RURAL DEVELOPMENT COMMITTEE

Tuesday 30 October 2001
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE
23rd Meeting 2001, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
*John Farquhar Munro (Ross, Skye and Inverness West) (LD)
*Dr Elaine Murray (Dumfries) (Lab)
*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Rhona Brankin (Deputy Minister for Environment and Rural Development)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
David Mundell (South of Scotland) (Con)
Mr Murray Tosh (South of Scotland) (Con)
Mike Watson (Glasgow Cathcart) (Lab)

CLERK TO THE COMMITTEE

Richard Davies

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 2

Scottish Parliament

Rural Development Committee

Tuesday 30 October 2001

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:04*]

Fur Farming (Prohibition) (Scotland) Bill: Stage 1

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen. Welcome to the 23rd meeting in 2001 of the Rural Development Committee. I am delighted that there is such interest in the subordinate legislation on foot-and-mouth disease that is on our agenda this afternoon. We look forward to discussing that under item 2. I ask members and the public to ensure that mobile phones have been switched off.

Item 1 on our agenda is consideration of the Fur Farming (Prohibition) (Scotland) Bill. Members will know that the bill was introduced on 5 October. We have been designated as the lead committee for stage 1 of the bill and will report on its general principles. We have before us a paper from the clerks outlining options for dealing with the stage 1 inquiry. Members should have received a copy of the bill, accompanying documents, a research note prepared by the Scottish Parliament information centre and a full copy of all replies to the consultation that the Scottish Executive undertook before it introduced the bill.

I can update members on one point. The Parliamentary Bureau will not discuss a proposed timetable for the bill until 6 November.

The clerks' paper explains the committee's obligations at stage 1 and notes possible approaches that we can take to gathering evidence. Does any member have comments or questions at this stage?

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): I thank the clerks for putting the material together. It seemed to me that there was a degree of consensus in the responses to the consultation, although positions were clearly polarised in a couple of those responses. Whatever the committee does, it should take oral evidence from supporters of those positions and from the Executive before producing a report. I do not think that it would be helpful at this stage for us to seek further written evidence.

The Convener: Some of the proposals that relate to the written evidence that was submitted to the Executive are not included in the bill as published. Members may want to ask the organisations that responded to the consultation whether they have anything to add, within a fairly short time scale. We could then draw up a list of those organisations from which we wanted to take oral evidence.

Cathy Jamieson: I would have no difficulty with that. It would be unhelpful if we were to start the whole process off again, but asking organisations whether they have any additional points to make would be helpful. I suggest that we limit oral evidence to one evidence-taking session, at which all views can be presented clearly.

The Convener: I could not agree more. If members have no further comments, I will attempt to sum up. We are not obliged to seek further evidence, but following Cathy Jamieson's comments I suggest that we agree to option (a) in paragraph 2 of the section entitled "Summary" in the clerks' paper. The recommendation is that we seek supplementary written submissions on the bill as introduced only

"from those who replied to the Scottish Executive consultation".

I or any other volunteer could act as a reporter on the written evidence and advise the committee on the organisations from which we would want to take oral evidence. Does that find favour with members?

Members *indicated agreement*.

The Convener: Are members happy that I should act as reporter?

Members *indicated agreement*.

The Convener: I did not sense that there were other volunteers.

Subordinate Legislation

Foot-and-Mouth Disease (Marking of Meat, Meat Products, Minced Meat and Meat Preparations) (Scotland) Regulations 2001 (SSI 2001/358)

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Amendment (No 3) Regulations 2001 (SSI 2001/367)

The Convener: Under agenda item 2, we are considering two statutory instruments. Originally we were due to consider a further instrument, the Wildlife and Countryside Act 1981 (Amendment) (Scotland) Regulations 2001 (SSI 2001/337), which was referred to us by the Subordinate Legislation Committee. However, the committee has since decided that that instrument, which relates to capercaillies, is better suited to be referred to the Transport and the Environment Committee. That is the reason that we are no longer discussing it. I hope that that meets with the approval of the committee.

We are the lead committee on the two remaining instruments that are before us today. The Subordinate Legislation Committee considered the regulations in its 37th report and made no comment on them to this committee. We have received no prior notice that any member wishes to comment on the regulations. Are members content with the regulations?

Members *indicated agreement*.

Protection of Wild Mammals (Scotland) Bill: Stage 2

The Convener: Agenda item 3 is stage 2 consideration of the Protection of Wild Mammals (Scotland) Bill.

I shall briefly address the sub judice rule. Members may be aware of speculation in the press today that current legal proceedings could have an effect on our work. We are aware of an action for judicial review of a decision by the Scottish ministers. The Parliament's legal adviser has advised me that nothing in that action prevents the committee from dealing with the bill today. It is my intention that the committee deal with its business today without reference to the court proceedings. If any member attempts to refer to those proceedings during the meeting, I shall have no choice other than to order that member to stop, as provided for by rule 7.5.3 of standing orders. That does not prevent the committee from carrying out its legislative responsibility today.

Mr Jamie McGrigor (Highlands and Islands) (Con): On that point.

The Convener: I cannot allow anybody to speak on that point, for reasons that I have explained, under rule 7.5.3 of the standing orders.

Mr McGrigor: Is it possible that the committee might have to reconvene and consider again everything that we are doing today, following 21 December?

The Convener: We will have to meet that challenge if and when it comes. The ruling is that the situation does not prevent the committee from continuing its work. We will rule on the matter that Mr McGrigor has raised if and when the occasion arises. I cannot be clearer than that. We are not permitted to discuss this today.

I will also address the admissibility of amendments, especially in the light of the meeting of 2 October. I said then, in response to Mike Rumbles, that I would be happy to undertake to discuss questions of admissibility with members, if it was procedurally correct to do so. I have been advised that it would not be appropriate to enter into discussions with a member seeking to lodge an amendment, in advance of a decision on admissibility. So far I have been asked to rule on six amendments—sorry, I have ruled six amendments to be inadmissible. It might be of interest to the committee to know that the majority of those amendments came from Conservative sources.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): That does not address the point that I made on 2 October. As we all know, the procedure is that when a member wants to lodge

an amendment, that member goes into discussions with the clerks. It is usually easy to come to some arrangement, on the clerk's advice, about what is admissible. It is often a judgment call. The standing orders, however, make it clear that the decision about whether an amendment is admissible is for the convener and for the convener alone. My concern is that the rules are not written tightly enough. It seems to me that there is a point about natural justice. The clerk, in discussions with the MSP, makes their opinion clear. The clerk then gives the same advice to the convener, by which the convener says that he will abide. It strikes me that there is a conflict of interest in the advice that the convener is receiving, because the clerk made a judgment call when the member lodged the amendment. Could the convener comment on that?

The Convener: That would depend entirely on the convener being totally bound by the advice of the clerk.

I will clarify the figures that I gave before. I have been asked to rule on six amendments and I have ruled four of them to be inadmissible. The fact that I was asked to rule on them, and ruled two of them admissible, suggests that I was able to use my own judgment. The convener puts faith in the rules that allow him to exercise that judgment. I have done that to the best of my ability and aim to ensure fairness at all times. My guiding light is that if there is a glimmer of doubt I tend to rule the amendment admissible; if there is no doubt I rule it inadmissible.

Mr Rumbles: Thank you very much, convener.

The Convener: I shall move on to stage 2 procedures. We would do well to go over those.

I also take this opportunity to welcome the Deputy Minister for Environment and Rural Development, who was not here at the start of the meeting.

I will explain how we will deal with the bill at stage 2. Members should have before them a copy of the Protection of Wild Mammals (Scotland) Bill as introduced, the marshalled list of amendments, SP Bill 10-ML1, which was published this morning, and the groupings of amendments, which is SP Bill 10-G1. Spare copies are available.

The amendments have been grouped, on my authority, to facilitate debate, but the running order is set by the rules of precedence that govern the marshalled list. All amendments will be called in strict order according to the marshalled list; we cannot move backwards on that list. There will be one debate on each group of amendments. I will call the proposer of the first amendment in the group, who should speak to and then move that amendment, having commented on all other amendments in the group. I will then call the proposers of all the amendments in the group in sequence, followed by other members, including Mike Watson, the member in charge of the bill, if he has not already been called. If other speakers then make substantive points, Mike Watson and, if appropriate, the minister, will be given an opportunity to comment before I invite the proposer to wind up. Mike Watson and the minister are entitled to participate in the debate on all amendments. Other visiting members are entitled to participate in respect of their own amendments only. Only committee members may vote.

14:15

Unless you are moving the first amendment in a group, you should not move any of your amendments during a group debate—your time will come. Rest assured that I will call members to move their amendments at the appropriate time. If any member does not wish to move an amendment when it is called, they should simply say "not moved". Note that any other MSP may move such an amendment, under rule 9.10.14. If no one moves the amendment, I will immediately call the next one on the marshalled list.

Following the debate on each group, I will check whether the member who moved the lead amendment wishes to press it to a decision or to withdraw it. If the member wishes to press ahead, I will put the question on the first amendment in the group. If any member disagrees, we will proceed immediately to a division by show of hands. It is very important that members keep their hands raised until the clerk has fully recorded the vote. If any member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, that amendment is immediately voted on; there is no division on whether an amendment is withdrawn.

After we have debated the amendments, the committee must decide whether to agree to each section of the bill.

I will now give a word of explanation on the first grouping. The first amendment on the list is amendment 38, in the name of Mike Watson. If agreed to, that amendment would pre-empt a number of other amendments. Because the members who lodged those amendments did not have time to react to Mike Watson's amendment, I have allowed them to lodge late manuscript amendments to minimise the impact of pre-emptions.

This is an exceptional circumstance, and that decision does not indicate that I will automatically accept late manuscript amendments in future. I

strongly urge all members to lodge their amendments in good time and not to wait until the last day. On that note, I remind members that the deadline for lodging amendments for next week's meeting, which will not proceed beyond section 3, is 2 pm on Friday 2 November, but I urge members to try their best to get their amendments lodged on Wednesday or Thursday at the very latest.

Section 1—Prohibition and offences

The Convener: Amendment 38 is grouped with amendments 39, 52, 48, 47, 1, 40, 41, 28, 49, 50, 51 and 18. I ask members to note that the group now includes manuscript amendment 52, which is printed separately and which will be called immediately after amendment 39.

The group contains a number of amendments that pre-empt other amendments. Pre-emption means that if an amendment is agreed to, a later amendment cannot be called. That is because of rule 9.10.11, which states:

"An amendment at any Stage which would be inconsistent with a decision already taken at the same Stage shall not be taken."

Therefore, if any of amendments 38, 39, 52, 58 or 47 is agreed to, none of amendments 1, 40, 41 or 28 will be called. In addition, if any one of amendments 39, 52, 48 and 47 is agreed to, none of the rest of those amendments can be called.

The first amendment on the list, amendment 38, pre-empts amendment 39, but does not pre-empt amendments 52, 48 or 47. So if amendment 38 is agreed to and amendment 39 is pre-empted, amendment 52 can still be called. If amendment 52 is not agreed to, amendment 48 can still be called. If amendment 48 is also not agreed to, amendment 47 can be called. That is incredibly complicated and I have now lost myself. I hope that it will all sort itself out as we proceed.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): As somebody who is perhaps as confused as anyone in the room, I ask for a point of clarification at this stage. You have indicated that if an amendment is pre-empted it cannot be called. Can we have a debate on such a pre-empted amendment, even if it cannot be moved and voted on?

It would be extremely useful for us to hear all the arguments on the substantive amendments today, whether or not there is to be a vote. I am thinking—perhaps selfishly—of amendment 47, which I believe will be pre-empted if amendments 38 and 39 are agreed to. If that happens, I hope that I will be able to speak to amendment 47, so that I can hear members' responses to my arguments.

The Convener: As I tried to explain in my long-running preamble, members will have the chance to speak to their amendments in the course of the debate on the grouping as a whole and will therefore be able to put forward the arguments that they wish.

Fergus Ewing: That is perfect.

Mike Watson (Glasgow Cathcart) (Lab): Before moving amendment 38, may I raise a point of order?

The Convener: No, I am afraid that we cannot have a point of order in committee. You may make a comment. Points of order and committees do not go together.

Mike Watson: I seek clarification about pre-emptions and amendment 38. As the member in charge of the bill, I have been supplied with the marked-up, marshalled list of amendments—I appreciate that other members do not have it—which shows the order in which the committee will vote and the amendments that, if agreed to, would pre-empt others. I am concerned that there is no sign that the amendments following amendment 38—particularly amendment 39, in the name of Murray Tosh, and amendment 48, in the name of Mike Rumbles—would be pre-empted. I believe that they should be, because if amendment 38 is agreed to and amendment 39—or even the updated version of that, which I think is amendment 52—or amendment 48 is then agreed to, that would substantially change the decision to support amendment 38.

I understood that pre-emption meant that the intention expressed by the committee in adopting an amendment could not be overturned by a later amendment. That is my interpretation of pre-emption. I wonder why, when you have signified that a number of other amendments would be pre-empted, those two would not be.

The Convener: The advice that I have been given is that the subsequent amendments do not change the substance of what you propose in amendment 38, but simply add to it.

Mike Watson: That argument might persuade me in respect of amendment 39, but if the phrase

"in the immediate pursuit of sport"

from amendment 48 was added to amendment 38, that would produce something quite different. It seems wrong not to regard amendment 48 as being pre-empted by amendment 38.

The Convener: The advice that I receive is that that is a policy argument rather than a reason for pre-emption. Is not it best to address the issue in the way that you speak to amendment 38?

Mike Watson: The debate will still take place, but the question is whether amendment 48 will be

put to the vote. That is what concerns me. A vote in favour of amendment 48 would completely overturn a vote in favour of amendment 38. However, you are obviously not persuaded.

The Convener: I confess that I am not fully persuaded because I am open to advice on the way in which the amendments have been grouped. Do members have any comments?

Mr Rumbles: I am a little perplexed about why one MSP seems to have information that other committee members do not have.

The Convener: I can answer that quite simply. As Mike Watson is the member in charge of the bill, he is allowed to have a marked-up marshalled list.

Mr Rumbles: But Mr Watson does not have a vote on the committee. Committee members should have all the available information in front of us. We obviously do not.

The Convener: We will have to note that and, if necessary, put the point to the Procedures Committee.

Mr Rumbles: Committee members are labouring over the issue without all the information. Mike Watson obviously has an advantage over us in that respect.

Mike Watson: I am simply in the same position that an Executive minister would usually be in when speaking to an Executive bill.

Mr Rumbles: But this is not an Executive bill.

Mike Watson: Exactly, but I am in charge of the bill.

The Convener: Mr Watson, as I think that the document was given to you for procedural guidance, it would be a pity to use it to argue for a vote at this early stage on whether other amendments should be pre-empted. On that basis, I would like to move on.

Mike Watson: I was not asking for a vote, convener. You will be giving members the information on the marked-up marshalled list anyway. It is not as if the information is secret.

The Convener: I think that we should move forward with the debate.

Mike Watson: Amendment 38 is quite straightforward. I have received a number of representations on this aspect of the bill from people concerned that if members of the public were out with their dogs—or even an individual dog—and they were to take off after a mammal of some form, they could be held to be committing an offence. Although I think that that concern is somewhat exaggerated, it is genuinely felt by those who have expressed it. I have always countered that suggestion by arguing that there would have to be intent. Although normal dog walkers can be expected to have a reasonable amount of control over their dogs, they cannot have total control and there are situations in which a dog might take off after another mammal or whatever. Amendment 38 simply combines section 1(1) and section 1(2) to make it as clear as possible that the main issue is intent. I really have nothing more to say about it at this point. However, I would like clarification about whether I will be able to comment later on other amendments, particularly those that seek to extend my proposal in amendment 38.

I move amendment 38.

The Convener: You will certainly have a chance at the end to comment on the debate. Does that mean that you do not wish to address the other amendments at this stage?

Mike Watson: I will leave that until I have heard the arguments of the members who proposed the various amendments.

The Convener: I call Murray Tosh to speak to amendments 39, 52 and 40 and other amendments in the group.

Mr Murray Tosh (South of Scotland) (Con): I am interested to hear that Mike Watson's intention behind amendment 38 was to try and insert the issue of intent. Convener, the clerks advised you that my amendment to insert the word "intent" into the bill was inadmissible; having heard what Mike Watson had to say, I am sorry that you did not admit it.

I support amendment 38. My slightly peculiar amendments 39 and 52 are simply the consequence of the amendments that Mike Watson lodged last Friday morning. We were trying to stay level with him and to amend whatever amendment he would ultimately move. As a result, I think that I will be moving amendment 52 and speaking to amendment 40.

In seeking to insert the phrase

"in such a way as to cause unnecessary suffering",

I am trying to do three things. First, I want to provide greater clarity about the bill's purpose. Secondly, I want to insert in the bill the ethical argument about cruelty and suffering that has underpinned the terms of much of the debate, but does not seem to have featured in the text of the bill or to offer much guidance to the courts.

In seeking to insert the expression about unnecessary suffering, I have tried to embody the fundamental principle that underlies the approach to the issue that those who lodged the bill expressed at stage 1, and previously in the debate in the committee.

I am conscious that that phrase features in other wildlife legislation, notably the Wild Mammals (Protection) Act 1996. Indeed, the penalties provided in the bill replicate those that are laid down in the 1996 act. It struck me that there was no guidance in the bill on what might be an appropriate punishment for anyone found guilty of an offence under the bill if it were enacted. It is my view that the introduction of the consideration of unnecessary suffering affords the prosecution service and the courts, in passing sentence, an opportunity to scale offences by severity, on the basis that an offence that involves a gross degree of unnecessary suffering would provide justification for imposing the maximum penalty. Otherwise, I do not know how the bill would differentiate between a caution and six months' imprisonment.

Amendment 40 would apply only if amendment 38 fell and the committee eventually decided to retain the text as it appears in the bill. Amendment 40 is designed to achieve the same end as amendment 52, which is to introduce an ethical dimension to the bill.

14:30

The Convener: I call Mike Rumbles to speak to amendments 48, 149 and 18, and other amendments in the group.

Mr Rumbles: I submitted my original amendments three weeks ago—in fact, they were all at number one—to give all committee members as much opportunity as possible to see the effect of my proposals. I am extremely disappointed that Mike Watson waited until almost the last minute to lodge his amendments. Judging from the comments Mike has just made, it sounds to me as though his amendments were deliberately designed to pre-empt mine. To use a word that I will use later, that was not very sporting. However, I thank the clerks for their forbearance in helping me to keep up with Mike Watson's late amendments and the convener for his forbearance in allowing manuscript amendments. We are all here to get the issue right.

Essentially, the committee can take three policy approaches today. One of those has been outlined well by Murray Tosh. I understood it clearly and in normal circumstances I would support it. My approach—the second approach—is based on my feeling that we should focus on what MSPs outwith the committee and the media think the bill focuses on, which is the outlawing of cruel and unacceptable sports. The third approach is that of Fergus Ewing, whose amendment 47 is a good one. Fergus has taken the approach of focusing on pest control activities.

If Mike Watson had chosen any one of those three policy directions in his original bill we would face a very different bill now. However, we must choose which of the three approaches is most appropriate for us today. I will say why I think that Murray Tosh's approach is not appropriate. I am concerned about stage 3, and that the vote at stage 1—84 votes to 34—was a clear indication of our Parliamentary colleagues' feelings. It was clear what MSPs voted for at stage 1—Mike Watson and many others said it clearly in the debate—they voted to abolish the sport of mounted fox hunting and the sport of hare coursing. Mike surprised us all at the last minute by mentioning fox baiting.

If that is what MSPs think that the bill is about and if that is what the media and people whom we represent think it is about, we are duty bound to make the bill fit whatever everybody thinks it is supposed to do, which is to hit those three activities. I am fearful that, if we go down Murray Tosh's route—although it is sensible—when we get to stage 3 of the bill, an argument will be put that unnecessary suffering is not caused by the mounted hunts. We have all heard the mounted hunts argue that the kill is swift and that no unnecessary suffering occurs. I say to Murray Tosh that my concern is that, although amendment 38 is useful, it will be overturned at stage 3. Going down that route would lead us into a bigger mess.

I also thought of going down the route that Fergus Ewing has taken with his amendments 47, 41 and 50. All the way through the debate, over the past year and a half, I wanted to ensure that Mike Watson's bill hit the targets that Mike Watson thought it was to hit. Doing so would mean that the bill would not hit the legitimate fox pest control activities of our gamekeepers, farmers and land managers, particularly in upland Scotland.

I reiterate that I thought about going down Fergus Ewing's route, but decided that it would be a mistake to do so because, again at stage 3, we will hear arguments that the mounted fox hunts exist not for sport but for fox pest control. That argument is legitimate. If we accept Fergus Ewing's route, we risk having the bill overturned at stage 3 and ending up in the mess that we were in after stage 1.

The convener will be delighted to hear that I am almost finished. I firmly believe that, after a lot of thinking about which of the three legitimate routes to take, we should be straightforward, upfront and clear. Parliament expects a vote on whether to outlaw what many of our colleagues in the chamber believe to be a cruel sport. That is what most people focus on when they think of Mike Watson's bill. We owe them a duty to go down that route.

I hope that I have highlighted the three policy issues. I also hope that I have been fair to Murray

Tosh and Fergus Ewing, but when fellow members vote on which of the three directions we wish to take, I hope that they choose my amendment 48. The issue is ending cruel sports. My amendments seek to do that.

The Convener: I call Fergus Ewing to speak to amendments 47, 41 and 50, as well as to the other amendments in the group.

Fergus Ewing: I will speak to amendment 41, as amendments 47 and 50 were added as manuscript amendments to allow for the possibility that Mike Watson's amendment 38 is agreed to. The main sense of my amendments is contained in amendment 41, which seeks to add to section 1 after:

"A person must not hunt a wild mammal with a dog"

the following:

"except for the purpose of controlling a pest species by means of an activity that does not involve the participation of any person on horseback.

(1A) For the purposes of subsection (1), 'pest species' means foxes, hares, rabbits, mink, rodents and such other species of wild mammal as the Scottish Ministers may, by order made by statutory instrument, specify".

The thinking behind the amendment—and I say this as a lawyer of some years' practice—is that it seems sensible, when drafting legislation, to achieve a number of things: clarity, avoidance of doubt and enforceability. My thinking can be summed up in the catchphrase "When in doubt, spell it out."

It seems to me that we are attempting today to achieve one objective—held in common by most members here—which is to ensure that the bill hits the right target. The vast majority of the public think that the bill is purely about the abolition of mounted hunts, pursued for the purpose of entertainment or pleasure. I am not convinced that the fact that the bill is much wider than that has been understood by the Scottish public as a whole. The fact that Parliament voted for the bill at stage 1 by a clear margin of about 50 indicates that the days of mounted fox hunting are numbered—the writing is on the wall. I say that as someone who voted against the bill at stage 1. Barring the unforeseen, it seems that that is Parliament's will. Therefore, our duty today is to find the right amendment worded in the proper way. Mike Rumbles is right to say that there are different approaches to that.

I do not intend to move amendments 41 and 47 today, but I want to hear the arguments against them so that I can bring them back if necessary. I am interested in hearing members' arguments.

First, why is amendment 41 appropriate? It is clear that Parliament and the committee believe that pest control should be protected. The bill's promoter and supporter recognise that gamekeeping activity, hill packs and terrier work is necessary. They have slight disagreements about the way in which pest control is carried out, but the principle is agreed. It follows that we should restrict the scope of the bill. Surely we should state clearly that it is necessary to control pest species. That principle would serve to restrict the scope of the bill.

Secondly, amendment 41 states that the control of a pest species is

"by means of an activity that does not involve the participation of any person on horseback".

That makes it plain that mounted hunts would be a thing of the past—obviously people are mounted on horseback. The form of words was selected to ensure that the will of Parliament expressed at stage 1 is achieved—I say that as someone who had reservations about the desirability of that approach, but who now feels that it is incumbent on me and others to try to achieve that aim.

Thirdly, I have attempted to do something that Mike Watson failed to do, which is to define "pest species". I hope that I have defined what people would view as the principal pest species:

"foxes, hares, rabbits, mink, rodents and such other species of wild mammal".

I have received a briefing from the Countryside Alliance, which has suggested adding weasels and stoats to the list. If my amendment is defective for that reason, I may be able to bring it back in an updated form. I offer this as a conceptually sound way of determining our business. We need to control pest species and to do that we need to define what are pest species. That cannot include protected species. There may be a case for extending the definition. Whatever the rights or wrongs of my amendment, the felicity of its draftsmanship or otherwise, I would argue that the bill should include a definition of pest species. That would be helpful, unambiguous and enforceable.

I have a lot more to say, but perhaps I could conclude with a few thoughts. It may become evident in the course of today's arguments that there is a need to take evidence from bodies that have had years of experience of such work. I say that not because I am anxious to spend more time on the bill but because I believe that some of the practical problems that arise may need to be the subject of evidence from bodies such as the Scottish Gamekeepers Association—members of that association are here today—the Scottish Hill Packs Association and the National Working Terrier Federation.

I do not believe that the argument that Mike Rumbles gave for rejecting amendments 41, 47 and 50 applies. Amendment 48, in Mike Rumbles's name argues that my solution would

still allow mounted fox hunting. I do not believe that that is the case because it would not be possible for anyone to participate on horseback. I have heard only one argument against amendments 41, 47 and 50 because only one member has addressed them thus far, but I must point out that I do not think that that argument applies. I await with interest other members' comments on the amendments.

14:45

Mr McGrigor: The purpose of amendment 28 is to give added legal certainty to the offence created by section 1(1) and section 1(2). The term "knowingly" has precedence in law and would therefore help to clarify the section. The word "deliberately" does not necessarily imply intention. What action would have to be taken in order for it to be construed in a court as being deliberate? Could "deliberately" be applied to acts that result from a failure to act?

The use of "deliberately" also fails to distinguish between an action and its consequence. For example, a person who deliberately lets his dog off the lead may have no idea of the consequence of that act, which is that the dog goes off in search of wild animals. He does not deliberately let the dog hunt an animal.

Shortly, we will deal with land reform legislation that is designed to give people greater access to land. If people think that land managers are going to be found guilty when dogs are let off their leashes and chase animals, there will be an awful lot of signs in the countryside saying, "No dogs on this land". I would not like that to happen because the dog is man's best friend.

The Hunting Bill, which is a multi-option bill that was considered by Westminster, contains the words, "knowingly permits". It was clear that an owner or occupier would be criminally liable if he merely permitted on his land parties who were engaged in hunting. An example of that is the House of Lords case of Alphacell v Woodward.

All criminal offences ought to be clearly defined. It is not clear what would be meant by "deliberately". For instance, would a landowner who allowed his land to be used for lawful activities be guilty under this provision if an offence were committed on the premises? The word "knowingly" distinguishes between actions and consequences far better than "deliberately", which fails to do so.

The Convener: That concludes the remarks of members who have lodged amendments. We now open the debate to other members.

Dr Elaine Murray (Dumfries) (Lab): I am pleased that Mike Watson has proposed the inclusion of a section that will reassure dog walkers that they will be exempt from the legislation. I know that he did not intend it to impact on dog walkers and I think that that reassurance will be welcomed, particularly by people who have more than one dog.

I am concerned about the issue of unnecessary cruelty and suffering. I would like Murray Tosh to tell us what difference his amendments would make to the prohibited activities. Could Mr Tosh's proposal be interpreted as meaning that mounted fox hunting or hare coursing would be acceptable if they did not cause unnecessary suffering? If that is the case, it would be contrary to the will of Parliament, which was expressed at stage 1.

As for the amendments that Mike Rumbles has lodged, I must say that there still appears to be a little bit of uncertainty about what constitutes sport. The participants in the mounted fox hunts in my area would not consider themselves to be in pursuance of sport. They have told me that their activities are in pursuit of pest control. There would have to be a legal argument around what was a sporting activity and what was a pest-control activity. I suppose that an argument could be made that if suffering is the issue, it does not matter whether mounted fox hunts are a sporting activity or a pest control activity.

Amendment 41, which was lodged by Fergus Ewing, would prohibit the participation of people on horseback in particular. I can see where he is coming from, but many mounted fox hunts involve people on quad bikes and on foot. I am not sure that simply ditching horses would ban the activity. People do not object to the activity of the horses in mounted fox hunting; they object to the activity of the dogs.

I do not understand Jamie McGrigor's argument about the difference between "deliberately" and "knowingly". I understood that the adverb in amendment 48 had to be taken with the verb so that the prohibition is on deliberately hunting and not on deliberately letting dogs off the lead. Deliberately must be taken with hunt, if you like. In that case, I am not sure of the difference between amendment 28 and amendment 48.

Mr McGrigor: The difference is between actions and consequences of actions.

Dr Murray: If somebody deliberately hunts, the intention to hunt, not the intention to let a dog off the lead, is deliberate.

Mr McGrigor: The intention to let a dog off the lead may be deliberate, but the intention that the dog should hunt may not. The dog has a natural instinct to hunt. People do not intend to make dogs hunt when they let them off their leads. People let their dogs off their leads to go for a run all the time. There is a difference when a person knowingly lets their dog off the lead to hunt.

The Convener: A question has been asked and Mr McGrigor has given an answer.

Mr Rumbles: Elaine Murray made a good point in questioning the interpretation of what is and is not a sport. At stage 1, it was clear that, irrespective of what the protagonists in the argument claim, we must consider the facts, which show that in mounted hunting fewer than one in 10 foxes that are flushed are killed. In respect of the other activities—by the foot packs, for example—the figure was around 90 per cent. I will stand corrected by the *Official Report*, but that gives an idea of the figures. There have been arguments, but we must consider the facts. I lodged my amendments because they address clear issues in the minds of MSPs and the public.

Fergus Ewing: I want to address the point that Elaine Murray made. It would be stretching a point to argue that if participation of a person on horseback were banned, hunting as we know it would live on. If participation of a person mounted on a horse were illegal, that would be the end of mounted hunting. Suggesting that hunting would continue—with people on foot pursuing foxes, I presume—seems to be a flight of fancy, if I may say so. I cannot see it happening.

Amendment 41 also states specifically that the activity must be for the control of a pest species. As Elaine Murray knows, we have received evidence from John Gilmour and others who are engaged in hunts that mounted hunts are not an effective form of pest control because a large number of foxes—a massive majority—get away. Taken together, the two arms of the amendment stand up to her criticisms.

The Convener: Does Richard Lochhead want to say something?

Mr Tosh: With respect, convener, Elaine Murray asked me questions, too.

The Convener: If Richard Lochhead agrees, he can come in after Murray Tosh.

Richard Lochhead (North-East Scotland) (SNP): Sure.

Mr Tosh: We should try to get away from arguments about when a sport is a sport, what would be allowed on horseback and whether stoats and weasels, mink, hares or rabbits should be included in the bill.

A conceptual basis should be set out: causing unnecessary suffering to wild mammals is an offence. I have framed my amendments so that the courts decide about that. My judgment is based on the debates that we have had and the reports that the committee has written. It is clear that hare coursing causes unnecessary suffering. The committee did not discuss fox baiting, but it is inconceivable that it causes anything other than unnecessary suffering.

There are arguments for and against mounted hunting. Given the arguments of those who introduced the bill, I think that they are confident that they can prove that mounted fox hunting involves unnecessary suffering, as the fox is chased and killed at the end of the process. If that is a sound analysis, a court would be likely to judge that fox hunting constitutes unnecessary suffering.

I do not presume to judge: I am trying to create an ethical and conceptual basis for a series of judgments that might bear on activities that have not been discussed in committee or in the Parliament and have not been considered by any of the people who contributed to the briefing papers. Stoats and weasels were a late addition to the debate. Further categories of animal and activity could be included by adoption of the framework that I propose.

Richard Lochhead: I support Elaine Murray's comments on Jamie McGrigor's amendment 28.

I will comment on Murray Tosh's amendments and especially on the use of the phrase "unnecessary suffering". I advise the committee to steer clear of those amendments because, contrary to Murray's argument that they would add clarity and help the courts, those words would do the opposite—they would create much confusion and not help the courts. If those words were in the bill, different courts would impose different sentences for the same offence.

The committee struggled with the phrase "unnecessary suffering" during discussion of its stage 1 report and used it as a benchmark for deciding what was cruel. We found that difficult. Necessity was a difficult concept to grasp, and suffering was even more difficult. The committee concluded that no absolute measure of suffering exists. We had no clarity after our deliberations. I do not think that the courts could find clarity either. I therefore recommend that the committee avoids Murray Tosh's amendments.

I welcome Fergus Ewing's comment that he is willing to listen to arguments and perhaps to lodge similar amendments to section 2, which is the best place for addressing many of the issues that the committee must deal with.

We must take a clear steer from Parliament, which referred the bill back to the committee. Parliament wishes genuine pest control to be allowed to continue. That is the task that faces the committee. I hope that there is room for some consensus on section 2. If we work together as a committee and produce the best amendments for section 2, that will be the key to the bill.

The Convener: When a member who has

lodged an amendment is named by another member, I will allow the named member to respond soon after, if they wish to.

Mr Tosh: I am sympathetic to the idea of making the law so simple that Richard Lochhead will find every decision easy, but I am not sure whether that is possible. I originally tried to lodge an amendment with the phrase,

"with intent to inflict unnecessary suffering",

but it was disallowed. That phrase comes from the Wild Mammals (Protection) Act 1996. It is recognised in law and can be debated in courts. There is nothing inherently difficult in courts reaching different decisions, because every situation is different. The phrase that I used was carefully drawn from existing legislation.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I am no longer a member of the committee, but my interpretation is that quite a few members wish to follow what they believe is the will of Parliament on mounted hunting yet still to allow other methods of pest control, such as the use of hill packs, in upland areas where more effective methods of pest control, such as lamping, are not appropriate or effective.

The committee has three choices about how to address those problems. I do not think that Murray Tosh's amendments would satisfy the Parliament because leaving something up to the courts to interpret to that degree would not be putting the intentions of the Parliament into legislation.

Amendments 1 and 48 give us a problem with definition. If there are several people engaged in the activity, some of whom believe that they are there for pest control whereas others believe that they are there for sport, I am not sure where that would leave us. I am not saying this because of party affiliation, but something along the lines of Fergus Ewing's amendment 47 would give us the advantage of total clarity. No one could be in any doubt as to what amendment 47, or something along those lines, means.

15:00

At some stage in the future there might be a problem with gangs of people driving around on quad bikes and hunting foxes. If that were ever to happen, there might be a need to address it. One of my constituents said that he followed the hunt on a motorbike and that that gave him great pleasure. We did not go into whether the other inhabitants of the countryside shared that pleasure. However, that might be for the future.

I commend Fergus Ewing's amendment to the committee, either now or in the future, on the basis of its clarity of intention.

Cathy Jamieson: I have heard Murray Tosh explain his amendments several times, but I am still not convinced that his is the correct argument to use. We should accept amendment 38, which Mike Watson has lodged.

In his first comments, Murray Tosh explained that the courts would be able to decide on and scale the offences appropriately. I am concerned that that would lead to everything being proved on a case-by-case basis. There would be nothing but a succession of arguments, making a lot of work for lawyers, and nothing would be done to progress the fundamental principles of the bill.

I agree with Alasdair Morgan and Richard Lochhead in relation to the will of the Parliament. The Parliament made it clear that we ought to progress the fundamental principles of the bill. Mike Watson's amendment 38 helps to do that.

I am also concerned about some of the comments that have been made about the possibility of dogs taking off after wild mammals. I have owned dogs for many years and have not experienced bunches of marauding dogs running around and dragging back wild mammals all over the place. The majority of dog owners are responsible people and keep their dogs under control. Once again, amendment 38 helps to distinguish people who deliberately set out to hunt wild mammals. It would cover those unfortunate circumstances where, if something went wrong, a dog owner would find himself or herself being penalised. That is an acceptable way forward.

Dr Murray: Amendment 39 and the amendment that I lodged at stage 1 try to achieve similar aims. I have sympathy with amendment 39. I merely make the point that, unfortunately, my amendment was heavily defeated at stage 1. It would therefore be difficult to interpret amendment 39 as being the will of the Parliament.

David Mundell (South of Scotland) (Con): Convener, you ruled that my amendments about intention are inadmissible. I feel that Cathy Jamieson and Elaine Murray have raised important issues. It would be useful for Mike Watson to respond to those issues in his summing up.

When I was a law student and later a practising lawyer, the issue of intention—or mens rea—and strict liability was the subject of a lot of discussion. The question was whether someone should be guilty of an offence simply by committing the offence. That often applies to offences such as speeding—which some members around the table have experienced—where the action is an offence by the doing of it. There are then offences that require the intention to commit a criminal act or to have such a wilful disregard for the law as to bring criminality upon yourself.

The point is important because the answer was not clear to me in the stage 1 debate in the Parliament. It was legitimate to discuss at that stage whether the overriding purpose of the bill is to create a strict liability offence or an offence that is based on some degree of intention. It is important that that is clarified.

The second point that concerns me, which Richard Lochhead raised, is a fundamental of the legal system: how much discretion judges and justices of the peace have in sentencing. That has been discussed at many levels and in many places. We need clarity with regard to the offence that would be created by section 1, for example. Either it is intended that there should be some discretion for the judge or magistrate or it is not. My initial reading of the bill was that there would be discretion and that people could be sentenced differently in different courts because their circumstances were different.

The Convener: If no other member wishes to speak, I would like to say that in the early days of stage 1, Mike Watson said that cruelty was the centrepiece of the bill, or words to that effect. The universally accepted definition of cruelty is the causing of unnecessary suffering. On that basis, I find Murray Tosh's amendments 39 and 40 more than relevant to the proceedings. I will limit my remarks to that.

I invite the minister to comment on the debate and to make her own points on the group.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): As the committee is aware, the Executive has a neutral position on the principles of the Protection of Wild Mammals (Scotland) Bill. I restated that point at the stage 1 debate on 19 September. However, the Executive has an interest in ensuring that any legislation passed by Parliament is workable in law, so it is obliged to reach a view on whether lodged amendments are workable in law. That has nothing to do with admissibility, which is a matter for the convener.

It is for the committee to decide whether to accept or reject the amendments that have been lodged to section 1, but where amendments cut across broader Executive policy, I will want to bring the Executive view on those amendments to the attention of the committee. Today, I want to mention the three amendments—amendments 1, 48 and 49—and the associated proposed change to the long title of the bill that were lodged by Mike Rumbles. They will cause two difficulties, which lead me to invite the committee to reject them.

First, the introduction of the term "sport" builds in the further hurdle of what is regarded as sport and may present difficulties in enforcement and prosecution, in particular in borderline cases. Secondly, it introduces a defence for those who continue to hunt, who could claim that they were not participating in sport, but were engaged in pest control. It is not possible to anticipate with any certainty how courts would react to that additional hurdle, which relies absolutely on the mental element in relation to the accused; that is, whether the accused hunted principally for the purpose of deriving pleasure. Moreover, we do not consider that the problem can be overcome by alternative drafting solutions.

I invite the committee to reject the amendments.

Mr Rumbles: I am not clear which amendments the minister recommends the committee should reject. Will she repeat them?

Rhona Brankin: Amendments 1, 48 and 49, and the associated proposed change to the long title, in your amendment 18.

Mr Rumbles: That comes as a surprise to me, because that was not my understanding of the Executive's position, especially in relation to amendment 48.

The Convener: Does the minister wish to comment?

Rhona Brankin: No.

The Convener: You have stated your position and you are happy with it.

I ask Mike Watson to wind up the debate and either to press or withdraw amendment 38.

Fergus Ewing: Before that happens, may I ask for clarification while the minister is present?

The Convener: If you are brief. [*Interruption.*] I ask members to conduct one meeting at a time, please.

Fergus Ewing: I understand that the Executive has adopted a neutral position in relation to the bill and I listened with interest to the Executive's position on Mr Rumbles's amendments. The minister did not comment either on Mr Tosh's amendment 39 or on my amendment 47. Perhaps there has been no opportunity for her to do so, but I would be interested to know the Executive's views on amendments 39 and 47. Conceptually, the amendments open two different approaches to the committee. As the minister has heard, committee members genuinely desire to work together as far as possible to come up with a workable, enforceable and practical bill. I hope that the Executive will give us constructive comments to allow us to achieve that purpose. If the minister believes that either approach is flawed, please indicate what those flaws are. Alternatively, if the Executive decides to support either Mr Tosh or me in our general approach, clarification would be most welcome.

Rhona Brankin: I reiterate that the Executive remains neutral on amendments 39 and 47.

Mike Watson: I shall deal with the amendments in the order in which they were discussed.

Murray Tosh said that he sought to bring greater clarity to the issue by introducing, in amendment 39, the term "unnecessary suffering". I do not believe that the incorporation of that term would bring greater clarity to the bill; in fact, I believe that the opposite would happen.

A number of members have made comments—I think that Cathy Jamieson talked about the legal implications of trying to establish "unnecessary suffering". It would be an absolute delight for David Mundell and his professional ilk to try to establish what is and what is not "unnecessary suffering", but I suggest that to show "unnecessary suffering", it would be necessary to have witnesses who saw the dog—or dogs—hunting, to gather evidence such as the corpse of a fox, and to do so in every case. That approach might be a lawyer's delight, but it would be a bureaucratic nightmare for the courts. I cannot accept that it is an advance in any way.

The committee considered the bill for about 18 months and its stage 1 report concluded that mounted hunting causes some unnecessary suffering, that hare coursing is cruel and that fox baiting is abhorrent. It would be quite unrealistic to expect a court to repeat those deliberations in every case in which an allegation of hunting is made. That approach is simply not possible. The committee in its stage 1 report found in favour of a ban on cruel and unnecessary activities. It is fair to say that the Parliament concurred with that view during the debate of 19 September.

Hunting requires Government legislation because it can be defined as cruel only by the Parliament. That is widely accepted. I accept the conditions on which Murray Tosh lodged amendment 39 and his motives for doing so, but I think that it would have the opposite effect to what is intended and I hope that the committee will not support it.

15:15

I regard Mike Rumbles's amendments as wrecking amendments. There are four of them in total, if we include the amendment to the long title of the bill. Amendments 1, 48, 49 and 18 would alter substantially the force of what I seek to achieve and amount to a back-door method of allowing mounted hunting and hare coursing to continue. That surprises me. In the past, Mike Rumbles has argued publicly that he is not in favour of mounted hunting or hare coursing. He has said that his concerns relate to the use of dogs, particularly terriers, and that he hopes to amend the provisions relating to that issue. However, amendment 1 is a sweeping amendment that would run counter to the view that the Parliament expressed on 19 September. I will do no more than make passing reference to the fact that I am surprised that it has been accepted as admissible, but it has been, and we must deal with it on that basis. However, it runs contrary to the statements that Mr Rumbles has made previously.

In his opening remarks, Mike Rumbles said—rather pompously—that when we debated the bill in September, all other members of the Parliament were clear about what the bill is trying to do. Fergus Ewing also spoke on behalf of other MSPs. I do not think that that can be done at all effectively. For a start, I am not at all sure what constitutes sport. Is sport competition, is it exercise, or is it fun and enjoyment? The closest that I get to sport these days is to go road running. That is not competitive—I do not run against the clock or against other runners. I do not get a great deal of enjoyment out of running and I certainly do not regard it as fun. Is that sport? I will leave others to judge whether it has any effect on me.

What are the components of sport? Mike Rumbles never told us what constitutes sport. Defining it is a potential legal nightmare. I have real worries that people involved in mounted hunts would be quick to claim that they were not hunting for sport, but were involved in pest control. The committee has heard over a number of months that the contribution that mounted hunting makes to pest control is at best negligible, so I suspect that that argument would not hold much water. In any case, I would argue that the sporting component of an activity is not necessarily what makes it cruel. It could be argued that gun packs, in which farmers come together to flush and shoot foxes, have a social element. However, flushing to guns in itself need not be cruel, and the bill quite clearly permits it. Members clearly expressed the view that mounted hunting and hare coursing should be banned and Parliament decided that that should happen. The only serious doubt concerned the activities of dogs, particularly underground. I would argue that mounted hunting and hare coursing are principally sporting activities, but the courts would find it impossible to determine the motives of huntspeople involved in those activities. I am concerned about that.

To introduce the notion of sport into the bill would, as I said, contravene the principles that gained broad acceptance in the debate of 19 September. For that reason, I do not think that the committee should support any of the amendments in the name of Mike Rumbles. It goes without saying that I welcome the Scottish Executive's position as outlined by Rhona Brankin.

I do not understand why Fergus Ewing feels that it is necessary at this stage in the bill's passage to introduce provisions relating to pest control and the definition of a pest. It may be appropriate to define pests—I am not intrinsically opposed to that—but I suggest that the best place to insert such a definition is section 7, not section 1.

I understand the points that Fergus Ewing made and his comments about hunting on horseback, and I accept his view—which was clearly stated—that he is not in favour of mounted hunting. However, I do not think that amendment 47 takes the argument forward; it introduces issues that are extraneous to section 1. I therefore hope that Fergus Ewing's amendments will not be supported either.

Jamie McGrigor and David Mundell talked about intent. I would say that the word "deliberate" applies only to hunting, not to the accidental release of a dog for another purpose, such as when someone is out walking. Hunting is an intentional act that needs no qualifying; when people are hunting, they know what is involved. That is why I support what Elaine Murray, Richard Lochhead and Cathy Jamieson said. David Mundell talked about mens rea. I am an economist, not a lawyer, and mens rea sounds to me like a top-shelf magazine. I am sure that intent—if that is what the term refers to—is the most important thing, and that has to be as clear as possible in the bill.

The bill has been criticised, from day one, for not being clear. I am trying to improve the bill where I can as the process continues, either by lodging amendments or by supporting amendments that I believe improve it. I believe that amendment 38 makes the issue of intent clear by combining subsections (1) and (2).

I hope that the committee will support amendment 38 and not the others.

The Convener: I invited Mike Watson to wind up, but I am not allowed to ask other members to speak.

Mr Rumbles: I have a point on procedures.

The Convener: Briefly, please.

Mr Rumbles: This is an important debate on a very important bill. One of the members who is present today has used every conceivable procedural point to pose difficulties. In his opening comments, Mike Watson made it clear that he wanted to listen to all members, which I thought was commendable. However, that then allowed him to raise new issues in his closing remarks. He has personally attacked my amendments as wrecking amendments. He has also said that he has not read all the amendments that we are considering today. If he reads amendment 49, he will see that it contains a definition of sport. Mike Watson has used procedural methods to their best effect—I compliment him on that—but that has not had the best effect on the debate. I would like that fact to be noted.

The Convener: The fact that you have raised it means that it is recorded in the *Official Report*.

I have a point to make that I thought I had made clear earlier. If I had thought for one moment that an amendment was a wrecking amendment, it would have been deemed inadmissible. I am sorry that my judgment has been called into question.

We have completed debate on the first group of amendments. The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

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

Amendment 38 agreed to.

The Convener: Amendment 39, in the name of Murray Tosh, was debated with amendment 38.

Mr Tosh: Amendment 39 is pre-empted, but I am happy to move amendment 52, which is compatible with the decision that the committee has just made.

The Convener: That is procedurally correct.

Mr Tosh: I move manuscript amendment 52, in section 1, page 1, line 4, to leave out from "must" to "(1)" in line 5 and insert:

"who deliberately hunts a wild mammal with a dog in such a way as to cause unnecessary suffering".

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 52 disagreed to.

Amendment 48 moved—[Mr Mike Rumbles].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 2, Against 8, Abstentions 1.

Amendment 48 disagreed to.

Amendment 47 not moved.

The Convener: Amendment 1 is pre-empted. Does Murray Tosh wish to move amendment 40?

Mr Tosh: Amendment 40 is also pre-empted, is it not, by the passing of amendment 38?

The Convener: As ever, Murray, you are one step ahead of me—rather, you are often so. You are correct that amendment 40 is pre-empted by amendment 38. Amendment 41 and amendment 28 are also pre-empted.

Amendments 49 and 50 not moved.

The Convener: Amendment 29 is grouped with amendments 30, 31, 42 and 43.

I ask David Mundell to speak to amendment 29 and the other amendments in the group.

David Mundell: As in the previous discussion, it is important that we clarify that whatever happens in relation to the bill and whatever its relative merits or demerits—which the committee has discussed and which have been debated in Parliament—a bill such as this cannot fundamentally change the established legal principles of Scotland. If people are to be accused of committing a criminal offence, the normal rules of evidence will apply.

A person cannot be found guilty of an offence without somebody giving evidence that they were, indeed, hunting with dogs. That principle was evident in my previous analogy about speeding offences: an individual cannot be charged with speeding unless there is supporting evidence. If an individual chooses to take the matter all the way to the courts, they have every right to do so. All the evidence has to be brought before the courts. Even in the light of the amendments to section 1 that have been accepted, all committee members must accept that there will be cases in which evidence is required. For example, there has been much discussion about drag hunting. If I were in a field, on a horse—provided that a suitable horse could be found for my weight and equestrian skills—wearing a red coat, with a dog beside me, I would not necessarily be guilty of an offence because I might be participating in a drag hunt.

15:30

A great deal of legal and evidential issues will arise from the passing of the bill. Like it or not, lawyers will have to be involved. They will debate the matter, people will appear in court and the legal aid budget will increase—people in the aristocracy tell me that they are in impecunious circumstances. The events will continue to happen; they will not be wiped out by the passing of the bill. We will still have to adhere to the fundamental evidential points on criminality.

I lodged amendment 29 because I believe that rather than clarifying the legal position, the bill will make it much more confusing and will introduce a number of concepts that will require legal debate. The bill will also—unintentionally, I am sure—criminalise a host of people who might have no intention of engaging in criminal activity. If we are concerned with intent, we should try to concentrate on that in the bill.

Despite the rather quaint terms of the Scottish legal system, such as mens rea, it is well regarded and is understood to have the ability to adapt,

particularly with regard to ancillary or secondary offences, and to bring in people who conspire to commit a crime, which in common parlance is called aiding and abetting, although that is not a technical Scottish term. People who have set out with the intention of helping somebody to commit a crime are already covered by the legal system in Scotland. The bill will bring in additional terminology and creates a lack of clarity about the meaning of "permit". Does it mean that landowners will have to know whether a person is going on to the land to hunt? If a landowner allows a person with a dog on to the land, must he take into account whether they could be hunting? Will landowners have to ask people or take steps to prevent people from hunting if they go on the land? Will they have to erect barriers? Those issues will arise if section 1(3) is passed as it stands.

The committee has accepted an amendment to section 1(1) and I am sure that, on the basis of the previous majority, the Parliament will accept it. The people whom the bill intends to catch are those who intend to support someone else in committing a criminal offence, but they can be caught by the legal system as it is in Scotland. Therefore, section 1(3) does not add anything, but merely creates additional confusion. Fergus Ewing quoted a little maxim earlier on. Mine is simpler: when in doubt, delete it. That is the purpose of amendment 29.

I lodged amendment 43 in the spirit of offering a menu for members who are not minded to accept the deletion of section 1(3). Amendment 43 would insert text to make it absolutely clear that, where permission is given, the intention should be that the person is permitted on to the land with the intention to hunt.

Amendments 30, 31 and 42 seem to relate to the range of other options that the committee could consider in tackling the issue. However, my view is that those amendments should not be moved, and that it would be better to delete the whole subsection.

I move amendment 29.

The Convener: John Scott was meant to speak to amendment 30, but as he is unable to be here today, Murray Tosh will do so instead.

I should have pointed out earlier that, if the committee agrees to amendment 29, all the other amendments in the group are pre-empted. Forgive me for not saying so earlier.

Mr Tosh: Basically, I agree with David Mundell's point. However, I am mindful of the possibility that the committee might decide to retain section 1. In voting as it has on amendments 38, 52 and 48, the committee has put in place a new law that in effect makes it an offence deliberately to hunt wild mammals with a dog. I suspect that over the years there will be rich pickings for people trying to establish what "deliberately" means in such circumstances. However, it is clear that the substantive offence will now be established in law and that anybody who does any of the things that are mentioned in sections 1(3), 1(4) or 1(5) to aid and abet the person who commits the primary offence will have committed a lesser offence.

That said, such action does not appear as a lesser offence in the bill. Although the criterion of deliberateness appears against the principal offence, it does not appear in subsections (3), (4) or (5). One could act in each of those categories in a way that contributed to the crime, but the prosecution would not need to apply the test that an offence was committed deliberately, wilfully or knowingly. That would be a dangerous law to pass.

Amendment 30 again raises the point about the word "knowingly". It covers the fact that the owners and occupiers of land are many and varied and can be people who have a distant interest in or relationship to the land, and who might not be in a position to exercise the degree of control over the land that is assumed in the bill. It is therefore appropriate to insert the word "knowingly" to ensure that the person who commits the alleged offence must be shown to be doing something deliberately and in the knowledge that the commission of a crime was a possibility.

On amendment 31, we must discuss what the word "permission" means. There are great gradations of permission and the law is not necessarily clear about the definition of the word. Is a landowner as guilty as the offenders are, if people he lets onto his land for what he thinks are lawful activities commit an offence? Has he given permission in such circumstances? Must permission be actively given or is the mere failure to prevent the criminal act where it is within one's power to do so—for example, by maintaining a fence or erecting a sign—sufficient? The bill does not clarify that. How, to avoid committing a crime, are owner-occupiers of land to know whether they have discharged the duty imposed by the word "permit"?

Section 1(3) places on landowners the responsibility for taking steps to ensure that anybody who is lawfully on their land does not hunt. In practice, that appears to put on to farmers or landowners the onus to police the act. Is that reasonable?

The bill as it stands refers to the

"owner or occupier of land".

Who are those people? The terms owner and occupier include, I understand, people who have only a nominal, indirect or minority interest and

involvement in the land. There is a risk that unfairness will be created. If a person has a minority interest in the land, he or she might have a strong view that the land should not be used for hunting, but might not be in a position to enforce that decision. Somebody who has the majority of control of the land might give permission for the land to be used in that way.

Who is the occupier? Is it the tenant on the land or is it the landowner? What happens if a tenant wants to make it impossible for people to exercise a dog—say a lurcher in pursuit of a rabbit—on the land, but the owner does not care and permits that? What happens if the owner says to somebody to go ahead and do that? Has the tenant in that case committed an offence? I argue that there is a risk that the bill as it stands permits that situation to arise because it is not clear about who is in a position to give permission, nor about what constitutes that permission.

An owner of land might in practice be neither the occupier nor the controller of it. The owner might own the freehold, but the land might be tenanted or leased to a third party. The owner might be hundreds of miles away and have no direct involvement with management of the land. If the offence is committed on that person's land, given the terms of the bill, that person might have committed a crime. That crime is more severe than the crime that the hunter has committed because the hunter must be found to have done something deliberately, but the landowner does not necessarily have to be found to have acted deliberately.

There are remote forms of ownership of land. A holder of a floating charge over part of a company's undertaking, a trustee in sequestration, an administrator, a receiver and a liquidator in certain circumstances are all the owners of land. I am sure that Mike Watson and the supporters of the bill did not propose for a moment that such people should be liable, chargeable and sentenceable. However, as the bill stands, it would be perfectly possible for somebody in those circumstances to be taken to court, charged and found guilty. Because we have no guidelines to guide the court on the severity of the sentence to be imposed, it is possible—although extremely unlikely—that somebody could be sent to jail for six months.

All those difficulties could be removed by taking out a redundant subsection of the bill. If the committee is minded to keep it in as a declaratory subsection, I urge the committee to amend section 1(3) by inserting the word "knowingly". That will put on the prosecution the burden of proving that the person who made the crime possible did so knowingly and in anticipation that a crime would be committed. I urge the committee to insert the words "gives express permission for", so that the permission cannot be some form of assumed permission, accidental permission or permission that is involuntary or unknown by the person who might be accused. The wording in amendments 30 and 31 does much to mitigate what is, as it stands, an unnecessary and potentially harmful subsection.

The Convener: Thank you very much. Do you wish to resume your own persona?

Mr Tosh: I spoke to amendments 30 and 31.

Mr McGrigor: Amendment 42 is similar to amendments 29 and 30 and I support those amendments. Amendment 42 seeks basically to point out or clarify who would be guilty of an offence. There is no clarity about what the offence consists of and what the term "permits" might include. With the land reform bill coming along, that is going to be important. If somebody gives permission for another person to go on to his or her land and an offence is committed, how would we define who is the owner? It could be anybody. Many people have interests in land. It must be shown who committed the offence. That is what amendment 42 would do. The definition of occupier, for example, could include people such as gamekeepers who have an interest in control of the land. Such people might tell somebody that he or she can go on to the land, but might not be aware of what that person is doing, and might think that that person is not committing an offence, when they are. Under section 1(3) they would be liable. My amendment tries to clarify that.

15:45

Dr Murray: David Mundell is a lawyer and has made it clear that the offence under section 1(1) would mean that people who offended under section 1(3) would be covered by the law. The only problem with omitting that subsection is that others who are less well versed in the law might not be aware that they would be covered by the offence under section 1(1). It is probably necessary to include wording that indicates to people that they would be guilty of an offence if they allowed deliberate hunting to go on on their land.

I have some sympathy for the points that are being made on what constitutes intention and what constitutes permission. I do not speak from the position of a solicitor, so I might have a more simple-minded way of considering the matter. However a farmer, for example, who was asked for permission to exercise horses or dogs on his land might feel that if those animals were, unbeknownst to him, used in a way that was against the law, he could be prosecuted.

I would like to explore—with Murray Tosh in

particular—the legal definition of "express permission". Does the definition make it clear that express permission must be given in writing or that it must be said, "I will allow you to use this land for hunting"? David Mundell referred to drag hunting; indeed, one of the arguments of the proposers of the bill was that foxhounds would not need to be put down because they could be used for drag hunting. However, if the owner or occupier of land gave somebody permission for drag hunting and that person went fox hunting instead, how would that owner or occupier be certain that he or she were not prosecutable? I would like some clarification of "express permission". Is there a legal definition, which would tighten up the subsection to indicate that people would have to signify their permission for the activity that was being indulged in?

Mr Tosh: I am not a lawyer, although David Mundell says that I should be. [*Interruption.*] Mike Watson says that I deserve to be—that is worse. I approach the matter more from a linguistic than a legal point of view. I understand that "permit" might mean just about anything, including not taking action to prevent something. It is a loose and imprecise term, whereas to give express permission means that one must commit positively—through a verbal or written statement of some kind—and say, "I know what is going to happen here and I say that that is all right." It would constitute a deliberate act, rather than an implied, accidental or even unknowing act, which is what "permit" could include. Although the question was put to me, David Mundell—who is a lawyer of sorts—might be in a better position to answer it.

David Mundell: Thank you, Murray. The great benefit of sticking with the common law position is that the concept that I introduced earlier—mens rea—is a fundamental part of the common law. One must intend to engage in criminality. As Mike Watson said in relation to section 1(2), intention is at the core of what he hopes the bill will achieve. That is why I think that reliance on Scots common law is the simplest way forward. With respect, Elaine Murray's argument is one that could be applied to a host of things. We could fill out most legislation that creates criminal acts with a host of declarations of other possible offences. We do not do that in general, because we rely on established common law mechanisms.

The second point in relation to permission is important. Many people are tenants on land and could be put in a difficult position if the landowner said that he or she was going to hunt on the land. What must such people do to make it clear that they are not a party to a criminal offence? As drafted, section 1 throws up so many difficulties that it would evidently be more beneficial to rely on the common law position.

Elaine Smith (Coatbridge and Chryston) (Lab): I am confused by what David Mundell says. On one hand, he says that he wants section 1(3) to be removed. However, he also says that, if that does not happen, he wants to beef up the subsection. That seems strange, given that he does not think that it should exist in the first place. I am not a lawyer, but I am concerned that if that subsection were left out, it would be impossible to prosecute people who allowed organised hunts and hare coursing on their land.

I have sympathy with the situation that tenants of landowners would be in and I acknowledge that there might be a problem in relation to who gives permission for hunts. With that in mind, will Murray Tosh say whether he will move amendments 30 and 31? If he is going to move them, can those two amendments be voted on together? If they were both included, the bill would read,

"knowingly gives express permission for".

The Convener: I can clarify your final question. The amendments will be voted on separately.

Elaine Smith: In that case, if amendment 30 were agreed to, would 31 fall?

The Convener: No.

Elaine Smith: So it would be possible for both amendments to be included in the bill.

The Convener: Yes.

Mr Tosh: I might be able to help. One of the amendments is in my name and one is not. I would have thought that the strength of the argument would convince the committee that there is some purpose in clarifying the intention of section 1 (3) and that the committee could usefully choose between amendments 30 and 31. I would have expected that, if the committee favoured one, it would be unnecessary to move the other. Although both amendments could be included, that would be slightly redundant.

Elaine Smith: I am glad that that has been clarified.

Given everything that Murray Tosh said, it seems that section 1(3) is not redundant, as David Mundell suggested. In fact, it is necessary.

The Convener: I ask David Mundell to respond to that point when he winds up the debate.

David Mundell: I will deal with the legal issue at that point, but I should clarify now the other issue for Elaine Smith. The clerks advised members that we could submit a graded range of amendments, seek to convince the committee of an argument and offer it a number of options. That is what we have sought to do.

Elaine Smith: I understand that very well in relation to other amendments, but not in relation

those we are debating. It is strange to say that we do not need section 1(3) because the law already covers the matter and then to somehow try to beef up that subsection if it is decided that it should remain. However, I have had an answer to my question, so I will leave it at that.

Richard Lochhead: Perhaps I can begin by congratulating my three Conservative colleagues on putting forward the best case for land reform that I have heard in a long time. It ranged from saying that people do not have a clue what is going on on their land, to saying that they perhaps live hundreds of miles away and still do not have a clue what is going on. Roll on the land reform bill.

David Mundell said that not agreeing to his amendment would reach to the fundamentals of Scots law. That was not mentioned in the then Justice and Home Affairs Committee report on the matter. When Murray Tosh was taking some time to speak to amendment 30 in John Scott's name, I took the opportunity to read through that report. It is surprising that it does not mention that point, if the amendment is as fundamental to Scots law as David Mundell suggests. It is important that we leave section 1(3) in the bill because it will implicate landowners who knowingly allow hunts to take place on their land.

However, I am in favour of an amendment along the lines suggested in amendment 30, to insert the word "knowingly". Because there is a drive to have different forms of ownership of land, there is a question of justice at stake. Perhaps we could address that by including amendment 30, of which I am in favour.

Mr Rumbles: It strikes me that section 1(3) is somewhat draconian. It states:

"An owner or occupier of land",

in other words, a land manager,

"who permits another person to enter or use it to hunt in contravention of subsection (1) commits an offence."

That is quite illiberal in design and I have no hesitation whatever in supporting amendment 29 in David Mundell's name.

Rhoda Grant (Highlands and Islands) (Lab): I would like some clarification of whether "permits" in the bill refers to active giving of permission. In other words, I read it to mean that somebody could not commit an offence under the bill if they had not actively given permission. Perhaps Mike Watson can clarify what he understands by the term "permits". Amendment 30 appears to give that point more emphasis. Amendment 31 uses the words "gives express permission for" and that phrase causes me concern. Could a person ignore something that was going on and therefore be found not to be giving it express permission? The amendment goes a little too far.

The Convener: Mike Watson will be given a chance to speak towards the end of the debate.

Alasdair Morgan: I was the convener of the then Justice and Home Affairs Committee when it produced its report, although I was not a member of the committee when it took evidence. We did not address the necessity of section 1(3). David Mundell and other members have made some reasonable points and I would like to hear Mike Watson's and the minister's responses to those points. We want legislation to be as simple as possible and if the bill will achieve the objectives of section 1(3) without the inclusion of section 1(3), we should pursue that conclusion.

The Convener: Fergus Ewing had asked to speak on the group but is currently absent from the room. Are there any other comments?

David Mundell: I would like the minister to say whether she is satisfied that the Scottish Executive, one of the largest landowners in Scotland, will not be guilty of an offence under section 1(3).

16:00

Dr Murray: I want to respond to David Mundell's suggestion that we omit section 1(3) altogether. One of his arguments was that much current practice under Scots law implies that people who aid and abet are guilty anyway. Under his suggestion, whereby that subsection would simply be omitted, instead of express permission having to be given or something having to be done knowingly, what would be necessary to indicate that somebody had aided and abetted the crime?

David Mundell: It would be necessary to demonstrate intention.

Dr Murray: What form would that take? How would intention be demonstrated?

David Mundell: It would be the subject of proof within the court system. In other words, evidence would be led that there was a clear intent. The court would have to be aware of what a person intended to do, or of what the clear possible consequences of the person's action were. Judgment would then be passed on the basis of intent.

Dr Murray: I am driving at the question whether that would protect the tenant in the case of a landowner deciding that he or she wished to hunt on the land that was occupied by that tenant. John Scott's amendment 30 and Murray Tosh's amendment 31 would mean that, to be found guilty, the tenant would have had to give permission, as it were. How would David Mundell's suggestion protect the tenant whose landowner decided to hunt on that land?

David Mundell: I should be clear about this: I am speaking in my personal capacity. I am not speaking with my former Law Society of Scotland indemnities in mind—if I were, I would be charging £300 a minute for my contributions. I am expressing only my own view, to allow academics and others to trawl over it. In my view, a tenant under such circumstances would not be guilty because that tenant had no intention of facilitating a crime.

The Convener: I ask members of the Law Society to write to Mr Mundell, rather than to me, on the hourly charge that they levy.

Mike Watson: There are two distinct parts to the debate on this group. David Mundell's amendment 29 concerns me because, were it to be accepted and section 1(3) to be removed, those people who allowed organised hunts or hare coursing on their land could not be prosecuted. That would be quite outwith anything that I would hope to achieve through the bill.

If I caught David Mundell correctly, he said that those committing an offence would be caught otherwise in legislation. I suppose that they may be, but I would be unhappy about leaving the door so widely ajar. For that reason, I think that section 1(3) is required.

I am sorry that John Scott is not here to hear me say that I find his amendments 30 and 35 basically acceptable. I am slightly puzzled that, although David Mundell, Murray Tosh and Jamie McGrigor share the same party affiliation, they seem to be saying slightly different things. Furthermore, when the Hunting Bill was debated in the House of Commons earlier this year, two Conservative members, John Bercow and Edward Garnier, argued that the words "knowingly permits" should be removed from that bill. My memory on that is not absolutely clear—they may have argued for a tougher clause that would have required written permission—but they made different arguments to those that we have heard today.

Amendment 30, which would insert the word "knowingly", would be acceptable to me.

Rhoda Grant asked what I thought "permits" in section 1 of the bill means. My understanding is that "permits" means that the person allows someone to carry out hunting. The word implies that that person has knowingly accepted that hunting is taking place and is acting in full knowledge. Intent is important. The onus of proof should be on the prosecution to demonstrate that permission was given. The courts would have to come to terms with that.

I am a bit unhappy with the other amendments, especially amendments 31 and 36, in the name of Murray Tosh, amendments 42 and 44, in the name of Jamie McGrigor, and amendments 43 and 45, in the name of David Mundell. Those amendments seem to erect a considerably higher hurdle for any prosecution.

The Convener: Some of those amendments are in a different group. We must stick to the amendments within the current group.

Mike Watson: I apologise.

I am not happy about the higher test that those amendments would apply, but the addition of "knowingly", by means of amendment 30, would provide adequate cover to ensure that people were not unwittingly drawn into such an offence. The person who owns the ground or is the occupier of the ground should be able to say, "I was not aware that this was going on." That would not be wrong.

Murray Tosh asked how an owner who was thousands of miles away could be held liable. My view is that it would be unlikely that anyone who lived thousands of miles away could be held liable. However, the bill says "owner or occupier", not both. If the owner is thousands of miles away, it is likely that the occupier will be present. It seems reasonable to assume that the occupier is occupying with the permission of the owner, so the occupier could be held liable. I would not seek to drag both owner and occupier into the net—if that is not an unfortunate term. Either the owner or the occupier would be liable.

I hope that that has clarified matters to some extent. The hurdle that the other amendments would set is too high, but amendment 30 is acceptable to me.

Rhona Brankin: I agree broadly with Mike Watson's interpretation. Permitting hunting to take place includes the element of knowledge. One cannot permit something without knowing about it. The addition of "knowingly" is not problematic.

A question was asked about what will happen on land that is owned by the Executive. We will not permit a person to enter land in order to hunt. The key thing is the intention to hunt.

David Mundell: Consideration of this group has been illuminating. Clearly, the way in which to prevail upon the committee is to do as John Scott did and not turn up.

Mike Watson touched, unintentionally, on the main difficulty, which is that ultimately the decision on who will be prosecuted will be taken not by Mike Watson or the Rural Development Committee but by the Crown Office and Procurator Fiscal Service. Once the bill has been passed by the Parliament, members of the Parliament do not retain control over it so that they can say, "I want this person prosecuted and not that person." The bill will be judged on the basis of what is in the bill, not on what any of us round this table thinks.

When we step back from it, we must look at it in that way. In section 1(1), we have created a criminal offence. The well-established law of Scotland, which is accepted in relation to criminal matters, clearly provides for the ability to prosecute anybody who assists with the perpetration of a crime, but also provides that that must have been done with intention. In my view, the greatest clarity would come from the deletion of section 1(3).

Of course, we cannot win. Elaine Smith and I have both pointed out that there are differing amendments. Lord Watson mentioned the fact that a number of members have lodged a variety of amendments. That variety allows the committee, on the basis of a debate that has touched on the key issues, to determine which of those options they want to select. Of the available options, obviously I give preference to my own, as I think that it adds the maximum clarity, although it also adds the maximum number of words. However, I would not be disinclined to the acceptance of any or all of the other amendments in the group.

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 29 disagreed to.

Amendment 30 moved—[Mr Murray Tosh.]

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

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

Amendment 30 agreed to.

Amendments 31, 42 and 43 not moved.

The Convener: Amendment 32 is grouped with amendments 33 to 36, 44, 45 and 5. If amendment 32 is agreed to, it will pre-empt amendments 33 to 36, 44 and 45, but not amendment 5.

David Mundell: I am now not adhering to what I said a few minutes ago, but I wonder whether I would have given my amendments a greater chance of being agreed to by leaving the meeting.

I shall set out briefly why I believe that section 1(4) should be deleted. My argument is very much in line with what I said about section 1(3). Given that a primary offence is created in section 1(1), I believe that the common law of Scotland would cover it. As Mike Rumbles said in our discussion on section 1(3), it would be draconian to go beyond that. Like subsection (3), subsection (4) throws up many questions—about what a keeper is and what their responsibilities are, for example. Those issues could be avoided simply by deleting subsection (4), which would mean that we did not have to get into whether a child who was walking a dog was considered its keeper.

16:15

If the committee is not minded to delete section 1(4), the other amendments to the subsection offer the committee a range of alternatives that would provide some clarity on the issues that I raised. I do not wish to impact on Elaine Murray's credibility, but I would have lodged an amendment to delete section 1(5) had she not done so. Section 1(5) would criminalise people simply because they kept dogs, which cannot be the intention. I will support amendment 5.

I move amendment 32.

Mr McGrigor: Amendment 33 deals with the word "keeper", which is not defined and is excessively broad. It might mean a child who, while out walking a dog, loses control of it. A child who is over eight years old has criminal responsibility. If a dog put up and chased a hare or a rabbit while it was on a family walk, who would be prosecuted? Who could be said to be the dog's

owner? Would that be the keeper, or could the entire family be prosecuted?

The word "permits" is opaque. Section 1(4) is unclear and illustrates the absurdity of trying to legislate on animal instincts and to make humans criminally liable for the natural and instinctive actions of dogs. Any person who owns a dog will know that.

Mr Tosh: I will speak to amendments 34 and 36 in my name and amendment 35 in John Scott's name. I also support David Mundell's amendment 32. The arguments behind amendments 29, 32 and 5 are identical and the amendments stand or fall as a group. I support those amendments, and I signed amendment 5.

Amendment 34 is based on an understanding that it might not be appropriate to prosecute solely the owner. It might be unreasonable for the owner to be held responsible for the act of someone else who was in charge of the dog.

I share Jamie McGrigor's concern about the word "keeper". I have heard the argument that an eight or nine-year-old child who is just within the limits of legal liability can be the keeper of a dog. I do not think that the committee intends such a person to be prosecuted. If the person with responsibility for a dog at any given time allows or causes that dog to act illegally, that person should be liable. The phrase

"owner of, or person having responsibility for"

seems to cover all the possibilities.

The arguments for inserting the word "knowingly" are identical to those used before. I hope that the committee will take the same view of subsection (4) as it took of subsection (3)—that intention should be considered so that there is proper liability for prosecution.

On the same basis, I prefer the expression "gives express permission for" to "permits". However, as I did not move amendment 31, I do not propose to move amendment 36 if the committee is minded to accept "knowingly" as an insertion. That would be consistent with what was decided in the previous group of amendments.

Dr Murray: In amendment 5, I am arguing that section 1(5) should be deleted altogether. It would be extremely difficult to prove that someone is keeping dogs with the intention of hunting with them, unless they hunt with them. That could be equated to the possessing of a car that is capable of going above the speed limit—the offence is committed only when it is so used.

An intention to hunt would be extremely difficult to prove. I return to the issue of drag hunting which, as I said earlier, has been used to demonstrate that horses and dogs would not necessarily have to be put down as a result of the legislation. What is the difference in intention between people owning a pack of foxhounds for the purpose of mounted fox hunting or for the purpose of drag hunting? It would be only when the dogs were taken out to hunt the fox that the person would be guilty of the offence. It would be difficult to prove the purpose for which the hounds were being kept.

Equally, when fox hunting is prohibited, if a dog lover was prepared to adopt a pack of foxhounds to prevent them being put down, how would the dog lover be able to prove that they did not intend to use the hounds for fox hunting? It is difficult to prove intention. Retention of section 1(5) could dissuade people from diversifying into other uses for former foxhounds.

That is also the case for owners of hill packs. They may own foxhounds, but not intend them to be used for the purposes of hunting, as it is proposed in the bill. Gamekeepers may keep a number of dogs without intending to use them for hunting. I would prefer section 1(5) to be deleted, because of the difficulties of interpretation that it will cause. I would prefer to see the offence being created when the dogs are used in a certain way rather than because dogs that are owned may be being used in a certain way.

Turning to the other amendments in the group, I am in favour of Murray Tosh's amendment 34, which proposes to leave out "or keeper of" and insert "of, or person having responsibility for". That clarifies where the responsibility lies, although I am not sure what the definition is of "keeper of a dog". However, if someone is in charge of a dog, they clearly have responsibility for it.

The arguments for the insertion of "knowingly" were made in our discussion of section 1(3). I will support amendment 35.

Fergus Ewing: Having decided, as a committee, that it is an offence to deliberately hunt a wild mammal with a dog, it would seem to be contradictory that we do not go on to conclude that those who have a role to play, as occupiers or owners of land, should also be committing an offence if they give express permission for that activity. Whether David Mundell is here or not, I do not support his amendment 32. I support Murray Tosh's amendment 34, although I am not sure that "person having responsibility for" is entirely free of ambiguity. I look forward to hearing what the minister says in that regard.

I would have supported Murray Tosh had he decided to move amendment 36, as the wording "gives express permission for" is much clearer than "knowingly". As the minister said in her last contribution, "to knowingly permit" seems tautologous. That is why I voted against

amendment 30. I would have happily voted for "gives express permission for".

Dr Elaine Murray has identified what, for me, is one of the major technical failings of the bill, namely the propensity to refer to "a dog" and then, in other parts including section 1(5) and section 2(7), to refer to "one or more dogs" or "a single dog". I raise that point as I hope that the minister will give the Executive's response. That is essential if the bill is to become workable.

One rule of statutory draftsmanship is that the singular implies the plural. It would seem that if—as I do—we support Elaine Murray and delete section 1(5), where two or more dogs are used, section 1(4) would continue to criminalise the activity of the owner, person having responsibility or keeper. It would be rather odd to criminalise someone because they gave one dog permission to do something wrong, but not to do so if two or more dogs were involved. I repeat that, as I understand it—although I am no expert—the normal rule of statutory draftsmanship is that the singular includes the plural.

Mr Watson has used variants of phrases at different points throughout his bill. Does that mean that that presumption is rebutted? I am lost as to the answer to that question. I thought that Elaine Murray's amendment 5 was lodged with that question in mind and that she proposed deleting section 1(5) because section 1(4) covers that point. Having listened to her arguments, I now understand that that may not be the case.

For the reasons that I have set out, the bill is a total mess, which has to be sorted out. I hope that we recognise that that is part of the Rural Development Committee's role. The Executive also has a role to play. I was extremely disappointed that the Executive did not comment on previous amendments. If we are all to work together, the Executive cannot do so simply by observing a position of neutrality. If we are to produce a workable bill, we deserve more. The question of the singular including the plural is one of the first technical points that we must address. I look forward to hearing the minister do so.

Mr Rumbles: Following on from Fergus Ewing's comments about the minister's stance of neutrality, I have to say that the minister has not been neutral about the bill. I would go so far as to say that when I left this room at the beginning of the meeting, I was given a message from one Executive minister that the Executive's position on my amendments would be neutral. However, during the course of the debate, we have heard from the minister that the Executive was against my amendments. That is not neutrality in the way that was indicated by Fergus Ewing.

The Executive has been particularly partisan with regard to the bill. I am not happy with the Executive's performance, nor do I have confidence in the Executive's position on the bill. I hope that the minister notes that point.

As Fergus Ewing said, the bill is a mess. It is the duty of the Rural Development Committee to clear up that mess. Mike Watson has deliberately thrown the net as wide as possible to catch lots of different activities and people. That disappoints me greatly. I had hoped to be able to support the bill and I continue to hope to do so. However, looking at the way that it is going, I do not think that that will be possible.

I support the removal of sections 1(4) and 1(5). I thought that the idea was to make cruel activities criminal, not to spread the net as wide as possible so as to drag in a few more toffs. Section 1(4) does not serve any useful purpose. I see Mike Watson smiling, but Elaine Murray is dead right. When Elaine Murray spoke to amendment 5, she used an analogy about the sports car. We have speed limits on our roads and if a person breaks those limits, they deserve everything they get. However, we do not pass a bill to ban sports cars. The bill stinks. I support the removal of section 1(4) and section 1(5).

Elaine Smith: I would like to clarify something about the removal of section 1(5). I also want to hear what Elaine Murray says in her summing up.

Elaine Murray said something about dogs that were used for drag hunting, and people who owned them being prosecuted under section 1(5). The bill says:

"A person who owns or keeps one or more dogs intending any of them to be used to hunt in contravention of subsection (1) commits an offence."

Section 1(1) clearly refers to a person who deliberately hunts a wild mammal with a dog—that does not involve drags.

Dr Murray: That was not my argument.

Elaine Smith: That is why I would like you to clarify what you mean. On the sports car argument, I do not think that section 1(5) necessarily means that a person cannot keep hunting dogs, but I wait to be persuaded.

Dr Murray: There is a problem with section 1(5). How can it be proved that somebody does not intend to use the dogs for an illicit purpose until the dogs are used for that purpose? Section 1(1) will prevent the offence, but section 1(5) appears to create another offence so that a person could be prosecuted if it was thought that that person was going to use the dogs to hunt a wild mammal.

Elaine Smith: That helps to clarify matters.

16:30

The Convener: As no member wishes to add anything, I invite Mike Watson to speak.

Mike Watson: A number of arguments that I advanced in respect of the previous group of amendments apply here. I will not go over the ground again, but I cannot agree to amendment 32, which seeks to delete section 1(4). There is logic in saying that the owner of a dog who knowingly permits another person to use that dog to hunt would commit an offence.

Amendment 35, which proposes inserting "knowingly", as in the previous group, is acceptable. If that is done, there is a logic in accepting amendment 33—"or keeper" can be taken out if "knowingly" is inserted. I would be satisfied with that.

I am not in favour of amendment 34, which goes a bit further, but I do not have terribly strong feelings about it. I note that Murray Tosh will not move amendment 36. The arguments that I used in respect of the previous group of amendments apply to amendments 44 and 45.

On amendment 5, which seeks to delete section 1(5), I agree that the subsection would be difficult to enforce in law. The bill will improve if the subsection is deleted, so I hope that the amendment will be accepted.

Mr Tosh: In the interests of good legislation, I feel obliged to point out that, if the committee accepts Mike Watson's advice, it will delete "or keeper" and will not insert "of, or person having responsibility for". That means that a dog that is under the control of its owner and that committed an act would render the owner liable for prosecution, but a dog that is under the control of anyone else would not render that person liable for prosecution, even if that person had wilfully set it on a wild mammal, other than under the common law provisions—the mens rea argument—which the committee has not accepted. The logic and the drafting are somewhat bizarre and the committee may want to pay careful attention to that.

Mike Watson: Is Murray Tosh saying that he would accept the addition of "knowingly" before "permits" in section 1(4)?

Mr Tosh: My point is that, if someone else has control of a dog and knowingly allows it to hunt an animal and cause suffering, that person will not commit an offence unless they are the owner. It would be wiser to include persons other than the owners of the dog if the committee wishes that that declaratory subsection be added to the common law provision.

Mike Watson: I do not have difficulty with that. If the owner knowingly permits another person to use their dog for hunting, that draws the owner in; however, I am happy to support Murray Tosh's amendments.

The Convener: It will be up to the committee to decide whether to accept them when it comes to a vote.

Rhona Brankin: We agree with what Fergus Ewing said about the use of the singular and the plural and we are happy to reconsider that. Otherwise, the amendments do not pose the Executive any undue difficulties and committee members should be allowed to reach their own conclusions on them.

The Convener: Committee members are always allowed to reach their own conclusions, minister. However, I know what you mean. I ask David Mundell to wind up and to press or withdraw amendment 32.

David Mundell: The exchange between Murray Tosh and Lord Watson strikes at the heart of the confusion that surrounds parts of the bill, concerning what they seek to achieve. I find it difficult to understand why Mike Watson would want to exclude from the provisions the person who was responsible and put the blame squarely on the shoulders of the dog's owner, who might not have been present or know what was going on.

I have made the argument for the deletion of section 1(4), which the committee does not favour. Fergus Ewing—in his inimitable way—argues that the bill is a mess but, when he is offered the opportunity to make its intentions much clearer by the deletion of subsections, he declines to do so. I am at a loss regarding the logic of that position and wish to press amendment 32.

Elaine Murray set out quite clearly in her speech and in answer to questions why amendment 5 should be accepted and I understood that Mike Watson is minded to accept it. There seems to be consensus on that deletion.

As you said, convener, it is now up to the committee members to determine which of the options that are available to them they are minded to accept.

The Convener: Before we vote on this group of amendments, I remind members that the final question of the day will be that section 1, as amended, be agreed to. I did not make that clear at the beginning of the meeting. We have agreed to go only as far as section 1 today.

The question is, that amendment 32, in the name of David Mundell, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 32 disagreed to.

Amendment 33 moved—[Mr Jamie McGrigor].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
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Murray, Dr Elaine (Dumfries) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 33 disagreed to.

Amendments 34 and 35 moved—[Mr Murray Tosh]—and agreed to.

Amendment 36 not moved.

Amendment 44 moved—[Mr Jamie McGrigor].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 44 disagreed to.

Amendment 45 not moved.

Amendment 5 moved—[Dr Elaine Murray]—and agreed to.

The Convener: The question is, that section 1, as amended, be agreed to. Are we agreed?

Mr Rumbles: No.

The Convener: A procedural matter arises. There cannot be a vote on that question because there has been no amendment to leave out the section and leaving it out would wreck the bill. However, we will note that some members do not want to agree to the section as amended. Which members want to indicate their disagreement?

Mr McGrigor *indicated disagreement.*

John Farquhar Munro *indicated disagreement.*

Mr Rumbles *indicated disagreement.*

The Convener *indicated disagreement.*

The Convener: If members wish to say why they disagree, I would be happy to listen.

Mr Rumbles: I think that members have the general idea of why I do not support the section.

Section 1, as amended, agreed to.

The Convener: Fergus Ewing wishes to raise a point that relates to next week's meeting.

Fergus Ewing: Earlier, I spoke about my impression of the desire to seek consensus on how to protect various traditional forms of activity that involve the control of pest species in Scotland. Next week, we will debate section 2—which may be said to be the central part of the bill—and amendments to it. We will also debate matters on which we have not taken evidence—I am thinking of the suggested wild mammals authority and certain new aspects that will be raised in amendments. I am extremely conscious of the responsibility on us to ensure that our decisions are made after having had the benefit of hearing from people who undertake those activities, such as members of the Scottish Gamekeepers Association, the Scottish Hill Packs Association

and the National Working Terrier Federation. Because of the new matters that have arisen and because of the importance of the decisions that lie before us, it would be helpful to have the benefit of brief evidence from those organisations. Committee members would then be able to ask questions on how those people would be affected if particular amendments were agreed to or disagreed to.

I raise this issue in the genuine belief that hearing such evidence would inform our discussions and ensure that we reach the best possible decisions—decisions that, as the minister said, should produce a piece of legislation that is as workable and practicable as possible.

The Convener: How do other members feel about that?

Rhoda Grant: Could we ask those organisations for a written submission? That would inform us of their concerns about, or support for, various amendments.

The Convener: That option is open to us, although time is very short.

Dr Murray: Some amendments, including mine, were lodged more than a week ago. I imagine that those who are interested in them will have read them and we should welcome any comment that people want to make in the interim. That will not cover amendments that are lodged at the last minute, of course.

16:45

Fergus Ewing: There is some support for taking evidence and it would be extremely helpful to do so. However, as Elaine Murray has just said, amendments can be lodged only 15 or 30 minutes before the deadline, like Mr Watson's amendment. It is not correct to say that there will be an opportunity for us to take essential evidence on how a proposal will affect working practices that have lasted for centuries. I would like the chance to take evidence and I do not think that our proceedings would be prolonged by more than 90 minutes.

There has been an extremely short space of time between stage 1 and stage 2 and it has been difficult to find out the views of members of the relevant organisations. That will be especially true if people lodge amendments just before the deadline next Friday. There will be no chance to hear evidence on such amendments and I fear that, if we do not do so, we will produce a bad law—or a worse law than we otherwise would.

If members are not willing to hear from the people to whom I have referred, I am willing to press the matter to a vote.

The Convener: I hope that members will pay heed to my entreaty not to lodge amendments as late as next Friday. Obviously, however, there is no guarantee that they will.

Mr Rumbles: Fergus Ewing makes some valid points. The committee has not taken any evidence on the amendment that Dr Murray has lodged. Although, as I have always said, I would far rather deal with the bill in as short a time as possible, I think that we must risk the wrath of the lobbyists who will accuse the committee of adopting delaying tactics if we take further evidence. I think that Fergus Ewing's suggestion would result in 90 minutes well spent.

Dr Murray: If we did that, we would have to consider the timing of the committee meeting. It might be difficult to take evidence and go through all the amendments that we would like to in a three-hour slot. We might have to take evidence at a different time.

The Convener: We also have to consider the budget report next week.

Richard Lochhead: I would appreciate having some written evidence. However, will we have to go through an evidence-taking process for every meeting in which we deal with amendments?

We have two days left in which to lodge amendments for stage 2. However, the *Official Report* for this meeting, which may influence the amendments that we wish to lodge, will not be out until Thursday or Friday. How can we use the *Official Report* to decide what amendments we want to lodge when it will not have been published in time?

The Convener: I am told that the *Official Report* should be out by Thursday.

Richard Lochhead: But you have said that you do not want last-minute amendments.

The Convener: Not if it can be avoided. However, an amendment lodged on Thursday evening would not be a last-minute amendment—anything after 2 o'clock on a Friday would be.

I ask members to lodge their amendments as timeously as possible, if for no other reason than that last-minute amendments cause the clerks an enormous amount of work. There are great difficulties, but I take your point, Richard.

I sympathise with Fergus Ewing's point of view, particularly as the concept that Dr Murray will introduce next week is a new one, on which we have taken no evidence. I assure Richard Lochhead that I see no point in taking evidence on a subject that we have covered.

Rhoda Grant: We should ask for written evidence in relation to amendments that we have not taken evidence on before. Most of the people

who have an interest in the bill are here today and will probably be present throughout stages 2 and 3. We could ask for written evidence and, if the need arises, put aside time to ask people questions on that evidence. We should ask questions only on aspects that we have not discussed before, not reopen the whole thing.

The Convener: Whatever evidence we take, it should be targeted only at the possible introduction of a licensing authority. We have two strands of thought: we ask either for written evidence or for verbal evidence. Does Fergus Ewing want to make a further comment?

Fergus Ewing: I am grateful that members have acknowledged that, if amendments are lodged at the last moment—as will surely happen—by definition we will not have had an opportunity to take evidence on them. The amendments cover a whole range of new matters. It is important that we take evidence on the precise phrasing of amendments—such as amendment 19, which deals with the exception of flushing foxes from below ground—from the people whose responsibility it will be to conduct their working lives within the framework that those phrases will set down. Those phrases could either make people criminals or not make them criminals. It would be helpful to give 90 minutes at the beginning of our next meeting to the three organisations that I have described. I have made the proposal to try to ensure that we are doing the right thing.

I agree that the organisations I mentioned should be invited to give written evidence, but that will not be enough. We need the opportunity, which members may or may not wish to exercise, to question the three organisations that will have to work with the bill in practice. I will push the matter to a vote, if that is what it takes. I want to ensure that we have the opportunity to do our job properly.

The Convener: For clarification, will Fergus Ewing repeat the three organisations to which he referred.

Fergus Ewing: The three organisations are the Scottish Gamekeepers Association, the Scottish Hill Packs Association and the National Working Terrier Federation.

Mr McGrigor: I support what Fergus Ewing has said. The issue is far too important to be ruled by whether the committee can spare 90 minutes. We should take evidence from those organisations.

Cathy Jamieson: We appear to be talking about different things. Fergus Ewing's proposal seems to be different to Rhoda Grant's proposal. I am concerned about the notion of spending 90 minutes taking evidence at the beginning of the meeting and then, without having any opportunity to consider the implications of what we have heard, moving straight into debating and voting on amendments that have already been lodged. That proposal seems to lack logic.

If we needed to speak to those organisations, we would surely need to do so before amendments were lodged, so that we could ensure that the amendments were lodged appropriately. It makes more sense to get the information in writing, so that we have the opportunity to consider it prior to next week's meeting.

The Convener: Frankly, is there any reason for not doing both? We can ask the organisations to submit written evidence by the end of this week, which we can cogitate over at the weekend and then ask questions on at next week's meeting. If we had the written evidence first, that would cut the time that might be necessary for oral evidence. We might even be able to cut it to three quarters of an hour.

Cathy Jamieson: Do we intend to invite only those organisations? I presume that other organisations may have other opinions. Do we not want a balanced view?

The Convener: I assume that Fergus Ewing has made a plea for those organisations because they will have to work under the auspices of the bill, when and if it is passed. I have no difficulty with taking evidence from the other side of the argument, if other people have a case to make. However, we need to be careful that we do not open up to the entire range of people from whom we have already taken evidence. My own view is that the evidence taking would best be targeted at those whom the bill will most affect.

Richard Lochhead: I would not be comfortable for the committee to take oral evidence—if that is what the committee decides to do—immediately before we deal with the amendments. The committee must take an impartial view and not simply react to what it has heard immediately beforehand. That would not be a healthy way to proceed.

Mr McGrigor: The evidence taking should be broadened to include any organisation that has an interest in what comes after section 1, such as the Scottish Countryside Alliance.

The Convener: We are considering specifically the introduction of a licensing authority.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): What is the time scale for this? Is it urgent? The suggestion is that we take evidence from the organisations that have been mentioned at our next meeting, which is due to take place next week. Do we need to do that? I agree that we should take evidence from those

organisations, but can we not delay doing that by a week? It is a lot to ask people who are engaged in other activities to drop tools to come here at a moment's notice.

The Convener: Are you suggesting that we should take evidence next week, but delay consideration of the bill for a further week, to allow amendments based on that evidence to be lodged?

John Farquhar Munro: No. I am suggesting that we should take evidence from the hill pack and terrier groups the week after next.

The Convener: I do not support that proposal, as it would mean an unnecessary delay. I see no reason for us not to take evidence next week and to postpone, if necessary, consideration of section 2 until the following week. That would mean a delay of one week and would allow members to lodge amendments based on the oral evidence that they have heard. Can we reach a consensus on that? I do not believe that delaying consideration of section 2 by one week can in any way be conceived of as tactical delaying of the bill.

Fergus Ewing: Excellent.

John Farquhar Munro: That is quite acceptable.

The Convener: Does the committee agree that we should ask the three organisations that want to provide us with written evidence by the end of this week to give us oral evidence next Tuesday?

Elaine Smith: You mentioned three organisations, convener. The point was made earlier that those three organisations may not be the only ones from which we want to hear.

The Convener: If members would like to suggest other organisations from which we should hear, we would be very happy to listen to them—that is what democracy is about.

Richard Lochhead: I want to make an alternative proposal that would allow us to have a straight vote. The more that I listen to this debate, the more uncomfortable I am with it. I propose that we invite written evidence.

The Convener: Just written evidence?

Richard Lochhead: Yes.

The Convener: In that case, we have two proposals. Before we decide which organisations to ask for evidence, we must decide which proposal we want to support. The first proposal, which was made by Fergus Ewing, is that we take oral evidence next Tuesday and delay discussion of sections 2 and 3 by one week.

Fergus Ewing: We should also invite organisations to submit written evidence right now in respect of our remaining work on the bill, if they so wish. I agree entirely that that is acceptable.

The Convener: The question is, that Fergus Ewing's proposal be agreed to.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Grant, Rhoda (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 6, Against 4, Abstentions 1.

Does Richard Lochhead want the committee to vote on his proposal?

Richard Lochhead: I thought that the two proposals were to be played off against each other. My proposal is irrelevant now, because the committee has voted in favour of Fergus Ewing's proposal.

The Convener: That is correct.

Richard Lochhead: Surely we should have been able to choose between the two proposals.

The Convener: It is possible only to vote for or against one proposal before moving to another.

Richard Lochhead: I disagree with the method of voting, but never mind.

The Convener: As far as I understand it, the procedure that was followed was correct. There was certainly no intention to do other than follow correct procedure. For clarity, I ask Fergus Ewing to restate his proposal.

Fergus Ewing: I propose that we request any organisations that want to submit written evidence to do so immediately and that next week we take oral evidence from the three organisations that I mentioned earlier: the SGA, the SHPA and the NWTF. We will postpone further stage 2 consideration of the bill until their evidence has been received.

The Convener: Should that evidence not relate specifically to Elaine Murray's amendment, which would introduce a licensing authority?

Fergus Ewing: No. The witnesses should be allowed to give evidence on the issues that have

been raised in the amendments that have been lodged.

Elaine Smith: It was not clear to me that we were voting on precisely that proposal. It now appears that the committee will hold an evidence session next Tuesday afternoon, but will invite only the three organisations that Fergus Ewing has chosen today. I do not see how that is correct. If the committee has decided to hold an oral evidence session—which is a decision that I did not agree with—the range of organisations should be much wider than the three that have been suggested.

The Convener: I think that we have already voted on this matter.

17:00

Mr McGrigor: I echo the suggestion that at least the Scottish Countryside Alliance should be included with those three organisations. [*Interruption.*]

The Convener: Hold it. I ask members who are not committee members—

Mr Tosh: Convener, we are confused. Under Fergus Ewing's motion, what will happen to the amendments under the heading "After section 1", which by definition are not amendments to section 2? If we are to lodge amendments, we need to know whether the section 2 amendments will be dealt with next week or will be held back a week.

The Convener: Frankly, any further discussion of any part of the bill will be put back a week.

As we have voted on this issue, I am keen to draw the meeting to a close.

Mr McGrigor: My proposal is that we include the Scottish Countryside Alliance—

The Convener: I am afraid that we have already voted on the matter.

Mr McGrigor: But I have another proposal.

The Convener: I do not think that I can accept any more proposals at this point. We have agreed that the people who will be most affected by the bill will give evidence next week. Any other organisation is entitled to send in written evidence and I am sure that the Scottish Countryside Alliance will be included in that number. However, we have voted on a specific proposal, and that is the one on which I will proceed.

Rhoda Grant: You said before the vote that evidence would be sought on items on which we had not already received evidence. Is that still the case, or will all amendments be discussed and thrown open for new evidence, as Fergus Ewing says?

The Convener: We cannot return to any amendments on section 1 that we have already discussed.

Rhoda Grant: No. You specifically said that you would take evidence on items on which the committee had not taken evidence at stage 1. Fergus Ewing has said that we will take evidence on all new amendments. There is obviously a conflict on the matter.

The Convener: New amendments have not been debated at stage 1, so I do not think that there is a conflict.

Unless any member is desperate to say something, I really feel that any more discussion on this matter will not be very helpful.

Elaine Smith: I am desperate to repeat Richard Lochhead's point. His proposal should have been taken in a straight vote against Fergus Ewing's proposal, as it might have given a different result. I think that you and the clerks will have to go away and consider that matter.

The Convener: One votes either for or against a proposal. That is what we did, and I am happy that the procedure has been correct.

On that rather discordant note, I draw the meeting to a close. However, I thank committee members for the way that they have gone about this afternoon's business.

Meeting closed at 17:02.

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