



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 5 March 2025

Session 6



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RURAL AFFAIRS AND ISLANDS COMMITTEE
8th Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Ariane Burgess (Highlands and Islands) (Green)

*Tim Eagle (Highlands and Islands) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*Emma Harper (South Scotland) (SNP)

Emma Roddick (Highlands and Islands) (SNP)

*Evelyn Tweed (Stirling) (SNP)

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Jack Bloodworth (Scottish Government)

Hugh Dignon (Scottish Government)

Leia Fitzgerald (Scottish Government)

Lisa McCann (Scottish Government)

Norman Munro (Scottish Government)

Joanne Napier (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Rural Affairs and Islands
Committee

Wednesday 5 March 2025

[The Convener opened the meeting at 09:10]

Decision on Taking Business in
Private

The Convener (Finlay Carson): Good morning, and welcome to the eighth meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, please ensure that all electronic devices are switched to silent. We have received apologies from Emma Roddick, and Rhoda Grant will join us remotely.

Our first item of business is consideration of whether to take item 3 and 4 in private. Do members agree to take those items in private?

Members indicated agreement.

Natural Environment (Scotland)
Bill: Stage 1

09:10

The Convener: Our next item of business is an evidence session on the Natural Environment (Scotland) Bill with the Scottish Government bill team. We will hear from two panels of Scottish Government officials who are involved in the bill. First, we will discuss provisions in the bill on nature targets, environmental assessments and national parks. For this part of the meeting, I welcome Dr Jack Bloodworth, the principal science adviser from the rural and environmental science and analytical services division—my goodness, that is a mouthful—Leia Fitzgerald, head of the nature division bill unit; Lisa McCann, head of the biodiversity unit; Norman Munro, a solicitor from the marine, planning and natural resources division; and Joanne Napier, senior policy officer from the offshore energy environmental legislative reform unit. I thank you all for joining us this morning.

We have a lot of questions to get through in a limited time, so concise questions and answers would be appreciated. I also remind you that you do not need to operate your microphones. We have until approximately 10:30 for the first panel. I will kick off the questions.

The Scottish Government has overarching goals to deliver on its Scottish biodiversity strategy. How will the statutory nature targets help to achieve those goals, and how can that help in the fight to halt biodiversity loss by 2030 and to restore and regenerate biodiversity across the country by 2045?

Lisa McCann (Scottish Government): Good morning. For the past few years, we have been working on what we call our overarching biodiversity framework, which is made up of three main parts. First, we have the strategy, which sets out our overarching vision and our aim to halt biodiversity loss by 2030 and reverse declines by 2045. Secondly, the strategy is underpinned by a series of rolling six-year delivery plans, in which we set out the actions that we need to take to achieve our overarching vision and aims. The third part of the framework is the Natural Environment (Scotland) Bill, which contains, in particular, the statutory targets.

We take the view that targets are a key way to drive action, to bring attention to the biodiversity crisis and to help ensure that we galvanise action across Government. They are a really important way to mainstream biodiversity thinking in our policy development and delivery. Although targets alone will not halt biodiversity loss and reverse

declines, they are an important way of encouraging action across Government and of making sure that we are aware of the actions that we need to take and the importance of taking them.

The Convener: The bill requires targets to be put in place within 12 months of its coming into force. That would be in 2026-27, and then 2030 is only three years down the road. Is there any chance at all that we might achieve the ambitions that are set out in the bill, with three years to reverse what is a biodiversity crisis?

Lisa McCann: The bill is not the only thing that Government is doing. As I said, we have had a biodiversity strategy for many years. Last year, we published the strategy and delivery plan, which set out some of the key actions that are being taken across Government. A lot is already being done; the targets are just another piece in that jigsaw. They are an important way to encourage the pace and scale of action to increase.

The Convener: Okay. Thank you.

Ariane Burgess (Highlands and Islands) (Green): The bill identifies three topic areas in respect of which targets must be set. I would like to understand how those were chosen.

09:15

Lisa McCann: I will give a brief overview, and then I will pass over to Jack Bloodworth, who can give you the science. For a number of years, we have been going through quite an involved process, seeking advice and expertise from a number of experts to determine how we can best incorporate relevant areas in the biodiversity targets. There is no simple way to measure biodiversity; it is a much more complex area than climate change, for example. There is not one apex target that we can include. Therefore, a really complex process has been used to identify a number of targets that provide the right indication of how biodiversity is reacting to the actions that we are taking. We have also been mindful not to have an overly complex or administratively burdensome reporting system with so many targets that it might muddy the waters or mean that there is not the right focus on what is being achieved.

Jack Bloodworth can give a little more detail on the process that we have gone through and the science advice that we have taken.

Dr Jack Bloodworth (Scottish Government): As Lisa McCann mentioned, we have a biodiversity programme advisory group. It is made up of a number of Scotland-based biodiversity experts across a range of different ecosystem types, it brings in expertise on the social sciences

and economics, and it has some representation from scientists in environmental non-governmental organisations. That group was brought together to advise not just on the natural environmental targets but on the development of the strategy and the delivery plan so that we have consistency in our approach across the whole framework with the expertise that we are pulling together.

For the Natural Environment (Scotland) Bill targets, we have been working on a four-step process for developing recommendations for the targets. The first of those steps is setting out the policy framework, which involves more answering questions about what types of targets would be the best to pull together and whether they should be outcome, output or input focused. It also involves considering other things around alignment with other pieces of work.

The second step of the process is around the target topics, which is what your question is mostly about. The Scottish Government initially developed a long list of target topic options, and we held workshops with the programme advisory group to refine that list on the basis of the minimum number of target topics that they felt would help us to deliver the overall vision in the strategy. It has been very much a collaborative approach with that group of experts.

The next stage of the process will be step 3, which involves looking at the indicators that are available for those target topics.

I will stop there, because that is a bit more detailed than what you asked for in your question.

Ariane Burgess: Thanks for describing that process. So, you had that long list and then there was a sifting process. Which of the topic areas that were proposed by the programme advisory board were not taken forward in the bill? Is it likely that we might see amendments at stage 2?

Dr Bloodworth: I will take the first part of the question and then hand back to Lisa McCann for the second part, if that is okay. The programme advisory group came up with seven target topics in total: ecosystem health and integrity; habitat condition and extent; threatened species status; enhancing environmental conditions for nature; citizens and society understanding, benefiting from and contributing to nature—we like long-winded things; investment in biodiversity; and positive outcomes in public sector policy.

We have taken forward three of those topics. I will comment on two of the others: ecosystem health and integrity and the one that relates to citizen science. As part of our third step in the process, which is looking at available indicators—in other words, what we can measure those against—the programme advisory board determined that, at the moment, we do not

currently have a suitable measurement approach for those two target topics.

Ariane Burgess: Will you repeat the names of those two topics?

Dr Bloodworth: They are ecosystem health and integrity and citizens and society benefiting from, understanding and contributing to nature. I will let Lisa McCann speak on the other two target topics, which were not taken forward.

Lisa McCann: The other two target topics that were recommended were investment in nature and positive outcomes for biodiversity in public sector and Government policy.

On the first of those, it is not that we do not consider investment in nature to be incredibly important. As is set out in the biodiversity strategy, we consider such investment to be one of the key conditions for success and see it as incredibly important. However, having looked at the advice that came from the PAG, we took the view that it was not really an appropriate topic for a statutory target and that there was a risk of potentially perverse outcomes or of actions being taken simply in order to meet the target that would not necessarily achieve the best biodiversity outcome. Within biodiversity policy, we continue to focus on ensuring that there is investment in nature restoration, but there was too much risk of potential greenwashing and, as I said, of perverse results, so we have set that target topic to one side.

The other target topic is positive outcomes for biodiversity in public sector and Government policy. That is basically about mainstreaming biodiversity to ensure that it is adequately considered. That is a key part of delivering on our biodiversity ambitions, and it is incredibly important that biodiversity is mainstreamed. However, we took the view that we already have a strategy and a delivery plan, which are actually far more effective tools for mainstreaming biodiversity, and that having a target could create an unnecessarily bureaucratic reporting mechanism, which would not necessarily be the way to achieve the results that we want to see and might result in resources being directed towards reporting rather than towards delivery.

It is probably helpful to point out that there is already a statutory duty on public bodies to further the conservation of biodiversity and that having a target would, in many ways, just be a repetition of that statutory duty.

Ariane Burgess: I will pick up on both of those targets.

Regarding investment in nature, do we need to have something to regulate that process, even if that is not done through the bill?

Lisa McCann: There is already quite a lot of work going on across Government to develop responsible private investment in natural capital. I am probably going to get the title wrong, but the natural capital market framework, which sets out the principles for private investment in natural capital, was published recently. The Scottish Government is also now investigating an ecosystem restoration code and trying to bring that forward. There is already a lot of work in that space. It is not for me to say whether more is needed, but it feels as though that is an emerging area and that a lot of attention is already being focused on it. Given that that is such a fast-moving area, statute may not necessarily be the right way to deal with that.

Ariane Burgess: On the issue of positive outcomes for the public sector, I hear your point about things already being in place and I know that national planning framework 4 includes a biodiversity policy, but, although we have those policies, what I see on the ground is that things are not actually happening at the local level. I also hear what you are saying about onerous reporting—we do not want to place more reporting duties on local authorities, for example—but how do we get our aim of meeting the 2030 targets to flow through the system? Targets can be a good way of setting a focus.

Lisa McCann: I entirely agree, and that is the purpose of the targets, but there is a difficulty with that target topic and with how it would be measured, including the type of indicators that would be used and what the reporting mechanism would be. When we started trying to unpack that, we felt that it would not actually achieve the outcomes but that focusing on the biodiversity outcomes would allow us to look at the actions needed to deliver those, which would lead to the mainstreaming of biodiversity considerations in policy development and delivery.

Ariane Burgess: I am trying to get clarity. I think that I agree with you about not having a target, because we do not want an extra and onerous level of reporting, but how are we actually going to get biodiversity transformation on the ground where there are ingrained practices and ways of doing things despite there already being biodiversity strategies in local authorities?

Lisa McCann: The purpose of targets is to bring to the forefront of policy delivery and development an idea of the impact that the policy that someone is developing and delivering is going to have on biodiversity, so that they can ask, "What can I do to ensure that I am helping to meet targets that are now binding on Government?"

There is no straightforward way to do that. A range of things need to be done within and outwith Government to make sure that people understand

the impact of their policies on biodiversity and understand what it is that they can do to try to make sure that their policy is going to help to deliver our biodiversity ambitions and, in due course, meet the targets.

Rhoda Grant (Highlands and Islands) (Lab): Can you summarise what the legal process will be for setting targets?

Lisa McCann: As is set out in the provisions, there are three target topics and there is a requirement on ministers to set at least one target in respect of each of those topics and to specify the way that those targets will be measured—that is, the indicators that will be used to measure progress. That must be set out in regulations, and those regulations are subject to the affirmative procedure. There is also a requirement that, in making those regulations, ministers must seek expert advice.

Rhoda Grant: Does expert advice include scientific advice? Would that be seen as expert advice?

Lisa McCann: As Jack Bloodworth outlined, the advice that ministers have been taking comes from the programme advisory group.

I must apologise, because the provisions state that “scientific advice” must be sought in relation to the targets—that is the exact wording. In our view, the programme advisory group is well placed to give that scientific advice. Would it be helpful for Jack Bloodworth to speak about the type of scientific advisers who sit on that group?

Rhoda Grant: That would be helpful, but it would also be good to know whether wider scientific advice is available, besides that group.

Lisa McCann: There is nothing mandated in the provisions about whom ministers have to take advice from. The requirement is that ministers must

“seek and have regard to scientific advice”

in relation to the targets and topics.

Rhoda Grant: So, that would not be limited to the group.

Lisa McCann: No, it certainly would not be limited to the group. If, for example, the view was taken that we needed to go wider and get some additional advice, that could be done. There is no limitation in the provisions about whom the advice has to be taken from.

Rhoda Grant: Okay. Beyond the scientific advice, what steps would be taken to consult with people who are impacted by the targets, so that we can ensure not only that the targets are met but that there are no negative impacts and that people can have their say before the targets are

set? I am thinking about not only stakeholders but also people and agencies who might have to carry out associated work and might face costs.

Lisa McCann: As I outlined earlier, the targets will not be what has the impact; the actions that need to be taken to deliver the targets will have the impact. We have already had quite an extensive consultation process in developing the biodiversity strategy and delivery plan. We had two public consultations on the strategy, we have had a significant amount of engagement with a wide range of stakeholders and we had a stakeholder consultation group that was made up of landowners, land managers, environmental non-governmental organisations and various organisations. All of that helped us in the development of the strategy and the delivery plan, so we feel that there has already been a wide range of consultation on developing our biodiversity ambitions and vision, which has helped us to refine the actions that we need to take in order to deliver on those ambitions.

There will need to be a further iteration of the delivery plan, and we intend to go through a very similar consultation process. We had not envisaged doing any formal public consultation on the regulations for the targets. We were focused on seeking the scientific advice, given the quite technical nature of what is in the targets. However, we certainly would not be doing that in isolation—we would be clear and transparent about what the targets would be, and we would be willing to share whatever scientific advice we had received in developing those regulations.

Rhoda Grant: I am not asking about what you would be sharing; I am asking about Government listening, because it is important to have stakeholders on board with all of the proposals, especially when you are depending on people to help you meet those targets. It is a bit concerning that very little stakeholder engagement seems to be planned. I appreciate what you say about what happened in the past and in the development process, but things will have to change if we are to meet the targets, and I wonder how you are going to listen to people and bring them with you.

09:30

Lisa McCann: That is a fair point, and we thought about whether it was appropriate to include a public consultation requirement before making the regulations. However, as I said, we took the view that the regulations themselves are really quite technical, and we were not sure how helpful it would be to have a public consultation on that quite technical set of indicators and on the quantitative values that would be set to those indicators.

We felt that the consultation that we had carried out on the fact of targets, on the wide range of topics that could be included in those, on the actions to deliver the targets and on the impact of delivering those actions was a good starting point to make sure that there was widespread stakeholder awareness of what the Government's intentions would be. However, I certainly take on board what you are saying about the vital importance of making sure that stakeholders and the general public have a good awareness of what is being proposed and are on board with it. We recognise entirely the importance of widespread delivery partners—our land managers, our landowners, the agricultural sector and so on. I think that that is set out quite clearly in the biodiversity strategy and delivery plan.

Leia Fitzgerald (Scottish Government): Obviously, now that the bill has been published, we are starting to have conversations with stakeholders. One of the things that we would be interested in hearing from stakeholders is how they feel they can best feed into the process of developing the targets, which is exactly the point that you made, Ms Grant. There is a wide range of stakeholders and a wide range of knowledge and expertise. We will have the PAG, but stakeholders obviously have vital information and expertise, too.

We are keen to hear how stakeholders feel that they can feed into the process and what is the best way that we can engage with them as we develop this work. We did not want to be prescriptive at the start, because we very much want to take stakeholders with us and hear how they think that they can best help with this process to develop the secondary targets.

The Convener: On a practical basis, how can landowners or land managers protect themselves and ensure that they are not subject to an intervention? The scope of the target is extremely wide and covers many different areas. Someone might have a piece of land that could be managed for preservation of internationally recognised peat bogs, heather or various species, but that might be at odds with promoting woodland enhancement. How are you going to decide what features are going to be the prominent features that you want to protect? How can landowners ensure that, as they go about their day-to-day work, they do not inadvertently trigger a legal intervention on the basis that they are preserving nature or a certain species in a way that NatureScot or whoever does not agree with?

Lisa McCann: These are high-level targets that ministers have an obligation to meet. The targets do not give any additional powers to ministers to interfere with landowners. You point to some of the obvious difficulties that there are at the moment, but the targets themselves will not allow

any specific interventions. The targets solely place an obligation on ministers to meet those targets.

The Convener: Okay. Thank you.

Emma Harper (South Scotland) (SNP): Good morning. Environmental Standards Scotland was set up as a public body in October 2021 to ensure the effectiveness of environmental law and to prevent enforcement gaps from arising as a result of the United Kingdom leaving the European Union, but the bill gives it a new function of monitoring the achievement of any legal nature targets. What discussions has the Scottish Government had with ESS in relation to its new role?

Lisa McCann: We have had some broad discussions with ESS to make sure that it is comfortable that the proposed overarching functions that will be conferred on it by the bill fit with its existing statutory functions, and we have discussed with it the shape of those functions.

Those discussions have been at a relatively high level because, until the bill was published, we were not able to share the exact detail of the provisions. We plan to have detailed discussions with ESS about how it sees its functions operating in practice, how, administratively, the Scottish Government and ESS will need to work together and how we will be involved in information sharing, as well as about the type of monitoring and reporting that will be undertaken.

Ideally, I would have been able to give you a bit more detail on those discussions, but because this session came around a little more quickly than anticipated, we have not yet been able to get time with ESS to have a really detailed discussion. I think that ESS appeared before committee recently and said that it was having those discussions with the Scottish Government and that it was broadly comfortable with that function and with how it fitted with ESS's existing statutory functions.

Emma Harper: So, no concerns have been raised yet about resource or about expertise or any other functions. I am sure that, if concerns were raised, they would be part of the Government's engagement with ESS.

Lisa McCann: Exactly. We need to make sure that ESS is comfortable with the functions and feels that it can carry them out and that it is comfortable with the process of how the Scottish Government will work with it. It is for ESS to determine the resource that it needs to carry out those functions.

Emma Harper: Thank you.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): Good morning, everybody. The convener has already touched on this issue. Given

that the goal is to halt nature decline by 2030, when will the Scottish Government seek to commence section 1 to ensure that regulations are introduced within a meaningful timeframe, given the tight timeframe that is in front of us?

Lisa McCann: I assume that commencement will be a decision for the next Administration, given the bill timelines that we are working to. We hope that commencement would happen as soon as was practically possible.

As Jack Bloodworth pointed out, we continue to work hard on what the detail of the targets will look like, so that we will be best placed to move as quickly as possible when that section is commenced.

Elena Whitham: I would also like to explore why there is no legal requirement in the bill to align the targets with the overarching 2030 or 2045 goals, given that the policy memorandum sets out the intention that the targets align with those timeframes. Why is that not in the bill?

Lisa McCann: Jack Bloodworth might want to come in on this as well. The impacts of biodiversity actions can be quite delayed. There is quite a long timeframe between an action being taken and seeing the biodiversity benefits of that action. We know that although we are ramping up activity, the increase in biodiversity as a consequence of those actions will be slow. We did not want to be too prescriptive in the provisions of the bill. For the secondary legislation, we will need to consider what is the appropriate timeframe when setting those targets.

Dr Bloodworth: I will add some of the scientific perspectives. It is often challenging to map out the pathway to meeting nature restoration goals. There are a lot of challenging circumstances when it comes to considering how to reach the overall restoration goal, especially when we are dealing with a changing climate. In the work with the programme advisory group, step 4 of our process will involve pulling together advice and recommendations around the numerical aspects of the targets and what it will be scientifically feasible to achieve. Those will be key considerations in relation to what dates we put in.

With biodiversity, in particular, you need to have adaptive capacity in order to be able to make changes as you go, particularly under the impacts of a changing climate. What we do now in relation to nature restoration might not be appropriate in 20 or 30 years' time, because we could be working under a completely different climate.

Elena Whitham: So, at this point in time, you are content that it will be an iterative process because of the long lead-in time before we will see the results and that the best way of dealing with

that will be through secondary legislation rather than through the bill.

Lisa McCann: Yes.

Beatrice Wishart (Shetland Islands) (LD): Good morning. Lisa, you said earlier that the biodiversity strategy would help to galvanise action across the Government. However, the Government has consistently failed to meet the previous, non-statutory biodiversity targets. What is going to change in relation to the making, resourcing and implementation of biodiversity policy to give confidence that statutory targets will be achievable?

Lisa McCann: That is one reason why we have a proposal for statutory targets. Statutory targets are effective in galvanising Governments and bringing focus to an area. For quite a long time, we have known what we need to do to tackle the biodiversity crisis. Certainly, there is a much greater focus on biodiversity and more attention is being given to biodiversity actions, and the targets will, we hope, be another tool to ensure that the right actions are taken across Government.

Beatrice Wishart: The Scottish Government's consultation in 2023 said that successful targets would need to incentivise "transformative change", which is the point that you are making. What does the bill do to ensure that nature targets will be mainstreamed across all areas of Government?

Lisa McCann: The very existence of targets has a powerful influence across Government. They are a transparent way of identifying what Government is doing and the progress that is being made. They draw attention to biodiversity and, therefore, they will be one of the ways in which we will increase the biodiversity activity that is needed.

Tim Eagle (Highlands and Islands) (Con): Good morning. Thank you for coming in.

My questions are about the 30 by 30 targets for 30 per cent of land and sea to be protected by 2030. I believe that the legislative team thought about making changes to legislation to help to make that doable in the foreseeable future, but there is nothing in the bill on that. What did you think it might have been useful to include in the legislation, and why are those things not in the bill? How do you think that you can make progress on the 30 by 30 targets?

Lisa McCann: As you said, there was a consultation, which included proposed changes to the existing legislation on protected areas. One of the proposals was to allow designation on the basis of an ecosystem, rather than simply on the basis of a particular feature. We also looked at ways to encourage the management of protected

areas not only when they have been damaged but when there has been a slow decline.

There was a pretty positive response to those changes but, equally, there was a feeling that the protected areas legislative landscape was already pretty crowded and quite complex. The view was taken that making additional changes to that suite of legislation would add to the complexity for land managers and landowners and that there were other, non-legislative ways in which we could potentially pursue the same outcomes, thereby avoiding additional complexity.

Tim Eagle: The argument is that the landscape is quite crowded and complex. Would it have been better to rethink all of that? Could that have been done in the bill to make things easier?

Lisa McCann: That would have been an incredibly complex piece of work, and it was not what we consulted on. I do not think that that would have been technically feasible in the bill.

Tim Eagle: If you are not going to implement legislative changes on the 30 by 30 targets, how will you make progress on them?

Lisa McCann: The Scottish Government has a significant programme of work to develop the 30 by 30 targets, with assistance from NatureScot and various other agencies. Criteria were set for the OECM, which we have consulted on and worked with stakeholders to develop and make suitable for Scotland. There will soon be a range of pilot schemes across different land use types that will apply those criteria. There is already a programme of work to implement the 30 by 30 targets that does not require any legislative change.

I am sorry—I should have explained that OECM stands for other effective area-based conservation measures. Those are non-statutory measures that apply to areas where nature is protected through contractual agreements. That involves a bottom-up approach whereby, if landowners and land managers recognise that they have a piece of land that could create significant biodiversity benefits, they agree to its becoming an OECM—I will not say that they designate it as such—that meets our 30 by 30 criteria.

The Convener: Thank you. We will move on to part 2 of the bill, which Evelyn Tweed will ask about.

09:45

Evelyn Tweed (Stirling) (SNP): Good morning, and thank you for your answers so far. Why does the Scottish Government need to take new powers to amend the environmental impact assessment legislation and the habitats regulations?

Joanne Napier (Scottish Government): The purpose of taking the enabling powers is to allow future amendments to be made to legislation in the light of the evolving circumstances for biodiversity and climate that we have talked about.

The EIA regime and the habitats regulations are key aspects of the legal framework that underpins environmental regulation and assessment in Scotland. At the moment, it is not possible to predict every circumstance in which the enabling powers will be needed, so we need to have flexibility to be able to adapt to future circumstances.

Previously—before our exit from the European Union—the powers in question would have been amended through the European Communities Act 1972, under the power in section 2(2). Since Brexit, the ability to make such changes through that act has been lost. The proposed powers will fill the legislative gap that has emerged following our exit from the EU. They will also give us the flexibility to adapt to future circumstances.

Evelyn Tweed: So, the bill gives the Government some flexibility to bring those powers back in.

Joanne Napier: Yes. It will enable it to do so while maintaining environmental standards and protection.

Evelyn Tweed: Will you summarise what powers the Scottish ministers already have across the different pieces of legislation in this area?

Joanne Napier: That is quite a technical legal question. As Lisa McCann touched on, there is a large patchwork of different regulations in the current picture of protected areas and environmental legislation, which has been made up over a number of years, and it cuts across a few different regimes.

The power that we are seeking relates to the EIA regime, for which the Scottish Parliament has legislative competency. Some powers that exist are due to sunset: they have an expiry date, after which they will no longer be able to be used. The proposed power would enable us to make the long-term adaptations and changes that we would seek to make to the EIA regime and the habitats regulations.

Norman Munro might want to expand on the power that is currently available.

Norman Munro (Scottish Government): The power that is due to sunset is one that exists in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. It is due to sunset on 29 March 2027. The purpose of taking the power in the bill is to allow for future amendment of the EIA regime and the habitats regulations beyond that date.

Other powers exist—for example, there is such a power in the Energy Act 2023. However, that power covers only offshore wind, so it does not have the same breadth as the power that we are proposing, which would enable ministers to amend the full spectrum of the EIA regime, as well as the habitats regulations. As Joanne said, the reason for taking the power is to plug the legislative gap that exists in the enabling powers that are available to the Scottish ministers.

Evelyn Tweed: A key aspect of the bill is the purposes for which the Scottish ministers can amend the regimes. How did you go about determining those purposes? What were the key drivers for including the different purposes?

Joanne Napier: The purposes in the bill were carefully considered. They have been set out so as to enable the regulations to be used only for those purposes—that is, to enhance environmental standards or to meet biodiversity or climate targets. They were considered carefully. The intention of the policy is that the purposes enable enough flexibility to adapt to future requirements while also effectively underpinning the environmental assessment and protection processes.

Elena Whitham: Last September, the committee took evidence from Fisheries Management Scotland, which pointed out to us that

“poaching for salmon and sea trout is the highest volume wildlife crime in Scotland”.—[*Official Report, Rural Affairs and Islands Committee*, 4 September 2024; c 29.]

It also has one of the highest rates of conviction of any class of wildlife crime.

However, fish poaching also has the lowest fines—under £250 on average—and wild salmon has been classified as an endangered species. There is a real concern that the fines do not act as a disincentive for that illegal activity. FMS has identified that the Natural Environment (Scotland) Bill could be a means of introducing amendments to the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. I would like to flesh that out and to ask whether officials will commit to working with FMS to examine the potential for an amendment to be made to the bill to increase the fines for the most serious of fish poaching offences.

Leia Fitzgerald: The bill is quite weighty. We must be pragmatic and realistic about how much can be done via any one bill, and that issue has not been raised with us previously. As the policy area is not one that any of us leads on, I cannot comment directly on that. All that I can say is that we have not had any discussions about that issue so far. Ultimately, it is for ministers to determine whether they want to introduce legislation, but it is

not in the bill at present and I am not aware of how much work or consultation has been done on that topic.

As officials, we can bring to ministers’ attention the fact that the issue has been raised at the committee today, but it will be for ministers to determine what to do, in discussion with officials who lead on the policy area.

Elena Whitham: Thank you. That is helpful. The bill allows for significant changes to be made to EIA and habitats regulations by way of regulations using the negative procedure, as the committee understands it. Those changes might have significant policy implications for how the regimes operate. Why did the Government not consider the affirmative procedure to be more appropriate for a wider range of circumstances under the powers in part 2?

Joanne Napier: The reason for the use of either the negative or the affirmative procedure in relation to any of these circumstances is to ensure that any use of the powers is subject to an appropriate level of scrutiny. There are circumstances in which the powers could be used to make relatively minor or quite technical changes to regulations, such as a move away from submitting paper copies of EIA reports to submitting electronic copies. In those circumstances, the affirmative procedure would not be an appropriate or an efficient use of parliamentary time.

Elena Whitham: Therefore, at this point, are officials content that the balance has been struck correctly and that the affirmative procedure will be used for the most appropriate occasions?

Joanne Napier: Yes, we think so. Setting out in the bill the circumstances in which the affirmative procedure must always be used ensures that checks and balances are in place. Outside of those purposes, it will be up to ministers to decide, case by case, whether they want to use the affirmative procedure or the negative procedure.

Ariane Burgess: The policy memorandum sets out that ENGOs encouraged the Scottish Government to include a non-regression provision in this part of the bill, so that powers could not be used to reduce overall levels of environmental protection, but that that has not been taken forward. I am interested in understanding why it was not taken forward and in what circumstances the Scottish Government might use the powers in a way that would reduce overall levels of environmental protection.

Joanne Napier: The intention of the policy is that the enabling powers provide the flexibility to adapt to future circumstances. As I said, we cannot predict all the circumstances in which the powers might be needed. A non-regression clause

was carefully considered in the development of the policy, which is why we have set out the purposes for which the powers can be used in the bill—the limitations on the use of the powers. It is also considered that a non-regression clause could be overly restrictive with regard to the management of some protected areas. As we have touched on before, the regulations surrounding protected areas are a real patchwork, and it is really complicated when situations have developed due to climate change and evolving circumstances that mean that those regulations are not the most efficient way to manage them. That is why we have set out the specific purposes for the powers in the bill and why the bill does not include a non-regression clause.

Ariane Burgess: Thanks. I will follow on from that. How might the environmental non-regression provisions in the trade and co-operation agreement between the United Kingdom and the EU interact with the Scottish Government's use of the powers in this instance, if the regimes were amended in a way that no longer aligned with EU law?

Norman Munro: The starting point is that the Scottish ministers are required to comply with the law, and that includes international law. The exercise of the power in part 2 of the bill will be required to take that into account at the point of use. At the point of use, the Scottish ministers will be required to take into account ministerial compliance with the international law that the EU and UK trade and co-operation agreement is part of. That would need to be considered in the round at the point of use. However, the starting point is that ministers are required to comply with the law, including, in this instance, international law.

The Convener: Which powers will sunset in 2027, and where are those provisions in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021?

Norman Munro: The power in section 1.1 of the continuity act will sunset on 29 March 2027.

The Convener: What is the difference from the previous powers in the 1972 act?

Norman Munro: The difference is that the powers in part 2 of the bill are limited to amending the EIA regime and the habitats regulations, whereas the power in section 2.2 of the 1972 act was far broader. It covered implementation of EU law. If there was something that the Scottish ministers were looking to implement, they could make use of section 2.2 to do that. However, in this instance, it is restricted to amending the EIA regime and the habitats regulations for the purposes that are set out in section 3 of the bill, so it is a narrower power.

The Convener: Will all the other powers sunset apart from the ones that you have mentioned? Will they be lost?

Norman Munro: The continuity act power will sunset and be lost. Section 2.2 was lost as a result of Brexit, so there is a legislative gap that the power in part 2 of the bill is seeking to fill.

The Convener: Tim, do you want to come in?

Tim Eagle: That is the exact question that I was about to ask.

The Convener: Oh, there you go.

Beatrice Wishart: One of the purposes for which the Scottish ministers could amend the regimes covered by part 2 is to ensure consistency or compatibility with other legal regimes, including the domestic ones. What changes are being considered at UK level in that area, such as under the UK Levelling-up and Regeneration Act 2023 or the UK Energy Act 2023?

Joanne Napier: Some changes are being considered at UK level to move away from the EIA regime altogether and bring in a new system of environmental outcome reports that is more focused on the outcome of the development than the impact of the development. It is not the current policy of the Scottish ministers to take that forward, so making those changes would enable us to keep the EIA regime in Scotland without moving to the UK regime.

Beatrice Wishart: In what circumstances might the Scottish Government consider it appropriate to align with those changes?

Joanne Napier: There could be some circumstances—for example, to remain aligned with EU law. If EU law was going to enhance environmental protections, we would want to keep pace with that. It is Scottish Government policy to keep pace with EU law, so we would have to consider that on a case-by-case basis. If EU law was going to enhance environmental protection to a higher level, we would seek to keep pace with that, if it was appropriate.

Rhoda Grant: Can you explain how the powers in the bill can be used to change how European sites are designated? For example, would the power allow the Scottish ministers to make it easier to withdraw the designation of a European site in certain circumstances?

Joanne Napier: The power could be used to make amendments to designations. That would include the boundaries of sites or the features within sites. It would also allow us the flexibility to change the features within sites, which we do not currently have, following EU exit. If we wanted to designate a site that is currently designated for

wild birds for a different form of habitat and remove the wild birds, it might be possible to form a regulation to do so.

Rhoda Grant: What safeguards are in the bill to ensure that the integrity of the network is maintained as a whole?

Joanne Napier: That is a wider question relating to the targets and the wider biodiversity network.

10:00

Lisa McCann: Could you repeat the question?

Rhoda Grant: I am just looking to see what safeguards are in the bill to ensure that the integrity of the site network as a whole is maintained.

Leia Fitzgerald: The bill sets out the purposes. The powers to amend the regulations are not unrestricted; amendments must be for one of the purposes that are set out in the bill. That would be subject to the appropriate parliamentary scrutiny and there would be a requirement to consult on those things.

The powers are very much looking at future proofing, which Dr Bloodworth talked about in relation to targets. We do not know exactly what will happen in the future with climate change. For example, there are sites that might be protected for a species that, in the future, due to climate change, no longer inhabits that particular area, although a new species might, which means that it might be appropriate to change the designation of a site to ensure that we are meeting our biodiversity targets. One of the purposes for which we might need to use the powers is to make changes to the regime, whether that is to do with protected sites or other parts of it, in order to meet our statutory nature restoration targets.

Rhoda Grant: So, you would see the powers being used not to pull back on any of our commitments to nature restoration but to tweak the regime in the face of future changes and to increase our commitments.

Leia Fitzgerald: Yes. We are very much aware of the fact that we need to be flexible and adaptive to meet our climate change and biodiversity targets. In order to be flexible and adaptive, we need to have the appropriate powers where future legislation is required. We do not, at the moment, have any plans to make any changes to legislation, so this is very much about future proofing and making sure that we have all the tools available in the future to ensure that we can be adaptive.

The Convener: We will now move on to part 3, which is on national parks. We have a question from Emma Harper.

Emma Harper: The bill includes provisions about changing national park legislation. What does the Scottish Government want to achieve overall by reforming the national parks legislation, and how will national parks and their management change as a result of the bill?

Lisa McCann: The proposals are to update the legislation so that the aims of the national parks are a more adequate reflection of what our existing parks are already doing and what they will do in the future. The parks already provide an important leadership role in tackling the nature and climate crisis, and the changes allow a more adequate reflection of that. The other proposed changes will enable a fixed penalty regime to be put in place for by-laws, which will create a more effective and less administratively burdensome way for by-laws to be enforced within the parks.

Emma Harper: Would the proposed legislation impinge on or constrain current economic development? I am thinking about the consultation that has just finished in Dumfries and Galloway, which is a big food-producing region. We focus on food security and the region is important in terms of beef, sheep and dairy produce—48 per cent of Scotland's dairy herd is in the south-west. Will the bill's updating of national park legislation constrain economic activity?

Lisa McCann: No. That is certainly not the intention, and it is not what we think would be the effect of the provisions. As I said, the bill is really just to update the legislation to reflect what parks are already doing. The aims that are included in the bill include the promotion of the

“sustainable economic, social and cultural development of the area's communities”,

because the bill recognises that that is a really important part of what happens in national parks. There is certainly no intention to have any impact on the agricultural and economic activity that is already taking place in the parks.

Emma Harper: Okay. I am thinking of the reforms around biodiversity enhancement and the challenges with forestry planting across the south-west to meet targets for carbon sequestration. There are impacts on ground-nesting birds, for instance; I have learned so much about curlew, peewits and all these other birds. How will the bill support improvements in biodiversity, for instance, while maintaining sustainable regenerative farming and economic development?

Lisa McCann: To be clear, that aspect is separate from the existing proposal—which is currently under consideration—to create a new

national park in Dumfries and Galloway. I just want to make sure that we are clear about that.

At present, as I said, our national parks are already doing a lot to tackle the nature and climate crisis. They play an important leadership role and they work in partnership with other public bodies, organisations and land managers. That is about collectively achieving the national park aims and implementing the national park plans. Those plans are the result of a collaborative process involving a wide range of people who live and work in the national park areas.

We hope that modernising those aims will bring to the fore the work that our national parks do. The bill is really just updating the legislation to make it clear what elements are considered to be part of a national park's aims. Those elements specifically include regenerating biodiversity and mitigating and adapting to climate change.

Emma Harper: I have one more wee question. You said that the Natural Environment (Scotland) Bill is separate from the current consultation. Does that mean that the current consultation is based on the National Parks (Scotland) Act 2000? Will there be an overlap? Is the bill going to impede the process?

Lisa McCann: It might be helpful to flag up that the Cabinet Secretary for Rural Affairs, Land Reform and Islands wrote to the Citizen Participation and Public Petitions Committee yesterday to address that particular point—we can certainly share that letter. That committee had raised concerns about the potential for, and the consultation on, a new national park in parallel with the changes that are being proposed to the national parks legislation.

As I said, the bill is about modernising the language of the aims and elaborating on what elements are considered to be part of those aims, and strengthening the duties on public sector bodies that operate within national parks. It introduces new powers to allow a fixed-penalty notice regime for the contravention of national park by-laws. The view has been taken that that will not impact on any designation process. The powers to designate a park that exist under the 2000 act and that designation process are not affected in any way by what is proposed in the bill.

The Convener: On that point, NatureScot is going to report on a consultation, but the people who are participating in that consultation are referring to the 2000 act, which will be amended by the bill. You say that there should be no conflict, but there absolutely is, because people are responding to an old act that will no longer be in place if designation of a Galloway national park actually goes forward. The legislation will look different and, although you suggest that the

differences are not significant, they potentially are. NatureScot set out, in its 2023 advice to ministers, that it would suggest

“The identification of ‘priority nature zones’ in”

a national park, which would

“formally contribute to 30x30 ... targets”.

Given the nature of Galloway's intensive industrial forestry, intensive dairy and intensive renewables activity, that might cause a conflict. With regard to the current consultation, the potential amendments that NatureScot has suggested could be viewed as having a significant impact on how people in the area might respond.

Lisa McCann: I again refer to the letter that the cabinet secretary sent to the Citizen Participation and Public Petitions Committee in response to that. The view that we have taken is that, as the changes being made to the aims do not impact on the existing powers to designate a new national park or the process, we do not envisage any difficulties with the bill being considered by Parliament at the same time as the consideration of the potential for a new national park to be created in Galloway.

I would add that residents, businesses or individuals within the proposed area for a new national park can, of course, respond to the consultation on the bill and can make their views known if they have any concerns about it.

The Convener: It is not the process of the consultation that is the issue here. At no point during the consultation was it suggested that the rules under which the national park might operate would change. That is the issue. There was no opportunity for constituents to respond to the fact that the rules under which their area might have to operate will change.

It is not an ideal situation; it is not an ideal scenario that the two things are working in parallel. One should have been done before the other. The Natural Environment (Scotland) Bill, with the national park changes, would preferably have become legislation before a new national park was consulted on, surely.

Lisa McCann: I would suggest that that is perhaps a matter to raise with the cabinet secretary. We can focus only on the provisions in the bill just now. However, we have carefully considered the implications of potential changes to the bill, and we took the view that the changes being made were a reflection of what our existing parks were doing. Therefore, there were no specific difficulties with that.

It may be helpful to add that any designation order that would be made in respect of a new park would also be subject to significant consultation

requirements as set out in the 2000 act, which are not impacted by the changes that we are making in the bill.

The Convener: What type of review has been undertaken to consider the performance of the existing national parks in relation to how they are performing under the current legislation and potentially under the new legislation that the suggested amendments would introduce? Has there been any review of the national parks' performance?

Lisa McCann: No, there has been no review, but both of the national parks are required to report to both Scottish ministers and Parliament in respect of the exercise of their functions.

The Convener: Is that not putting the cart before the horse? Surely we should be able to understand how the parks are performing under the existing legislation before making amendments to change it. We do not actually know whether they are performing or not.

Lisa McCann: As I said, there is already a process in place whereby national parks and national park authorities are accountable to their boards and to the Scottish Government. It is also open to the Scottish Parliament to scrutinise the parks' performance.

Rhoda Grant: My question is similar but slightly different. I hope that it might elicit the response that we are looking for. What is wrong with the current national park legislation that requires the proposed changes to be made?

Lisa McCann: There is nothing dramatically wrong with the existing legislation, but it was felt appropriate, given the passage of time since the original national park legislation was passed, to update the legislation to make it a more accurate reflection of how our existing national parks are operating.

Rhoda Grant: Can you be more specific about what needed to change and why?

Lisa McCann: Some changes were made to the existing aims to bring out more of the role that the national parks can play in promoting the cultural heritage of their area and in tackling the biodiversity and climate crises. There are also the additional obligations or requirements on public bodies operating in the park to assist with implementation of the national park plan. There are then the important technical provisions that will enable a fixed-penalty notice regime to be implemented in respect of byelaws.

Rhoda Grant: The only real material change appears to be the fixed-penalty notices.

10:15

Lisa McCann: That is an important part of the changes that are being made, but the provisions change the extent to which public bodies that operate in the park have to pay attention to the national park plan.

I will try to find the right provision to make sure that I have got the wording right. Norman Munro might want to come in.

Norman Munro: Section 7 makes a change in relation to the national park plans. It strengthens the current duty on public bodies and office-holders, as set out in the National Parks (Scotland) Act 2000, that they should "have regard to" national park plans, by instead requiring them to "facilitate the implementation of" national park plans, as far as that is consistent with the exercise of their other functions and duties.

Rhoda Grant: That is interesting in the light of other legislation. We have previously been told that "have regard to" is pretty cast-iron phrasing, but I will leave my remarks there.

Tim Eagle: I will come to the point on "have regard to" in a second, because I love a bit of legal terminology.

First, I go back to Emma Harper's point about economic opportunities in national parks, which is critical. I want to double check that I have this right. Section 1 of the 2000 act sets out four principal national park aims and, in the bill, you slightly tinker with those aims but not very much. However, section 5(2)(1) of the bill amends the 2000 act by introducing a new section 1(2), which adds six new aims that are around issues such as the natural environment, biodiversity, climate and access. Those aims expand upon the four main national park aims, but none of them refers to the economy or economic development in a national park.

That concerns me slightly, because lots of businesses, not just farmers, operate in the parks. Why not add another aim that is about enhancing and protecting the sustainable economic development of those areas?

Lisa McCann: Within the overarching aims—

Tim Eagle: I am talking about the proposed new section 1(2).

Lisa McCann: It is very clearly stated that one of the overarching aims is to "promote sustainable economic ... development".

Tim Eagle: The overarching aims also include conserving and enhancing an area's "natural and cultural heritage" and promoting "sustainable use" and management of natural areas, and those are also among the six new aims that are set out in

section 1(2). However, economic development is not specifically referred to.

Lisa McCann: Yes. Given that activities on biodiversity and climate change are considered to be key ones that the national parks carry out, it was felt that it was important to expand upon those aims and expressly refer to them. Given that there is no change on economic development, it was felt that the existing provision was adequate.

Tim Eagle: Perhaps I am missing the point and you felt that some of the aims needed to be expanded on. I look at the six new aims and think that they are already inbuilt in the original four. However, as we take evidence from various bodies, it will be interesting to know whether they look at the aims and think, “We don’t need to talk more about this, because it is there and clear.” We will find that out as we go forward.

Lisa McCann: The aims also refer to “supporting access” and, significantly, “promoting sustainable tourism” and “visitor management”.

Tim Eagle: Okay—fine. Thank you.

I will go back to the point that Norman Munro made a minute ago about the statutory duty being changed from “have regard to” to “facilitate the implementation of”. What will that mean in practice for a local authority or other public body in a national park area?

Norman Munro: Ultimately, it will be for local authorities, for example, to take legal advice on how to implement the duties once the act is in force. However, the Scottish Government’s position is that the bill strengthens the duty in that it places a greater emphasis on the facilitation of national park plans. As Rhoda Grant mentioned, the “have regard to” duty is a firm duty—anything that says that a public authority, for example, “must” do X, Y and Z is a firm duty on that public authority, and it is required to comply. However, the policy intention of the bill is to strengthen the duty on public authorities for the actual facilitation, so far as is consistent with their existing duties.

What that will mean on the ground will depend on the circumstances of each individual case. For example, local authorities will need to take legal advice when faced with a question of implementation or facilitation of a policy that might engage the national park plan. They will need to consider that in the round as part of the fulfilment of their legal duties.

Tim Eagle: What is the thinking behind that? Let us say that I am a councillor sitting on one of our wonderful councils and a national park covers part of my ward, and I am struggling for cash. Currently, when I get a paper that covers part of the national park area, I would have regard to the plan—I think that I understand what it is trying to

do and that I have to go in a certain direction. However, under the bill, I will have to facilitate the implementation of that plan. That might have an economic or financial consequence, or it might have a consequence for what I can do on planning, education or anything else. Will you develop that a little more and say what you expect the local government lawyers to say to that?

Norman Munro: One key point is that, although your example of having considered the plan but needing to go a different way because of a multitude of other factors is correct, under section 7(4) of the bill, a caveat to the duty to facilitate will also be inserted into the 2000 act. It states that the public body or office-holder is to comply with the facilitation duty, but only so far as their existing functions extend. If a public body is faced with competing legislation, for example, and has to consider which of the two to comply with, the duty in the bill extends only so far as its other functions, which will mean that, in that instance, the other consideration could prevail.

Tim Eagle: Okay. I think that I understand. Thank you.

Emma Harper: You have probably covered this already, but I want to go back to the original national park legislation, which was enacted in 2000, when there was no biodiversity crisis, nature crisis or climate crisis. The updating of the legislation will bring it more into line with what is happening right now with regard to biodiversity loss, nature loss and climate issues. I am thinking about how flood management and so on is part of that. Am I correct in thinking that the bill is about bringing up to date the legislation that was delivered in 2000?

Lisa McCann: Yes, exactly. The intention is simply to update and modernise the aims of the parks so that the legislation is a more accurate reflection of what our parks do and what we hope they will continue to do in future.

The Convener: I have one final question, but first I want to go back to the topic that Tim Eagle referred to and ask about how the decision on the list of aims was made. The bill states:

“Without limit to the generality of subsection (1), those aims include”,

and then it sets out a list.

We must be conscious that, for Galloway, which is potentially going to be designated as a national park, its economic future is not reserved to recreation, tourism or visitor management. The most significant commercial forestry in Scotland is based in an area of Galloway; we have the most significant dairy industry in Scotland and, potentially, in the United Kingdom; and one of our areas has the highest concentration of

renewables. However, those industries have been excluded from the list. It must have been a conscious decision not to mention them. Given that Galloway is the only area to have been identified as Scotland's next national park, why do the aims seem to exclude all economic activity other than tourism and recreation?

Leia Fitzgerald: I appreciate that people will look at things in different ways, so I am interested to hear the committee's views on whether, to reflect what we have set out, there should be expansion of that part of the aims. Proposed new subsection 1(2) of the 2000 act refers to

"promoting sustainable development activity which improves the health, wellbeing and prosperity of individuals and communities within the area."

Is that economic prosperity? Anyway, that has been added to the subsection, and we hope that that addresses the point that you and Mr Eagle have made. We are very open to hearing any recommendations from the committee on whether that could be strengthened.

The Convener: Okay. Thank you.

You have touched on the fixed-penalty notice regime. What do you believe the impact of the new regime will be? What resources do you envisage a national park authority will need to make those powers effective?

Lisa McCann: The intention behind introducing a fixed-penalty notice regime is to ensure improved compliance and behaviour change, while providing a more proportionate means of enforcement than the quite administratively burdensome process of reports having to be made to the Crown Office, with the time and expense to the public purse of individual cases, which in some instances could be seen as disproportionate to the maximum penalties that are available.

The hope is that the regime will allow minor and technical offences to be dealt with quickly and effectively and that it will reduce the likelihood of reoffending. We hope that it will improve standards, encourage increased compliance and allow rule breaches to be dealt with more effectively so that, if someone is issued with a fixed-penalty notice, they are not required to attend court. It should reduce the burden on the Scottish Courts and Tribunals Service and on the Crown Office. We hope that it will give more flexibility to park authorities by giving them an additional enforcement option as an alternative to seeking prosecution in the criminal courts.

You asked what the resource implications will be. When we spoke to the Loch Lomond and the Trossachs National Park Authority, it estimated an additional cost of £8,500 for staff training, public communications and so on. Given that there are currently no byelaws for the Cairngorms national

park, it is much more difficult to estimate what the resource implications would be for that park authority, but it would be fair to use the Loch Lomond and the Trossachs national park cost estimates as a proxy for potential costs in the Cairngorms.

The Convener: At the moment, there are fixed-penalty notices for littering and fly-tipping in Loch Lomond and the Trossachs. Can you give examples of where else fixed-penalty notices might be used?

Lisa McCann: Do you mean the types of offences for which they might be used?

The Convener: Yes.

Leia Fitzgerald: At the moment, one of the parks—Lisa will have to remind me which one—

Lisa McCann: It is Loch Lomond.

Leia Fitzgerald: —has just finished a consultation on whether to introduce byelaws in relation to wildfires.

Lisa McCann: Sorry—that is the Cairngorms.

Leia Fitzgerald: That is the kind of thing that might be appropriate for a fixed-penalty regime. It will very much depend on what byelaws national parks consider, but they have a duty to consult before creating any byelaws. As part of the consultation process, they would consult on whether it would be appropriate for the byelaw to be subject to a fixed penalty. People have pointed to wildfires as being of great importance and as an area where having the power to issue fixed penalties could be very effective in reducing wildfire risk.

The Convener: In practice, that could mean fining someone who sets up a barbecue or campfire during a certain period in the year when that could be dangerous. Is that the sort of practical implication?

Lisa McCann: There is a proposal with ministers at the moment in respect of seasonal wildfire byelaws, and I assume that it covers things such as that.

I have just found the right part of my briefing. At the moment, there are byelaws in the Loch Lomond and the Trossachs national park that include measures to tackle antisocial behaviour and to improve public safety on Loch Lomond in respect of recreational usage by minimising irresponsible navigation. Those types of byelaws could potentially become part of the fixed-penalty notice regime.

The Convener: That concludes our questions absolutely bang on time. Thank you very much for joining us and for your succinct and informative responses to our questions.

I suspend the meeting for 15 minutes, after which we will look at part 4 of the bill.

10:30

Meeting suspended.

10:44

On resuming—

The Convener: We will now hear from a panel of Scottish Government officials who are involved with the provisions in the bill on deer management. I welcome Hugh Dignon, who is the head of the wildlife management unit; and, returning, Leia Fitzgerald, who is the head of the nature division bill unit, and Norman Munro, who is a solicitor in the marine planning and natural resources division. Thank you for joining us.

We have until approximately 12 o'clock for this evidence session. Ariane Burgess has the first question.

Ariane Burgess: I am interested in understanding why the current legislative framework for deer management has not worked to adequately control deer numbers in Scotland.

Hugh Dignon (Scottish Government): Good morning. I would not say that it is the legislative framework that has failed to keep deer numbers down; there are a number of factors involved. Nevertheless, it is clear that having the right deer management legislative framework in place is an important factor in helping to address high deer numbers. That is why, through the Natural Environment (Scotland) Bill, we are trying to put in place a framework to enable effective deer management and effective intervention, where necessary, to reduce deer numbers.

Several things have got in the way of reduction, and we are trying to address those through the bill. We will, no doubt, get on to this, but there are triggers for intervention in the bill that we think are an important change. Those should help in that regard.

Ariane Burgess: Will you spell out what the problems are—numbers are one part—and tell us how the bill will address them?

Hugh Dignon: There are two elements to that. There is the broad recognition that we need to do more to get deer numbers down. That will involve more culling effort, so we need to put in place the necessary framework to allow that to happen safely, effectively and efficiently. There are provisions in the bill around competence in that regard and the way in which people can be authorised to carry out certain acts of deer management.

There are also the rare but important occasions on which NatureScot will need to intervene in deer management, and the bill looks at some of the obstacles that have got in the way of that process. It also looks at the grounds on which NatureScot can intervene, and it broadens those slightly. It has taken those grounds for intervention and used them as the grounds for authorising other activities such as shooting at night or out of season.

Ariane Burgess: So, there is a connection with the deer working group's recommendations. Some of what is in the bill is about being able to implement those.

Hugh Dignon: Yes—one of the main sources of the bill's provisions is the recommendations of the independent deer working group, but those are not the only source. There are some other important things. That group reported in 2020. Since then, we have had a clearer focus on what we need to do on biodiversity and climate change, so there are additional provisions in the bill that we think will help us to address the Scottish Government's wider goals in that regard. However, a lot of the modernisation aspects derive from the DWG's report.

Ariane Burgess: That clearer focus on biodiversity has come from the 30 by 30 commitment—protecting 30 per cent of Scotland's land by 2030.

Hugh Dignon: That is one of the elements. It is also about recognising that there is significant taxpayer investment in things such as planting trees and restoring peat, which are some of the Government's main levers for addressing nature loss and reducing carbon emissions. The bill aims to prevent those significant taxpayer investments from being damaged or degraded by high deer numbers. That is the link in that regard.

Beatrice Wishart: With regard to the changes that the bill makes in respect of the

"Aims and purposes of deer management",

which are set out in section 10, how will "public interest" be defined, given that that can vary according to context and can change over time?

Hugh Dignon: That is an important point. It will change and vary in time, and it will also change and vary according to context. The bill is not the only piece of legislation in which public interest is a key issue. As well as in other legislation, it is also partly in the Deer (Scotland) Act 1996, where there are actions for the public interest of a social, economic and environmental nature.

There is some sort of legal explanation for that. Broadly speaking, public interest encompasses the collective needs, values and interests of society as a whole rather than those of individuals or specific groups. The expression and what

constitutes the public interest is to be understood and applied contextually. In different situations, it might be different. It might also evolve and change over time. I do not think that there is any one static definition of public interest. The concept is used in other legislation, such as the 1996 act, and there is a general understanding in the legal profession of what public interest means when interpreting legislation. Perhaps Norman Munro has something to add to that.

Norman Munro: Public interest is not defined in the bill, but Hugh Dignon has set out some of the main considerations. It would be incumbent on the Scottish ministers, when considering matters of public interest that apply to NatureScot, to act reasonably in what they are doing as public authorities. They would therefore need to consider all the circumstances in the round before coming to a reasoned and proportionate view on what constitutes the public interest.

It should also be noted that the deer management code of practice contains a reference to public interest and what that encapsulates. The code of practice will continue to evolve over time, so the definition might also evolve over time, as Hugh Dignon said.

Tim Eagle: The bill sees the addition of the word “environment” to things that NatureScot must account for. What criteria or metrics will be used to assess environmental impact, and how will it be balanced by local management?

Hugh Dignon: In terms of metrics on assessing impacts on the environment, is that the particular—

Tim Eagle: The bill sees the addition of the word “environment” to the things that NatureScot must account for. What was the purpose of that addition and how will you assess that? What does it mean in practice?

Hugh Dignon: Managing impacts on the environment has long been part of the requirement for NatureScot and how it looks at deer management. On how that is assessed, there are metrics in deer management plans such as habitat assessment and so on, but I am not quite clear what you are getting at in asking how NatureScot will assess impacts on the environment. Is that what you are asking me about?

Tim Eagle: Perhaps I am wrong about this, but my understanding is that NatureScot has a range of things it can look at when considering deer management, but the word “environment” has now been put in. What does that mean to a land manager? If NatureScot can come and say that you must have regard to the environment before you put in place a deer management plan or it can force you to do X, Y and Z, what does that look like to a land manager on the ground? That is my

understanding, at least. The word “environment” is a new addition, is it not?

Hugh Dignon: I think that some of those additions arise from the recommendations of the deer working group, which was looking at being more specific to reflect the reality and actuality of what NatureScot does. I do not think that adding “environment” to its purpose changes a lot of what NatureScot does. It rather reflects what it has been doing and makes sure that its functions and aims are in line with what is actually going on.

When NatureScot looks at how deer management plans will work, how effective they will be and what effective deer management means, and when it looks at the grounds for intervening, the impact on the environment is a key consideration, as is assessing what the public good is, what the public interest is and whether intervention is justified.

There is a range of metrics for assessing the impact on the environment, including looking at impacts on natural processes for regeneration, processes for carbon sequestration or carbon emission, and trampling impacts on water courses. There are a number of things that one could look at to assess the impact on the environment, but that is not a new function for NatureScot. It might be that, by setting that out in relation to the functions and purposes of NatureScot, we are being more specific about what is involved.

Tim Eagle: In your mind, then, this is just the addition of a word, and it does not make any real difference to NatureScot. One could argue whether it is required at all.

Leia Fitzgerald: I think that you are referring to section 10(4)(a), which would add “and environment” where the 1996 act says “impact on the natural heritage”. That is to make it clear that NatureScot, when it is considering and formulating deer management policy, will need to take into account the cumulative impacts of deer across Scotland and their impact on biodiversity and carbon emissions at both regional and national levels. As you are aware, the 1996 act is quite an old piece of legislation, so this is to bring it up to date, in recognition that the impact of deer on the environment is a crucial issue, which very much has to be taken into account in that section of the act.

Beatrice Wishart: My question is about advisory panels. How do they function, and is NatureScot’s active involvement in them a significant change that will improve decision making?

Hugh Dignon: Advisory panels are not new—they have been in the 1996 act for a while. As the title suggests, their purpose is to advise on deer management actions. It was a DWG

recommendation that NatureScot staff should be on those panels, so that their expertise and knowledge forms part of the panels. I do not see that as a significant change in the way that panels operate. NatureScot staff are already involved in servicing those panels and providing secretariat support. As far as the DWG was concerned, it was a sensible but reasonably minor change to have people with particular expertise from NatureScot on the panels.

Evelyn Tweed: What is the reason for changing when NatureScot can review compliance with deer management rules? How will NatureScot decide what is an appropriate time to carry out a review?

Hugh Dignon: That was originally put in as a three-year requirement—it was to be done every three years. Another DWG recommendation was that that was probably unnecessarily prescriptive, and that to require a review every three years was an undue burden on resources. What we are looking at now is that NatureScot can review compliance or can be asked to review compliance, but there is a backstop, which is that it should do it at least every 10 years.

Evelyn Tweed: Who can ask for a review?

Hugh Dignon: I think that ministers can ask for a review. If there is pressure for an issue to be looked at, the Government would require NatureScot to carry out a review.

The Convener: What is the purpose of adding nature restoration as a reason for intervention in deer management? How does that align with the broader goals of the bill?

11:00

Hugh Dignon: That is one of the key changes that the bill will make, and it is one that is outside the DWG's recommendations. There are a number of aspects to that decision, but one of the fundamental points is that there was considered to be a difference between intervening to rectify damage or prevent damage and intervening to allow something to be enhanced or changed. These changes are intended to ensure that NatureScot can take a proactive role in intervention instead of having to wait until damage is either being caused or likely to be caused.

A related part of that is that, for a long time, there have been issues around the measurement of damage. To have robust arguments about the extent of damage that has been caused, it is important that we have a baseline from which to measure. Such baselines for damage really exist only in protected sites and in some other sites, so it is difficult to intervene to stop damage or prevent future damage in areas in which we do not have a baseline.

This part of the bill is about being able to intervene proactively to allow for nature restoration, including in circumstances in which damage might have been done a long time ago and is no longer occurring. There are a number of circumstances in which that is the case. It is about intervening proactively rather than reactively, which is how sections 6, 7 and 8 of the Deer (Scotland) Act 1996 are currently set up.

The Convener: One confusing element is how to define the enhancement of the natural environment. Whether it is “preservation”, “protection” or “restoration”, these words are all pretty subjective and open to different definitions. The difficulty that arises is whether the way that we establish damage by deer is predicated on how someone defines the preservation, protection, restoration and enhancement of the natural environment. How will that be demonstrated?

Leia Fitzgerald: NatureScot will have to make assessments on that in relation to environmental impacts and a range of its duties. That is not a new thing. However, it feeds into the wider work that we are undertaking on our biodiversity strategy, delivery plan and action plan. We will proactively look at what we need to do to meet the targets. It will sometimes be clear when areas have been developed and are in a degraded state and where action is required.

As I said, across a range of things, NatureScot and the Government have to assess environmental impacts and environmental damage and look at where to make interventions to help to restore and enhance the environment. It fits within that broader context. Hugh Dignon might be able to say more about the detail of those provisions.

I will add that, in the code of practice, NatureScot will be required to set out examples of the kind of circumstances in which the powers of intervention could be used.

Hugh Dignon: That is an important point. The code will set out the circumstances in which intervention might be considered. The interventions are around deer management and will be made where the impacts of deer are preventing natural processes or the fulfilment of projects or plans that are part of a scheme, enactment or project. There are some constraints on when that can happen, and it is important to bear in mind that any scheme that is proposed for compulsory powers under nature enhancement or nature restoration will need to be approved by ministers and will be subject to further appeal if that is required.

It is an issue of deer management and where deer are having an impact; it is not wider than that, and it is not about a power to require restoration or enhancement. It is about where existing plans for

restoration or enhancement are being frustrated by a high deer population. It is about then being able to take action to reduce deer numbers to enable a restoration project to take place.

Emma Harper: Good morning. I am interested in how the bill changes the process for creating and approving deer management plans. What will a deer management plan look like?

Hugh Dignon: Deer management plans are in widespread use by deer management groups across Scotland, and what they are and what should be in them is well understood. Very few plans fall under NatureScot's compulsory or intervention processes, but those plans set out the actions that need to be taken among a group of land managers who operate across an area. Deer being a mobile species, collaboration is obviously important, so the plan covers a range of landholdings and sets out what needs to happen to achieve sustainable and effective deer management.

The bill makes changes in those circumstances in which NatureScot requires deer management plans from people. It allows NatureScot to request that a deer management plan be submitted on a shorter timeframe than at present. I think that it is 12 months under the existing legislation. Under the new legislation, it will be three months. That recommendation arose from the deer working group and it is about ensuring that, where NatureScot wants to focus closely on an area of land and is looking for deer management plans from landowners or a landowner, it has a more effective way of getting the information that it requires for it to understand what is going on, what the landowner proposes to do and what NatureScot may be required to do in response.

There are also changes in relation to the grounds for starting to look at where a deer management plan is required. NatureScot must be satisfied under the new grounds, which, as I said earlier, are those in proposed new sections 6ZA and 6ZB of the 1996 act, which will apply across the whole range of deer management issues. Those grounds should be what drives NatureScot to focus on where a deer management plan requires to be submitted to it.

Emma Harper: You mention new sections 6ZA and 6ZB of the 1996 act. I am looking at new section 6A of the 1996 act, which talks about

“the relevant owners and occupiers of a particular area of land”

and about

“requiring those owners or occupiers to prepare and submit a deer management plan”.

Can you clarify that? I am thinking about tenant farmers, who have deer management issues, too.

Can you clarify whether the deer management plan notices will be given to all landowners and occupiers, or to landowners or occupiers? Who is responsible for creating a plan, if I am a tenant farmer but it is the landowner who receives the notice?

Hugh Dignon: I guess that, broadly speaking, it is whoever is responsible for managing the deer on the land. I do not think that many tenant farmers have deer management responsibilities.

Emma Harper: Okay, but what if they want the responsibility or if they are designated to be responsible for deer management because the landowner does not want to do it?

Hugh Dignon: I am not sure what would happen in a case in which the tenant farmer stepped forward and said, “I will take on responsibility.” I guess that that would require the consent of the landowner.

We are looking for as many ways of getting deer management done as possible. If there are people wishing to play a role in that, and if that is lawful and they are not transgressing on the rights of the landowner, there would be no problem with that. However, the law applies, in the first instance, to those who have responsibility for managing the deer on the ground.

Emma Harper: We have a deer management problem in Scotland—in fact, we have a deer problem in Scotland. Can you say something, for the record, about the task in hand of needing to manage the deer population?

Hugh Dignon: It is a serious issue, and it is pretty fundamental to the achievement of a lot of our biodiversity and climate aims. There is a lot of debate over how many deer there are in Scotland. There are possibly up to 1 million animals—the number has doubled since the 1990s, and that number had doubled since the first deer management in the 1950s. We now have at least four times as many deer as there were 30 or 40 years ago. We think that we need to seriously increase the cull level to bring numbers down, perhaps to the levels that they were at in the 1990s, and to aim for something like 500,000 deer in Scotland. Those are broad numbers but, if that is the scale of the task, while we currently kill or cull around 200,000 deer a year, we think that we probably need to do an extra 50,000 a year for the next 10 years in order to reduce the numbers to around half. There are some pretty big assumptions in there, but that is the scale of the task. It is not small.

Emma Harper: Finally, on a point about language, I see that the words

“competent to shoot deer”

are to be substituted with

“fit and competent to shoot deer”.

Can you tell us what “fit” means in terms of “fit and competent”?

Hugh Dignon: “Fit” specifically refers to the firearms licence—that the person is fit to do that. “Competent” is really about how they do that.

Emma Harper: Is the firearms licensing through the deer stalking certificate 1?

Hugh Dignon: No. That is more about competence. The DSC1 is a competence training level, and it sets out various things about marksmanship, identification of deer, safety in shooting and gralloching and so on—the managing of deer after they have been shot.

Rhoda Grant: How will NatureScot approach the control agreements and control schemes under the provisions in the bill? How do the new rules and agreements differ from those in the past?

Hugh Dignon: Broadly, NatureScot seeks information from people through the deer management plan process and aims to enter into a voluntary agreement to achieve the objectives on the land that it believes are necessary. Either the voluntary agreements work and the job is done, or they do not work, or NatureScot takes the view that they cannot work, and it then moves to consideration of a compulsory process. That is broadly the same as it was under the 1996 legislation. A new trigger for intervention is now included, around restoration enhancement, but the various stages of the process—the information-gathering, the voluntary stage and then the compulsory stage—are broadly the same, although there are some changes to the detail.

Rhoda Grant: This harks back a wee bit to Emma Harper’s question but, if deer cause a nuisance to tenant farmers or to the community, as often happens, what powers do those people have to trigger intervention by NatureScot?

11:15

Hugh Dignon: Tenant farmers and others in that situation have powers to take deer where they are causing damage to their crops. That power has been in previous legislation and remains in legislation, so there is no big change on that. However, it is not solely landowners who are responsible for taking, or who have the ability to take, action in those circumstances.

Where deer cause a nuisance, in the first instance, the responsibility lies with the land managers and landowners—the people who have the right to take the deer—to ensure that they do not cause a nuisance to communities and others. However, there are also emergency powers under

section 10 of the 1996 act that would enable NatureScot to intervene, take action and, if necessary, use contractors and reclaim costs. If deer were causing the sort of danger or problems for communities mentioned in that provision, that would be the broad mechanism by which the intervention would occur.

Rhoda Grant: Okay, so it would not have to be that the deer were damaging the natural environment or biodiversity; it could be that they were causing damage locally. We know that tenant farmers can control deer but only if they catch them on their land. They cannot really go off their tenanted land to deal with the problem. It is the same for communities.

Hugh Dignon: There is a broad range of reasons for intervention, and one of the key ones is public safety. That comes into play around road vehicle collisions in particular. NatureScot has powers to intervene or require land managers to intervene.

The Convener: I ask for clarity on exactly where the responsibility lies. The bill states that, if a deer notice is to be issued, it is to be issued to the landowner and/or the manager. If a landowner has an agreement in place, whether that is a tenancy, a stalking licence or shooting rights, is the notice issued to the people with the stalking or shooting rights or to the tenant? By default, if there is no agreement in place, does the responsibility land with the landowner?

Hugh Dignon: If deer cause agricultural damage within the terms of the 1996 act, the land manager—the farmer—can take action herself or himself to deal with them. That is a separate issue from deer causing damage to the wider environment. As you say, the expectation in that case is that the landowner who is responsible for, or who has the right to take, those deer takes action. If they do not take the appropriate action, the intervention can start.

The Convener: I am still unclear. If I own a piece of land and have a tenancy agreement in place, and if deer that are on my property cause road accidents, stray into another area or eat trees, where does the responsibility sit? In the absence of some agreement about who is responsible—it might be the tenant or the person who has the shooting rights—does it default to the landowner?

Norman Munro: A notice to require the submission of a deer management plan may be issued to the relevant owner or occupier. It would be for NatureScot to take into account the circumstances and the relationship that you described and to ensure that the notice is given to the correct relevant owner or occupier. By that, I mean the person who is best placed to prepare

the deer management plan. I presume that NatureScot will consider that when it has informal discussions prior to issuing such a notice.

The Convener: I can see there being issues in the future about legal obligations in the absence of any legal agreement.

Hugh Dignon: I am not sure that that is changing in any substantive way. That has been an issue for a long time. Broadly, it is pretty clear who has the responsibility for deer management on a piece of land. It may be a tenant farmer in some circumstances, but, more usually, it is the landowner.

Leia Fitzgerald: That kind of thing can be set out in leases. For example, a landowner will have the right to own deer, but the land manager may or may not have the right to take deer, depending on leases or other formal agreements that are in place between the tenant and the landowner.

Elena Whitham: When you responded to my colleague Emma Harper's question about the changes that the bill makes in relation to the creation and approving of deer management plans, you mentioned the importance of collaborative working across landholdings. What regard was paid to the very different issues that are experienced in the lowlands of Scotland—the area that I represent—in relation to deer management, where there are a lot of much smaller landholdings and different moving parts? There is perhaps not as much collaboration happening, the number of stalkers is being reduced, and there are no community larders. What thought went into how we ensure that we have robust deer management in the lowlands of Scotland, given that it is a very different situation but one that still needs to be addressed?

Hugh Dignon: You are absolutely right. It is a very difficult issue. Clearly, in the Highlands and open hill areas of Scotland, where established arrangements, procedures and collaborations are in place, and there are fairly large landholdings, those things are easier to manage and it is easier to focus on them.

We think that the numbers of roe deer in woodland in lowland Scotland are very high; there is evidence of high levels of damage to native woodland. It is difficult to assess deer numbers in woodland, but there is good evidence, from the impacts, to show that there are high numbers. As you say, the landholdings are small and the deer are not as mobile as they are in the red deer range, so the need for collaboration is not the same. However, we need to understand more about what goes on there in order to put in place arrangements to ensure that those deer numbers are better controlled than they are.

The bill puts in place various arrangements, but I do not think that it will solve the issue on its own. We need better data, and we need to get the message across to people that there is a need to manage the deer. You mentioned things like community larders. Those will be important ways that we can facilitate improved deer management in the lowlands and gather more information about who is managing deer there, what their needs are and so on.

Although the management of deer in the lowlands is done by professional contractors and rangers in commercial forestry, in large areas of woodland that surround farmland and so on, it is usually done by recreational stalkers. For the most part, they are highly competent and know what they are doing, but they are not very inclined to be forthcoming about what they are doing, how many deer are being killed, what arrangements there are for collaboration with other stalkers and so on. We are doing our best to make that happen.

We think that a useful way of gathering information about what happens in the lowlands is through the use of incentive schemes. People would be required to register if they wanted to take part in an incentive scheme and to provide data on exactly what is happening in the lowlands. For the most part, it is a difficult issue.

Elena Whitham: That is helpful. It is good to have a marker down in relation to the incentive schemes that you mentioned. Although the bill's provisions may not address the issue, as you rightly point out, the committee needs to be very aware of the issue in the lowlands.

The Convener: I will bring in Ariane Burgess to ask a supplementary question on the response to Elena Whitham's question. After that, I will bring in Tim Eagle and then Emma Harper.

Ariane Burgess: While we are in the space around deer larders and people eating venison—

The Convener: We will move on to that later. There is a question on that.

Ariane Burgess: Yes, but my question is different. It is about killing the deer.

I am aware that work is being done on a potential ban on lead shot, or on the large-calibre bullets that are used for deer management. I know that we do not necessarily need legislation for that, but I wonder whether you are considering that in the work that you are doing around deer management in the bill. Are you considering the need to switch in relation to how we kill the deer on the hill if they are going for human consumption?

Hugh Dignon: A process is going on through the UK registration, evaluation, authorisation and restriction of chemicals—REACH—process, which

is looking at a UK-wide ban on the use of lead ammunition. That is moving ahead and it will come to fruition fairly shortly.

Separately, I note that the use of lead ammunition in relation to deer is being driven to a very large extent by the market. The large processors of venison are not accepting deer that have been shot with lead, and most of the supermarkets will not accept venison that has been shot with lead. There is therefore pressure on lead ammunition from that direction, and there are also likely to be changes in the broader legislation on a UK-wide basis fairly shortly.

Tim Eagle: I want to try to get a little more clarity on the deer management plans and how they will operate. Out of curiosity, do you see them as, in effect, the same as the deer management nature restoration orders? How are they different, if that makes sense?

Hugh Dignon: As I said, deer management plans are widely used now, and they have been for many years. A deer management plan is put together by a deer management group where we have large-scale collaboration. I note again that we do not often see such groups in the lowlands. DMGs will usually have a plan that sets out what they intend to do to ensure effective deer management in the area. NatureScot and other Government agencies are usually on the groups, so they are aware of what the plans are and how effective DMGs are in delivering them.

Under the bill, if NatureScot is not satisfied with the quality or delivery of a plan and believes that it is not compatible with the new requirements in section 6, it will be able to ask to see the plan and start the process of agreeing to it or otherwise.

Tim Eagle: You do not foresee the process being used very much.

Hugh Dignon: I certainly do not see it being used on a basis that would cover the whole of Scotland. Do I see it being used more than it is now? Probably. However, NatureScot is not going to be in a position where it enters a formal process with regard to every deer management plan that is produced by every DMG.

Tim Eagle: What is the process? It is quite subjective, is it not, around the nature restoration stuff? If NatureScot says that it is not happy, so it wants a plan, will there be a move straight to a plan or can there be a period of discussion before a plan needs to be made? Can NatureScot say, "If you do this, we probably won't need to go to that extent," or does there have to be a jump straight to a plan? What happens if the landowner says, "Actually, I think that we are doing everything"? What evidence could they supply to NatureScot in saying, "We disagree with you here—we think that we are abiding by what you require of us"?

Hugh Dignon: It is pretty fundamental for a deer management group, or any group or individual land manager who is managing deer, to have a plan for what they are going to do. In some circumstances, the plan might be to not do very much, but most deer managers will say that they need to take action. Without any natural predators, deer need to be controlled. If they are not controlled, they will have an impact on the environment, so a plan is needed.

I do not think that saying, "You need to have a plan and we would like to see it" is a big step in itself. The issue is whether NatureScot believes that the plan will deliver for the environment and the public good.

11:30

Tim Eagle: That is the question that I am asking. There might be a plan in place, but, at some point, NatureScot might decide that the plan is not delivering what it wants. At that point, can there be a period of discussion before any further process is needed? NatureScot might come back at that point and say, "We still disagree with you," but is there a process by which the landowner can provide evidence to NatureScot?

I am asking, in effect, whether there is an appeals process. Does the landowner have the power to disagree, or do they just have to do what NatureScot says?

Hugh Dignon: NatureScot needs to specify why the plan is deficient. Ultimately, however, NatureScot can require that a plan is produced.

Emma Harper: I have a quick question about urban and peri-urban deer plans. A quick search of the bill and the explanatory notes shows that the word "urban" is not mentioned, but I know that good practice guidance exists for the management of deer in urban and peri-urban areas in our towns and cities.

To clarify, are formalised deer management plans for urban areas not needed? Is deer management a problem in our towns and cities as well?

Hugh Dignon: Some urban and peri-urban areas have deer issues, and some local authorities have plans and resources in place to deal with them. The situation could be better, but it is not at the top of the priority list. Some areas certainly have issues, which are often around road safety. In order to deal with that, many local authorities have plans that involve fencing and planning of roads, junctions and so on.

The Convener: Does Glasgow City Council have a deer management plan?

Hugh Dignon: As far as I am aware, it does not. I do not believe that Glasgow City Council manages deer at present.

The Convener: I am a bit confused. You said that NatureScot could ultimately say that the plan is the plan. However, section 16(3) amends an appeals process that is set out in schedule 2 of the 1996 act.

Norman Munro: The amendments that are made by the bill regarding the plan, agreement and scheme approach are intended to fit within the current framework of intervention, and the policy intention is that the process will invariably start off with a voluntary discussion. That is the approach that the bill puts in place. As we go through the plan, agreement and scheme process, various safeguards will have been put in place by virtue of the bill's provisions.

At a later stage—for example, at the point of schemes—there will be the ability to make objections to the Scottish ministers as regards any proposed scheme or modification that the Scottish ministers might be seeking to make. Ultimately, on confirmation of a scheme, there is a right to appeal to the Scottish Land Court.

The Convener: Okay. We were not clear about that, but there is an ability to appeal.

Ariane Burgess: I am going to go into the space of preventing damage by deer. Hugh Dignon started to go into that in responding to the convener earlier, but I have some questions on the subject that line up with sections 19 and 20. What prompted the need for the changes in the bill regarding the prevention of damage by deer?

Hugh Dignon: As I said earlier, that is broadly about reactive intervention as opposed to proactive intervention. For damage, the process is, in essence, reactive. It is about when damage is occurring and is likely to occur in the future or when damage has occurred.

There are a number of issues around the assessment of damage, especially outside protected sites, where the baseline data is not adequate. There are also a number of data issues around restoration of a river basin, because there will be a number of different landholdings along a river basin, with varying degrees of data being available on the damage that has been caused.

It is about being able to take a proactive view on the presence of high deer numbers preventing the achievement of a plan or a natural process and being able to intervene on the basis of reducing deer numbers to allow that plan or process to take place.

Ariane Burgess: To clarify, we are currently in a more reactive mode, and the provisions in the bill will allow people to act proactively.

Hugh Dignon: That is right.

Ariane Burgess: That is helpful. What led to the inclusion in section 20 of provisions for a legal defence for actions that are taken to prevent deer from causing harm?

Hugh Dignon: That is a deer working group recommendation. It is a matter of clarification. There is probably no real likelihood of people being at risk of legal action if they intervene to prevent risk to human life and human safety. I think that the provisions just clarify that.

Beatrice Wishart: Will you explain the motivation behind modifying the powers for NatureScot-authorised individuals? Why do you believe that those changes are necessary?

Hugh Dignon: I think that that is another deer working group recommendation. It is about a situation in which some sort of intervention is required that might require an action to be taken that would otherwise be unlawful. It is to ensure that NatureScot staff or contractors approved by them who take part in that action do not commit an offence.

In practice, NatureScot usually licences and individually authorises such people. Again, the provision is a safeguard to ensure that staff who carry out an intervention—for example, shooting deer out of season—are not liable to prosecution by virtue of the fact that they are exempted by the proposed provisions.

Beatrice Wishart: Will it increase their powers?

Hugh Dignon: I do not think that it will increase their powers. It will ensure that they are not subject to prosecution.

Beatrice Wishart: How will that improve deer management practices? Will you spell out how that will work?

Hugh Dignon: Again, I am not certain that it will change what happens on the ground. As I say, it is about the situation in which NatureScot staff intervene in deer management. It could be under the emergency powers if they need to take action to prevent a deer welfare issue, a road safety issue or something like that and it involves doing things that would otherwise require a licence—in other words, shooting deer out of season or at night. The provision will mean that the contractors or NatureScot staff who do that work will not need that licence. It will not really change things on the ground, but it will ensure that, when they do that work, they are not liable to prosecution for doing something that would otherwise be unlawful.

Tim Eagle: What is the primary motivation for changing the authorisation system for taking or killing deer during the close season or at night or by using vehicles? How will it help with deer

management in Scotland, which is one of the fundamental aims of this section of the bill?

Hugh Dignon: There is an element of simplification in that. It is about ensuring that, when people are on the fit and competent register, they are considered fit and competent to do things such as shooting out of season or at night. The same rules will not apply across the board. Shooting at night will require a few people to be on the fit and competent register who have done the appropriate training for shooting at night. People will not need further authorisation from NatureScot to shoot out of season, shoot at night, use shotguns or use vehicles to drive deer. Actually, I note that out-of-season shooting does require further authorisation, and people who are shooting at night will still be required to inform the police beforehand, even though they have the fit and competent qualification. There will still be some degrees of control. It is about trying to prevent people from having to be individually authorised to do those activities—being on the fit and competent register will, by itself, get them so far.

Tim Eagle: In the 1996 act, the term is just “competent”, but in the bill it is “fit and competent”. What does the addition of “fit” mean? I presume that you do not want to decrease the number of stalkers that we have in Scotland, because we need them to carry on. Are you considering things such as grandfather rights for those people who are clearly able and have been doing that work for a long time?

Hugh Dignon: As you know, that is not in the bill, although it could be considered when we introduce a scheme under secondary legislation. I do not think that a view has been formed on whether giving some sort of rights to people with good existing skills and experience should be one of the considerations.

Tim Eagle: That is fine—it is not in the bill. I was curious as to whether that had gone through your minds in the process of developing the bill, but we can discuss that as we take more evidence. What is the purpose of putting in “fit”, though?

Hugh Dignon: As I mentioned before, the term “fit” generally refers to the fact that the person is qualified to do it and they have a firearms certificate. Again, what someone will need to do to be on the fit and competent register is yet to be determined; it will be part of the scheme to be introduced through regulations.

Tim Eagle: Do you have any thoughts at this point on what that would be?

Hugh Dignon: We think that the DSC1 is the likely level.

Leia Fitzgerald: We will obviously speak to stakeholders about that. There is the DSC1 and I am aware of other qualifications that other organisations run. You also mentioned grandfather rights. It is really important that, before the secondary legislation is introduced, we take the time to speak to the people who will be doing the work in the future in order to understand their thoughts and views on the appropriate range and level of qualifications that should be a requirement for the register. We will certainly look to actively engage stakeholders on that if the bill is agreed to.

Tim Eagle: That is good to hear. I asked about that just for clarity, because we are already getting questions about it. I assumed that what you have mentioned will apply, but it is good to have that on the record so that we know what we are looking at.

Hugh Dignon: It will be there or thereabouts. As Leia Fitzgerald said, there may be other people who are providing training at that level. We also know that, as I mentioned, the use of night sights is not currently part of the DSC1. There will be changes, but that will be subject to discussion with practitioners, for sure.

11:45

The Convener: With regard to authorisation for particular activities, the focus has changed from land types and land use to specific reasons for authorisation—for example, as we have heard, damage by deer or nature restoration. What benefits do you see in that approach?

Hugh Dignon: As I said, the primary benefit is in bringing consistency across the whole range of activities that are covered by deer management. The purposes that allow intervention by NatureScot are the same sort of purposes for which we can authorise people to shoot at night or out of season, or whatever else is required.

The Convener: Okay. Thank you. We move to our next topic with a question from Elena Whitham.

Elena Whitham: Section 32 seeks to insert in the 1996 act provisions that deal with

“Liability for taking or killing stray farmed deer”.

In particular, it introduces an offence of

“failing to report taking or killing of stray farmed deer”

and a defence of civil liability in that regard. What are the reasons for introducing those provisions regarding stray farmed deer? Is it believed that they will effectively help with the management of stray farmed deer?

Looking at the provisions, it seems that they refer to the liability of the person who has actually taken the farmed deer as opposed to effective

management to prevent farmed deer from escaping in the first place.

Leia Fitzgerald: That was a DWG recommendation. The DWG felt that, while there was clear legislation governing the circumstances for taking or killing other forms of livestock such as cows and sheep, the legislation was ambiguous with regard to people's obligations in relation to stray farmed deer specifically. The provisions were put in to address what the DWG felt was a deficit and to provide the clarity that already exists in relation to other forms of livestock.

Elena Whitham: So, it is specifically about dealing with that rather than how we support farmers of deer to ensure that they do not have escapes into the wild.

Leia Fitzgerald: Yes. It addresses the DWG's recommendation on the current ambiguity in the legislation.

The Convener: We move to our final set of questions. Emma Harper will kick off on that.

Emma Harper: Community larders were touched on earlier with regard to the availability of venison to go into the food supply chain. What would be the main reason for removing the requirement for a licence to deal in venison? How will that change make venison more accessible to consumers while ensuring that it meets food safety standards?

Hugh Dignon: The primary reason is that most of the people to whom we spoke took the view that the venison dealers licence does not really have any particular function. Venison, like any other food or game, is already subject to food standards requirements, and that is the most effective way of protecting public safety.

Emma Harper: When the committee held a round-table evidence session, we talked about making venison more available and more appealing, and about changing the perception that it is just for people who have deep pockets and big wallets. How will the provisions in the bill support widening access for schools, hospitals and other places?

Hugh Dignon: That particular provision will not have a big impact in that regard, but it will remove one of the restrictions on the general availability of venison by removing the venison dealers licence. However, there are not many such licences—there are something like 26 in Scotland—so it is not a big issue that is inhibiting the supply of venison. There are much broader issues to be dealt with in that respect in order to make venison more widely available and part of the diet in schools, hospitals or wherever. The provision to remove the venison dealers licence is one small part of that; it is really

about removing something that no longer has any function.

Emma Harper: I note that Food Standards Scotland would be part of supporting wider access to venison. There would be some collaboration and engagement with it to ensure safety while also helping to support widening access.

Hugh Dignon: That is certainly the case with regard to ensuring safety. I do not know whether FSS's remit covers marketing.

The Scottish Government supports the venison industry with promotion and marketing materials. If we are looking to see a significant increase in the number of animals that are culled, we want to be very sure that those animals will be put to productive use. As you say, venison is a healthy, lean and nutritious meat; we would like to see better use made of it, and we would like that to feed through to the people who are producing the venison. We absolutely support that.

The Convener: One of the objectives is to increase availability while maintaining a high standard. If section 33 repeals the provisions in the 1996 act on the need for a licence to deal in venison, how will we ensure that those high food standards are maintained?

Hugh Dignon: As I said, venison, like any other meat—and game meat in particular—is already subject to Food Standards Scotland's requirements and will continue to be so. That is the main way to maintain high standards and ensure that the meat is of high quality—it is the means by which that is delivered.

The Convener: If a recreational stalker shoots a deer, how can you ensure that there are high food standards in that case—for example, that the carcase has been treated in a certain way—as opposed to the case of a professional stalker who has been through licensing and has dealt with a dealer? If I was a recreational stalker, I would need only to have a rifle licence to be fit and proper. How can you ensure that someone who, like me, is a recreational stalker maintains high food standards?

Leia Fitzgerald: Venison is governed by exactly the same food standards legislation as other meat and wild game. Somebody may be a professional stalker or they may just shoot grouse recreationally, for example. All that legislation is in place. The venison dealers licence was an additional measure; my understanding is that that was put in place primarily not for reasons of food safety, but for traceability in respect of poaching. Whether someone is a mass producer of venison or they are just shooting recreationally, they are governed by the same legislation, such as the hygiene rules and so on that they have to follow.

The Convener: You mentioned traceability. How do you ensure that?

Leia Fitzgerald: We can write to the committee with more information on the work that Food Standards Scotland undertakes more widely in relation to the regulation of meat and game.

The Convener: I am just concerned that we are taking away a licence that ensures standards but there is nothing in its place.

Leia Fitzgerald: We consulted on that, and the majority of people who responded to the consultation supported the provisions to remove the licence. They felt that it was an unnecessary barrier and was no longer required. We are removing it in response to those consultation responses. We also consulted local authorities, and they did not have any concerns about the provisions on repeal of the venison dealers licence.

The Convener: There are no further questions. Once again, we have come in on time, which is much appreciated. I thank all the witnesses for giving evidence this morning. We will now go into private session.

11:54

Meeting continued in private until 12:26.

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