



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 28 June 2023

Session 6



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RURAL AFFAIRS AND ISLANDS COMMITTEE
20th Meeting 2023, 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)
- *Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)
- *Rhoda Grant (Highlands and Islands) (Lab)
- *Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hugh Dignon (Scottish Government)
Leia Fitzgerald (Scottish Government)
Gillian Martin (Minister for Energy and the Environment)
Norman Munro (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 28 June 2023

[The Convener opened the meeting at 08:47]

Wildlife Management and Muirburn (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning, and welcome to the 20th meeting in 2023 of the Rural Affairs and Islands Committee. I remind members who are using electronic devices to turn them to silent mode.

The first item on our agenda is the Wildlife Management and Muirburn (Scotland) Bill, on which the committee will take evidence from the minister. I welcome Gillian Martin, the Minister for Energy and the Environment, to her first meeting with us. She is joined, from the Scottish Government, by Hugh Dignon, who is head of the wildlife management unit; Leia Fitzgerald, who is team leader of the wildlife legislation team; and Norman Munro, who is a solicitor.

I will kick off with the first question. Did the Scottish Government balance any potential increase in public health risk with animal welfare considerations in coming to the conclusion that purchase and use of glue traps should be banned?

The Minister for Energy and the Environment (Gillian Martin): Yes, we did. It is fair to point out that we looked at how other countries are dealing with such traps, as well. The United Kingdom Government had considered a licence scheme for particular incidences of pest controllers saying that glue traps are necessary—in healthcare settings or food production settings, for example.

There are a number of reasons why we have come to our position. First, we feel that there are sufficient alternatives to glue traps to deal successfully with rodents—there are snap traps, live box traps and electric traps. We obviously liaise with pest controllers and have looked at what pest controllers are doing throughout the country. Some of the big names in pest control, including Rentokil, have opted not to use glue traps because of animal welfare concerns.

We also reached out to find out about pest control in all local authorities. Of the 14 local authorities that responded, 11 said that they would never use glue traps, two stated that they do not provide a pest control service and only one said

that it had used them in the past, although very rarely.

We therefore looked at other models in which glue traps have been banned completely; for example, the Republic of Ireland has banned them completely. The committee will note that, last night, the Senedd in Wales voted to ban the sale and use of glue traps completely, as well. We think that that is the right way to go. Those traps are inhumane.

The committee has had a witness before it who made the point that glue traps are sometimes necessary. We will have a period in which pest controllers can adjust and find alternative methods that they are, perhaps, not already trained in or might need to source. We will bring in directives on that by regulation, to allow the pest control sector to adapt.

The Convener: As you mentioned, we heard from pest control professionals who suggested that use of glue traps is limited but is an essential part of the toolkit and is important in some circumstances. Why, therefore, did you rule out the possibility of a limited licensing scheme?

Gillian Martin: I heard that witness's testimony, and I have to say that he made a good case. I was thinking about it and spoke to my officials, who have been working on the bill for a lot longer than I have; you will appreciate that the environment brief came into my portfolio only just over a week ago. The officials had already significantly teased out a lot of the questions that I had about the matter.

The main reason why we ruled out a licensing scheme is that there is no regulatory framework in place for pest controllers. There is no accredited body, so the question is, what accreditation would someone who sells to a licensed pest controller have? Such accreditation does not exist, so how would sellers know that they were the real deal? England will have that situation, and I worry about how the English authorities will monitor and police it.

That is the main reason why we decided that a complete ban is the way to go. Glue traps are inhumane traps. I forget the name of the chap who was in front of you; he talked about using cameras and being on site. However, even an hour of being trapped in a glue trap is extremely distressing for an animal, because it is an inhumane type of trap. There is suffering involved and we feel that it is not possible to monitor a licensing scheme for glue traps in a watertight way.

Beatrice Wishart (Shetland Islands) (LD): Good morning. We heard from Police Scotland that there could be some dubiety about the offence of acquiring a glue trap. What

consideration did the Government give to introducing an offence of possession?

Gillian Martin: I might bring in my officials in a second because, as I said, they have been working on the bill for some time.

The language around use and sale is much cleaner and clearer. My officials will comment on the rationale, on which they have been working for some time, but we could have a situation in which someone could have old glue traps in a garden shed or loft. We should not criminalise people who do not intend to use such traps but who bought them a long time ago and might not even know that they still have them.

We will stop the sale and use of glue traps. My officials will be able to give you the detail of the investigation into that aspect of the bill, but my feeling is that introducing an offence of possession could unnecessarily criminalise people who have just forgotten that they have traps. Police Scotland will be involved in disposal of any glue traps that people have, so I guess that it will do some work to ensure that people do not possess them when they should not. However, I do not see the need to criminalise people who do not intend to use glue traps.

Leia Fitzgerald (Scottish Government): We want to introduce as complete a ban on glue traps as possible, so the bill includes a ban on their use, but, as we set out in the policy memorandum, other potential offences, including the sale of glue traps, might invoke the United Kingdom Internal Market Act 2020. Therefore, the provision that we have in the bill is, as the minister said, the key one—the ban on use of glue traps. We are considering a range of other offences, such as in relation the sale of the traps, but they will have to be compliant with the 2020 act's conditions.

The Convener: The letter that was written to Trudy Harrison states that it is your intention to introduce provisions to ban sale and possession of glue traps by amendment at stage 2.

Gillian Martin: We will look into that. I wrote to Trudy Harrison just over a week ago—maybe not even that long ago—so we need to hear back from her.

The issue will also be on the Welsh Government's plate, so I guess that we need also to have a look to see what is happening there. The Welsh are in the same position as us, as the Senedd has voted to ban the sale and—

The Convener: My point was specifically about possession. Will that be staged?

Gillian Martin: I gave you my initial personal thoughts about why we have not included possession in the bill, but I am, obviously, willing to move on anything. Beatrice Wishart raised the

issue; it is, perhaps, something that she feels should be included in the bill. We are at the general principles stage, so I am willing to speak with anyone who thinks that the offences could be widened or improved.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Will you elaborate on the point about use and how the police will deal with that? I might be recalling this wrongly, but I think that someone indicated to the committee that a glue trap could, in many circumstances, be literally a plank of wood and a tin of glue. Are the proposals adequate to deal with home-made traps? Do they fall within the scope of what you intend?

Gillian Martin: That would come down to the definition of a glue trap. I might have to turn to my officials about that level of detail about what could constitute a glue trap. We can write to the committee and give you the firm definition. However, to me, a plank of wood with a layer of extremely powerful glue would constitute a glue trap.

Alasdair Allan: So, it is about intent, is it?

Gillian Martin: I get where you are going, Mr Allan: obviously, there is sale of recognised brands of glue trap, but someone could make a home-made version.

Hugh Dignon is helpfully pointing out that the bill states:

“‘glue trap’ means a trap that ... is designed, or is capable of being used, to catch an animal other than an invertebrate, and ... uses an adhesive substance as the means, or one of the means, of capture.”

Therefore, the home-made version that you mentioned would be a glue trap. Basically, the provision would include that. We are not in a situation where planks of wood and tins of glue—

Alasdair Allan: I am not suggesting that you would criminalise having planks of wood. That answers my question about how you define use and intent and all the rest of it. Thank you.

The Convener: To be clear, will you lodge amendments at stage 2 to ban possession of glue traps? We might have a grey area, there.

Gillian Martin: We have not decided on that yet.

The Convener: Okay.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): The Scottish Government has said that it might lodge amendments at a later stage to ban sale of glue traps if an exclusion from the United Kingdom Internal Market Act 2020 is agreed. Will you update the committee on progress with those discussions? Is it likely that an exclusion will be agreed in time for stage 2 or 3 of the bill?

Gillian Martin: I guess that the convener has effectively answered your question, Mr Fairlie. I have written a letter to Trudy Harrison, who is my opposite number in the UK Government, setting out our plans and highlighting the fact that we will need—well, we might need this but I think that we will need it—an exemption from the United Kingdom Internal Market Act 2020 to ban the sale of those traps. It is too early to have had a response from Ms Harrison. I know what ministerial inboxes are like and the length of time that it takes to respond, so I was not expecting a reply from Ms Harrison by this point. I would expect a reply by stage 2, because by then we will have an idea of what we can do and what we might have to amend in the bill.

Now that the Senedd has passed the ban on glue traps, I will be reaching out to my Welsh counterparts to ask what they did around the exemption from the United Kingdom Internal Market Act 2020, because it could be that they are a lot further ahead. I imagine that they might not have pressed ahead if they did not have that exemption, but I would need to reach out to them. That will be quite helpful.

Certainly, it is still our intention to ban the sale of the traps. I do not think that it is unreasonable to ask for an exemption. We will see what Ms Harrison comes back with, but I think that I will also be liaising with my Welsh counterparts on the matter.

09:00

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): The 2020 act seems a bit of a devil, because it would apply to practically anything, including snares and vaping products.

Gillian Martin: Essentially, the 2020 act is about sale of things across the UK, so, if we want to progress our policy objectives in the Scottish Government and the Scottish Parliament, it has the potential to be something that we ask for exemptions from quite often.

Christine Grahame: It just struck me that practically everything you can get, you want to prevent.

The Convener: To go back to the exemption, the Welsh Senedd has passed the ban. Is it reasonable to suggest that the Welsh Senedd has an exemption, or has it brought in the ban without seeking one?

Gillian Martin: To be honest, I would need to look into that. Hugh—do you have any information on whether the Senedd has achieved that exemption?

Hugh Dignon (Scottish Government): It is best if Leia answers that.

Leia Fitzgerald: The Welsh Parliament has brought in a ban of use of glue traps, which everyone is satisfied does not invoke the 2020 act. It would be for offences such as sale and, potentially, possession that the 2020 act would come into play. The Welsh have just gone with the use of glue traps, and they set out their reasons for that in their policy memorandum.

We have committed to bringing in as full a ban as we can, which would include sale and, potentially, possession.

Gillian Martin: My understanding was that the Welsh had a complete ban—I looked at that last night as they passed it. However, I still want to speak to my Welsh counterparts to see what they have done in that area. Our intention is to ban the sale of glue traps, and we will need to negotiate with our UK counterparts to see whether we can do that.

The Convener: We will move on to the next section, with a question from Karen Adam.

Karen Adam (Banffshire and Buchan Coast) (SNP): On the wider discussion of wildlife traps, we have had quite robust discussions on proposed licensing. We have heard concerns from stakeholders and land managers that other people tampering with their traps might make them liable to prosecution. Has the Scottish Government given any consideration to making tampering with traps an offence?

Gillian Martin: If you mean having a specific offence of tampering with traps that does not already exist, at the moment, we are satisfied that there are already offences that would be committed if people were tampering with traps. I am just having a look—one offence is vandalism under the Criminal Law (Consolidation) (Scotland) Act 1995, and it can also be prosecuted as malicious mischief.

I have watched all the committee's evidence sessions, and some people made the point that an additional specific offence could include an element of cruelty or causing distress to the animal. If somebody is tampering with a trap, that has the potential to prolong the suffering of the animal. I am open to suggestions, but there might be existing legislation that could be triggered. For example, off the top of my head, as Finlay Carson will remember, we have the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020, which includes penalties for certain offences against animals. We can look at that.

Members are at liberty to come forward with suggestions. There could be other existing legislation that might be capable of being used in that manner, or there might be new offences. I

have an issue in relation to cases in which somebody tampers with a trap, probably because they are—as has been suggested; not by me but by the people whom you have heard from—activists in animal rights or are against the operation of grouse moors and want to get a prosecution in a vexatious way.

I am not convinced that people would really want to do what you are suggesting in a way that would prolong the suffering of animals, because that is probably not their modus operandi or where they are coming from, from a philosophical point of view. From what I have heard, what they are most likely to be doing when they interfere or tamper with traps is disabling them to ensure that they do not trap—by, for example, taking off doors or hinges, smashing them up or whatever they might do so that traps are not operational.

I listened to what Alex Hogg, for example, said about being very frightened by the traps having identification numbers on them and people using them, perhaps, to point the finger at somebody else. That defence is available to the people operating the trap, and the police tend not to criminalise people if there is sufficient evidence that somebody is setting them up.

In answer to the question, I say that I am, on one hand, open to suggestions and, on the other, I am wondering what the reality is with regard to trap tampering and whether it comes from a place of causing additional suffering to an animal. It seems to me that that might not be the case.

Jim Fairlie: I will ask a follow-up question. Over the sessions, we have taken lots of evidence from practitioners who are constantly finding traps that have been exposed and should be hidden. I take your point about addressing something that might increase animal cruelty or suffering, but what about protecting the practitioners? That is where they are coming at the issue from—they are not coming at it from any other point of view than the need for some kind of safeguard. With due respect, I will say that a prosecution for vandalism is probably not going to be seen as enough by those who are doing the job legally. They are looking for some balance to ensure that what they do legally in their work cannot be tampered with in a way that could cause them difficulties with law enforcement. Do you understand where they are coming from?

Gillian Martin: I do—and you have just articulated effectively why I am open to considering something. First, we need to look at whether the existing offences and the associated penalties are enough of a deterrent. However, we also need to put our trust in the police. The system of ID numbers has been operational for a number of years, and for good reason. Let me put it this way: the police are not daft. They are going to sus

out pretty quickly whether somebody is at it. As for whether taking a belt-and-braces approach and providing more of a deterrent will deter people, I am absolutely open to suggestions on that.

Jim Fairlie: I think that we need to come back to that.

The Convener: When the committee visited a moor a few weeks ago, we heard that 100 traps had been tampered with. In one case, an individual who thought that a gamekeeper had trapped their cat had actively set about identifying the traps that the gamekeeper had set to try to get him into trouble—only to discover that the cat had just disappeared for a couple of days. That is an example of somebody going out maliciously to get a gamekeeper prosecuted, which is why there is a potential issue with individual identification of traps and their being associated with one gamekeeper.

We certainly heard that a lot of tampering was going on, and I urge you to look at the potential to bring in a specific offence, given the significant penalties that a gamekeeper or an estate can face. After all, losing a licence can put them out of business. The issue is not widely known about. As for the proposal to prosecute on the basis of vandalism or other such crimes, we have heard in evidence that a specific offence would raise awareness of how serious tampering with traps is.

Gillian Martin: I understand the worry, and it is probably not enough for me to say that it is unlikely that the police would ever fall for or be convinced by such activity. We need to accept that people are still worried about being accused of something and investigated. I was struck by how vociferous Alex Hogg was—I do not quite remember, but I think that he used the phrase “scared to death”—so we need to have due regard to that worry.

I reiterate that I am open to any suggestions that might be made in the committee’s report or might come from individuals about stage 2 amendments that members or the Government might lodge. At the moment, we think that the other offences provide enough of a deterrent, but we are open to suggestions—I cannot say it much more strongly than that.

Jim Fairlie: Something that the convener touched on had crossed my mind. Illegally tampering with a trap could, in effect, result in someone’s licence being suspended. On the one hand, the keeper would lose their house, their job and everything else; on the other hand, the estate might be unable to trade for the entire season. As we work our way through the bill process, I hope that we will iron out the wrinkles, but I wanted to put on the record practitioners’ main concerns about trap tampering.

Gillian Martin: I know that the committee heard from NatureScot that, to suspend a licence, it would have to be convinced that something serious had happened. It would not suspend a licence on the basis of supposition.

The Convener: We will come on to that issue, because the committee has concerns about the powers that the relevant authorities might have.

Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con): Minister, I am looking for clarity on what you said about considering amendments to the bill. Are you saying that you would consider the creation of a specific offence for malicious tampering with traps?

Gillian Martin: We are only at stage 1. It is my job to consider any proposal that a member makes ahead of stage 2. Having been on the other side of the table for many years, I encourage members to ask for meetings with me so that we can look at their proposals and see whether the Government can support them.

Rachael Hamilton: Thank you.

Beatrice Wishart: At our meeting on 31 May, we heard that the Scottish Animal Welfare Commission had recommended that the sale and use of snares by the public and industry should be banned on animal welfare grounds. Officials indicated that an announcement on the snaring review was imminent. Will the minister update the committee on the timing of that announcement?

Gillian Martin: When my officials were in front of the committee three or four weeks ago, we hoped to have a decision by today on whether we would seek to amend the bill in that regard. The reality is that we are still looking at proposals that have been put to us about other types of snares. We do not want to make a decision before we have fully investigated those proposals, but our decision will be imminent.

I am conscious that, as Christine Grahame said at the 31 May meeting, the committee will need time to scrutinise whatever we decide to do; I am completely alive to that fact. When I convened committees, I got quite upset when things changed halfway through a bill process and there was not adequate time for scrutiny, so I understand that the committee needs to know our position on snaring quite quickly. The committee can expect a decision very soon.

09:15

When stakeholders tell us—as they have done, particularly from the gamekeeping fraternity—that there are more humane ways of doing things that they would like us to look at and that there has been modernisation in the field, it is incumbent on us not to dismiss that out of hand and simply

barrel on regardless. We need to consider whether the mechanisms are humane, and we do that with veterinary and animal welfare colleagues.

To respond to Ms Wishart's question, I cannot give a date, because I do not know it yet, but it will be soon.

Beatrice Wishart: Thank you.

The Convener: Why was it urgent to introduce the bill when two of the most important elements—extra powers for the Scottish Society for the Prevention of Cruelty to Animals and the potential banning of snaring—are coming late in the process? Why did you not wait until you had all the evidence, to ensure that the committee had the fullest opportunity to scrutinise those two important topics?

Gillian Martin: You will appreciate that I realised only a week past Tuesday that I was taking forward the bill. I was not involved in its drafting, so I cannot speak to that. The question is really for my predecessor, who is not accountable to the committee any more.

Bills change. If we make proposals, we have to ensure that the committee has the time to scrutinise them. That is why I made the announcement about the SSPCA yesterday, ahead of the committee deliberating on its report.

I am looking to my officials for when we think that we will have anything on the snaring proposals. I would want to get that to the committee sooner rather than later so that, when the committee puts together its stage 1 report, it has the full information.

The Convener: Will your officials give us an indication of that?

Hugh Dignon: I absolutely support what the minister said. I imagine that the date will be soon. I do not want to be too specific, but it will certainly be within a few weeks.

Gillian Martin: If we had a date, we would give you it, but we do not.

Christine Grahame: I am looking at what the Scottish Animal Welfare Commission does. It said:

“We looked at snares generically, but we have also looked at humane or modified cable restraints. The basic operation of the snare is the same whether it is modified or not ... We looked at that and we could not see any fundamental difference between the manner of operating of the conventional type and that of the new type.”—[*Official Report, Rural Affairs and Islands Committee*, 14 June 2023; c 60.]

I have two questions. First, why do you not simply come out and say, “We will go with the Scottish Animal Welfare Commission”? That is why it was set up.

Secondly, let us say that you try to ban the sale of snares. Have you raised that issue in relation to the United Kingdom Internal Market Act 2020 or are you raising it in advance with your UK counterpart? It is a case of not just possession and use but sale. The same issue will arise.

Gillian Martin: You are right. You have pointed to the Scottish Animal Welfare Commission's recommendations. We take that position seriously, and we look to the commission for advice. However, individuals, stakeholders and organisations have asked us to look at other views, which we are doing. We will come to a conclusion on that soon. It might be the same conclusion that you just cited.

As members will understand, I want to be sighted on all the decisions about that, as I now have responsibility for the bill. Before a decision is made, I want to see what has been looked at and what conclusions have been reached, and I want to do that quite quickly—as I have said, in the next couple of weeks. After this evidence session, I will look to see when we can give the committee a definitive date. If I can get a definitive date to the committee even more quickly than when it is going to be released, I will do that.

Christine Grahame: What about the IMA and the sale of snares?

Gillian Martin: My officials and I need to decide what our policy objective is going to be and what our proposal and our amendments will be at stage 2. If that is to ban the sale of snares—in the same way as we propose to ban the sale of glue traps—there will immediately be a letter to notify the UK Government of our intention.

Christine Grahame: I give you notice, minister, that I will lodge an amendment if you do not.

Gillian Martin: Thank you for that notice; it is not often that Christine Grahame gives ministers notice of her amendments.

Christine Grahame: Well, you have got it.

The Convener: I think that this question will be difficult for you to answer, minister, but perhaps your officials can step in and help you out. Have any inquiries been done into the IMA with regard to banning the sale of snares? Have you considered the IMA?

Hugh Dignon: One of the obvious points about snaring is that many snares are not sold—instead, a lot of keepers and other snare users buy and assemble the components. The components are pretty simple—they are swivels, wire cable and so on—so, although there might be a case for banning the sale and that might help with the argument, the sale is not the key issue; the key issue is banning the use. Snares have been made at home for many years, and one issue with

banning their use is that the illegal use of snares might continue, and illegally used snares are almost always home-made with readily available components.

The Convener: So, the measures are not going to help, are they? At the moment, snares are registered, and you are considering banning the use of registered legal snares, which will not address the issue of home-made, unregistered, illegal snares.

Hugh Dignon: Obviously, the illegal use of snares is already illegal, so there is nothing further that we can do about that, but the police, the SSPCA and others do what they can to enforce the law on that.

My point is that many legal snares are constructed at home by those who are going to use them and, although it might help the thrust of the policy to ban the sale of snares, that will not really address the main issue. However, if it is decided that banning their sale is the direction that we will take, we will need to speak to the UK authorities about the IMA implications.

The Convener: Have you done that yet?

Hugh Dignon: No—not yet.

Rachael Hamilton: My question is on the proportionality of the licensing scheme. Last week, we heard from various witnesses that there should be a

“rational connection between the content and design of the scheme and its aim”

to tackle raptor persecution. It has been demonstrated that there is no rational connection between those aspects. Does the Government think that it is fair and proportionate to introduce a licensing scheme that does not have such a rational connection?

Gillian Martin: I will have to ask for more clarity in relation to your question. Are you saying that there is not a connection between the evidence and what we are doing in the bill? What do you mean by “rational connection”?

Rachael Hamilton: I am talking about proportionality. The question relates to a point that was made that

“the law requires there to be a rational connection between the content and design of the licensing scheme and its aim”.—[*Official Report, Rural Affairs and Islands Committee*, 21 June 2023; c 2.]

We know from evidence that the RSPB has demonstrated that raptor persecution—the illegal killing of raptors—has reduced by 75 per cent between 2007 and 2021, so I am just trying to determine whether the bill goes further than it needs to or whether a rational connection can be demonstrated.

Gillian Martin: Over the years, we have known that raptors, including some of our most prized bird species, such as golden eagles, have been illegally killed, and—long before I was in Parliament—we have worked to try to put in place measures to significantly reduce the number that are killed and to eradicate their killing. During my time here, we have put in place more extreme penalties as well as vicarious liability to see whether that would put an end to that. A lot of the measures have reduced it.

I am looking at the figures: 25 bird of prey crimes were recorded in Scotland in 2019; in 2020, there were 11. In my view, that is 11 too many. I do not have information in front of me that goes beyond 2020.

Rachael Hamilton: I am trying to consider the connection—

Gillian Martin: Let me answer the question. Measures that we have put in place are still not making the significant difference that we intended them to make; they are not eradicating that crime. The fact that there has been recorded crime does not mean that unrecorded crime does not exist. I also note that a lot of the evidence has disappeared.

We are maybe talking about tagged birds—so, there would have been 11 tagged bird crimes in 2020. However, what of the ones that are not tagged? We have no way of knowing. Hugh knows about that figure.

Hugh Dignon: Specifically, 11 crimes were recorded by the police—

Gillian Martin: Eleven recorded crimes—

Hugh Dignon: —so there will also be—

Rachael Hamilton: Are all of those related to grouse moors?

Hugh Dignon: No. Not all of them are related to grouse moors.

Rachael Hamilton: How many are related to grouse moors?

Hugh Dignon: I do not have the information at hand on how many of those 11 crimes are related to grouse moors. However, we have—

Rachael Hamilton: Why, then, is it proportionate to bring forward a licence scheme that is related to grouse moors?

Hugh Dignon: Because, over a long period, a clear historical association has existed between raptor persecution and grouse moor management. That association has been shown by the maps that we have produced over a period of years and by the evidence that the RSPB has published in its bird crime report—you mentioned the RSPB—and

it was clearly drawn out, too, in the Whitfield and Fielding report, which looked at the analyses of the fates of golden eagles. Therefore, we are satisfied with that connection.

Gillian Martin: The other thing that I would say, Ms Hamilton, is that the Werritty review was very clear in its recommendations to Government. We took on board a few of them, and it recommended that a licensing measure could make a difference in that area.

I know that, when they were in front of you, you asked my officials for more evidence as to the connection, which they sent on to the committee. That evidence was sent—that is a matter of record.

We cannot just stand by and accept the status quo; we need to go to the licensing that Professor Werritty and his team said would be an option if some of the other measures were not getting us to a solution on the issue. That is what we are proposing.

Rachael Hamilton: Do you agree that it is not proportionate to impose sanctions specifically against a certain sector, on the basis of suspicion, when no direct correlation exists?

Gillian Martin: Ms Hamilton, you are the one asserting that point—I do not agree with it.

Rachael Hamilton: No, I am asking you.

Gillian Martin: I am saying that the evidence is there to suggest that many of those crimes have taken place on grouse moors—that is a fact.

Christine Grahame: The sentence that follows the table of detailed stats that the Scottish Government provided in the letter to us simply stated:

“Information provided by the National Wildlife Crime Unit shows the land use category most associated with raptor persecution incidents is grouse moors.”

It would be helpful to the committee to expand—perhaps not now but in a further letter—on what that information is and to give us some detail. It would help our understanding of that assertion if that point were expanded on.

Gillian Martin: Okay—if that is additional to what my officials have already sent, because quite comprehensive evidence was sent to the committee a couple of weeks ago.

Christine Grahame: Was it? Sorry, I have missed it.

Hugh Dignon: That evidence has not been directly provided, as far as I am aware, but I am sure that we would be happy to provide it once the minister has had a chance to see it. I caution that we would need to check with the NWCU whether the information is sensitive.

Christine Grahame: If it is sensitive, that is fine. Expanding that would be helpful rather than our just having a letter that makes a reference to “Information provided”. Obviously, you have that information but we do not.

Gillian Martin: I get that. That is fine. We will pass that on.

09:30

Rachael Hamilton: I will continue my line of questioning. Would the minister be open to narrowing the scope of relevant offences to focus on raptor crimes in isolation?

Gillian Martin: No, I would not. I have seen people claiming that the Werritty report was concerned with only raptor persecution—it was not. The Werritty report was by the grouse moor management group, and it made more than 40 recommendations relating to grouse moor management, including recommendations on licensing, grouse shooting, muirburn and the use of traps. The bill is reflective of those recommendations and the issues that the Werritty report identified. So, no, I will not reduce the scope of the bill.

Alasdair Allan: We, as a committee, have had evidence from the police about what they view as the number of, if you like, suspicious disappearances of raptors, in addition to evidence on prosecutions. Professor Werritty said in evidence that licensing was not only appropriate but the only way forward that he could see to deal with the situation. Did the Government similarly feel that that was the only option available?

Gillian Martin: Yes, because we absolutely do not want to do the alternative. Grouse moors make a significant contribution to the rural economy, and they provide jobs. You have heard from many of the people who have those jobs. They also make a significant contribution to countryside management and biodiversity. Grouse shooting brings a tremendous amount of people to Scotland to spend their money. There are licensing schemes for many activities across Scotland. The licensing scheme in the bill is the option that Professor Werritty has recommended that we take forward, should other measures not solve those problems.

It is fair to say that, in any area of life, certain things can have unintended consequences. The science and evidence that comes out of monitoring that activity, particularly on the impact on the environment—for example, on peatland—will offer us and land managers the evidence base to be able to say that we would not have known that X activity had a detrimental impact on a piece of land had we not had that monitoring in place. Licensing gives us the mechanism to do that.

The main reason, Mr Allan, is that the alternative for the rural economy is not where we want to go.

Alasdair Allan: I have a final, related question, convener. Was the drive towards licensing as a model based on the understandable concern about raptor persecution? Was it also based on wider concerns about the management of grouse moors?

Gillian Martin: Professor Werritty highlighted some concerns. I say up front that the vast majority of estates that have grouse shooting on their moors act in a satisfactory way. To be honest, the few that have not acted in a satisfactory way are giving those other estates a bad name and a bad reputation, which is completely undeserved.

It is in the interests of those responsible land managers and estate owners that the whole sector has a licensing scheme behind it, because when their good practice can be recognised, their licences will be renewed. There will be no problems with their licences being suspended if they act in a satisfactory way. That is notwithstanding the concerns that I heard about vexatious claims and so on, but it might just bring those other estates up to the standard that we expect when working in their natural environment.

The Convener: I have another point to make before we come to the end of this set of questions. Werritty made it clear that licensing should be brought in if there was no reduction in raptor persecution over a five-year period. We have seen a significant decrease and we are not at five years yet. In Scotland in 2021, there were 11 recorded bird of prey crimes. Where were they, and were they related to grouse moors? I think that the majority of them were in Dumfries and Galloway, and there are no grouse moors there.

Gillian Martin: I do not have the disaggregated data in front of me, Mr Carson.

The Convener: Well, does Mr Dignon have that? It is incredibly important, because we are talking about crimes specifically related to grouse moors.

Gillian Martin: I get that not everybody in this room or across the Parliament agrees with our licensing proposals, but we always said that, if we did not feel that progress was significant enough—

The Convener: Is a 75 per cent reduction not significant?

Gillian Martin: It is not significant enough. Raptors are still being persecuted and there are still issues about land management in some places that we think should be addressed. We are bringing forward the proposals. The committee will be able to make recommendations and say

whether it agrees with the proposals, but we feel that this is a proportionate measure to deal with some of the long-standing issues and areas in which there are not necessarily improvements to the degree that we would like.

The Convener: You will agree that the data is incredibly important, so that we get a real picture of what is happening. Of the 11 recorded crimes in 2021, how many were related to grouse moors and where were they?

Hugh Dignon: As I said earlier, I do not have specific data on that. You are right that there was an incident in Dumfries and Galloway that accounted for a number of crimes around that time, so what you said might well be the case.

If I may, I will make two points. One is that that figure is for recorded crimes and we have long known that recorded crimes do not necessarily tell the whole picture. Many crimes go unrecorded, as it is a difficult environment in which to detect crime. Evidence disappears, there are no witnesses and there are no victims to complain or anything like that. For that reason, the evidence that we have on suspicious disappearances has been important and that has not shown the same sort of decline.

The other point is that I think that Professor Werritty's report said that a recovery in raptor populations in the areas was the key metric that he was interested in, and I do not think that we can say that we have seen that recovery in raptor populations.

Gillian Martin: To my understanding, we are also seeing that the populations are of a disproportionately younger age, which suggests that there are issues relating to the suspicious disappearance of more mature adults. I stick with what I said in response to Mr Allan. We feel that the licensing scheme is necessary, because we are not seeing the significant improvement that we wanted.

Ariane Burgess (Highlands and Islands) (Green): I will broaden out the discussion on the topic of licensing. Good morning, minister—it has been a really engaging session so far.

Professor Newton mentioned that one reason why the Werritty group recommended licensing of grouse moors was to

“fill an important evidence gap in relation to land use in Scotland”.—[*Official Report, Rural Affairs and Islands Committee*, 14 June 2023; c 12.]

He said that that could be done by requiring annual information to be returned on the number of animals killed of all species.

Alex Hogg said that the Scottish Gamekeepers Association would agree with that, and Ross

Ewing from Scottish Land & Estates said that such information is already being collected, although it is not reported. I am interested in whether the Government will introduce such a requirement or recommend that NatureScot does so.

Gillian Martin: The last part of your question probably nails it, because NatureScot will deal with the licensing scheme, and it will decide with stakeholders on the parameters for the scheme and what information it requires from people ahead of their getting a licence.

If I understand your question correctly, you are right in saying that the licensing scheme could have a dual function—in effect, that is what I said to Alasdair Allan. Many of the issues around that are to do with data and evidence for things such as the practices that take place on peatland and whether they damage or enhance it, and whether they enhance or degrade biodiversity. I see the licensing scheme as a very useful tool in evidencing where that happens.

We cannot pre-empt what that evidence will be. However, we hear from land managers all the time—you will have heard from them directly—their practices increase biodiversity. They might tell you that you will see bird species on grouse moors that you do not see anywhere else, for example. They will point to their land management in terms of areas where they rewild and have brought back species that have not been there for some time.

I think that the licensing scheme will be a useful tool. Again, I make the point that how that will be set is not for me to decide; rightly, it will be for NatureScot.

When NatureScot was before the committee, I was pleased to hear its commitment to working with a large range of stakeholders to make sure that the licensing scheme is simple, easy to apply for and not onerous in terms of evidence that land managers must produce. However, if it has concerns or it does not quite know about something, it will work with the land manager or the person who is applying to find out more information. It will not be a rubber-stamp exercise, or a yes or no. NatureScot will have a conversation and, if it has any issues, it will iron those out before deciding on whether to grant a licence.

The philosophy that I heard NatureScot outline is the right one. It is not there to stand in the way of good practice; it is there to encourage good practice, to licence it and, as you said, to get data off the back of that. I look forward to seeing what it will do on that.

Jim Fairlie: Last week, when we talked about annual licensing, I think that I was the only person in the room—that includes NatureScot—who

thought that that was a good idea. Has the Government considered whether it could extend the licensing period?

Gillian Martin: I am sorry to disappoint you and not to chum along with you in thinking that annual licensing is a good idea, but I am really open to any suggestions about the licensing period being longer. That goes back to something that I mentioned to Ariane Burgess about NatureScot wanting the process to be as easy as possible for people who are applying for a licence and for the administration not to be onerous.

I am completely open to suggestions as to how long the licences should run for. I do not see that a licence of longer than one year would necessarily have any unintended consequences. I am open to the period being longer.

The Convener: Will you lodge amendments to remove what seems to have been a bizarre period of one year?

Gillian Martin: You will have to wait and see.

The Convener: We are here to ask you about that. What do you see as a reasonable length? Is it three years? Is it five?

Gillian Martin: For me to lodge amendments, or if people were to come to me with amendments for me to look at and decide whether we would support them, I would need to do a little bit more work so that there are no unintended consequences.

I keep coming back to the fact that I have had the bill in front of me for only a week. Between now and stage 2, I need to determine what length of licence is appropriate—what will hit the mark and is neither too long nor too short—so I cannot really make that commitment to you right now.

The Convener: I would again point out that the situation is a bit bizarre. We have draft legislation that suggests a period of one year. We have been through most of our stage 1 inquiry and you are sitting in front of us, still looking for ideas about licensing. Surely—

Gillian Martin: Mr Carson, you have been here long enough to know that no bill stays in the form in which it is introduced until stage 3. Amendments are lodged—

The Convener: But was one year ever reasonable?

Gillian Martin: —evidence is taken and, indeed, ministers change. I have been looking at this for one week. I have watched all the committee's evidence sessions, I will speak to SL&E tomorrow on its views, I am meeting with stakeholders and I will be speaking to a lot of the people who I would have spoken to already, had I been here at the start of the drafting of the bill. Therefore, forgive

me, but between stage 1 and stage 2 is when I will make many of those decisions.

09:45

The Convener: I absolutely accept the difficult position that you are in, but there must have been some rationale for a one-year licence.

Gillian Martin: I will bring in Hugh Dignon, but I would not say that I am in a difficult position. I am going to take the bill forward. There are things that I need to be satisfied about, and there was a rationale for the draft, so if Hugh wants to come in on that, that is fine.

Hugh Dignon: As, I think, we previously explained to the committee, there was a rationale for the one-year licence, which was about the utility of being able, at reasonably short intervals, to gather the sort of information that Ms Burgess was just referring to. That, combined with a licence that is easy to obtain and does not produce an administrative burden, would be a good way to operate. Since then, we have had very strong representations from some stakeholders that that would cause difficulties for their long-term planning, and we have agreed to look at that and think about whether there are any grounds for changing that, as the minister just described.

Rachael Hamilton: What are you likely to achieve through the code of practice and will some of the stakeholders who will be affected by it be included in shaping it? Last week, the point was made that we cannot scrutinise what the code of practice looks like if we have not seen it, and we cannot make a decision as a committee on whether the bill is proportionate.

Gillian Martin: It is very unusual for a code of practice to be in a bill. I can think of only one bill where that was the case in my seven or eight years here, and that was not in this portfolio. The code of practice was a recommendation of the Werritty review, but, as you will have heard from NatureScot, the code will be developed by it in consultation with stakeholders. I was pleased to hear how vociferously that was put forward. It is only right that the code of practice is a collaborative effort and that there is agreement on it. I think that everyone the committee has spoken to in that space will be involved in the process and invited to collaborate.

As far as the committee's deliberations are concerned, I do not need to tell you how to operate, but requiring more information on the code of practice is very much putting the cart before the horse. NatureScot will deliver on that code of practice. The bill is to put in place the law that will facilitate the licensing scheme.

Rachael Hamilton: I think that you have just said yourself that it defines the clarity of the law, and that is very important—

Gillian Martin: I did not say that, Ms Hamilton. It does not define the clarity of the law.

Rachael Hamilton: You mentioned the law, and it does define the clarity of the law.

Gillian Martin: No. We will have to disagree on that.

Rachael Hamilton: Okay. You referred to the Werritty report. In relation to your answer to Jim Fairlie's question about the one-year licensing period, you have chosen to ignore the Werritty review, because we heard:

"Given that the bill provides quite wide powers for ministers or NatureScot to modify, suspend or revoke licences, I think that annual renewal is probably unnecessary."—[*Official Report, Rural Affairs and Islands Committee*, 14 June 2023; c 6.]

Therefore, on one hand, you are using the Werritty review to justify your decisions and, on the other hand, you are rejecting the recommendations of the Werritty review, so how is there consistency in that approach?

Gillian Martin: The Government can decide what is proportionate and reasonable to put in a bill on the basis of advice and recommendations. A committee then deliberates whether the bill is proportionate and reasonable, and it can make recommendations for amendments. I believe that the bill that is in front of the committee is very much in line with the Werritty report, and I stand by it. Will the bill change before it is passed at its final stage? Of course it will. I am open to speaking to stakeholders about how the bill can be improved, and to hearing from members if they have proposals for improvements. I have said that quite clearly.

Rachael Hamilton: Is the Government's approach to the code of practice consistent with the approach that it has taken to other land management sectors?

Gillian Martin: The code of practice will be designed by NatureScot after the bill has been passed.

Rachael Hamilton: Is that approach consistent with the approach to other land management sectors?

Gillian Martin: The code of practice has not been written yet.

Rachael Hamilton: Clearly. Is it possible to see a draft of the code of practice?

Gillian Martin: I do not have a draft of the code of practice because it is not me who is drafting it.

Rachael Hamilton: Okay, but is that proportionate in relation to the clarity within the definition of the law?

Gillian Martin: I refer you to my earlier answer in which I explained that it would be very unusual for the code of practice to be written by a minister when we have a body such as NatureScot, which will be taking forward the licensing scheme and the code of practice in consultation with, and through working together with, stakeholders.

Rachael Hamilton: I accept that, but is it possible for NatureScot to produce a draft code of practice, in conjunction with stakeholders, so that the committee can scrutinise whether the bill is proportionate in that regard and whether there is clarity in law?

Gillian Martin: Ms Hamilton, you can ask me the question as many times as you want, but the code of practice will be written by NatureScot, in collaboration with stakeholders, after the bill has been passed.

Rachael Hamilton: Thank you.

The Convener: Is the approach of having a code of practice, no matter what is in it—the code of practice in relation to dogs, for example, is in the process of being drawn up—in line with the approach to other land management sectors, or is it specific to grouse moors?

Gillian Martin: There is nothing unusual about this at all, but I will bring in Hugh Dignon, who will probably have examples, given that the matter is in his remit.

Hugh Dignon: A key code of practice for deer management was produced after the reforms to the Deer (Scotland) Act 1996. That is a clear example in a similar area that involves many of the same land managers. NatureScot has a long history of working closely with stakeholders to ensure that such codes reflect the views of the industry and other stakeholders on best practice.

The Convener: Thank you. I will bring in Christine Grahame.

Christine Grahame: Are we on to question 9?

The Convener: We certainly are.

Christine Grahame: I was losing the will to live there for a moment as we went round in circles on codes of practice.

The minister was quite right to say that most land management is done appropriately—it is just the odd case that causes difficulty, if I can put it in my own way. However, every business will now have to comply with everything. How did you come to the conclusion that there will be little to no impact on businesses that currently comply with the law?

Gillian Martin: You are probably referring to the business and regulatory impact assessment, which sets that out. There was a great deal of collaboration with my officials ahead of the bill's drafting, and the review group met a number of organisations and businesses, including representatives of many grouse moor estates. As well as meetings, there were questionnaires that were targeted at landowners, land managers, gamekeepers and other interested bodies. A few years ago, we commissioned research on the socioeconomic impact of licensing, and quite a lot of financial information from estates was collated in order to provide an evidence base.

Of course, it is not just estates that are involved. We also looked at the implication of banning the sale of glue traps, for example, so there were meetings with the pest control sector and we looked at the implications for people who sell glue traps. They are actually very cheap, so there was not much implication there.

In effect, I am saying that a great deal of work was done in speaking to stakeholders and reaching out to them in a number of ways to ascertain any financial implications that the bill might have for them, as you always have to do for bills, and we thought that they were minimal.

The proposal for a licensing scheme is not problematic in itself. We want to make it simple and NatureScot has said that it wants to make it simple. We do not want it to be too complicated or to take time away from the day-to-day work that land managers do. NatureScot says that it currently does not charge for licences, but I wonder how sustainable that will be. That is something that NatureScot will need to decide.

Perhaps people on this committee will need to decide whether a lot of applications for licences will be made to NatureScot. NatureScot seems quite happy that it can continue with the situation, but I would say that it is going to have to do quite a lot of work. Therefore, we might need to look at that. Even so, I think that any fee would need to be minimal, just to cover the administration costs.

Christine Grahame: As, I think, NatureScot pointed out in its evidence to the committee, if the licence renewal is made triennial, say, rather than annual, that would surely reduce the administrative burden on NatureScot and, indeed, on those who apply for licences. Therefore, perhaps that is a good reason, on top of everything else, for the Government to consider at least three-year renewal as the target.

Gillian Martin: Yes—you make a good point.

Christine Grahame: I should be giving evidence.

The Convener: Next time.

Rachael Hamilton: On the impact on business, minister, it has been said that the Government did not intend to engage specifically at the BRIA stage. However, is that not a key aspect in establishing the bill's implications or impact?

Gillian Martin: The Government did engage with representatives of the estates and business owners. I—

Rachael Hamilton: But it says here—

Gillian Martin: I watched your line of questioning on the issue in a previous committee meeting. I think that it was to Professor Werritty.

Rachael Hamilton: That is right.

Gillian Martin: I was quite surprised by it, and afterwards I went and looked at the BRIA. In fact, the BRIA states:

“A wide range of businesses that have previously notified an interest in wildlife management and rodent control were sent the public consultation directly and were encouraged to respond.

These proposals have been informed by two independent reviews that gathered evidence and liaised with stakeholders”.

That, to me, would be business engagement.

Rachael Hamilton: But you do not have evidence in that respect. Clearly, the committee needs to look into that, because we are getting the wrong information, if that is the case.

Gillian Martin: The independent reviews did engage with businesses. If you want information on what that engagement looked like, I am sure that it can be provided.

Rachael Hamilton: Thank you, minister.

Ariane Burgess: I would be interested in hearing whether the minister agrees with Scottish Government officials that the proposed grouse moor licensing system is compliant with the European convention on human rights. What is your response to stakeholders who claim that it is not?

Gillian Martin: Obviously, I agree with my officials. Every bill that comes before this Parliament has to be ECHR compliant, and the Presiding Officer has to decide whether that is the case, too. This bill is compliant.

Ariane Burgess: Can you go into a bit more detail on that? After all, you are clearly getting some pushback from people who are saying that it is not.

Gillian Martin: I listened to the evidence where that issue was thrown in, and I have to say that I did not quite understand where people were coming from. This bill is ECHR compliant. The officials have gone through the process of testing

that, and the Presiding Officer has decided that it is compliant, too.

I had wondered whether this question would come up. When Liz McLachlan was in front of you, she made the point that, under the general licence restrictions, NatureScot operates an agreed framework before it will use any of the powers associated with a licence. It is not as if a Government body is going to behave in a way that is not compliant with human rights legislation or with the agreed framework that is set out in the bill, which is ECHR compliant. I therefore struggle to understand why anyone would say that it is not compliant.

Hugh Dignon might want to say a bit more about this, as he was mentioned, if indirectly.

10:00

Hugh Dignon: At the basic level, we are well aware that interference with, potentially, someone's property rights or their right to operate their business is a serious matter, with clear ECHR implications. However, in order to intervene in that way, we will need to be sure that what we are doing is proportionate and justified, and we think that the long history of seeking to tackle raptor persecution and other unsustainable practices around grouse moor management provides clear policy justification. It has been a Government objective for many years now, and we believe that what is proposed is proportionate and justified, given the number of other initiatives—the minister referred to some earlier—that have already been tried.

We are content that the scheme is ECHR compliant. I am in danger of speaking about things that fall within my colleague Norman Munro's area, and he might well want to correct me on some of this, but we are satisfied that the processes for issuing and removing licences are consistent with other processes that are ECHR compliant. As has been mentioned, there are remedies that involve appeals within NatureScot and external appeal to a sheriff if people are not satisfied with decisions that have been taken. On the broad scheme, however, we have taken advice from our legal colleagues, and we are content that it is, indeed, compliant with the ECHR.

Gillian Martin: I do not know whether Norman Munro wants to comment.

Norman Munro (Scottish Government): I agree with everything that Hugh Dignon has set out. The bill's provisions were drafted with an eye to the convention rights and to making sure that the proposals would strike a fair balance between the rights of individuals and the general community interest. The Scottish Government's position is that that fair balance has been struck by

the bill's provisions and that, as a consequence, the bill is ECHR compliant and within the legislative competence of the Scottish Parliament.

Ariane Burgess: Thanks very much.

The Convener: We have heard fears of licences being suspended on the initiation of an official investigation into, say, traps that have not been set correctly or appropriately. I assume that it will potentially take a court case to decide whether removal of a licence—with, potentially, the loss of half a dozen jobs and the knock-on effect on the local economy—is proportionate. Is it your expectation that the first time that this will be tested will be in court?

Gillian Martin: I point you to the evidence that you were given by NatureScot. It was put to NatureScot that a heavy-handed approach was being taken, but I got a clear impression from it that the way in which it wants to operate with regard to the licences is that, if concerns have been raised by the public or if it has its own concerns—however concerns have arisen—it will liaise with land managers, in the first instance, on those things and give them advice to help them to rectify the issues. It will not suspend a licence unless there is a very good reason to do so, and I think that that is the right approach to take. It will not be a case of a land manager getting a letter through the door that says, "Your licence is suspended" without any communication or collaboration, and with no opportunity for them to rectify some of the issues.

I come back to what Hugh Dignon said. Because NatureScot is a public body, there are quite a lot of guarantees as far as its behaviour is concerned. People can go to the Scottish Public Services Ombudsman if they are not satisfied with any decisions that NatureScot has made, and they can also challenge NatureScot's decisions with a sheriff. I guess that that answers your question, but I imagine and hope—I certainly have this impression from hearing what NatureScot has had to say—that there would be a lot of negotiation and communication between NatureScot and land managers before any licence decisions would be made.

The Convener: Okay. We will now move on with a question from Alasdair Allan. [*Interruption.*] I beg your pardon—Jim Fairlie has a supplementary question.

Jim Fairlie: Last week, we heard from Jamie Whittle of the Law Society of Scotland. I should say at this point that the Law Society is going to provide us with some written information on interference with property rights.

However, I want to highlight an issue that was raised with me before we began our scrutiny of the bill. If I, as a sheep farmer, were to shoot an eagle,

I would not be stopped from farming sheep; I would be prosecuted under a different law. However, if I were a grouse moor manager and shot a hen harrier, I could have my licence suspended. Do you see that as being problematic from an ECHR point of view at a later point in the bill?

Gillian Martin: No—that has all been looked at. I will hand over to Norman Munro, who might be able to give you chapter and verse on that. I am not a lawyer, but I trust the advice of Scottish Government lawyers in that regard. Norman might be able to address that specific scenario.

Norman Munro: On your specific example, the starting point for the Scottish Government's position is that the bill's provisions are ECHR compliant. When it comes to the suspension of a licence, the licensing authority has a power rather than a duty to take such a decision. Whether that is done by Scottish ministers or, as is likely to be the case, it is delegated to NatureScot, it will be incumbent on NatureScot, in reaching a decision whether to suspend a licence, to have regard to the whole circumstances of the case and to any representations that are made by the licence holder about their case. NatureScot would need to reach a view on the case that was compliant with ECHR, given that that is what is required of it as a public body. Therefore, the Scottish Government's position is that the power with regard to the suspension of licences is ECHR compliant and capable of being exercised in a way that complies with ECHR.

Jim Fairlie: Okay—

Gillian Martin: Hugh Dignon has something to add.

Hugh Dignon: I simply make the point that the difference between the two scenarios that you have painted is that there is not a long track record of farmers shooting golden eagles. That is the issue that we have sought to address with the bill. We think that the measure is proportionate and justified, because of the long association between some elements of grouse moor management and wildlife crime.

Jim Fairlie: Is it not that issue of proportionality that stakeholders are bringing to the table? Is it proportionate for them to lose their whole livelihood when the same level of proportionality is not being applied to sheep farmers?

Hugh Dignon: Under both scenarios, criminal prosecution is an avenue that can be pursued by authorities. However, over a number of years, it has been difficult to establish criminal prosecutions in such cases, where there is little evidence and no witnesses, where carcasses disappear and so on. A number of initiatives have

been introduced to address the issue in such situations.

If it could be addressed simply—that is, by prosecuting those people who were responsible—that would be the ideal solution. Over a number of years, though, it has been very difficult to identify the actual individual who might have carried out these acts. For those reasons, we have been taking a series of different measures, and we have ended up with the present position with regard to licensing.

Jim Fairlie: Returning to the question of proportionality, I would just point out that there are other areas of the law under which you could prosecute me if I did something wrong. I could get jailed, get a big fine and all the rest of it, but you would not be able to tell me, "You have to stop farming sheep on your land." That is where I see a potential challenge to the bill at some point. Do you accept that that issue could give rise to difficulties for the bill later on?

Gillian Martin: The scenario that you have put forward is very specific. I go back to what Hugh Dignon said: the proportionality in the bill is based on the evidence that we have had over many years. The issues that were examined in the Werritty review and which were then put to us by way of recommendations potentially needed a licensing scheme to provide the framework for monitoring those measures and ensuring that they could be used as a deterrent against on-going practices.

With all respect, Mr Fairlie, I would just point out that my position, as minister responsible for the bill, is that the advice that I have had from the Scottish Government lawyers is that the measures are proportionate and the bill is ECHR compliant. That is the line that I will be sticking to.

Jim Fairlie: Okay. Thank you.

The Convener: I should mention for the record that the legislation as it stands is probably compliant; the question is how it is applied. We have talked about the code of practice, which is not like any other code of practice. It is more or less like a statutory instrument. If someone does not follow the code of practice, the chances of them getting a licence will be gone. It is regulation, rather than just a code of practice, as has been suggested in relation to deer. It—

Gillian Martin: It is not regulation; it is a code of practice, which will be worked on by NatureScot and in collaboration with the stakeholders who will be applying for the licences.

The Convener: If you could let me finish the point: if someone does not follow the code of practice, they will not get a licence, so it is like a regulation. There is a perfect storm around

whether the code is proportionate. If someone does not follow the code of practice, they do not get a licence, and that has a disproportionate effect on the business, and I think that that is why stakeholders are concerned.

You also said that, because NatureScot is a public body, there is a level of protection there. There is a further area on which we are unclear, in that a licence can be suspended without NatureScot being satisfied that an offence has been committed. That is another very worrying area. If a licence were to be suspended in that way, ECHR may well kick in, because the measure would not be proportionate. That is the concern that we are hearing from stakeholders.

Gillian Martin: There are a couple of things there. First, people will be applying for licences, which will be granted when they provide certain information. That process will be quite straightforward. It is not the case that we can say, “If you do not follow the code of practice, you will not get a licence.” People will have a licence and, if complaints are made that they are not following the code of practice, the idea is that NatureScot will liaise with the landowner or land manager in order to ascertain what parts of the code of practice they are not complying with and to establish what it can do by way of advice or assistance to get them to comply with the code. That seems to be the philosophy from NatureScot: it wants to liaise and work with land managers so that it can get them up to code, so to speak, and so that what you are suggesting does not come to pass.

Your second point was about the idea of a disproportionate, almost knee-jerk, reaction from NatureScot, suspending licences based on very little information. I just cannot see that coming to pass. NatureScot would lose credibility very quickly. It is an organisation—it used to be Scottish Natural Heritage—that people know well and it has been working and operating in Scotland for many years. On the whole, it has very good relationships with land managers and the shooting estates.

The Convener: Yes, but none of that information is in the bill—there is nothing about the liaison and so on. I will go back to my point: NatureScot does not have to be convinced that a crime is being committed for “the relevant authority” to suspend a licence. That is in the bill, which is a concern.

10:15

Gillian Martin: The bill sets out the framework for the code of practice to be made and for the licensing scheme to be operated in consultation with NatureScot and its stakeholders—

The Convener: Specifically, if NatureScot did not agree that an offence had been committed, is it right that a licence could be suspended? Is it right that NatureScot does not have to agree?

Gillian Martin: I cannot talk about hypothetical situations.

The Convener: It is not hypothetical—it is in the bill.

Gillian Martin: I am here to talk to every line in the bill. I am not here to look into a possible future situation in which someone is not content that NatureScot may have operated in a certain way. However—

The Convener: But that is specifically a line in the bill.

Gillian Martin: I do not want to tell you what your job is, but you can have NatureScot in front of you any time you want, as can I. As the bill becomes law, the code of practice is put together and the licensing scheme is put into operation—

The Convener: Minister, why is there a line in the bill that says that NatureScot does not have to be satisfied that an offence is being committed for a relevant body to suspend a licence?

Gillian Martin: Because there is the potential for an incident to be so severe that it might have to suspend a licence quickly.

The Convener: Surely, NatureScot would agree with that. It says in the legislation that NatureScot does not have to be convinced that an offence has taken place. So, it can say, “We do not believe that an offence has taken place, but”—

Gillian Martin: I get that we are arguing back and forth, but NatureScot has to have the flexibility to be able to act in order to prevent any further damage from happening. The line is in the bill to allow it to do that. It can take a while for a police investigation to take place, but if something so egregious and severe has happened that NatureScot feels that it should take that action, it needs to be able to do that. Whether it will ever do that is another matter, but it needs to have the flexibility to be able to. That is why that line is in the bill.

The Convener: I may not be making myself clear. NatureScot will not have a role in it if another relevant body suspects illegality and a licence can be suspended without the agreement of NatureScot.

Gillian Martin: I do not understand your question, but I think that Hugh Dignon does.

The Convener: I will come back to that. I will find the actual line in the bill.

Rachael Hamilton: My question is about the same thing. The bill says that licences can be suspended for an unlimited time where the regulator is not satisfied. I think that we need clarity about what you are saying, minister.

Gillian Martin: I do not really get what you are asking, so I will ask Hugh Dignon to come in. From my understanding of what you have said, you do not have the right understanding.

Hugh Dignon: To be clear, it is only the body to which we delegate the power of being the relevant authority, which will be NatureScot, that can issue or suspend licences. I cannot imagine or see how there could be any circumstance in which any body other than NatureScot could suspend a licence.

NatureScot could suspend a licence without it being satisfied as to all the conditions. That is set out in section 7 of the bill, in proposed new section 16AA(8) of the Wildlife and Countryside Act 1981. It is envisaged that that would operate in the sort of circumstances where, as the minister says, an event has happened and an investigation is on-going. It is not that NatureScot would disagree with any of the conclusions that have been reached, but that it could take action in advance of it being satisfied.

Alasdair Allan: I presume that it is not particularly unusual in other spheres for licences to be suspended if prosecutions are being considered. What is unusual about that?

Gillian Martin: You could look at environmental health, for example. Licences would be suspended in environmental health if it were thought that there was a public health risk. You are absolutely right that there are a myriad of areas in which that could happen.

You would hope that something so serious that required such action to be taken would never happen, but if NatureScot did not have the flexibility to do this and something like this happened, you, as MSPs, would be coming back in future years and asking for additional secondary legislation to amend the provision. The bill gives that flexibility, as you have said, in the way that quite a lot of other licensing schemes do.

Norman Munro wants to highlight some examples. I have been talking about environmental health, but I was obviously not anticipating your question, so perhaps the lawyer can jump in here, too.

Norman Munro: There are a number of examples throughout Scottish legislation of provisions for suspending licences. For example, the Marine (Scotland) Act 2010 allows ministers to suspend marine licences and the grounds on which licences can be suspended in those

circumstances are quite broad. As with this bill, there is a statutory appeals mechanism; indeed, that is one of the key aspects with regard to the proportionality of the bill's provisions. A licence holder who has their licence suspended or revoked will be able to appeal the decision by applying to the sheriff.

Moreover, as Hugh Dignon has alluded to, the power to be delegated to NatureScot is but one of the approaches that it might take in any particular case. It might do nothing; it might elect to modify or suspend a licence; or, in a particularly egregious case, it might, following the conclusion of the official investigation and if satisfied that a relevant offence has been committed, decide that revoking the licence would be appropriate. There is a spectrum of potential approaches that NatureScot might ultimately elect to proceed with.

The Convener: I will bring in Jim Fairlie and Christine Grahame in a minute, but can you say whether, in any of those examples, the regulator does not have to be satisfied that an offence has taken place?

Norman Munro: The examples that we have—and we will be able to write to the committee with specification on each of them—are drafted in high-level terms to cover a lot of the cases in which this power has been conferred on the licensing authority, and there is no further clarification or qualification of the power with regard to suspending or revoking a licence. Obviously those powers will be exercised in a way that complies with the ECHR, so, reading between the lines, we would imagine that in each of these cases the licensing authority would not be revoking a licence while an official investigation was on-going, unless there were particular circumstances. The legislation that we have prepared puts any such qualifications on the face of the bill to restrict the licensing authority's powers and ensure that it would be able to suspend or revoke a licence only in particular specified circumstances.

The Convener: But they are not on the face of the bill.

Norman Munro: The specified circumstances are in proposed new section 16AA(8) of the Wildlife and Countryside Act 1981 as inserted by section 7(2) of the bill, which says that the licence may be modified at any time and suspended or revoked if the licensing authority is satisfied that a relevant offence has been committed or if it is not, at that time, satisfied that a relevant offence has been committed but will be so satisfied at the conclusion of the official investigation. That would apply to the particularly egregious case that the minister has alluded to.

The Convener: That is quite concerning, as a suspension could lead to a business or multiple businesses being lost.

I call Jim Fairlie.

Jim Fairlie: I was looking for some clarification on the wording, but I think that my question has just been answered. I will leave it at that, convener.

The Convener: I call Christine Grahame.

Christine Grahame: I am quite happy. I am looking at section 7(2) and proposed new section 16AA(8) and at the suspension that takes place whether or not the relevant authority is satisfied. I am looking at that and, in my view, you do specify. The bill talks about and defines an “official investigation”, talks about a “relevant authority” and then defines what a “relevant offence” is. A number of other statutes are referred to.

If I am right, it would be a pretty dramatic circumstance if a relevant authority such as NatureScot suspended a licence there and then. Something pretty dramatic and obvious would have to have happened. I think that I am also right in understanding that that could be taken straight to appeal.

I have one thing to ask, although you may be unable to answer. How quickly would an appeal be taken? Would it be like an interim interdict, which can be repealed and removed the next day? Would it be quite quick, depending on circumstance, or would someone sit for months waiting for a criminal prosecution and with their licence suspended or amended? Because of its impact, could the process be accelerated by the sheriff? That is what I am trying to find out. That would be a better way of looking at it. It would depend on the circumstances, but I think that that is an important thing to know.

Norman Munro: It would depend on the circumstances and on the remedy being sought by the licence holder’s solicitor. They may seek an interim interdict of the suspension of the licence and would be able to apply to the sheriff for that, but it would depend on the remedies that they wished to proceed with, which would be for the licence holder and their solicitor to discuss.

Christine Grahame: Does that mean that there would be a legal remedy beyond the appeal procedure? Could a solicitor say that they were going to seek an interim interdict, or a suspension of the revocation of the licence, to try to prevent that from happening? I am trying to follow a process that would be fair to the landowner and to the acting agent. Would there be other remedies, apart from the appeal procedure?

Norman Munro: That could be part of it.

Christine Grahame: That is okay then. That makes it better.

The Convener: Rachael Hamilton has a final, very brief supplementary question.

Rachael Hamilton: We have heard in evidence that, if something that is regarded as a crime under conservation legislation is committed on a farm, the farmer is not required to stop working. The bill does not make that clear, which seems almost disproportionate, as we have heard. Would an appeal be weakened if NatureScot did not have to be satisfied that a relevant offence had been committed?

Norman Munro: There are circumstances in which a licence may be suspended while an official investigation is on-going. The wording of the legislation is:

“despite the relevant authority not being satisfied as mentioned in paragraph (b)(ii)”.

It is envisaged that that wording will capture circumstances where an official investigation is on-going and where NatureScot is not, at that time, able to say, on the balance of probabilities, that the relevant offence has been committed by the licence holder or by someone connected to the management of the land, but that NatureScot has sufficient information, and that the offence is particularly egregious, to justify suspension of the licence.

Rachael Hamilton: What is egregious?

Norman Munro: Hugh Dignon may wish to give some examples of that scenario.

Hugh Dignon: In the past, there have been situations in which people have come across poisoned birds, perhaps more than one—

Rachael Hamilton: We heard last week about toxicology reports—

Hugh Dignon: There have been cases of people discovering poisoned birds, poisoned baits where there is clearly carbofuran present or birds trapped by their legs and hanging from pole traps. Some of those cases would cause considerable public outrage, so the idea that people might be able to carry on doing business as usual while such cases were being fully investigated by the police would probably be difficult to sustain.

In relation to your specific question, appeal applies when a licence has been suspended and not in the circumstances around which it was suspended. Things such as the period of 14 days that must apply before any suspension takes effect would also apply in those circumstances. There are therefore opportunities for people who feel that they have been hard done by to take action, whether that is to seek an interim interdict or to set an appeal process in motion.

10:30

Christine Grahame: May I say something? An interim interdict could be heard the next day on cause, if you wish. Am I correct? I do not know, because it is a long time since I was in practice.

Hugh Dignon: Yes.

The Convener: We are now going to move on to the next section. I am conscious that we have reached our time limit, but we would like to keep going, because we have not touched on muirburn yet.

Ariane Burgess: I thoroughly welcome yesterday's announcement that the Scottish Government will lodge amendments at stage 2 to expand the SSPCA's powers. Green colleagues have been campaigning for that for many years now.

At the end of the letter that was sent to the committee yesterday, it says that the amendments will be lodged after "further consultation with stakeholders". Who are you going to be consulting and what kind of questions will you be asking them?

Gillian Martin: I will have to defer to Hugh Dignon on the consultation. However, before I hand over to him, I want to clarify what we are saying to the SSPCA and the agreement that we have. Time and time again, what has come up in evidence on this bill and others that deal with any kind of animal harm and cruelty is those situations in which the SSPCA has not been able to act and take evidence that would have helped a police investigation. When the SSPCA is called to a scene, it is able to deal with any live animals, but, if dead animals are involved, it is not able to give that evidence to the police. The issue came up during the passage of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 in the previous parliamentary session, and it has been mentioned by Mike Flynn and the SSPCA.

Police wildlife officers have also said that they can find themselves in a situation in which the SSPCA is first on the scene and it has taken a bit of time for the police to come. Indeed, it can take hours. If the SSPCA is first to arrive on the scene, it cannot do anything or take any evidence. The powers that we are giving to the SSPCA will not be blanket powers that will be given to everybody who works for it; instead, I will, as minister, be able to give licences to specific individuals who have been trained in the area, and I will have to be satisfied that they have had the training required to do the job. I will have oversight of that, and I will also be able to take those licences away from those individuals, if necessary.

In case of any doubt, I make it clear that the police have primacy in investigating wildlife crime. The powers that we are giving to the SSPCA are for evidence gathering to assist the police in those investigations. It closes a loophole that has been talked about for many years now—indeed, the need for it is quite compelling. That is where we are coming from on that point.

As for your other question about what consultation will take place, I defer to Hugh Dignon.

Hugh Dignon: In line with our general commitment to consult, we plan to run a short public consultation to which anyone with an interest, including all key stakeholders with a direct interest, can respond. We will also, as always, be open to people coming to talk to us specifically, whether they be in welfare groups, conservation groups or land management groups. Undoubtedly, we will also be talking with our colleagues in the police and the Crown. The short answer, therefore, is that it will be a public consultation but we will talk to stakeholder groups, too, alongside that.

Ariane Burgess: Thank you.

Rachael Hamilton: I have had a look at the report, and I cannot see how its recommendations chime with what you are saying, particularly given the concerns about primacy of responsibility, access to intelligence, interference with other cases, and health and safety risks to personnel. We heard strong evidence from Detective Sergeant Lynn regarding concerns that, when an investigation progresses and police become involved, the measures could be a disadvantage, because things that the police would have done early in the investigation might not have been done. There is a huge amount of concern around your interpretation.

Gillian Martin: Are you talking about the *Official Report*?

Rachael Hamilton: Yes.

Gillian Martin: So, you are not talking about a report that was produced—okay, I understand you.

Rachael Hamilton: It is this report that I am holding up.

Hugh Dignon: It is Susan Davies's report.

Gillian Martin: Okay—sorry. It would have been helpful to have known which report you were referring to.

Obviously, officials have been working hard on the matter. We made the announcement two days ago now, I think, and up until we did so, we were liaising with Police Scotland on the issue quite comprehensively. The position that we have arrived at aims to close the potential loophole that

could be used to get rid of evidence, due to the time lag. That is particularly the case when SSPCA officers have seen something but they cannot do anything about it—they cannot gather evidence. Something could happen in the intervening period, if there was a lag before the police could get there. Indeed, we could be talking about quite a long period, as there could be weather issues or geographical implications.

Hugh Dignon mentioned suspicion of crime. There have been issues with the ability to recover evidence to support any kind of investigation, which is why we have arrived at our position with regard to the powers that the SSPCA should have. We hope and think that those powers will assist the police, but there is absolutely no doubt that the police have primacy. We will continue to liaise with the police on how the measure will work on the ground. If the police have concerns or feel that a particular officer from the SSPCA is not acting within that remit, I have, as I have said, the power as minister to take away that licence.

Hugh Dignon wants to give some detail on the exact thrust of the comments with regard to the report. In my view, however, if the police raise any issues about SSPCA officers acting in a way that hinders an investigation in any way, I have the ability to act and to investigate that myself.

I do not know whether Hugh wants to come in on that.

Rachael Hamilton: But how would a minister have the ability to understand that? You say that you are trying to close a loophole and deal with a situation in which wrongdoing has potentially been carried out. How can a minister react to a situation if we are actually trying to reduce the persecution of raptors?

Gillian Martin: I am not involved in the investigation of wildlife crime.

Rachael Hamilton: I know, but you are saying—

Gillian Martin: We are giving the SSPCA the powers to gather evidence that would assist the police.

Rachael Hamilton: But the police do not agree with you.

Gillian Martin: Actually, that is not the case. In the previous session of Parliament, when we were considering the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, we heard from a wildlife officer at a round-table session; of the members here today, I think that it was only me and Mr Carson who were at that meeting. There is already a strong relationship between the police and the SSPCA. The wildlife officer at that meeting recognised that there could be an issue with hiding or removing evidence, and they said

that it would be regrettable if somebody from the SSPCA were called to a scene and could not gather evidence that would help the investigation.

Hugh Dignon: Susan Davies's report sets out a number of concerns, and Rachael Hamilton has mentioned the ones about health and safety, access to the police intelligence database and retaining primacy for the police.

We have looked at all of those concerns and think that the proposal that we have come up with addresses them. It will not involve issues of access to the police intelligence database, and it will not involve the SSPCA being anywhere it would not already have been under its existing powers. It means that the police will retain primacy and that people will not be able to ring up the SSPCA to ask it to go and investigate crimes that are outside its powers under the Animal Health and Welfare (Scotland) Act 2006

We have, of course, talked with our police colleagues about the proposal and no doubt the committee will want to speak to them again at some point. However, I can report that, at this stage, they have indicated to us that they think that the compromise position is something that they can work with.

The Convener: Can I just ask whether the SSPCA would be a "relevant body" as referred to in the legislation? If the SSPCA were to establish an investigation, might that be a cause for suspending a licence?

Gillian Martin: It would not be the SSPCA that would establish an investigation into wildlife crime. It would be the police that would conduct such an investigation.

The Convener: But would the SSPCA be a "relevant body" in that respect? In other words, if it had concerns that a law had been broken, might it be able to deal with the issue?

Gillian Martin: No, that would be the police—and, indeed, NatureScot, as the issuer of the licence. I see what you are getting at, but the SSPCA cannot make claims that will revoke or suspend any licences. NatureScot is the licence supplier; it has the licensing scheme and will work closely with the police in that respect.

As I have said, I see what you are getting at, but I do not think that it is a concern. In effect, what the SSPCA will be able to do, if it has already been called to an area and sees evidence of a wildlife crime, is that as part of that call—which could be about something completely different—it can gather that evidence and supply it to the police.

The Convener: Finally, and again for clarity, I note that, with regard to suspension, the

legislation talks about an “official investigation”. The bill defines that as

“an investigation by the Police Service of Scotland or any other body that has as one of its functions reporting, for consideration of the question of prosecution, offences alleged to have been committed”.

Are you saying that the SSPCA would absolutely not be covered by that?

Gillian Martin: The bill refers to

“any other body that has as one of its functions reporting, for consideration of the question of prosecution”.

In effect, the SSPCA would be gathering evidence. I get what you are getting at, though. The SSPCA is able to provide evidence, but it can already do so in a range of cases, even before it gets the proposed powers. It does so if there is, say, illegal breeding of domestic animals or concerns about the suffering of animals. It will provide evidence, should something go to court. That is what that means. Hugh Dignon might want to come in on the detail of that, if I have got it slightly wrong.

The Convener: Just for absolute clarity, then, is it the case that, when the bill talks about official investigations, that includes the SSPCA?

Hugh Dignon: Potentially, it does. However, under the additional powers that we are proposing, the SSPCA will be subject to the establishment of a protocol with the police, as part of the conditionality of our agreeing those powers with the SSPCA. Therefore, the SSPCA will pursue criminal investigations in relation to any additional evidence that it gets under the new powers only with the police’s agreement.

The police will remain the primary force for investigations. The SSPCA may seize evidence under the new powers, but it has to discuss with the police what to do with it. It does not mean that the SSPCA will automatically own that case.

The Convener: My main point is that, with regard to official investigations, which are mentioned as one of the reasons for suspending a licence, any work relating to the SSPCA gathering evidence would, in effect, be defined as an “official investigation” under the bill.

Hugh Dignon: The SSPCA would certainly fall within the terms of the definition with regard to the function of reporting for prosecution.

The Convener: Okay.

Hugh Dignon: However, it is extremely unlikely that the SSPCA would be investigating that sort of offence, other than to gather evidence and liaise with the police on those prosecutions.

The Convener: Absolutely, but the main point is that that would be defined as an “official

investigation”, which then relates to other legislation.

I am going to suspend—

Christine Grahame: I have been waving my hand at you, convener.

The Convener: I beg your pardon.

Christine Grahame: I just want to ask a brief question. I have to say that I welcome the idea of protocols, because it seems to me that they might formalise what is already happening. How do the police feel about establishing protocols, or is it still early days? The police have primacy in all those aspects, so what is their reaction?

Gillian Martin: They want the protocols to be established.

Christine Grahame: That is fine, then.

Gillian Martin: As Hugh Dignon has said, this is a compromise position, because people wanted us to go further in this area. I think that that is where a lot of the police criticism has come from—it was about the other position that we were taking, which would have given far more powers to the SSPCA.

Christine Grahame: By the way, I should have declared an interest as a member of the SSPCA.

Gillian Martin: The SSPCA was saying, “Give us these powers or don’t.” However, the SSPCA and others have been pointing out the issue of evidence being able to be destroyed or removed.

Christine Grahame: I appreciate that. The main point is that the police are content with the protocols. I take comfort from that.

Gillian Martin: They need those protocols to be in place, because they will be working together. They already work together very closely on domestic cases.

The Convener: I would like a little bit more clarification on this. Perhaps after the meeting, you could write to the committee to clarify exactly in which circumstances the SSPCA’s part of the work would come under the definition of “official investigation”. That would be helpful.

I suspend the meeting for five minutes for a comfort break. When we come back, we will address the topic of muirburn.

10:46

Meeting suspended.

10:52

On resuming—

The Convener: We move on to the topic of muirburn. Rhoda Grant has the next question.

Rhoda Grant (Highlands and Islands) (Lab): I have questions on the muirburn licensing scheme and how it will operate. Large estates might have a lot of people undertaking muirburn and crofters might have only one person doing that. Will the scheme take into account the impact on smaller operators and different operations?

Given that the science on the benefits or disbenefits of muirburn is not entirely clear, how will the code be adapted to follow the science?

Gillian Martin: You make a really good point about smaller landowners and crofters who might have to apply for a licence. I would expect NatureScot to take that into consideration and that, when it liaises with stakeholders, it would speak to crofters about how the scheme might impact on them. It should do the same as it puts the licensing scheme together. Again, the scheme cannot be onerous: it cannot place a series of requirements on crofters to prove, measure or provide evidence of things that do not even apply to their land. It would be ridiculous, frankly, if that were the case.

I come back to what I said earlier. I have listened to NatureScot, and I very much get the impression that it wants to work with all sectors that might be affected by the licensing scheme, so it must have buy-in and the application process must not be onerous for people.

Lots of things in the code of practice will not apply to certain landowners, so I come back to the idea that the code should require people to have due regard to items in it rather than the idea that every single item in the code will be relevant to a crofter. Some parts of the code will be relevant to crofters and other parts will be completely irrelevant, so that must be taken into account. The code must be meaningful, must work for everyone who engages in muirburn and must have buy-in from them all.

You mentioned the science and the evolving data. The licensing scheme will enable data to be collected, and that information will be provided to people involved in various scientific efforts relating to peatland, in particular. It will be very helpful to have information on what is happening where, because we do not know what is happening where in relation to muirburn practices on peatland. That will allow us to give evidence to anybody who wants to undertake a scientific survey on the effect of muirburn on peatland. We cannot pre-empt that and say what the effect is—it might be positive or negative—but the code needs to provide flexibility so that NatureScot can react to the evolving science. I cannot look into the future to see what the data will show, but the fact that we will have a licensing scheme that will provide better data on what is happening where might allow the science

to develop in a way that has not been possible so far.

Rhoda Grant: Will it be possible to review the code quite easily?

Gillian Martin: Absolutely.

Alasdair Allan: My question is along similar lines. Can you say a bit more about the reasoning behind the distinction between peatland and non-peatland? I know that several of us on the committee have asked questions about that previously. Does the distinction relate to the release of carbon from a carbon sink directly, or is it about protecting and maintaining the type of vegetation that is found on pristine peatland? For the crofters and farmers who are having to identify, on mixed land, what is peatland and what is not, it would be helpful to have an idea of the rationale for the distinction.

Gillian Martin: It comes down to the fact that peatland is so important. The science on that has developed substantially, as we now know how much of a carbon sink peatland is—it is a big sequestrator of carbon. You will know that the Scottish Government has a range of policy objectives and that a major one is the rewetting of peatland, which is now in my portfolio. The regeneration of peatland will be very important in helping us to reach the climate change targets that we have set—both the interim 2030 target and the target of net zero by 2045. More than that, peatland is rich in biodiversity in relation to not just plant life but fungus, which is crucial to the health of the land, and the species that live on peatland.

When activities such as muirburn take place on peatland, we believe that there should be special considerations. We should give some guidance on where such activities can happen, and we should monitor what is going on where, particularly when muirburn takes place on peatland. We should give an idea of what we consider peatland to be and what a licence is needed for—we should provide information on the depth, for example.

It all comes down to the fact that adherence to the code and the applications for licences can add to the science and data on muirburn on peatland, which will be very helpful. We are adhering to the precautionary principle because of peatland's massive value to the health of the soil in Scotland and to the environment more generally. Its value is so substantial that special measures are required.

Alasdair Allan: Do you accept that it can be quite a prospect for a crofter or a common grazings committee with a piece of land that has peat of wildly varying depths to identify how much of the land is relevant?

11:00

Gillian Martin: Yes. That is where I see NatureScot providing advice to individual applicants, which could really help. We are proposing a depth of 40cm, and guidance will be given on how people can measure the depth of peat and declare what they believe it to be. People will be able to liaise with NatureScot and say, “I’m proposing to do some muirburn on this piece of land, but I’m not entirely sure how deep the peat is across the area. Can you give me some guidance?” NatureScot will respond to that and help them. I certainly hope to see that as part of the licensing arrangements. It is not a question of someone putting in an application and NatureScot saying, “Hang on a second,” because it does not believe—

Alasdair Allan: So, NatureScot will not have to work on some kind of precautionary principle whereby, if people do not know how much peat there is, it will assume the worst.

Gillian Martin: No.

Alasdair Allan: How will it reach a view?

Gillian Martin: If people declare that they want to do muirburn on peatland, that will be part of the licence. Basically, we are talking about one licence, and there will be a section that asks, “Are you going to do this on peatland?” I cannot say how the form will look, but I think that that needs to be taken into consideration.

I expect that NatureScot will have guidance in place for crofters or anyone else who applies for a licence, but people will also be able to contact NatureScot and ask for advice if they are unsure in any situation. I do not want licence applications that go in to be rubber-stamped “No” when there can be communication between the licence applicant and the licensing organisation.

The Convener: You have mentioned the relationship with NatureScot. Can you provide reassurance that those who apply for a licence will not be prosecuted if they follow what they believe is the right way to measure peat depths or whatever but that turns out to be wrong?

Gillian Martin: Yes. I think that we have pretty much given that assurance already—I think that my officials gave it when they came in front of you. The licences are going to be straightforward to apply for. We are talking about a space where, if people are not adhering to the code, the liaison that I have discussed will take place. I understand why you are putting the worst-case scenarios to us, but, if you need something in writing to confirm what we have already said, we are happy to provide that.

I do not know whether Hugh Dignon wants to comment and, perhaps, identify something in the bill that might be helpful in this regard.

Hugh Dignon: The bill already provides that the licence will specify whether the land is peatland. If someone has a licence that has been granted by NatureScot and it says that the land is not peatland, then it is not peatland. Someone could come along and say, “Well, if you measure it in a different way, it could be peatland,” but that is not really relevant. If the person has honestly followed the methodology that NatureScot has set out and the results that they have provided have concluded that the land is not peatland, then it is not peatland.

The Convener: Thank you. Rachael Hamilton is next.

Rachael Hamilton: The minister keeps talking about there being one licence, but Hugh Dignon has just mentioned peatland and non-peatland. Will you clarify whether there will be two licensing schemes—one for each type of land?

Gillian Martin: I again point to the fact that NatureScot will take forward the development of the licensing scheme, but I think that it said in evidence to the committee that it will seek a declaration on whether the land is peatland within the one licence. I cannot see that changing. It certainly seems to be the position that NatureScot has set out.

The Convener: I had understood that there would be a licence for non-peatland and a licence for peatland, but you are saying that that is not the case. There will be one licence and it will state—

Gillian Martin: It is up to NatureScot to decide how the licence is taken forward, but the indication from the discussions that I heard the committee have with NatureScot is that it will not have an onerous process that requires people to apply for umpteen licences for umpteen different muirburn activities. Again, it is up to NatureScot to take that forward.

Christine Grahame: I want to talk about the interpretation part of the bill. We are all talking about peatland, but the only thing that we have on interpretation is in section 18(1), where it says:

“peatland’ means land where the soil has a layer of peat with a thickness of more than 40 centimetres.”

I appreciate that you can change that through regulations under the affirmative procedure. However, under section 10, “Application for muirburn licence”, the applicant can say, “I can do muirburn here, because the land to which this application relates is not peatland,” or they can make an application where the land is peatland. I do not know this, so you are going to have to tell me: how do you know what is peatland? You have

given a definition of depth only, not acreage or anything else.

Gillian Martin: That is where the guidance that NatureScot will develop will come in. We have kept it quite strict in the bill. There is a second part to the definition in the bill, which states:

“peat’ means soil which has an organic content ... of more than 60%”—

Christine Grahame: I understand that.

Gillian Martin: If we were to be more definitive than that—

Christine Grahame: I am talking about acreage. I might have a piece of land the size of this room that has peat to a depth of 40cm and complies with your definition. Is that peatland? Can I burn it? Which application do I come under? Who is going to tell me?

Christine Grahame: If you want to burn land that has a peat layer to a depth of more than 40cm, you will need to declare that—

Christine Grahame: Even if it is just the size of this room?

Hugh Dignon: That is exactly the sort of issue that will be covered by the methodology that NatureScot will give to applicants and discuss with them before the scheme comes into effect. Any piece of land might have pockets of peat layer that are deeper than 40cm. That does not mean that the whole parcel of land is defined as peatland. There will, precisely as you say, be specifications for the proportion of the area that needs to be more than 40cm deep for it to be included in the scheme.

Christine Grahame: Let us imagine that a piece of land meets the chemical and depth definitions. Will applicants get guidance as they make their applications to NatureScot so that applicants can say, “Here is my bit of land. Do I have to apply?” The bill refers to

“the land to which the application relates”,

so, if an applicant has to specify that—I presume that they provide acreage or a map or something—will NatureScot say, “You don’t need to bother. That does not meet the definition of peatland”? I am talking about acreage or size.

Gillian Martin: It comes back to my answer to Rhoda Grant about crofters. The guidance must take into account the different types and acreage of land.

Christine Grahame: That is what I am getting at.

Gillian Martin: You can see why that is not in the bill. In collaboration with the many different types of businesses that we are talking about, it

needs to be decided what guidance they need, what is acceptable and what practices will take place. That will be dealt with in the guidance.

Christine Grahame: I was concerned because we keep talking about peatland as though everybody knows what that is, and, of course, we do not.

Leia Fitzgerald: I will add that the measurement and determination of land as peatland already have to be done in forestry work, for example, so there is already an established way of measuring that, and there are examples of people having to take those measurements to undertake forestry work.

Christine Grahame: Therefore, there is already something in operation that has designated what is and what is not peatland.

Hugh Dignon: I would say that it is analogous. It is not exactly the same; there are different definitions.

Beatrice Wishart: In which circumstances do you consider muirburn to be appropriate on peatland and where do you expect muirburn on peatland to be licensed?

Gillian Martin: I guess that it comes back to that definition. We have set out in the bill what we want to see licensing for. As Christine Grahame said, the definition of peatland in the bill refers to a depth of 40cm; the other part of that definition is that peatland is soil that has an organic content of more than 60 per cent.

Members will have the bill in front of them, but I will read from it. Applications for muirburn on peatland could be for the purposes of

“restoring the natural environment ... preventing, or reducing the risk of, wildfires causing damage to habitats”,

or

“preventing, or reducing the risk of, wildfires causing harm to people or damage to property”.

Those are probably the reasons why applications would be made. For example, a land manager might want to create habitats for ground-nesting birds such as grouse. I know that there is an established practice of burning pockets of vegetation to provide areas that encourage birds to nest.

To take a topical issue, there could be a situation in which a land manager wants to use muirburn to prevent wildfire, which would be absolutely acceptable. If the area in which they wanted to do that was peatland, they would have to have a licence.

The last reason is research. Any research would be acceptable. That goes back to the idea of

collecting data, which I mentioned in my response to Ms Grant.

Those are all acceptable reasons for wanting to carry out muirburn on peatland. The code and the licensing system that will be set up by NatureScot will include guidance on that, but that is what the bill says.

Rhoda Grant: Licences for burning on peatland will be issued only if

“no other method of vegetation control is available.”

What other methods would be preferable to the use of muirburn?

Gillian Martin: I will probably have to bring in Hugh Dignon, because I do not have a list of the other methods in front of me. We have to be clear that muirburn will not be the first option if another process could achieve the same outcome, because muirburn has the potential to damage the peat. If someone goes straight to using muirburn without taking other methods into account, NatureScot will probably want to know what else they have looked at and why they cannot use other methods.

On the question of what those other methods are, I ask Hugh to help me out.

Hugh Dignon: The main method is cutting or swiping, whereby people cut heather rather than burn it. There are pros and cons to that, and it may not always be the most suitable method, but it is definitely an alternative to muirburn in some cases.

Rhoda Grant: I know that we will come on to the issue of wildfire, but it is my understanding that cut heather will dry out, which might create a greater fire risk, so—

Gillian Martin: That would be a reason for using an alternative method. If someone makes the case that they do not want to cut heather because that could provide fuel for a wildfire, that is a perfectly legitimate argument to put forward. That is where collaboration and communication come in, and that is where the code would come in, too.

It is also worth saying that, if someone applies to muirburn on peat, NatureScot will not just rubber stamp that. I suggest that there should be an opportunity in the application process for someone to state the reason why they want to do that—which is set out in the bill—and why it is necessary. That will be taken into account.

Rhoda Grant: Therefore, it is not strictly true that muirburn can happen only if

“no other method of vegetation control is available.”

It may need to be—

Gillian Martin: I think that we might use the word “practicable”.

Hugh Dignon: We might.

Gillian Martin: I think that that is a good word to use for those cases, and maybe we need to reflect on that at stage 2.

Rhoda Grant: Practicable.

Gillian Martin: The word “available” might give the wrong impression. Other methods are available, but they may not be the right methods, such as for the reason that you have just given. That could be something that we could look at.

Christine Grahame: “Available” was the word that I picked up on. I thought that “available” was not a good word.

Gillian Martin: Yes. Let us look at that at stage 2.

The Convener: A more precise wording would deal with some people’s concerns that other methods of vegetation control may be available but may not be appropriate.

Karen Adam has a question.

11:15

Karen Adam: What is the rationale behind defining peatland as having a depth that is greater than 40cm? What objective is that definition meant to achieve?

Gillian Martin: We have to come to a decision about the depth. At the moment, the definition is 50cm, but other people have called for it to be 30cm, so we have taken a compromise position. We are aware that the science around that is not exact and that there are conflicting views.

This goes back to what I said to Alasdair Allan about the value of peatland. We are taking the view that 40cm is a significant depth and suggests a mature peatland. We do not want to be too restrictive by going to 30cm. If science develops—if irrefutable science comes before us—in either direction and shows that 50cm would be better or that 30cm would be more reasonable, we have flexibility to amend the definition. However, for the purposes of the bill, we have gone for 40cm because we think that that is a reasonable depth.

We must protect peatland as much as possible. I went through all the reasons why peatland is important. To use 50cm as the definition was not the right approach. I cannot be more exact. I would love to be able to point to a definitive reason for the 40cm depth, but that is where we have landed, based on the value of peat and the potential risk to that very valuable natural resource.

The Convener: This is where I get confused, because peatburn—I mean, muirburn, not peatburn.

Gillian Martin: Peatburn is something else.

The Convener: Muirburn does not burn peat, so whether it is 40cm, 50cm or 20cm deep should be irrelevant. If peat is burned, as we heard from previous witnesses, that is usually when there is a wildfire.

Why did you pick 40cm when the current data identifies where peat is 50cm deep? We will have to carry out a remapping exercise. I do not understand why we have that 10cm difference, which will cause a lot of problems, because we do not have the data. Why would you go for 40cm rather than 50cm, when peat is not being burned?

Gillian Martin: I will start with your first point, which was that muirburn does not burn peat. I absolutely get that. That is true when muirburn is done well by trained people who know what they are doing, which is another reason for having a licensing scheme. There may be people who are not trained, who are not doing it properly and who are putting peatland at risk.

You said that there is data that suggests the depth should be 50cm, but there is also conflicting data that suggests that it should be 30cm.

The Convener: No, I was talking about the national survey data, which tells us where peat is 50cm deep. We do not know where peat has a depth of 40cm.

Gillian Martin: Oh—I see. You were talking about the survey maps. I will bring in Hugh Dignon.

Hugh Dignon: Although there are maps, they are not sufficiently detailed for this purpose, so it is not particularly useful to have them.

The Convener: Okay.

Ariane Burgess: I have a couple of questions about wildfires. The committee has heard that muirburn is an important tool in managing wildfire risk but that its use must be justified by a genuine need to manage for wildfires in specific circumstances. I would be interested to hear whether the bill strikes the right balance.

I recently visited Cannich and Corrimony and saw at first hand the devastation that took place there. It was interesting to see an area of peatland where the fire had basically skipped around it. The other thing that I thought was really interesting was that, on the hillside where there were mature trees, the fire stopped. You could see a line of burn, and the mature trees held it back.

I think that there is something in that, so I would be interested to hear in what ways the Scottish

Government is looking to create, in the longer term, more wildfire-resilient landscapes as the climate changes. Will you commission further research on how peatland and other landscapes—those maturer landscapes—can act as natural firebreaks without the need for muirburn?

Gillian Martin: It is great to hear that example from you, Ariane, because peatlands can provide a natural firebreak if they are in good condition. If they are degraded, they probably will not, but if they are in good condition they can. That is why we are putting so much effort into rewetting. There are a number of schemes that you will be very familiar with in that area, because that provides a natural firebreak. It is great to hear that exemplified.

However, we have to recognise that some muirburn practices can also provide a firebreak. I am not an expert in how fire works. The experts, of course, are in the Scottish Fire and Rescue Service. Work is being undertaken with the service at the moment, and it is liaising on that. The people in the service are obviously the ones who have to deal with it on the front line when a wildfire happens.

We also come to the question: what are the major causes of wildfires? There are two. One—this is a sort of practical aspect—is human behaviour, which is the usual cause. Another is that the increasing prevalence of wildfires in northern countries—we are one of those—is due to climate change. A couple of years ago, I was in the Arctic circle, where we met some representatives of the Sámi people, who are from the north of Norway. For the very first time in their existence, they were dealing with wildfires in the Arctic circle, so we cannot dispute that fact.

Peatland and rewetting provide a carbon sink, which is helping in that regard. Their restoration is helping to protect against wildfires and helping us to reach our climate change objectives. Obviously, Scotland cannot do that alone—all countries have to be involved in that—but climate change is one of the main reasons why we are seeing more wildfires. You will have seen on the news that there are terrible wildfires in Canada, which are making cities in America the most polluted places. The air quality in Chicago, for example, is intolerable. However, if the Sámi people of the Arctic circle are dealing with wildfires, that tells a story.

Ariane Burgess: I also asked whether you would be willing to commission further research on how peatlands and those maturer landscapes can act as natural firebreaks.

Gillian Martin: Yes, I think that that is something that we can look into—if it has not already been done. I can check. A number of

things might already have been done in that area, but we will look into that.

Ariane Burgess: Thank you.

Christine Grahame: I will ask about training in relation to muirburn. Section 10 is on “Application for muirburn licence”. Subsection (3) says:

“An application under subsection (1) ... must be made ... to the Scottish Ministers, and ... in such manner and form as the Scottish Ministers may require”.

Would you consider including in that application a requirement that someone who is applying to carry out muirburn on peatland should confirm that they have undergone training?

Gillian Martin: Again, that will be for NatureScot to determine, but I would say that that would probably form part of the licence application—that it would confirm that the person applying had had training.

I am just having a look at my notes, which refer to

“Substantial compliance with the Muirburn Code”.

The muirburn code will set out whether training is required. I suspect that such a requirement will be part of the code.

My notes also refer to

“Mandatory training for staff directly involved in setting and managing fires”

and

“Keeping a record ... of each operation.”

Therefore, we have already set out that intention. We would expect to see the code include that and to give more detail. We might even expect the code to say what the accredited training should be. It was good to hear the representatives of gamekeepers who were before you saying that they accepted the idea of training and that proving competence in that area is absolutely something that they sign up to.

Christine Grahame: The bill says that an application must be made

“in such manner and form as the Scottish Ministers may require”,

but can I be satisfied that the Scottish Government’s position is that something will have to be included about being compliant with the code, which is not actually in existence just now?

Gillian Martin: Maybe we can put that down in the bill at stage 2, to set that out a little more strongly. I am open to that.

Christine Grahame: You would consider that.

Gillian Martin: Yes.

Christine Grahame: That is good. Thank you.

Beatrice Wishart: What consideration has the Scottish Government given to procedural safeguards when licences are suspended? Did the Government consider putting time limits on suspensions, or does it expect that to be part of NatureScot’s guidance?

The Convener: Before you answer, minister, I want to clarify that the question relates to all three licensing regimes, not just licences for muirburn.

Gillian Martin: We have already had quite a robust discussion about the process that is available to people if they object to or disagree with NatureScot’s decisions. They have the right to appeal to a sheriff if NatureScot decides to refuse to grant a licence, to attach a condition to a licence or to modify, suspend or revoke a licence. If someone is dissatisfied with how NatureScot has operated in relation to their communication or liaison, they are also able to contact the Scottish Public Services Ombudsman.

However, I keep coming back to the intentions that NatureScot set out in its evidence. It was made clear that NatureScot wants to work with potential licence applicants and other stakeholders in the area to ensure that the licensing scheme, the code of practice and the advice and guidance that are given are appropriate and are bought into as much as possible by the people who will apply for the licences. That is where a lot of the confidence will come in that area. As I said, NatureScot—or SNH, as it was called previously—is used to working with all those stakeholders in a number of areas. I hope that there will be that confidence, and I think that there will be, as was demonstrated in the back and forth during the committee’s round-table session.

One criticism is that someone could say, “Well, I like the person who is in charge of NatureScot—I think they are decent—but what if it was someone else with a different personality?” There are processes, procedures and frameworks in place to avoid personal decisions being made. NatureScot would have to adhere to those frameworks and, if it was found to be the case that it had not adhered to them, an appeal would be successful. I hope that that gives comfort. I think that NatureScot’s answers addressed quite a lot of the concerns.

The Convener: Without going over it all again, I point out that the worry is that everything could be undermined by NatureScot’s ability to suspend a licence, even if it is not satisfied that an offence has been committed. That causes concern.

Gillian Martin: I cannot say anything more than I have said already. I take those concerns seriously. As Beatrice Wishart alluded to, we need to have robust processes and procedures, including appeals procedures, and we need to

have additional bodies—as we do—to which someone can go if they are not content.

The Convener: Has there been any consideration of putting time limits on suspensions?

Gillian Martin: That has been discussed, but we have not put anything in the bill and I do not know whether we want to put it into the bill. I must say sorry to Beatrice Wishart, because I missed that part of her question. We might need to leave that to NatureScot.

11:30

The Convener: Alasdair Allan is next.

Alasdair Allan: Are we on wildlife traps?

The Convener: We are on to relevant offences, yes.

Alasdair Allan: Section 16AA licences or wildlife trap licences can be suspended or revoked, and we have heard evidence from various stakeholders about whether there is a greater risk in relation to grouse moors. Will you say a bit more about section 16AA licences, why the provisions have been drawn in the way that they have been drawn, and whether they have been framed to cover issues other than raptor persecution?

Gillian Martin: This stems from the Werritty review. We looked at some of the things that it flagged up as being other offences that are an issue. It covered the taking of wild birds and wild animals, and the protection of badgers is also in there.

I am aware that not all the offences are relevant in every situation, but Professor Werritty's review gave support for the list of legislation that is included in section 16AA. The bill includes a power to amend the list through secondary legislation. I want to be clear that the commission of an offence under the listed legislation does not automatically require the licensing authority to suspend or revoke a licence; it might elect not to do so.

I hope that that gives a bit of comfort.

Jim Fairlie: In relation to the relevant offences and section 16AA licences, RSPB Scotland recommended in written evidence that they should include offences under the Animal Health and Welfare (Scotland) Act 2006. Did the Scottish Government consider that?

Gillian Martin: Are you talking about tampering with traps?

Jim Fairlie: No. RSPB Scotland is looking for offences under the Animal Health and Welfare (Scotland) Act 2006 related to animal suffering

because of the misuse of live capture bird traps and so on to be included. Have you considered including those offences?

Gillian Martin: I have looked into it. I come back to whether the law, as it is drawn, is sufficient in itself. All I can say is that I am open to suggestions on that. I know that some people have been calling for that, but I keep coming back to the fact that people are concerned about a lot of things and I have not been able to have one-to-one conversations about them. I want to have those conversations from now as we move on to stage 2, and I will consider anything that could strengthen the bill in areas in which people believe that it is not strong enough. Alternatively, we could change the wording to make it clearer, or look at anything else that people want to bring to me.

The Convener: Have you had any discussions with NatureScot about its ability to issue fines for more minor breaches, such as not notifying a neighbour of muirburn or whatever? Is that a conversation that you have had and would you consider that?

Gillian Martin: I will bring in Hugh Dignon on this in a moment. I have heard this being talked about, and my initial thought is that I am not convinced that fines are the way to go. Sometimes, fines can be the price for not doing something. People might say, "We don't have to do that. It is just a small fine," or whatever.

The Convener: I guess that the point is: if someone has breached the regulations, what could happen other than their licence being revoked or suspended?

Gillian Martin: I would rather that NatureScot used other methods to get people to conform with the code, and I think that that is the intention.

The Convener: What might those methods be?

Gillian Martin: It could be a visit to the licence holder to speak to them and give advice on how to do things in future. It could be a letter to alert the licence holder that NatureScot is aware of what has happened, ask them to rectify the situation and say that it will follow that up. That is the approach that I would prefer, and I get the impression from NatureScot that that is also its preferred approach.

Rachael Hamilton: Do you want me to cover the questions about NatureScot and monitoring and compliance, convener?

The Convener: Yes, please.

Rachael Hamilton: How does the Government envisage monitoring compliance with what is set out in the bill?

Gillian Martin: The Government?

Rachael Hamilton: I am sorry—I mean NatureScot. How will NatureScot monitor compliance?

Gillian Martin: I guess that it will monitor compliance through some of the things that we have just discussed. If someone is not complying, the public will soon let NatureScot know, and it will respond to any public intervention.

NatureScot liaises with shooting estates all the time on a number of areas. Again, it is up to NatureScot how it would monitor compliance. I am very aware that it might have an increased workload as a result of the scheme. I have not yet had a one-to-one meeting with NatureScot, but it is one of the bodies that I really need to get up to speed with and have a one-to-one conversation with about what the bill will provoke in its work and what it wants to do on compliance and licensing, so that we can ensure that it is adequately resourced.

Rachael Hamilton: That was the next point that I was going to make. How will the Government ensure that NatureScot's new responsibilities do not divert from its wider work?

Gillian Martin: That is a serious consideration. I need to be satisfied that it has the resources to do what we are asking it to do. I alluded to the fact that, so far, it has felt comfortable and able not to charge for some services, and I wondered whether a small charge would help. I do not know—I need to have that conversation with NatureScot. Ms Hamilton will understand that, in the past week, I would have loved to have sat down with NatureScot to talk about the scheme in detail, but I absolutely have to do that between now and stage 2.

Rachael Hamilton: Have you had the opportunity to speak to any of the stakeholder organisations so far?

Gillian Martin: I am doing that tomorrow.

Rachael Hamilton: Do you intend to look at full cost recovery for wider species licensing?

Gillian Martin: Hugh Dignon has just told me that a review will look at that. That needs to be done. Whenever we look at giving more work to an agency, we need to look at how it will be funded, but Hugh has just notified me that there is a review.

Rachael Hamilton: Did I miss the date of that review?

Hugh Dignon: If I may jump in, the review is looking at NatureScot charging across the piece and not just for this particular licence. That is why we have been generally resistant to the idea of introducing charging for individual licences in advance of that review, which has not yet started,

unfortunately. I am hopeful that we will get it under way this summer—that is my ambition.

Rachael Hamilton: I also want to ask about the suspension of a licence or suspension of any activities that could affect lives, livelihoods and perhaps investment. To suspend a licence, NatureScot has only to be satisfied that there is an issue. Notwithstanding all the conversations and explanations that the minister has given on the conversations between individuals, would an individual who has had a licence suspended or revoked have the ability to go into a cost recovery situation the other way round?

Gillian Martin: I would just point to the appeals process and everything that I have said so far about that. Again, I am open to discussions. I need to think about what you have said and reflect on it.

Rachael Hamilton: Okay, thanks.

The Convener: Thank you, minister. That brings us to the end of this mammoth baptism of fire on your first appearance in front of the committee. I very much appreciate your time and that of your officials.

I will suspend the meeting very briefly to allow a change of witnesses before we move to agenda item 2.

11:40

Meeting suspended.

11:41

On resuming—

United Kingdom Subordinate Legislation

Agriculture and Horticulture Development Board (Amendment) Order 2023

The Convener: Our second item of business is consideration of a UK instrument, which must complete the affirmative procedure in the Scottish Parliament before the UK Parliament can consider it.

I make members aware that the instrument was considered by the Delegated Powers and Law Reform Committee yesterday and no points were raised.

I welcome back Gillian Martin, Minister for Energy and the Environment, and her officials: Caspian Richards, who is head of the policy and pesticide survey unit; and Emily Williams Boylston, who is a solicitor.

I invite the minister to make an opening statement.

Gillian Martin: It feels like I have never been away. [*Laughter.*]

Thank you for asking me to give evidence on the draft UK statutory instrument, the Agriculture and Horticulture Development Board (Amendment) Order 2023. The Agriculture and Horticulture Development Board is a statutory levy board funded by farmers, growers and others in the supply chain. It provides services, advice and support to our world-class food and farming industry.

The AHDB comprises the four statutory levy-paying sectors that are currently included in the scope of the order, which are the cereal and oilseed industries in the UK, the milk and bovine dairy industry in Great Britain, the pig industry in England and the beef and sheep industry in England.

The amendment order is a UK-wide instrument, as has been said, to be made in the exercise of powers conferred by the Natural Environment and Rural Communities Act 2006 on the secretary of state, acting with the approval, for Scotland, of Scottish ministers.

The main purpose of the order is to deliver a set of modernising updates to the principal order, the Agriculture and Horticulture Development Board Order 2008, which will enable it to deliver operational and financial improvements.

A UK-wide consultation on the proposed amendments was launched on 4 December 2022

and closed on 28 February 2023. It was led by the Department for Environment, Food and Rural Affairs, which contacted all stakeholders by email. It received 17 responses and the majority of respondents agreed with the proposals included in the instrument.

I will not outline all nine amendments, because you have them in front of you. I support the changes that the order makes to deliver those improvements and I am happy to take any questions.

The Convener: As there are no questions from members, we move to formal consideration of the motion to approve the instrument. I invite the minister to move motion S6M-09530.

Motion moved,

That the Rural Affairs and Islands Committee recommends that the Agriculture and Horticulture Development Board (Amendment) Order 2023 be approved.—[*Gillian Martin*]

Motion agreed to.

The Convener: Is the committee content to delegate authority to me to sign off a report on our deliberations on this affirmative SI?

Members indicated agreement.

The Convener: We will aim to publish that as soon as possible today, to enable the instrument to be considered in the chamber before summer recess.

That completes consideration of the affirmative instrument. I thank the minister once again, and her officials, for attending the meeting.

Validating Alternative Methods for Salmonella Typing (Amendment) Regulations 2023

11:45

The Convener: We move to consideration of a consent notification for a UK SI.

As members have no comments on the notification, are we content to agree with the Scottish Government's decision to consent to the provisions that are set out in the notification being included in UK, rather than Scottish, subordinate legislation?

Members indicated agreement.

Windsor Framework (Retail Movement Scheme) Regulations 2023 (NID/011)

The Convener: That concludes the public part of our meeting.

Windsor Framework (Plant Health) Regulations 2023 (NID/012)

11:46

Meeting continued in private until 11:59.

Windsor Framework (Enforcement etc) Regulations 2023 (NID/013)

Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (NID/014)

Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 (NID/015)

The Convener: We move to consideration of five notifications for UK SIs implementing the Windsor framework. The notifications were received on Friday afternoon and it is regrettable that they were added to the agenda at the very last minute, so that members have not had much time to scrutinise all the implications of the UK legislation for devolved competence.

Before I invite comments from members, I would like to say that I think that it is vital that any letter that we send to confirm our decision should include a strong form of words about the lack of time for adequate parliamentary scrutiny of the instruments.

As there are no comments, are members content to agree with the Scottish Government's decision to consent to the provisions that are set out in the notifications being included in UK, rather than Scottish, subordinate legislation?

Members *indicated agreement.*

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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