments are needed.

Màiri McAllan: Yes—I have no problem with that at all. I would be happy to discuss that and to look back at some of the old legislation with Edward Mountain. For today’s purposes, however, I cannot support these amendments as they stand, as I do not think that they are required or, indeed, helpful.

Finally, I turn to amendment 228, in the name of Rachael Hamilton. I agree that killing, rather than simply attacking, should be the intention of the person who is using the bird of prey. I have listened to Rachael Hamilton’s arguments and I am happy to support the amendment.

The Convener: I ask Ariane Burgess to wind up and say whether she wishes to press or withdraw her amendment.

Ariane Burgess: I thank Colin Smyth, Rachael Hamilton and Edward Mountain for lodging and speaking to their amendments in this group. We are legislating for a future Scotland and, as we must respond appropriately and urgently to the climate and nature emergency, it will be a very different Scotland. Rural Scotland and its economy and practices must change.

Colin Smyth’s amendments would result in greater protection for wild mammals, which is the key purpose of the bill, so I will support them. However, in order to afford wild mammals even greater protection, we should remove the relevant section completely, so I urge members to also vote for my amendments in the group.

Again, I cannot support Edward Mountain’s or Rachael Hamilton’s amendments in this group, as the majority of them serve to weaken protection for wild mammals and loosen that loophole.

Rachael Hamilton: I want to get some clarity on that. You want to remove section 6, but you said that you believe that rural people or rural life—I cannot remember your exact words—should or must change. Does that mean that you want to see a full ban on all country activities that include

shooting, rough shooting and anything else? Is that the intention?

Ariane Burgess: I will speak about rough shooting in a moment. We have just had the UK Climate Change Committee’s report, which calls on us to make changes. Over the coming months, we as a committee, and the Parliament, will be looking at various issues and bills, and we should bear in mind that we will need to radically change what we do. When we legislate today for provisions that are going to be used in future, we need to think about why we are doing so. There are pressures that we perceive now, but there will be different pressures in the future. As we are involved in making legislation, we have the challenge of working today to address something that is going to have to change radically.

I am concerned, in particular, about Rachael Hamilton’s amendment on rough shooting, and I thank the minister for her clarifications in that area. In written evidence, Police Scotland stated:

“Although most individuals would respect this law, this aspect of the bill provides a platform to conduct illegal hunting utilising packs of dogs.”

The SSPCA made a similar point, stating:

“as soon as it becomes a loophole, those who are not law abiding will use it as an excuse, which will tarnish everybody who does it lawfully.”—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 23 November 2022; c 30.]

Rachael Hamilton: Will the member take an intervention on that point?

Ariane Burgess: I will continue.

That is even more likely to happen because Rachael Hamilton’s amendment 142, which creates the exception, does not place a limit on the number of dogs, as the other exceptions do. Rachael Hamilton questioned how rough shooting does not comply with the highest possible standards of animal welfare. It is because killing animals for sport is not necessary or justified, so it would not align with the ethical principles for wildlife control.

I will respond to Edward Mountain’s point that falconry and deer stalking are not always done for sport. I accept that, but section 6 seeks to legislate specifically on deer stalking and falconry for sport. His examples would be governed under section 7, which is the section on environmental benefit.

I ask members to consider whether we are legislating for the Scotland of the past, the Scotland of today or the Scotland of the future. Do we want to be a country where we prioritise the entertainment of humans who enjoy hunting over the very life of sentient wild mammals?

I press amendment 2.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 2 disagreed to.

Amendment 132 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 132 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 132 disagreed to.

Amendment 133 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)

Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)

Abstentions

Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 133 disagreed to.

The Convener: We will take a short comfort break.

10:53

Meeting suspended.

11:01

On resuming—

The Convener: Amendment 148, in the name of the minister, is grouped with amendments 149 to 155, 168, 168A and 169.

Màiri McAllan: Amendments 168, 148, 150, 152 and 154 would introduce a new section after section 6 of the bill. That new section would create a new exception to the offences in sections 1 and 2 of the bill to allow for searching for injured wild mammals.

The exceptions already in the bill allow for the use of up to two dogs to search for an animal that has been injured by an attempt to kill it in the course of hunting with dogs. However, as drafted, the bill does not allow the use of dogs to search for a wild mammal that has been injured in a manner not related to hunting.

Engagement with stakeholders at stage 1, including Forestry and Land Scotland, highlighted that it is necessary to include an exception that allows the use of dogs to search for an injured wild mammal in those circumstances. For example, FLS has, on occasion, deployed dogs to search for deer that have been injured as part of a road traffic accident or where a member of the public has spotted an injured animal on its land.

The committee also acknowledged the comments made by stakeholders during its evidence sessions and noted the absence of a provision to allow for two dogs to search for and retrieve a wild mammal that has been injured not in the course of hunting. In my response at stage 1, I announced my intention to address that.

Similarly, amendments 169, 149, 151, 153 and 155 introduce another new exception that allows the use of up to two dogs to search for dead wild mammals. The definition of wild mammal in the bill does not specifically exclude deceased wild mammals. Therefore, it applies to living and dead wild mammals that fall within the definition, and, to

allow the use of a dog to search for a dead wild mammal, we need to provide an exception.

Having spoken to stakeholders, I am aware that there are many different examples of a variety of people using dogs to search for dead wild mammals for a variety of purposes. Examples that the committee will be interested to note include Police Scotland searching for dead wild mammals as part of the investigation of wildlife crime or researchers and surveyors assessing the impact of any manner of developments on different species.

To prevent a loophole where a person could use either of those exceptions as a cover for the illegal hunting of live wild mammals—for example, by claiming that their pack of 10 dogs was searching for an injured or dead wild mammal—we have applied the same safeguards that have been included in section 3 and sections 5 to 7. Namely, the person using the exceptions must not use more than two dogs, must take steps to ensure that those dogs do not join others to form a pack and must have permission from the landowner or be otherwise authorised to enter land.

Amendment 168A, in the name of Rachael Hamilton, would remove the two-dog limit from the new exception under amendment 168. As I have said, that would be a very obvious loophole, as it would allow more than two dogs—actually, any number of dogs—to search for an injured animal. I can see how a person could very easily claim that their pack of 10 dogs was searching for injured wild mammals as a cover for illegal hunting.

To be clear, the two-dog limit that is used throughout the bill is there because, as we have discussed, there will be greater control over one dog or two dogs than there would be over a pack of dogs. Where there is less control over a pack of dogs, there is always a higher risk of more than two dogs chasing and killing a wild mammal.

Edward Mountain: Will the minister take an intervention?

Màiri McAllan: I was just concluding, but I am happy to take any comments from Edward Mountain.

Edward Mountain: I am pleased to see the new section. One of my concerns has always been road traffic accidents involving deer, which often result in the deer getting a broken leg at the front or the back. A deer that has been hit might have only one broken leg. When that happens, following the deer can take hours and is really difficult to do. Does the minister accept that, in those circumstances, where it is justifiable, using more than two dogs might be appropriate to prevent suffering, which has often been caused by people going too fast on roads and not paying any attention to the wildlife on them?

Màiri McAllan: I would not accept that. I absolutely accept the premise of the point, and the circumstances that Edward Mountain has pointed to are exactly those that the provision seeks to address—such as those examples that Forestry and Land Scotland has shared with us—but I do not accept that it would be necessary or acceptable to allow more than two dogs to undertake that activity.

The Convener: Have you concluded your comments, minister?

Màiri McAllan: I have.

I move amendment 148.

Rachael Hamilton: I concur with the comments of my colleague Edward Mountain on the fact that using more than two dogs would be appropriate in certain circumstances in which animals have been injured. My daughter hit a deer and there was no idea where it had got to. It was not known whether it was injured or where it had fallen. At that point, we did not need to use dogs, of course, but there are situations in rough terrain in which using more than two dogs would be appropriate.

Relieving the suffering of injured wild mammals is rightly prioritised in my amendment 168A, which adds to amendment 168 the reasonable steps that must be taken to ensure that animals that have been injured are located when the injury occurred as a result of the excepted activity. The amendment would not create a loophole; it was lodged purely for animal welfare reasons.

Unlike in the 2002 act, there is no recognition in the bill that dogs might need to be used to relieve suffering, as I have just described, or to locate or retrieve animals where one of the exceptions would not and could not apply. The amendment would rectify an omission.

I do not accept the minister's dismissal of amendment 168A and her suggestion that it could be used as a loophole. The amendment is a really important one, and I ask the minister to reconsider it and to work with me in good faith on something that would both tighten up what she is concerned about and ensure that the absolute highest standards of animal welfare are delivered.

Mercedes Villalba: I will support amendments 148 to 155 and 168 and 169, in the name of Màiri McAllan, as they will create an exception for relieving the suffering of injured wild mammals and for searching for dead wild mammals without exceeding the two-dog limit. On that basis, I cannot support amendment 168A, in the name of Rachael Hamilton, which would remove the two-dog limit from the new exceptions. I think that that would create a potential loophole.

Edward Mountain: I am concerned about this. I will give you a real life example. A deer was hit by

a lorry and it broke its jaw. It took four days of following that animal before it was possible to put it out of its misery. It could not eat and it was struggling to breathe, but it was still capable of running. The problem is that that animal might well have been tracked down quicker if more than two dogs had been used, but it went into a 200-acre wood and the best that we could have done to get at it and put it out of its misery was precluded because there were only two dogs. Therefore, I would have thought that a carefully worded exception for cases where there is evidence to prove that more than two dogs are required should be perfectly justifiable on the ground of being humane.

The Convener: Thank you. I ask the minister to wind up.

Màiri McAllan: I have said since the introduction of the bill that I am always happy to work with stakeholders and members of Parliament to ensure that the bill is as effective as possible. My amendments in this group are an example of my having done that. On the exception to search for injured wild animals, it was evidence provided by stakeholders at stage 1 and the recommendations of the committee at stage 1 that made the amendments necessary. The exception to search for dead wild animals was also developed after discussion with stakeholders.

I hope that members agree with my reasons for including the amendments and that they will support them. I also hope that they agree with my reasons for rejecting Rachael Hamilton's amendment 168A. I am sorry to hear about Rachael Hamilton's daughter's incident and I hope that all are okay.

The amendments were developed in close consultation with stakeholders including Forestry and Land Scotland, and I have not had any evidence that more than two dogs would be required in order to fulfil the activity. It is clear to me, as I think it is to many people, that someone could easily claim that their pack of 10 dogs was searching for injured wild mammals, which would be a too-convenient cover for the illegal hunting of live wild mammals. For that reason, I cannot support amendment 168A, which would create inconsistencies and loopholes in the bill.

Amendment 148 agreed to.

Amendment 149 moved—[Màiri McAllan]—and agreed to.

Amendment 58 moved—[Edward Mountain].

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (L D)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 58 disagreed to.

Amendment 63 moved—[Edward Mountain].

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 63 disagreed to.

Amendment 64 moved—[Edward Mountain].

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 64 disagreed to.

Amendment 65 moved—[Edward Mountain].

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 65 disagreed to.

11:15

Amendment 66 moved—[Edward Mountain].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 66 disagreed to.

The Convener: I call Edward Mountain to move or not move amendment 67.

Edward Mountain: I will not move amendment 67, on the basis that it is not clear whether the amendment relates to a native polecat or a feral polecat. Therefore, I will change the amendment and lodge it at stage 3.

Amendment 67 not moved.

Amendment 68 moved—[Edward Mountain].

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 68 disagreed to.

Section 1, as amended, agreed to.

Section 2—Offences of knowingly causing or permitting another person to hunt using a dog

Amendment 3 moved—[Ariane Burgess].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 3 disagreed to.

Amendment 4 moved—[Ariane Burgess].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)

Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Minto, Jenni (Argyll and Bute) (SNP)
 Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 4 disagreed to.

Amendment 134 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Burgess, Ariane (Highlands and Islands) (Green)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 Minto, Jenni (Argyll and Bute) (SNP)
 Villalba, Mercedes (North East Scotland) (Lab)
 Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 134 disagreed to.

Amendment 135 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 135 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Burgess, Ariane (Highlands and Islands) (Green)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 Minto, Jenni (Argyll and Bute) (SNP)
 Villalba, Mercedes (North East Scotland) (Lab)

Abstentions

Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 135 disagreed to.

Amendments 150 and 151 moved—[Màiri McAllan]—and agreed to.

Amendment 59 moved—[Edward Mountain].

The Convener: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Burgess, Ariane (Highlands and Islands) (Green)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 Minto, Jenni (Argyll and Bute) (SNP)
 Villalba, Mercedes (North East Scotland) (Lab)
 Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 59 disagreed to.

Amendment 5 moved—[Ariane Burgess].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
 Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Minto, Jenni (Argyll and Bute) (SNP)
 Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 5 disagreed to.

Amendment 6 moved—[Ariane Burgess].

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
 Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Minto, Jenni (Argyll and Bute) (SNP)
 Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 6 disagreed to.

Amendment 136 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 136 disagreed to.

Amendment 137 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)

Abstentions

Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 137 disagreed to.

Amendments 152 and 153 moved—[Màiri McAllan]—and agreed to.

Amendment 60 moved—[Edward Mountain].

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 60 disagreed to.

Amendment 110 moved—[Colin Smyth].

The Convener: The question is, that amendment 110 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 110 disagreed to.

Amendment 7 moved—[Ariane Burgess].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 7 disagreed to.

Amendment 8 moved—[Ariane Burgess].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 8 disagreed to.

Amendment 138 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 138 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 138 disagreed to.

Amendment 139 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)

Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)

Abstentions

Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 139 disagreed to.

Amendments 154 and 155 moved—[Màiri McAllan]—and agreed to.

Amendment 61 moved—[Edward Mountain].

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 61 disagreed to.

Section 2, as amended, agreed to.

Section 3—Exception: management of wild mammals above ground

The Convener: Amendment 35, in the name of Rachael Hamilton, is grouped with amendments 111, 112, 118, 119, 144, 122, 145, 127 and 147.

Rachael Hamilton: Amendment 35 addresses a semantic point in the bill. Hunting with dogs in the context of this amendment is necessary to protect livestock, woodland and crops from being attacked or degraded by foxes and other pest species. The threshold for what constitutes “serious” damage as opposed to any kind of damage is undefined, and it is important that livestock, woodland and crops are protected from any kind of harm. As we have heard in evidence from the NFUS, now more than ever, farmers’ livelihoods are under pressure. We cannot allow loose terms such as “serious” to dictate the gravity of damage. Therefore, my amendment would remove the word “serious” from this section to make it clear that an exception would apply to protect farmers’ stock and their livelihoods.

11:30

On Colin Smyth's amendments 111, 119 and 127, I understand the concerns around animal welfare that underpin the second part of each of those amendments. However, the undertones are that it is not standard practice to implement the most appropriate and practical solution to wild mammal control and that the use of dogs is less humane than other methods. On the contrary, those participating in the control of wild mammals are best placed to discern what is appropriate, proportionate and humane, and there is not a shred of evidence to suggest that that method of mammal control is less humane than others. Therefore, I do not feel that the amendments are necessary.

Amendments 112, 144, 145 and 147 would prohibit the use of dogs for searching, stalking and flushing wild mammals during their breeding season, but they do not take into account the need for year-round control. Lambs do not suddenly become less susceptible to predation by wild mammals just because it is their breeding season. The reasonable justification for the use of dogs to search, stalk, and flush centres around the necessity to do so, and breeding seasons do not negate that necessity. Again, I understand the animal welfare concerns that underpin those amendments, but they cannot be supported, for the reasons that I have outlined.

I have some concerns about the welfare element of Colin Smyth's amendments 118 and 144. Removing the provision to use dogs to relieve the suffering of dependent fox or mink would mean that those animals would be left to suffer, unable to fend for themselves. The purpose of including that in the bill is, as the section states, to relieve suffering. I fail to understand how removing that provision would have any effect other than to promote the suffering of dependent animals. I therefore cannot support those amendments.

I move amendment 35.

Colin Smyth: Amendments 111, 119 and 127, in my name, seek to ensure that the use of dogs in hunting is a last resort. They would require a person using dogs, if asked, to be able to show evidence that the use of dogs meets the purpose of preventing damage, not simply reducing the number of a certain species—the two are not necessarily linked—and that they had considered more humane methods and had reasonable grounds to believe that those would not be as effective. The amendments would not prevent the use of dogs; they would merely require a justification for their use, which introduces accountability that is currently lacking in the bill.

Amendments 112, 118, 144, 145 and 147 would introduce a close season for the use of dogs,

which is a basic animal welfare and conservation measure that would reduce the perceived need to send dogs underground to relieve the suffering of a dependent fox or mink, which is currently permitted under section 5(2)(d). Amendment 118 is consequential to amendment 112. If amendment 112 is agreed to, amendment 118 would be required to provide a close season for wild mammals during their breeding seasons and obviate the supposed need to use dogs below ground to dispatch orphaned fox cubs that would otherwise die of dehydration or starvation. Not killing animals with young is a basic animal welfare and conservation measure. Section 5 allows for the use of dogs underground, so the two are linked.

Amendment 122 seeks to remove subsection (4), which states:

"In this section, 'dependent' means that the mother of a fox or mink is dead and it is too young to survive on its own."

Amendment 122 is consequential, and if amendment 118 is agreed to, amendment 122 is no longer needed, as there is no other reference to dependent animals in section 5.

I urge members to support my amendments to ensure that using dogs to kill wild mammals is a last resort and that we do not create loopholes in a bill that is designed to close loopholes.

Edward Mountain: I am slightly concerned by Colin Smyth's amendments. I am sure that he will remember the old phrase "breeding like rabbits". Rabbits breed all year round, so there would be no way to control them at all by flushing, because they could have dependent young all year round. That is a fact of life. Nature is clever—breeding takes place for foxes at a time of year when there are other vulnerable animals, such as lambs, around. Mr Fairlie, I think, gave the example of a vixen with no teeth that was preying on lambs during the lambing season, which was a particular problem. To my mind, you cannot stop controlling problem animals just because they might be in their breeding season.

Of course, that then gives rise to the problem of having to humanely dispatch any dependent young that there might be. In that respect, Colin Smyth's amendments are fatally flawed, because their dependence on the breeding season—that is, as a time when you cannot kill animals—does not take into account the fact that that might be when those animals are causing the biggest problems. I am also scratching my head and trying to understand how Mr Smyth, having agreed to rabbits being in the bill, precludes them from being killed during the breeding season, given that, as I have explained to him, the season is all year round.

Mercedes Villalba: I support all of Colin Smyth's amendments in this group and urge all members to do the same.

Amendments 111, 119 and 127 require a person to demonstrate that a method is appropriate and is the most humane, while amendments 112, 144, 145 and 147 require the activity in the exception not to take place during the breeding season, which I support as a basic animal welfare and conservation measure. I cannot support amendment 35, in the name of Rachael Hamilton, as I feel that it weakens the language in the bill.

Màiri McAllan: On amendment 35, in the name of Rachael Hamilton, which seeks to remove the word "serious" from the purpose set out in section 3 of

"preventing serious damage to livestock, woodland or crops",

I point out that the "preventing serious damage" test that is included in the bill is the same as that used for section 16 licences under the Wildlife and Countryside Act 1981 and regulation 44 licences under the Conservation (Natural Habitats, &c) Regulations 1994. Removing the word "serious" from the permitted purpose under section 3 would plainly lower the test for the use of more dogs and would make it possible to use two dogs to

"search for, stalk or flush"

wild mammals, even where the potential damage to livestock, woodland or crops was trivial. What could flow from that is that licences under the licensing scheme connected with section 3 could be granted under section 4 to enable packs of dogs to be used to prevent minimal damage to livestock. In short, because the amendment lowers the test for the exception under section 3, I cannot support it.

On amendments 111, 119 and 127, in the name of Colin Smyth, which insert additional conditions that must be met before using a dog to hunt, I have considered the proposal very closely and, to me, it is unclear what kind of evidence would be sufficient to meet those tests and to whom the person in question would be demonstrating those things. Moreover, the amendments make use of concepts that are not found elsewhere in the bill; they refer, for example, to the most "humane method", but the bill itself refers to "the minimum possible suffering". The amendments also refer to "the person responsible for the activity".

The amendments would therefore introduce inconsistency into the bill, which is something that my team and I have tried very hard to avoid.

That said, I understand the intention behind Colin Smyth's amendments. As I have said, I have considered the matter closely, and I am satisfied

that the bill as drafted contains a number of tests that must be fulfilled and which are sufficient to achieve the legislation's aim of reducing the risk of wild mammals being chased and killed by packs of dogs. The committee will be familiar with them: any searching for, stalking or flushing of wild mammals must be for a purpose that is allowed under the bill; any dog that is used in the activity must be under control; landowner permission must have been given; and reasonable steps must be taken to ensure that dogs do not join together to form a pack. I believe that those tests are sufficient to achieve the bill's aims, and the amendments are therefore unnecessary and could cause confusion.

Colin Smyth's other amendments—amendments 112, 118, 144, 122, 145 and 147—seek to insert into each exception a new condition with regard to the breeding season and would also remove the reference to a dependent fox or mink from section 5 on the basis that it would not be possible to hunt these animals when they have dependants. Again, I have considered those amendments closely, and I believe that they would have an impact on a land manager's ability to undertake effective predator control at what is undoubtedly a crucial point.

As has been noted, the breeding season for foxes coincides with lambing season, when farmers are more likely to undertake necessary fox management and, under those amendments, they would be unable to do such activity at what is, arguably, the most essential time for protecting their livestock. As Edward Mountain has said, rabbits can breed all year round, and the amendments would effectively curtail the ability to control them with dogs at any point.

In my view, such issues are important, but they would be more appropriately examined for the species as a whole, rather than being considered in respect of a single type of control. Of course, close seasons for certain mammals are set out in the Wildlife and Countryside Act 1981 or the Deer Act 1991, as the case may be.

Therefore, I think that the amendments in question would cause significant issues for predator control, so I am unable to support them.

The Convener: I invite Rachael Hamilton to wind up and to press or withdraw amendment 35.

Rachael Hamilton: Having listened to Colin Smyth's explanation of the reasoning behind his amendments, I believe that it shows a lack of understanding of management in the countryside. What he proposes would pull the rug from underneath the feet of farmers who want to protect their livelihoods and is completely unnecessary.

With regard to the minister's comments on damage to crops, livestock and woodland, I do not

believe that the proposed removal of the word “serious” is overreaching. She did not describe it as that, but I do not believe that the issue that the amendment seeks to deal with is a trivial one. Amendment 35 would ensure that farmers could protect their livelihoods within the parameters of the Scottish Government’s bill, which the minister has always said she wanted to be practical and workable. We need to ensure that, when we consider proposed legislation, we understand the ramifications for—particularly in the current circumstances—farmers and their ability to use the methods that are within their reach to protect their livelihoods.

Therefore, I am slightly disappointed that the minister has not accepted my point.

Màiri McAllan: I take on board Rachael Hamilton’s comments, but I put on record that I was not suggesting that the issue of farmers protecting livestock was trivial. My point was that removing the seriousness test could allow trivial activities to come within the terms of the protection of livestock; it was not that the need to protect livestock in the first place was trivial.

Rachael Hamilton: Thank you for explaining that, because I was a bit alarmed when I heard the word “trivial”.

I press amendment 35.

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)SF

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Villalba, Mercedes (North East Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 35 disagreed to.

Amendment 111 moved—[Colin Smyth].

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 111 disagreed to.

Amendment 112 moved—[Colin Smyth].

The Convener: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 112 disagreed to.

The Convener: Amendment 9, in the name of Ariane Burgess, is grouped with amendments 10, 11, 21, 191, 72, 156, 204, 205, 22, 206, 23, 157, 116, 207, 208, 158, 24, 209, 159, 210, 160, 211, 161, 25, 12, 15 to 17, 171, 103, 231, 232, 33, 233, 34, 172, 130, 234, 235, 173, 236, 18, 104 to 106, 19, 20 and 107. I remind members of the pre-emptions in this group. I call Ariane Burgess to move amendment 9 and to speak to all the amendments in the group.

Ariane Burgess: My amendments 9 to 12 and 14 to 18 seek to remove the provision for licences permitting the use of more than two dogs in any circumstances and would remove all references to the licensing scheme. My amendments 19 and 20 are consequential and would remove further sections on the licensing schemes.

Licensing the use of two dogs does not align with the aim of pursuing the highest possible animal welfare standards. Foxes that are hunted by packs of dogs are not killed quickly but endure

enormous physical and psychological suffering before death, which can involve being torn limb from limb by dogs. The committee heard that around 40 per cent of foxes hunted with packs of dogs are killed by the dogs.

11:45

The licensing scheme would be the biggest loophole for those who enjoy hunting wild mammals with packs. Eighty-seven per cent of the Scottish public want a watertight ban on fox hunting with packs. Let us deliver that, not perpetuate the current situation in which conviction is, to use Police Scotland's word, "impossible". Bringing in a strict limit of two dogs without a licensing scheme to allow the use of more would make enforcement of the law much more straightforward.

I urge members to support the amendments in my name.

Rachael Hamilton: On your point about the public wanting to ban fox hunting, is fox hunting not already banned?

Ariane Burgess: No, fox hunting is not banned. That is part of the reason why the bill has been introduced. The 2002 act had loopholes in it. The committee has discussed that and you have brought up issues about rough shooting. We are introducing legislation on hunting with dogs to be very clear about what can and cannot be done. In this case, licensing will allow people to find ways around the measures to stop hunting.

On other amendments in the group, I support Christine Grahame's amendments 156 and 159, which would remove the option to grant a licence to a whole "category of persons" to avoid the issuing of a blanket licence that is not strictly necessary for everyone who receives it. I also support her amendment 161, which would require NatureScot to keep a publicly available register of licences, as that would increase transparency and accountability. However, it would better achieve the purposes of the bill to remove the licensing scheme altogether.

I support Colin Smyth's amendments 116 and 130, which specify that a licence holder must adhere to a set of standards based on

"ethical principles for humane wildlife management".

I would like to work with Colin Smyth, the Government and other parties before stage 3 to refine that idea and ensure that it is workable in practice.

I also support Jim Fairlie's amendments 157, 160, 172 and 173, which add that any licence must require the use of the minimum number of guns that NatureScot believes would be effective

for killing the wild mammal as soon as possible after it is located or flushed. However, I have concerns about encouraging the greater use of guns in any circumstance, so I would be interested in working with him at stage 3 to add appropriate safeguards to those conditions.

Edward Mountain's amendment 105 simply seeks to change the reference to "Scottish Natural Heritage" to one to "NatureScot". I will leave it to the minister to advise on whether that is appropriate.

There are other amendments in the group that I cannot support, but I will not list them all. The minister's amendment 158 would allow the 14 days for a licence under section 4 to be spread over six consecutive months. I do not support that amendment. If the purpose of the licence is to enable effective wildlife control, spreading out the days when more than two dogs can be used will undermine that purpose. RSPB Scotland knows that you need a period of consecutive days—or, more importantly, nights—when trying to protect other animals from foxes, for example. Having one day here and there to hunt foxes with several dogs would not be effective for achieving that purpose. You need to deal with the problem when it arises, not on separate days spaced out over six months or a year.

I urge the committee to support amendments 9 to 12 and 14 to 18. I encourage it to support Christine Grahame's amendments 156, 159 and 161, Colin Smyth's amendments 116 and 130 and Jim Fairlie's amendments 157, 160, 172 and 173. I will decide how to vote on Rachael Hamilton's amendments 205 and 232 and Edward Mountain's amendment 105 after I have heard from them. I ask the committee to vote against all other amendments in the group.

I move amendment 9.

The Convener: I call Rachael Hamilton to speak to amendment 21 and the other amendments in the group.

Rachael Hamilton: Amendments 204, 209, 231 and 234 seek to clarify that a licence may be granted to categories of individuals that suggest some shared characteristic and groups of people, even where they do not necessarily amount to a category. There might be situations in which disparate individuals might need to apply for a licence jointly. As the committee heard in evidence, there might be different types of landholding that require fox control across various holdings if control is to be effective. There is no use in granting a licence to a livestock holding that does not cover adjacent land under different ownership that is without livestock but with large areas of forestry or other cover that act as a reservoir for foxes that predate on neighbouring

livestock. The bill must allow sufficient scope for NatureScot to issue licences on the basis of need, whether to individuals, groups or categories of persons.

Amendment 205 is a relatively minor amendment that would allow NatureScot to issue a licence that would cover more than one species. As drafted, the bill states that a licence must be for “a particular species” instead of “particular species”. The amendment would ensure that the bill does not unnecessarily restrict NatureScot’s ability to issue licences as needed and that are practical.

Amendment 22 relates to the consideration of alternative methods of predator control. In oral evidence to the committee, it was stated that effectiveness is to be understood as relating to whether alternatives are practical and possible. There must be clarity in the bill that that is the case and that alternatives that might be effective would not necessarily be practical or affordable. It is important to avoid NatureScot facing legal challenges to licences that have been issued on the basis that it has failed to meet what amounts to a test where it must be satisfied that there is no alternative that would be effective. What really matters is whether the use of more than two dogs is necessary and whether that would make a significant contribution to the purpose for which a licence is granted.

The proposed new wording through amendment 22 would recognise, as the current wording does not, that the use of dogs to flush to guns under licence does not mean that other methods of fox control would not carry through alongside licenced control using dogs. Indeed, control is normally achieved using a combination of methods that complement one another and can be used concurrently. There is a danger of thinking that it is an either/or scenario; the reality is that successful fox control involves a variety of methods. Which methods are used; when, where and how they are used; and the combination of methods that are used at any given time will depend on terrain and other considerations that are best decided by the people who conduct the control of wildlife management on the ground.

Amendments 206, 23, 210, 34, 233 and 235 relate to a legal duty on NatureScot that it simply cannot discharge. NatureScot could not rationally reach a decision on the minimum number of dogs that were required for a given task. For example, on what evidential basis could it make a decision to allow eight dogs but not 10 dogs and that it should be eight and not seven or six dogs? Moreover, a person with a licence might be using dogs over a variety of terrain and cover, even on a single landholding. In relatively open country with limited cover, six dogs might be sufficient, but a far

greater number might be required for a 1,000-acre block of forestry, for example.

The amendments would remove that burden—and the obvious risk of legal challenge to licences—and replace it with a more workable solution. It is proposed that a condition of the licence is that the people who are licensed use only the number of dogs that is appropriate in the circumstances. I think that that is part of the nature of the bill. That could be reinforced by a reporting requirement so that, if required, a person would have to explain and justify their decision on how many dogs to deploy at a given time and place.

Amendments 207, 208 and 24 would extend the period of time during which a 14-day licence could be used from 14 days to 12 months from the date on which the licence was granted. That would allow the licence to be used on a given number of days as part of the continuous process of predator control. It reflects what was accepted by all sides in oral evidence, which is that control is preventative, not simply in response to damage having been suffered.

The existing wording fails to recognise this reality that fox control is a year-round activity and that it is conducted using a variety of methods, depending on factors such as terrain and the time of year. Creating a fair and workable licensing regime, as has been described by the minister, is vital if effective fox control is to remain possible across larger parts of rural Scotland. Those amendments will help to achieve that.

During evidence to our committee, several witnesses, including the minister, noted that it was not possible to specify in the licence the number of guns to be deployed. It is hard to understand how NatureScot must specify the number of dogs and how it is rational to determine a specific number of dogs but not guns. For both the number of dogs and the number of guns, what is appropriate will depend on the circumstances. As with dogs, it should be a requirement that a licensed person is to be responsible for ensuring that an appropriate number of guns are deployed. That could be reinforced by a reporting requirement so that, if required, the person would have to explain and justify their decision about how many guns were deployed at a given time and place.

Lord Bonomy was also of the opinion that the number of dogs was not a problem and that reducing it to two would not change the situation other than by bringing the practice of flushing to guns to an end. Instead, he said that having a sufficient number of guns was the thing that mattered most. In Lord Bonomy’s words:

“I think that the number of guns is vital. As I have said, the different way that the foot packs went about it did not seem to me to involve a chase”.—[*Official Report, Rural*

Affairs, Islands and Natural Environment Committee, 15 June 2022; c 47.]

Amendments 211 and 236 reflect that there are statutory conditions that apply to all licences, but there may be other additional conditions that are not explicitly required by the legislation, including ones that relate to the statutory conditions themselves.

Amendment 25 would provide a definition of an “approved professional body” in the bill for clarification on that point. It would also require ministers to create a code of practice for the purpose of a licensing scheme. That is because a definition of an approved professional body alongside a code of practice is required for the licensing scheme to function effectively. Licence holders would be expected to adhere to the code, and it would set out what was expected of them.

Amendment 232 would mean that, as would be the case with rough shooting, a licence holder would be able to specify more than one species of wild mammal when making an application. As the committee heard in evidence from BASC, a licence applicant could be dealing with more than one pest species at a time, but the bill as drafted would not make allowances for that. This amendment circumvents that issue.

Amendment 33 relates to the condition in the bill that the relevant authority may not issue a licence unless it is satisfied that

“killing, capturing or observing the wild mammal will contribute towards a significant or long-term environmental benefit, and ... that there is no other solution which would be effective in achieving the purpose set out in section 7(2) in relation to which the application for a licence is being made”.

That part of the bill is unnecessarily prohibitive. I have already discussed the matter of whether hunting with dogs should be a last resort, as this section would require. However, I am proposing an amendment that is less prohibitive while still showing that the aims as set out in section 7(2) would be met.

As I have already said, using dogs to help to control predators and pest species is often the most practical solution, and they can be used in tandem with other control methods for maximum efficiency. It is less practical to propose, as the bill does, that this should be an all-or-nothing choice between maximum control and inadequate control, depending on those arbitrary conditions. Amendment 33 would allow the right balance to be struck by the licensing scheme.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): I have been thinking for some time about the issue of the number of guns used during a hunt, and I have voiced my concern on that.

From everything that we have heard in the committee, when it comes to actually killing a wild animal in a swift and humane way, the number of guns seems to be a vital part of the process. When I asked Lord Bonomy about that during stage 1 evidence sessions, he responded—as Rachael Hamilton has just cited—by saying:

“I think that the number of guns is vital”.—[*Official Report, Rural Affairs, Islands and Natural Environment Committee, 15 June 2022; c 47.*]

One of the examples that I gave during the evidence sessions was of a person who has only two guns covering 150 yards of forestry. The fox would run straight through the middle and would not be shot. However, if the number of guns was increased to, for example, 15, it would be more likely that the fox would be shot, so the loophole of allowing dogs to hunt and kill a fox would be closed.

12:00

My amendments 171 and 191 would amend sections 4 and 8, on licence provisions, to give specific examples of the kind of information that NatureScot can ask people to provide on their applications. That would be information on the number of dogs for which people are seeking permission and the number of guns that they intend to deploy. Amendments 157, 160, 172 and 173 carry on from that by amending both licensing sections so that NatureScot would have to require a minimum number of guns to be deployed when issuing a licence and put that number on the licence. That would mean that NatureScot would look at the information provided by the applicant and would make the decision on exactly what the minimum number of guns should be.

The principle of those amendments has been widely supported by a variety of stakeholders and committee members at stage 1. Stating in the bill what information may be required will give early notice to applicants of the type of information that will be required. The amendments could also assist in filling out some of the detail of the licensing framework—in particular, the type of information that applicants may require to include in their applications.

I know that Rachael Hamilton agrees with the principle, as she has lodged amendment 21, which is very similar to mine. It would amend section 4(2)(c) to include information that the relevant authority may require. My issue with Rachael Hamilton’s amendment, and the reason why I have lodged an alternative version, is that amendment 21 talks about

“the number of dogs or guns that would be ... licensed”.

I do not think that the wording is right in that the applicant would not know how many dogs or guns

would be licensed, because that is a matter for the licensing authority to decide.

My amendment makes it clear that the applicant provides the information and then the licensing authority considers that information and reaches its decision. That might be to grant a licence for the number of dogs and guns that the applicant has stated on the form, or it might be to grant a licence for a different number. My amendment keeps the flexibility for the licensing authority to do just that.

I have also included the same requirement for section 8 licences, for environmental benefit, as for section 4 licences, on wildlife management, so that the requirements are consistent. It is absolutely right that the licensing authority has the final decision-making power for those licences, as it does for all other wildlife management licences.

It is important that we are clear about what we will expect under the licensing regime, which is why I have lodged the amendments. I hope that members agree and will support my amendments.

Edward Mountain: I will talk about my amendments first, which are on the issue of fees for licences. One of the reasons why I lodged the amendments was to help the minister. I believe that this could be a contentious area and that there will be discussion about fees in the future. Therefore, I believe that, rather than the matter being decided by the regulating authority, it should come before Parliament in regulations made under the affirmative procedure, so that it can be cleared and can be seen to be discussed and agreed in advance. I also believe that the minister is the logical person to whom an appeal should be made, should the licensing authority choose to deny a licence. In that way, the process would be open and transparent and could be seen to be truly democratic.

On amendments 105 and 106, I will listen to the minister's reasoning as to why we still need to refer to Scottish Natural Heritage rather than NatureScot. Constantly changing names tends to confuse people—it certainly confuses me.

As for the other amendments in the group, I suspect that Ariane Burgess's amendments are wrecking amendments and I take them as such. I was very interested to hear Jim Fairlie's reasoned argument regarding the number of dogs and guns that should be specified in the licence, although I have some concerns about that. If you are, as in the example that Mr Fairlie used, putting dogs into a wood to flush a fox, the placement and number of the guns will be known by the person who is doing that, because foxes will always run on a certain line. That does not always happen, of course—if somebody coughs or is upwind of where the animal would be, they might deviate—

but, if you have sensible gun placement, the keeper or land manager will know where the fox goes.

Jim Fairlie: The point of having a minimum number of guns is to close the loophole that allows people who are shooting foxes in order to control their numbers to say, "Oh, we had plenty of guns, but it just so happened that the fox slipped through"—that is the loophole in the Protection of Wild Mammals (Scotland) Act 2002.

If the licensing authority requires all those who are shooting to ensure that there is an equivalent number of guns to the number of hounds that are driving the area, the likelihood of a fox being shot is far higher than it would be if that were left to the discretion of people who could try to circumvent the law.

Edward Mountain: I take that point, but I am not defending the people who would try to circumvent the law; instead, I am trying to come at it from the angle of a person who would abide by the law.

I think that the suggested provision would be difficult to implement, because NatureScot's licensing division would end up sitting on licences and saying, "Oh, they are doing this area, and therefore they need 12 guns," which would mean that the process would become formulaic and would not take into account what was actually happening.

Jim Fairlie: Surely the whole point of the bill is that we trust and respect the people who are doing the job legitimately, and therefore the working relationship between NatureScot and the people carrying out these acts is such that they understand each other and know the areas that they are working in, and they will therefore come to a compromise on how the job should be done properly.

Edward Mountain: Of course, and I take the amendment in the manner in which it was meant. Those who work together succeed better—but it does not always work that way, and it worries me that the process will become formulaic.

Subject to the amendment being redrafted, I imagine that it could be worked out that a minimum number of dogs and guns could be specified, subject to restrictions. I have been in lamb management for 15 years, and it worries me that the views of the people on the ground will not be taken into account by licensing authorities or authorities that are responsible for management. That is already a problem.

There may be ways to make the amendment better. I understand the spirit in which it is meant, but I will not support it as it is at the moment.

I am not entirely sure about Colin Smyth's amendment 116, and I want to hear more about the code that he wants to be published.

The Scottish Government's proposal to extend the licence for a set period would actually be of benefit. I say that because I disagree with the point that Ariane Burgess made about solving a problem within 14 days; problems in the countryside are not solved in 14 days. What happens is that a problem comes to light and proactive action is taken, but we may have to continually go back to resolve it if it is not resolved in the first place. For example, a licence could be introduced to allow for fox control, but the fox might be pushed into a deep area of wood from which it would be impossible to get it out. The fox might then move to another area before coming back to the area where it knows there is an easy meal. That licence should therefore be observed as a licence for a problem area over a longer timeframe rather than a problem area for a specific 14-day timescale, because that just will not work.

I also have a slight problem with Christine Grahame's amendment 161. I am interested in hearing what she is suggesting, because, in some ways, this is controversial legislation. If people have access to a register I want to be sure that those who apply for a licence are not victimised for doing so and that their addresses and details would not become known. That has happened before in the countryside, and it still does. I would be interested in seeing what safeguards there would be, because some people take things to the extreme and I am not sure that I see any safeguards in what the amendment proposes.

I might make further points in response to other points made by members.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): My goodness—what a long day the committee has had.

First, I will speak to my amendments 156 and 159, as they pretty well deal with the same thing. I will then move on to amendment 161. The amendments are probing amendments, and I am interested to hear what the minister has to say about them.

Amendments 156 and 159 seek to delete

“or to a category of persons”

and “or category of persons”. I do not quite understand those phrases—I am sure that the minister will clarify them for me. Rachael Hamilton and Jim Fairlie have referred to the licence holder, but a category of persons is not a licence holder—it is a category. I do not know what that means. Does it mean the farmers, the gamekeepers or the landowners? I do not know.

If I follow the line that it refers to gamekeepers, landowners or whatever, who will be liable for any breach at the end of the day? Who would be brought before the court for breaching the terms of the licence? There would be no name.

I understand that there might be several farms on a large piece of hillside in respect of which exceptions to exceptions require a licence over an area in which different persons own the land, but I do not see why a licence could not be granted to a particular person or persons. That might be the gamekeepers on three different estates, for example. At least there would then be a name in the frame.

I am not looking to persecute anybody; I just want to make things easier for enforcement and responsibility.

Rachael Hamilton: Will the member take an intervention?

Christine Grahame: I think that I am getting multiple interventions, as is my wont. That is up to the convener.

Rachael Hamilton: This is more of a comment to address what you are saying. I completely agree with you. Those were the points that I tried to make in respect of the category of persons in amendments 204, 209, 231 and 234. I, too, am interested in what the minister has to say in that regard. We agree, Christine.

Christine Grahame: This is a wonderful moment for us.

Rachael Hamilton: It is. I think that we should celebrate.

Christine Grahame: I will get a badge.

Edward Mountain: On the basis that agreement is always good, can you clarify whether you believe that the licence holder should be present when the activity takes place? For example, if the licence holder was the landowner or the farmer, would he have to be present when the activity took place? Some clarity on that would be useful, because that is the position in other cases.

Christine Grahame: I have not thought about that point, but my answer off the cuff in thinking about it now is that, no, they could not possibly be present when the activity took place. They would delegate holding the licence to a responsible person, as MSPs do to our staff. However, the buck would eventually stop with the landowner.

The issue is who has their name in the frame at the end of the day. That could be one person or two people. I do not know where “category” comes in.

I will move on to my next amendment before the minister responds. I am beginning to chair the meeting, and I did not mean to do that.

Amendment 161 follows on from that. I heard what was said about victimisation, but there is an element of how people know. This is about exceptions to exceptions. If members of the public or whoever are just swarming about and they see something that should be allowed, how do they know that it should be allowed? They may not know that the area has been licensed for certain pursuits that do not come under the general legislation. On the other hand, they might see something that should not be taking place. There has to be some responsibility there.

Are licences for publicans, for instance, published? I am trying to remember. Is there a list of licensed publicans or a list of licensed taxi drivers somewhere? Are they in the public domain? I appreciate that there might be data protection issues, but there might be ways of dealing with the addresses. Again, I am probing.

Rachael Hamilton: Will the member take an intervention?

Christine Grahame: Yes. Are we going to agree again?

Rachael Hamilton: As you know, I have an interest in the hospitality business. The licences in that business are slightly different, as individuals take quite stringent exams to get to the point at which they are issued with a licence.

It is not necessarily fair to compare apples and pears in these circumstances. Although people have to have a gun licence and be competent to have a gun and so on, such comparisons slightly confuse the situation. In licensing, we need more clarity and succinctness, rather than trying to muddy the waters with comparisons with other industries that may be slightly different.

12:15

Christine Grahame: I dispute that, because, with a gun licence, somebody has to license the person's expertise. They will have expertise with a gun, and the expertise that is required for management of the land. In the circumstances, there is enough in common—although there is not a direct similarity—to say that there should be a register, which would allow people to know and to feel secure.

Edward Mountain turned the issue on its head and used the word "victimised". I would put it the other way round: the person who is being granted that exceptional licence as published knows that when they are out and about exercising the licence, they are doing so, and if any member of the public challenges them, they are able to say,

"Well, have you checked the register? I'm licensed to do this." That turns the situation on its head.

Edward Mountain: Will the member give way on that point?

Christine Grahame: I will have to, will I not?

Edward Mountain: No, you do not—the convener could say that you do not have to.

On the basis that the convener has not said that, I will raise my concern, which is about the licence. I am thinking about what would happen if we had a licence and we stipulated the guns—I will give you an example, if I may.

When seal management was allowed and licensed in Scotland, those people who were able to control seals had to go on a course and had to have it on their firearms certificate, and it had to be listed on the licence when the licence was made. That resulted in some bailiffs, who were authorised, competent and complying with the licence conditions, to be victimised afterwards. I take the member's point about being open and allowing it to be seen that the activity is allowed, but if the minister were tempted to go to that level, there would need to be a way to ensure that there was no way that people who were taking part could be victimised as a result of a legal activity.

Christine Grahame: What I am asking for is quite plain stuff—it does not go down to the granular level. I am asking that we

"keep a register of licences granted, including the start and end dates of the licence and the name of the licence holder."

That is it. The rest can be done by regulation. It does not get into the detail of the guns and so on, which Edward Mountain has just exemplified.

It is my understanding that the Scottish Animal Welfare Commission has suggested that we should have such a register. I see security in it for people who have been granted exceptions. The public will think, "Oh well, this is the law now," and they will not necessarily appreciate that there are exceptions to exceptions whereby there could be an increase in the activity. Rather than see it as victimisation—to repeat myself—I would see it as something that would give security to the licence holder.

I have nothing further to add, convener. If you feel that it is appropriate, perhaps the minister could answer some of those points, as I just want explanations.

The Convener: The minister will be contributing to the debate when she speaks to her amendment, but she is welcome to intervene if she wishes to comment.

Màiri McAllan: I will respond once we have been through the amendments, convener.

The Convener: I call Colin Smyth to speak to amendment 116 and other amendments in the group.

Colin Smyth: I support amendments 9 to 12 and 15 to 20, in the name of Ariane Burgess, which would remove section 4 from the bill. The bill as it stands would allow for a continuation of the use of packs of dogs in hunting, albeit under licence. It therefore fails to fully close the loopholes that exist in the current legislation; it merely licenses them.

I am clear that we cannot license cruelty. We cannot believe, on the one hand, that we need to limit the number of dogs to two because that reduces the risk of dogs instinctively chasing and killing, while, on the other hand, continuing to allow the use of packs of dogs simply because someone has a licence. One does not close one loophole by creating another.

I do not agree that these are wrecking amendments—in fact, what is wrecking is including licensing in a bill that seeks to end the use of packs of dogs. Alternative and more humane methods are available to manage wild mammals.

Jim Fairlie: Will the member take an intervention on that point?

Colin Smyth: Yes.

Jim Fairlie: Can Colin Smyth explain to the committee what other methods he would use in an area of woodland covering 1,000 acres?

Colin Smyth: It is interesting that Jim Fairlie raises that point when there is no definition in the licensing scheme of the example that he gives. That is one of the weaknesses of the licensing scheme: it is not clear about exactly when packs of dogs will or will not be allowed to be used.

Jim Fairlie: Will the member take an intervention on that point?

Colin Smyth: I will try to finish answering the first intervention before doing that.

There are alternative and more humane methods available to manage wild mammals and protect the environment, and, of course, the use of two dogs would continue to be allowed.

If members do not support the amendments to remove licensing, amendments 116 and 130, in my name, would allow NatureScot to require licence applicants to meet standards in the application process that could be drawn up in line with an ethical framework such as the international consensus principles for ethical wildlife control, which is an existing international example of such

standards. The principles would bring significant animal welfare benefits if embedded in Scottish Government and societal practices. They would provide a framework to guide decisions on whether, when and how wildlife interventions should take place, and they would ensure that ethical reasoning is applied, evidence is consulted and animal welfare is prioritised. Perhaps most importantly, the principles invite a shift in mindset, recognising that each animal is sentient and deserves equal consideration, regardless of the category that humans have put them in. That is a key point.

Jim Fairlie: If all animals are sentient, how do you justify a fox killing a lamb or several lambs in order to take a tail or an ear to give as a trinket to cubs? Do we accept the fact that foxes will kill lambs?

Colin Smyth: I think that we accept that. I do not think that the bill suggests that we should not control predatory behaviour by animals—no one is proposing that. However, that does not mean that the animal is not sentient. I would have thought that every member recognises that all animals are living, breathing creatures that feel pain and suffer. I think that that is a basic thing that any human being would recognise.

I have heard it argued that we do not need this ethical approach, because the NatureScot position statement on wildlife welfare and the shared approach to wildlife management that NatureScot currently uses to guide its decision making in the area are sufficient. That is a bit of a red herring—it seems to be more of an excuse for not supporting my amendments rather than a credible explanation. If you compare the seven international consensus principles for ethical wildlife control with those two current policies, you will see that the latter are outdated and simply do not go far enough, and I think that the Government recognises that in its thinking on, for example, the coming changes to deer management.

The current policies are commendable statements of intent, but they are not a proper framework that will act as a guide for decision making in any application process. In contrast, the seven principles can easily be converted into seven questions in any licence application process, literally providing a step-by-step protocol to follow when a potential problem is identified and a decision on how to approach it must be made.

Crucially, NatureScot's definition of wildlife welfare is outdated. It contains no recognition of sentience. Although I think that it would be perfectly logical—this would be my preference—to say specifically that the ethical principles should be the international consensus principles for ethical wildlife control, my amendment 116 does not do that; it simply says that ethical principles

should be used. I believe that such ethical principles could be drawn up by NatureScot, working with those involved in wildlife management, animal welfare charities and others when developing the licensing scheme.

One criticism of the bill is that there is a lack of detail about what would guide the licence application process, and my amendments would help to overcome that by setting a clear direction of travel. Anyone who is considering an application under a licensing scheme that follows ethical principles has nothing to be concerned about because, frankly, if they cannot justify the licence on ethical grounds, they should not have a licence in the first place.

Rachael Hamilton: This morning, we received a letter from the minister. As it was, regrettably, received very late, I have not had the opportunity to fully absorb it. However, it addresses what will happen with regard to the licensing and what NatureScot will do to engage with stakeholders.

It says that

“NatureScot is committed to a ‘shared wildlife management principles’ approach to stakeholder engagement.”

It does not sound as though Colin Smyth accepts that NatureScot is committed to those principles. He seems to want to go further, albeit that we all know that the intention of the bill is to maintain the highest standards of animal welfare. What do Labour members not appreciate about the shared wildlife management principles?

Colin Smyth: I have outlined exactly—

Rachael Hamilton: Yes, but specifically.

Colin Smyth: The current policy does not recognise the priority of animal welfare or the sentience of all animals. The Government itself has recognised that that is the case in some areas. For example, in its approach to the upcoming deer management policy, it is going further than the current policy statements that are in place. There is a recognition that those statements are outdated and need to be updated. We are not specifying exactly what the detailed policies should be. The detailed application process should be part of a discussion and consultation.

Edward Mountain: Will the member take an intervention?

Colin Smyth: I will finish my point first.

The approach should be to discuss it with all stakeholders, including those involved in wildlife management and those involved in animal welfare. As part of that—they are very small amendments—the direction of travel should be to follow ethical principles in developing a licensing scheme.

I would turn the question round and ask any member to look at the seven ethical principles—I have given an example—and say which of them should not guide the process when it comes to an application.

Edward Mountain: I get confused when we talk about this issue and mix up species.

Currently, deer control is carried out by Forestry and Land Scotland. NatureScot is issuing licences to all seven regions of Forestry and Land Scotland for the out-of-season control of deer. That means the shooting of females that have dependent young, without necessarily ensuring that the dependent young are controlled. It seems that you are mixing up the two. It concerns me that you are looking for a stronger licensing procedure on this issue, whereas you will then promote the shooting of deer that have fawns at foot without killing the fawns. I have a problem with that. Can you justify it to me?

Colin Smyth: I will not confuse the two, because we are dealing specifically with the bill. My reference was to the fact that, in the Government’s proposals for upcoming changes to deer management, it recognises that it needs to go beyond existing policy.

I think that I have covered all the points that have been made. As I said, one criticism of the bill is that there is a lack of detail. My amendments 116 and 130 would set a direction of travel for the discussions on that lack of detail. I have been very clear that the amendments are quite tight. They do not specify all seven of the ethical principles—I gave an example of one that could be incorporated—but they set a direction of travel that ethical principles should direct any licence application process.

I would be happy to work with any member on the practicalities of that, if the amendments are not agreed to. However, I urge members first to support amendments to remove the licensing scheme from the bill; failing that, I urge them to support amendments to include the ethical principles for wildlife management to ensure that the licensing scheme is as robust as possible.

Màiri McAllan: Again, I hope that members will bear with me, as the group of amendments is large, but I want to give the Government’s due attention to each member’s amendments.

I will follow some of the chronology that we have already had, so I will start with amendments 9 to 12 and 15 to 20, in the name of Ariane Burgess. As we know, those amendments would remove the licensing scheme altogether. The Government has always sought to balance our aim of promoting the highest standards of animal welfare with the reality that, in this rural country, as I have

said, access to the legitimate control of wild mammals is required in certain circumstances.

If farmers are not able to protect their stock, they will lose lambs, poultry and other stock. That is not just an economic loss to hard-pressed farms; it is also emotionally distressing for farmers to see the killing of livestock that was under their care. We know that control can be difficult to carry out on rocky terrain, hill ground or densely vegetated areas—for example, we know that lamping may not be possible and that two dogs on their own may not be able to flush to waiting guns. That was expressly recognised by Lord Bonomy, who had very specific comments on terrain that I am not prepared to ignore.

12:30

With all that being the case, I am clear that the licensing scheme is an exception to an exception; it must be available where it is essential, but it must also be tightly regulated and controlled. The use of more than two dogs will be for specified purposes only, where there is no other effective solution, where a maximum number of dogs is specified and for a time-limited period. It will always be illegal to allow any number of dogs to chase and kill a fox. For those reasons, I do not support Ariane Burgess's amendments.

Jim Fairlie clearly set out the reasons why he does not support amendment 21 in Rachael Hamilton's name. Principally, that is because the decision should lie with the licensing authority and not with the applicant. I agree with his reasoning and do not support the amendment. Jim Fairlie's formulation in amendments 191 and 171 addresses the issues that he has identified. I support those amendments to add specific examples of the information that the licensing authority may require; they are useful additions in the name of high welfare standards.

Rachael Hamilton: I would like clarification on your comments about who is best to decide what is best in terms of the terrain and the understanding of the topography and so on. I know that you have explained this in the past, but are you confident that NatureScot has the ability to do that? I note that the letter that the minister sent to the committee this morning refers to the intention to have workshops with stakeholders so that they can raise questions. If my amendment is not accepted, are you confident that NatureScot will get a better understanding of what is required in relation to the nature of the topography and terrain that I describe? Is that the intention?

Màiri McAllan: I already have great confidence not only in NatureScot and its expertise, but in the good relationship that exists at a local level between NatureScot representatives and the

people with whom it works in various ways, which Jim Fairlie pointed out. That will only improve and, as I say, NatureScot and I are committed to continued consultation with people who would seek to use that section of the bill.

The point about the difference between the amendments is more of a technical one. Ultimately, we cannot say that it is for the applicant to decide on the number of guns; it must always technically be for the licensing authority to make that judgment in all circumstances. That is the licensing authority's duty to fulfil, but I have every confidence that there is a good relationship there and that there will be a good understanding of what is required. The fact that applicants will be able to give an indication of what they think will be the correct number of guns will be useful in that regard but, ultimately, the decision must lie with the licensing authority.

I move on to Edward Mountain's amendments 72, 103 and 107, which would add a new section and amend sections so that NatureScot could not implement a fee. The provisions in the bill around the potential for NatureScot to charge a fee are similar to those that are in other legislation under which NatureScot operates a licensing scheme, such as those under the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, &c) Regulations 1994. I do not see why our approach would differ under the bill. The Scottish Government has committed to reviewing the approach to charging for licensing generally in the near future, so it would not be correct to pursue differences in this scheme when that review is shortly coming down the track. For those reasons, I do not support those amendments.

Edward Mountain: Are you going to speak to the other parts of the amendments on the licensing appeal procedure and whether the minister will be the ultimate arbiter of that?

Màiri McAllan: Apologies for omitting that—it slipped my mind—but I do not support that aspect of the proposals, either. There are already well-established review processes inherent in NatureScot's operations, and NatureScot is best placed to take a view, not Scottish ministers. Referring back to my conversation with Rachael Hamilton, the expertise lies with NatureScot and not with me.

Edward Mountain: My concern is that SNH then becomes judge, jury and ultimate appeal judge, which is contrary to common law and would be against the procedure where somebody else could review the licence. If the minister cannot give an assurance that she or a future minister will do that, will she set out an appeal procedure that people can go through?

Màiri McAllan: I am more than happy to keep talking to you about that, but my view today, and the reason why I will not support the proposal as formulated, is that review procedures are already very much built into the processes. That is within NatureScot, but I expect it could ultimately come under judicial review—I look to my legal colleagues on that. Review processes are available right up to judicial review, and I do not think that bringing those issues in house within the Scottish Government would be helpful.

I hope that that clarifies the point.

Edward Mountain: [*Inaudible.*]

Màiri McAllan: That will be in the eye of the beholder.

Amendments 156 and 159 from my colleague Christine Grahame seek to remove the ability of NatureScot to license “a category of persons”. I very much understand the intention to tighten up how licences can be granted. However—we have discussed this a lot this morning—I do not want to create inconsistencies with the wording of the bill, which the two amendments could do, as the approach that we have set out is as set out in the Wildlife and Countryside Act 1981.

I will try to cover each of the points that have been made in turn. On the point about “person” and what that can be taken to mean, the law already states that the word “person” would include bodies such as a company or club, so those types of bodies could be granted a licence even if the bill were amended to only include “person”.

Christine Grahame: I understand that they are legal entities. Companies, clubs and partnerships are legal entities, but “category” is not a legal entity.

Màiri McAllan: Yes. I was just going to come on to the point about categories. The other reason why that is important is that excluding a category would prevent a situation in which a set of neighbouring farmers, perhaps with hill ground stretching between them—exactly the terrain where Lord Bonomy said the provisions would be required—would be able to do what we have discussed with them: apply for a licence that runs with the terrain, not the individual, over that area of land.

Christine Grahame: How, therefore, would that category be described in the licence? Would it refer to the farmers of X, Y and Z farms?

Màiri McAllan: It would run with the land, not with the individuals. NatureScot would receive an application for an area of land, it would consider the terrain—that being one of the main considerations—and it would determine whether it was suitable to grant a licence over that land.

The point about who would be liable in the case of a breach of conditions is important. That will always be the person or people who are undertaking the activity. Under section 1(4), those undertaking the activity will be everyone involved, not just those who are controlling the dog. As concerns applications for categories of persons, those liable would still be the people undertaking the activity. Likewise, if a farmer had applied for an agency to undertake the work, it would be in the first instance the agency—the folks on the ground who were undertaking the activity—who would be liable for any breach of licence conditions.

I would add that there are ancillary provisions in the bill that might catch the farmer in those circumstances if they had knowingly permitted illegal activity to take place on their land.

Christine Grahame: Forgive me, convener, but I am going to have to ponder that for stage 3, as I am not quite satisfied with the explanation. It may be perfectly right, but I need to tease it out and read the detail.

Màiri McAllan: I would be happy to meet you to explain it further.

Christine Grahame: That would be good. My understanding is that the licence goes to a person or category as the bill stands. Therefore, if the licence is breached, surely the licence holder is liable, notwithstanding the fact that another party is undertaking the physical control. At the end of the day, it is the licence holder who says, “I’m getting a licence, and I’m responsible for what happens under this licence of mine.”

Màiri McAllan: I have just explained that that is not the case. The individuals who were responsible for the breach of conditions on the ground would be responsible.

Christine Grahame: We would not know who those were. It could be anybody. It could be somebody who has nothing to do with the landowner.

Màiri McAllan: That might be the case in certain circumstances, but it would be for—

Christine Grahame: I will leave it at that. I will have a big think about the matter again, because I am not sure.

Màiri McAllan: Yes. [*Interruption.*]

I do not appreciate the whispering across the room.

The Convener: Minister, are you continuing or have you completed?

Màiri McAllan: I have completed that section, but I am more than happy to keep talking to Christine Grahame about it to try to clarify her

points. However, if I can, I will move on, because I am conscious of the time.

Rachael Hamilton's amendments 204, 209, 231 and 234, which would insert the word "group" into section 4, are not necessary. They do not add what she hopes they would. As I have said, "person" is not limited to individuals and, under interpretation legislation, it includes bodies such as clubs, companies or partnerships. As we have discussed, the singular includes the plural unless the context requires otherwise. Therefore, it is already possible to grant a licence to more than one person if they meet the requirements, so I ask that those amendments not be moved.

Again, I am not entirely clear what amendments 205 and 232 in Rachael Hamilton's name seek to achieve. However, they could create inaccuracies in the bill. Sections 4(4)(b) and 4(5)(b) work together. The former sets out what a licence can or must do and the latter sets out what must be specified in the licence. Amendments 205 and 232 would break that relationship, which would cause confusion. However, I am not entirely clear what the intention of the amendments is and, if Rachael Hamilton wants to work with me to clarify that, I am more than happy to do so.

Rachael Hamilton: I would like to come back to the minister to have a look at those amendments. I followed what she said on amendment 205, but I ask for clarification of the other amendment that she mentioned. Was it 222?

Màiri McAllan: It was 205 and 232.

Rachael Hamilton: Thank you.

Màiri McAllan: Rachael Hamilton's amendment 22 seeks to change one of the tests for granting a licence from

"there is no other solution which would be effective"

to "there is no other solution which would be practical". I have considered that very closely. To simply substitute "practical" for "effective" could significantly weaken a key licensing test, so I cannot support that today. However, I accept that there are situations in which a solution would be effective—say, in preventing predation from taking place—but might not be practical to achieve. For example, building and maintaining a high fox-proof fence around a large field might be effective in keeping foxes out, but there is a question about whether it would be practical to achieve for the farmers who would be involved.

On the other hand, it could be argued that, for a solution to be considered effective, it is implied that it would be practical. However, I would like to give further thought to that and, if necessary, come back with an amendment at stage 3 to cover those points.

Amendments 206, 210, 233 and 235, in Rachael Hamilton's name, would allow a licensing authority to specify any number of dogs rather than the minimum number that would be effective. I do not support those amendments. The requirement for the licensing authority to specify the maximum number of dogs that are to be used is an important safeguard to maintain the tightly construed licensing scheme that we want. With any other approach, we would risk creating loopholes, and that must be avoided. Having the minimum number specified by the licensing authority is consistent with our approach of ensuring that we use more than two dogs only when there is no other effective solution.

Amendments 23 and 34, in Rachael Hamilton's name, which were earlier alternative amendments to 206, 210, 233 and 235, would adjust the wording of the test rather than delete it altogether. I repeat that the requirement for the licensing authority to specify the maximum number of dogs that are to be used is in our view an important safeguard that we will seek to maintain, so we cannot support those amendments.

I support amendments 157, 160, 172 and 173, in the name of Jim Fairlie, for all the reasons that have been stipulated. For the sake of time, therefore—if Jim Fairlie does not mind—I will move on.

12:45

Amendments 116 and 130, in the name of Colin Smyth, would amend sections 4 and 8 respectively. They propose that applications for a licence to use more than two dogs should be subject to adherence to a set of standards. There has been some discussion about that. I am sympathetic to the intention behind these amendments and I listened closely to what Colin Smyth had to say.

I know that NatureScot has looked closely at the international ethical principles of wildlife management and examined how those compare to its own shared approach, which, again, has been discussed. I have confidence in the shared approach, not least because it was discussed and developed over a long period of time and brought together a range of diverse stakeholders around points on which they could coalesce.

However, the main point that I put to Colin Smyth today is that the Scottish Government is shortly to commission a review of licensed wildlife management, which will look at welfare aspects and may recommend changes across the board. As previously discussed with regard to fees, I am reluctant to make changes to a particular category when a larger piece of work, which will look at the issues as a whole, is coming down the track. For

that reason, I cannot support amendments 116 and 130.

I turn to amendments 207, 208, 24 and 25, in the name of Rachael Hamilton. I am not persuaded by these amendments. I think that a year is too long for the validity of a particular licence, bearing in mind the need to maintain tight control. The deletion of a maximum period through amendments 207 and 208 would appear to remove the licensing authority's ability to license fewer than 14 dogs and would require it to license 14 dogs, which we could not support. I am sorry; I mean 14 days—I am getting confused now. We therefore cannot support these amendments either.

Having said that, I am aware that there is concern about the time period over which the 14 days could be used. I have listened carefully to the discussions on the licensing period in section 3 and to the evidence that the committee has heard. I remain of the view that 14 days is the correct maximum number of days for a licence to cover. I am persuaded, however, that there could be more flexibility around the period in which those 14 days could be used. I propose a maximum number of 14 days to be used in a period of six months. Again, that does not allow any more days of activity, but it allows for flexibility to deal with things such as a change of plans, bad weather and unforeseen events.

Amendments 211 and 236, in the name of Rachael Hamilton, would insert the word "other" into licensing provisions in section 4 and section 8 respectively, so that, where the bill says that licences

"must specify ... any conditions to which the licence is subject",

the wording would be changed to read "any other conditions".

I understand the intention, but the thinking is incorrect, as it confuses what those subsections are. They are not conditions—they list the information that must be specified in the licence. The amendments would therefore not work, and I ask Rachael Hamilton not to move them.

I turn to Christine Grahame's amendment 161 and the point about publication of a register of licences under section 4. I am sympathetic to that; transparency in how licences operate is always desirable. NatureScot already successfully shares a lot of information on wildlife management licences, not least—as has been seen recently—in detailed reporting on the operation of the licences to manage beavers, so there is a precedent. There are also plans to publish data on all of NatureScot's licences, but we need to work carefully through the general data protection regulation legislation in order to do that in a way

that is legally watertight and does not undermine the GDPR.

That being the case, and having listened to the exchanges, I will continue to consider Christine Grahame's points, and I assure her today that I will commit to going as far as possible within the remit of the GDPR to publish what it is that she is asking for.

Christine Grahame: So, there is a possibility of having a public register.

Màiri McAllan: I cannot commit today to its being a public register. I have to consider what can be published within the scope of the GDPR.

Christine Grahame: Could we have another little meeting about that?

Màiri McAllan: Perhaps we could discuss it at the same meeting, to save time.

Christine Grahame: I will put that in my diary. That is good, thank you.

Màiri McAllan: Okay, thank you.

I will try to proceed as quickly as I can.

Amendment 33, in Rachael Hamilton's name, would remove the tests for the relevant authority to grant the licence, which are that the work would need to contribute towards a significant or long-term environmental benefit and that no other solution would be effective. Amendment 33 would remove those two key tests that have to be met before the granting of licences under section 8, which are the need for the activity to contribute to long-term environmental benefit and for there to be no other effective solution.

The "no other effective solution" test is the foundation of the licensing scheme that we are proposing, and it is designed to ensure that the use of more than two dogs is kept to an absolute minimum and that more than two dogs are used only when it is absolutely necessary. Likewise, the long-term environmental benefit test is important in section 8 because licences could be granted for up to two years, so we need to remain strict on how that test operates.

Without those two tests, it is hard to see what criteria NatureScot would apply before deciding, and I think that it would loosen a great deal of what we are trying to achieve under that section of the bill.

Rachael Hamilton: Obviously, the workshops will take place in the future—possibly after the passage of this bill. I am not quite sure of the timetable that you might have suggested in your letter.

If a stakeholder engagement session took place after the bill had passed, and if there was a

discussion about licensing 14 days in a six-month period and a two-year licence, which currently exists for environmental benefit, and stakeholders and NatureScot decided that there was something in the middle to achieve environmental benefit but neither of those parameters was suitable, how would a change become effected in law?

Màiri McAllan: Thank you for the intervention. If I understand you correctly, my response is that the consultation has been happening from the beginning. It has got the bill to this point, and it has taken us through the scrutiny period in the Scottish Parliament, so it is not as though consultation—

Rachael Hamilton: The licensing scheme has not.

Màiri McAllan: Well, it has, because the framework of it is there in the bill, and we have said from the beginning that the bill will set out the fundamental parts of the licensing scheme and that that will be supplemented by guidance.

Consultation has informed what is in the bill, just as it will inform what is included in the guidance, so it is not correct to suggest that taking into account stakeholders' views in the aftermath of the bill would be problematic because we would not be able to undo what had been done before; their views have been part of the process from the beginning and they have shaped much of what we have in front of us, just as they will shape the guidance.

I have two more sections to address. Amendment 104, from Edward Mountain, which inserts an additional section that requires NatureScot to either grant or refuse a licence on receipt of a licence application and allows the Scottish ministers the ability to decide whether a licence has been reasonably refused. We touched on that subject earlier, so, if you do not mind, I will not deal with it again but will move swiftly on to amendments 105 and 106.

Edward Mountain made a point about replacing references to SNH with references to NatureScot, which is not required, because Scottish Natural Heritage remains the correct legal name. That is set out in the Natural Heritage (Scotland) Act 1991, and it should be used in this context. Edward Mountain referred to the constant changing of names, but I think that one change in 20-odd years is not bad.

Edward Mountain: It is still confusing, minister. There should be consistency in the bill. It cannot have two names.

Mercedes Villalba: I have some reservations regarding amendments 157, 160, 172 and 173, in the name of Jim Fairlie, which require the licensing authority to specify the minimum number of guns required.

Although that may well increase the likelihood of a clean shot of a wild mammal, I am concerned that it could also increase the risk to humans and other animals, and I would not want to set a precedent for legislation to mandate a minimum number of guns in any context.

The Convener: If no other members wish to speak, I ask Ariane Burgess to wind up on this group.

Ariane Burgess: I thank the minister, and I thank other members for lodging amendments in the group. I appreciated hearing their perspectives. To clarify, my amendments are not wrecking amendments; rather, they are intended to legislate for the highest possible standard of animal welfare in a modern Scotland.

I agree with Christine Grahame's comments about having a public register of licence holders. The intention would not be to victimise them; it would be to ensure accountability and responsibility. A public register of licence holders was one of the recommendations made during consultation on the member's bill on protecting Scotland's wild mammals, which was introduced by Alison Johnstone in the previous session, and I fully support that.

The minister raised the need for farmers to protect their livestock, and I fully understand and sympathise with farmers' need to minimise the loss of lambs and other livestock, but the bill will not prevent farmers from taking action to control animals that are preying on their livestock or crops. It even allows lethal control. However, the bill puts humane conditions on how that is done, to ensure the least suffering by the smallest number of animals.

I agree with Colin Smyth that we need to rethink the false assumption that killing wild animals is the best way to protect livestock, and I welcome his comments about the ethical principles. I fully support the idea that, if the licence scheme is to be retained in the bill, the licence conditions should be aligned as closely as possible with the best practice of ethical wildlife management, such as the international consensus principles of ethical wildlife control or RSPB Scotland's vertebrate control policy.

However, Colin Smyth's amendments 116 and 130 are not specific enough and refer to "a set of standards based on ethical principles".

The committee heard NatureScot trying to reassure us that its shared approach to wildlife management is already

"fairly well aligned with the ethical principles",—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 22 June 2022; c 24.]

so it could simply require licence holders to align with its existing approach. NatureScot's shared approach is supported by pro-hunting organisations including the British Association for Shooting and Conservation, the Scottish Countryside Alliance, the Game and Wildlife Conservation Trust in Scotland and Scottish Land & Estates. That implies that the shared approach would perpetuate the status quo rather than encourage behaviour change and increase protection for wildlife.

I will support Colin Smyth's amendments at this stage, but I would like to work with him, with Government or with other parties before stage 3 to amend this area of the bill further to require closer alignment with actual best practice in ethical wildlife control while ensuring that that requirement is workable in practice and can align with the outcome of the species licensing review, as the minister has mentioned.

I will press amendment 9.

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Villalba, Mercedes (North East Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Carson, Finlay (Galloway and West Dumfries) (Con)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Minto, Jenni (Argyll and Bute) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 9 disagreed to.

The Convener: That brings us to the end of our stage 2 consideration today. At our next meeting, we will consider the remaining stage 2 amendments to the Hunting with Dogs (Scotland) Bill. We will also consider an affirmative Scottish statutory instrument on poultry meat and a negative instrument, and we will consider further our work programme paper.

Meeting closed at 12:59.

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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