

RURAL DEVELOPMENT COMMITTEE

Tuesday 13 November 2001
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE

25th 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)
David Mundell (South of Scotland) (Con)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
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 13 November 2001

(Afternoon)

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

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen. I welcome you to this meeting of the Rural Development Committee. I also welcome the visiting members, who are Rhona Brankin, who is the Deputy Minister for Environment and Rural Development, Mike Watson, David Mundell, Murray Tosh and Jamie Stone. I ask all members and members of the public to ensure that their mobile phones are switched off.

Subordinate Legislation

Processed Animal Protein (Scotland) Regulations 2001 (SSI 2001/383)

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Amendment (No 4) Regulations 2001 (SSI 2001/394)

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (Recovery of Costs) Regulations 2001 (SSI 2001/401)

The Convener: We have a great deal to get through this afternoon, so without further ado we move to agenda item 1, which concerns three sets of regulations.

The Subordinate Legislation Committee considered the regulations in its 40th report of 2001. It had no comments on SSI 2001/401, but has brought comments to our attention as the lead committee on SSI 2001/383 and SSI 2001/394. Members have a copy of the Subordinate Legislation Committee report, but they have not intimated a desire to comment. Are members content with the regulations?

Members *indicated agreement.*

Protection of Wild Mammals (Scotland) Bill: Stage 2

The Convener: Members are aware that we have a difficult and complicated afternoon ahead of us. There are 24 amendments to Mike Watson's amendment 53 to consider and a further 13 amendments to discuss. When the relevant amendments have been debated, all the amendments to amendment 53 must be dealt with before I put amendment 53, which proposes a new section, to the vote.

I ask members to keep a careful note of their views on amendments as they are debated because once the votes begin, we will not return to debate amendments again. We have a great deal of debating to do before the voting procedure commences and I want members to be aware of what they are doing.

After section 1

The Convener: Amendment 53, in the name of Mike Watson, is grouped with amendments 53G, 53H, 53I, 53A, 53B, 53J, 53N, 53K, 53O, 53C, 53L, 53M, 53W, 53P, 53Q, 53R, 53X, 53D, 53S, 53T, 53E, 53U, 53F, 53V, 57, 57A, 57B, 57C, 57G, 57D, 57E, 57F, 22, 23, 81, 24 and 84. Amendments 53W, 53X and 57G are manuscript amendments and are on a separate sheet. If amendment 53T, in the name of David Mundell, is agreed to, I will not be able to call amendment 53E, in the name of Rhoda Grant, and if amendment 22, in the name of Elaine Murray, is agreed to, I will not be able to call amendment 23, in the name of Fergus Ewing. I will repeat that when we come to vote on those amendments.

Mike Watson (Glasgow Cathcart) (Lab): In effect, amendment 53 is an amended version of the replacement for section 2 that I intimated to the committee when I gave evidence on 4 April 2000. Amendment 53 reflects the fact that I have been persuaded that a licensing scheme is not likely to be popular or profitable in achieving the bill's aims. I have listened to a lot of organisations. From the start, the British Association for Shooting and Conservation raised serious concerns that such a measure might outlaw rough shooting and falconry. As I outlined to the committee previously, I have tried to deal with those concerns.

Instead of proposing licences to determine what is acceptable, amendment 53 outlines a wide range of activities, which, I believe, are acceptable to the people in the countryside who are involved and which are necessary for their work. Amendment 53 reflects representations made to me and it would allow gamekeepers and the Scottish hill packs to do their valuable and important work. The bill is about hunting wild

mammals with dogs—it will not stop shooting, humane trapping or killing them by other means.

Amendment 53 would allow the use of dogs for flushing to guns or the use of birds of prey to protect livestock, fowl, game birds—in a particular place, which I will mention later—and crops, again in a particular place. It would allow dogs to be used to provide food for people and animals, to protect human health and to prevent the spread of disease. It would also allow dogs to be used underground, subject to tests of humaneness and need. Some of those issues were dealt with in considerable detail in last week's evidence session, which highlighted the major issues. I took considerable encouragement from the comments of the representatives who gave evidence. I believe that amendment 53 and other amendments that have been lodged will meet those representatives' concerns.

Gamekeepers have persuaded me that they need to use terriers underground to flush to guns—I fully accept that. I have never suggested that gamekeepers go about their duties without due care for their dogs—the same is true in respect of the Scottish Hill Packs Association and the National Working Terrier Federation. I accept the points that those organisations made and appreciate the openness and honesty in their evidence to the committee last week.

Amendment 53 suggests conditions that would ensure that all terrier work underground meets gamekeepers' high standards. There are basic tenets: a person must seek to flush to guns and to prevent injuries to dogs and have a firearms or shotgun certificate. Incidentally, it has been argued that firearms or shotgun certificates are a form of licensing. If that is accepted, such a form of licensing is a responsible way of going about things and is already in existence. What must be done to qualify for a certificate and what disqualifies one from using that certificate is well understood. It is therefore a form of licensing, but an acceptable form.

Amendment 53 also proposes that those involved in terrier work must have written permission to be on the land in question. The amendment's exceptions to the bill's objectives are important.

Many amendments to amendment 53 have been lodged and I will accept some, but not all, of them. At this stage, that is all that I want to say. I stress that amendment 53 is a replacement for the new section that I outlined when I gave evidence to the committee last year.

I move amendment 53.

The Convener: I invite Fergus Ewing to speak to and move amendment 53G and to speak to amendment 53H, which is in the sub-group on

stalking and flushing. I hope that members approve the clerks' considerable and excellent work in putting the amendments into sub-groups, which will allow the committee to get through the debate in a structured way. I thank the clerks for the huge amount of work that they have done.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I thank the committee clerks and Andrew Mylne, whose work with me for many hours in the past week I greatly appreciate. We have tried to achieve the objectives that many, if not all, of us want to achieve: to amend the bill's defects and allow activities that have been carried on in the countryside for legitimate purposes to continue without turning the practitioners into criminals or potential criminals; to protect agriculture, flora, fauna and our natural heritage; and, above all, to minimise the pain and suffering of wild mammals such as foxes.

I am pleased that Mike Watson commended the evidence that we took last week from the Scottish Gamekeepers Association, the Scottish Hill Packs Association and the National Working Terrier Federation. The evidence was extremely useful and a great help to the committee.

Amendment 53G seeks to amend amendment 53, which is intended to ensure that no one commits an offence

“by using a dog under control to stalk a wild mammal, or flush it from cover ... for the purpose of—

(a) protecting livestock, fowl (including wild fowl) or game birds in, or crops growing at, a particular place from attack by wild mammals”.

A list of animals, birds and crops that should be entitled to protection is provided, but the list seems incomplete. Ground-nesting birds require protection from predation by foxes by virtue of the fact that they nest on the ground. They can therefore be preyed on by foxes, especially during the breeding seasons, when they are particularly vulnerable.

It seems that in order to conserve certain species of bird that nest on the ground we should put beyond any doubt the intention to protect those species. I am no expert in the field, but I am told that the lapwing, the curlew and possibly the ouzel and the partridge would fall under that definition, although I stand ready to be corrected on any particular species. The purpose of amendment 53G is to build on the framework of amendment 53, but to extend the protection that that amendment seeks to confer.

I move amendment 53G.

The Convener: Does any other member wish to speak to amendment 53G?

Mike Watson: I believe that amendment 53G is unnecessary. As I understand it, most ground-

nesting birds—because they are game birds or fowl—are already covered by the exception in amendment 53. Other ground-nesting birds are more likely to be disturbed by dogs being used to flush than by trapping the predator. Although I take in good faith what Fergus Ewing says about building on amendment 53, I simply believe that amendment 53G is unnecessary.

14:15

The Convener: There has been a slight misunderstanding between Mr Ewing and me. I thought that I had asked him to speak to amendment 53H as well, as it is in the same subgroup. If members will bear with me, I ask him to do that now.

Fergus Ewing: Amendment 53H seeks to spell out in the bill that there are other things that we need to protect. We need to be able to use a dog to flush foxes and pests from cover to do that. Amendment 53H would add “timber” to the list of livestock, fowl, game birds and crops. I understand from the Scottish Gamekeepers Association and the BASC that it is necessary to protect timber from various types of pests and that, on occasion, dogs might be the means of doing that. I am told that particular types of pest that cause damage to timber include hares, voles and rabbits, among others. Amendment 53H is simple—the same arguments that I have made previously apply to it, so I will not repeat them.

I hope that the committee will accept that it is necessary to prevent pests from eating the bark from timber, which destroys the tree—especially young trees. Among those to whom that causes considerable commercial damage are crofters, such as John Farquhar Munro, who rely for their livelihood on obtaining modest grants—as we know, grants from the Executive to crofters are always modest—to protect their trees against pest species.

The Convener: We will move on to crofting at another stage in our programme.

Does any other member wish to speak to amendment 53H?

Elaine Smith (Coatbridge and Chryston) (Lab): I want to seek some clarification. Is not timber a crop?

Fergus Ewing: The answer is that timber can be—but is not necessarily—a crop. Not all timber is treated as a crop. Some timber might be grown for recreational purposes or for biodiversity—to have different types of trees rather than rows and rows of Sitka spruce. Trees are grown for that reason all over Scotland—central Scotland is benefiting massively from huge grants, which are no doubt worthy, to create biodiversity through

different species of trees.

All those types of trees, whether or not they are crops, are susceptible to damage. I understand from those who provided detailed briefings and who have more knowledge than I could possibly possess that the issue is serious. Although Elaine Smith has a valid point that many trees—perhaps most—are crops, not all of them are. However, all of them require protection.

Rhoda Grant (Highlands and Islands) (Lab): That is the point that I was going to make.

Dr Elaine Murray (Dumfries) (Lab): Mike Watson felt that amendment 53G was unnecessary, because he believed that all ground-nesting birds were covered by the description “fowl”. However, I understand that some ground-nesting birds are not so described. They could be disturbed by dogs and also be the prey of certain wild mammals. The reason for controlling those mammals might be to protect ground-nesting birds.

Fergus Ewing: I accept that the description of fowl may include many ground-nesting birds, but I am not sure that it includes all of them. I understand that Mike Watson did not disagree in principle to amendment 53G. If I am right about that, and about the fact that he believes the intention behind it to be valuable, amendment 53G would be a useful clarification. In drafting legislation, we should try to spell out exactly what we mean. An element of duplication should not cause a problem. When members come to the vote, I hope that amendment 53G is accepted.

Mr Jamie McGrigor (Highlands and Islands) (Con): The list of ground-nesting birds that Fergus Ewing gave us includes a number of protected species including the hen harrier, a bird that is much prized by the RSPB Scotland. The hen harrier is also a ground-nesting bird.

The Convener: Does Mike Watson want to reply?

Mike Watson: Is the convener taking amendments 53G and 53H together at this stage?

The Convener: Yes.

Mike Watson: In respect of amendment 53G, I accept the suggestion that there could be other ground-nesting birds. I was aware that gulls and terns were possibilities, but I understand that they are covered in the way that I suggested earlier.

I do not have strong feelings about amendment 53H and the insertion of the word “timber”. I anticipated that Fergus Ewing would mention beavers, as I was pleased but surprised to find that rodents would be excluded from the bill, but he did not. I did not know that hares ate trees but, if they do and we need to include timber as a crop,

I will go along with that.

The Convener: As no other members wish to contribute to the debate on the first sub-group, I remind members that no further amendments need be moved at this stage. They will be moved later, as part of the voting procedure.

We move to the sub-group on general control of pest populations. I ask Fergus Ewing to speak to amendments 53I, 53B and 53J.

Fergus Ewing: Amendment 53 would mean that people are not made into criminals if they use a dog to flush a wild mammal from cover for the purposes of:

“protecting livestock, fowl (including wild fowl) or game birds in, or crops growing at, a particular place from attack by wild mammals”.

Amendment 53I is designed to remove the qualifying provision “a particular place”. Why? I had hoped that Mr Watson could explain why he considers it necessary to include that phrase in proposed subsection (1)(a). I look forward to hearing his comments.

It seems to me that if people are not criminals if they use dogs to protect things that exist at “a particular place”, a number of consequences arise. First, we should remember that we are creating exceptions. If the exceptions do not apply, we also create potential criminals. We therefore have to apply forensic zeal and rigour to our scrutiny of the provisions of subsection (1)(a). If, when a gamekeeper, crofter, farmer, hill packs man or member of the terrier federation sets out, he has to prove that his object is to protect livestock, fowl, game birds, ground-nesting birds or timber at “a particular place”, he must be able to prove what he is going out to protect. In the case of game birds, he needs to be able to say in what “particular place” are the birds that he is going out to protect.

What happens if those game birds that have the temerity to be unfamiliar with the terms of the Protection of Wild Mammals (Scotland) Bill decide to depart from that particular place, between the time that the gamekeeper sets off with a written list of those game birds and where they are—as he has to do to avoid being a criminal—and when he arrives where they are? If the birds have the temerity to fly away, they will no longer be at that particular place.

Inserting the requirement of “a particular place” runs the risk of creating unintended consequences. The main objection is that, before a gamekeeper or other person who is carrying out the activities sets out to begin his work for the day, he will have to set out a specific list. That means that if it turns out that the pests do not exist at the particular place, he will, by definition, be committing a crime. We know that crops will be in a field and that timber will be growing where it is

growing, so my objection would not particularly apply to them.

The second main objection to including this provision is that we recognise as a general principle that pest control is necessary. We know that the fox will predate a large variety of species. Last week, Ronnie Rose said that outside one fox den he found 93 dead species. Surely the gamekeeper cannot be expected, before he goes out, to produce a list comprising 93 species? The fox requires to be protected because it kills a wide variety of pests. Some of those pests will be known, but others will not, so what happens if we do not know about animals or fowl at a particular place, which nonetheless require to be protected? They would not be entitled to the benefits of the proposed section, and the person who was carrying out the activity would, potentially, be exposed to the risk of being a criminal.

Amendment 53B would add a new subsection (1)(e), so that just as it would be legitimate to use dogs for flushing from cover above ground for the purposes of protecting livestock from attack from wild animals, providing food for consumption by a living creature, protecting human health or preventing the spread of disease, it would be legitimate to control the numbers of a pest species. It is self-evident that pest species need to have their numbers controlled, but Mr Watson does not actually state that.

It is interesting that Mr Watson stated that aim in the original version of the proposed new section, which can be found on page 295 of volume 2 of the Rural Development Committee's stage 1 report. I presume that the section that is proposed in amendment 53 is a variant of that on page 295 of the committee's report. I had hoped that Mike Watson would explain in his opening remarks why he has deleted as a legitimate exception:

“using a dog under close control to stalk a wild mammal, or flush it from cover above ground, for the purpose of—

(a) controlling the number of a particular species”.

I appreciate that that is not identical to what is proposed in amendment 53B, but it is obvious that Mike Watson originally envisaged pest control as a legitimate activity. Land managers should be entitled to use a dog in that way to control the numbers of pest species. I wait with interest to hear from Mike Watson why that form of words and that category did not find its way into amendment 53. Given that Mike Watson has recognised that it is necessary to control pest species, pest control should be accepted by members as a legitimate aim and one that we should seek to protect. We should also ensure that its practitioners do not become criminals.

Amendment 53J is intended to reinstate a specific category of work that should be subject to

the protection of the bill and which should not result in people who are doing necessary work becoming criminals. The amendment would add a further paragraph—paragraph (e) or (f)—to the proposed new subsection. It would permit the use of dog

“to stalk a wild mammal, or flush it from cover”

for the purpose of

“controlling the number of a particular species to safeguard the welfare of that species”.

Mike Watson raised that in his original proposal to replace section 2. My understanding of the purpose of the provision is that many species of animal can require to have their numbers controlled in the interest of the species—for example, when a population of any species becomes so numerous that it runs the risk of running out of food and being unable to continue to support itself so that older and weaker members of that mammal population become unable to fend for themselves.

There are many welfare reasons why the provision is necessary. We think, for example, of rabbits and hares. Feral goats were also mentioned to me as an example of an animal that, if it became over-populous, might require to be controlled in the interests of the species.

14:30

Rhoda Grant: I have a few questions. On amendment 53B, I am not sure what other species would not be included in paragraphs (a) to (d), which mention any pests that affect livestock, fowl, crops and, if amendments 53G and 53H are agreed to, ground-nesting birds and timber. They also mention pests that affect human health and spread disease. What other kind of pests do you intend to cover that are not already covered in those four paragraphs?

Fergus Ewing: The purpose of amendment 53B is to allow the control of the number of a pest species to be a legitimate activity. That is not specifically stated—the phrase “pest species” does not appear in the proposed new section. I have lodged an amendment, which will be dealt with at a later date, by which, with members’ agreement, a definition of pest species would be inserted in the bill.

We all accept, as we did in our stage 1 report, that pest control is necessary. If we accepted that—I believe that the committee did so unanimously—it seems sensible and logical that we should give clear guidance, as is required when we are proscribing any form of criminal activity, to set out exactly what we mean by pest species.

I am sure that Rhoda Grant agrees that there is

no reference in amendment 53 to what we mean by pest species. Paragraphs (a) to (d) do not specifically identify the need to control pest species. There is no mention of pest control as an excepted activity per se.

Amendment 53B is intended to improve the bill and to introduce something that I had understood was the subject of consensus and agreement in the committee’s stage 1 deliberations.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I place on record my support for amendments 53I, 53B and 53J.

In particular, I support 53I. The problem with the bill can be seen when we look at the lists of amendments that are in front of us. I appreciate that we have decided not to go down the route of dealing with cruel sports—the activity that everybody thinks that we ought to be banning. That was the view of the Parliament. We seem to have missed that entirely. We now have the problem of banning an activity and then trying to define the huge number of exceptions to that activity. Fergus Ewing has clearly highlighted the difficulties that arise from such an approach. In removing the words “a particular place”, amendment 53I seems to be perfectly logical. I did not see amendment 53I when I first saw amendment 53, but it will improve amendment 53, which I support.

I think that we are in for a lot of trouble as we make our way through the amendments, because of the methodology and approach that we have taken to the bill.

Mr Murray Tosh (South of Scotland) (Con): I will be brief. I support Fergus Ewing’s amendment 53I at the moment, although I do not really understand it. A particular place could be anywhere from a small agricultural holding to a substantial forest or estate that might be privately owned or under community ownership—that would be immaterial. How does one define “a particular place”? I appreciate that Mike Watson will respond to that point at the end of the discussion and there might be a watertight definition.

This is the third major bill that I have followed through committee and the second bill for the Rural Development Committee. I am used to ministers coming back with their civil servants’ advice on technicalities and expressions and confirming whether the wording is appropriate. It might be appropriate if the Executive gave a view on whether the expression “a particular place” is tenable in general law as well as for the purposes of the bill. If there is no good definition, it strikes me that it is an unreliable expression that we might be well-advised to remove from the bill.

Dr Murray: I seek further clarification from Fergus Ewing about how he would define a pest

species. I am sympathetic to the idea that certain species have to be controlled because of the potential damage that they might cause rather than because they are causing damage at a particular time. Does Fergus Ewing intend to define the meaning of “pest” or does he intend to define a number of species as pests?

Fergus Ewing: Amendment 63, which appears on page 12 of today’s marshalled list, is my latest stab at answering Dr Murray’s question. The answer is also that the committee—not Fergus Ewing—will define pest species, and decide whether it is appropriate to do so.

If, as we agreed at stage 1, it is legitimate and necessary to control pests in the interests of agriculture, protecting livelihoods and minimising suffering, it seems logical that we must define our terms. That is one of the problems that we have with the bill.

I echo Murray Tosh’s comments, in that it would be a considerable help if the Executive were to provide a view. I appreciate that the Executive is neutral. However, I would have found it useful to have the benefit of the advisers’ comments on each of the amendments—not necessarily on their merits but on the possible technical flaws that I am sure that we all wish to avoid.

The approach that I have adopted is to make it clear which species are pest species, as I have done in amendment 63, to which we will come at a later date. I am sure that there will be many different candidates to help with that definition, and I welcome that. My definition will benefit from the thoughts and advice of other members and perhaps even from the Executive. However, at present I have listed a number of pest species:

“foxes, hares, rabbits, mink, stoats, weasels, rodents and such other species of wild mammal as the Scottish Ministers may, by order made by statutory instrument, specify as being liable to cause damage or nuisance”.

That is simply the version that I propose today. I hope that, before we come to debate amendment 63, Mr Watson and the minister will have given us the benefit of their comments, so that if the definition requires further amendment we can do that before the deadline for submitting amendments has passed. In that way, we can avoid the possibility of the bill being technically incompetent through lack of response and advice.

I hope that that rather long answer nonetheless provides an open and honest response to Dr Murray’s point.

The Convener: Are there any further points before I come to the member in charge? Does Mike Watson wish to respond?

Mike Watson: I oppose amendments 53I, 53B and 53J but I oppose 53I most strenuously,

because I think that the phrase “a particular place” is essential and I do not accept that it is difficult to define.

Consider the individual involved. A gamekeeper works in a particular place, namely the estate on which he is employed. A farmer works on a particular farm. It is the place, not the animal, that seeks to be defined. We need to be able to say that someone who is flushing to guns can identify the farm or estate that they are protecting. I could say that crops in general need to be protected, but the next question would be, “Where?” It is important to know that someone is actively pursuing an activity in the particular place where they have permission to do so. Such robustness is needed in the bill; otherwise there will be *carte blanche* for someone to say, “I recognised that some crops needed protecting and that is what I am doing.” There are other catches. For example, if someone needs permission to be on the land, the particular place is important if they are required to defend what they are doing.

On amendment 53B, on controlling the number of a pest species, I hear what Fergus Ewing says about definitions. What he has done in amendment 63 is quite wide, as it lists about six species and anything else that the Scottish Executive deems appropriate. I reiterate Rhoda Grant’s point, that paragraph (a) is a pest-control paragraph. I do not see why we particularly need the new paragraph that is proposed by amendment 53B. I do not feel as strongly about amendment 53B as I do about amendment 53I, but I still do not think that it is necessary.

The reason for the change to the original new section 2 that I proposed some 18 months ago was that the provision was put in by mistake. In fact, it applied to deer in England and Wales. Amendment 53J is unnecessary in Scotland because we do not hunt deer, but shoot them with high velocity rifles.

The Convener: Given the substantive point that “a particular place” brings up and the fact that we cannot come back to debate it at voting time, I am prepared to let members back in if they wish.

Mr Tosh: I understand that the Executive has assisted Mike Watson in the drafting, although I do not know to what extent. Has the Executive, being responsible for the criminal law, satisfied itself that “a particular place” is a good legal definition?

The Deputy Minister for Environment and Rural Development (Rhona Brankin): The Executive is neutral on the group of amendments. It is up to the committee to decide which ones it chooses to agree to. If the agreed amendments require some technical amendments to the drafting, we will introduce those amendments at stage 3.

Mr Rumbles: I would like to comment on what Mike Watson said about “a particular place”. If what Mike was saying was correct, I would have less of a problem with it. If, as Mike is suggesting, “a particular place” relates to a person who works on a particular estate, surely the words should be included in the head of subsection (1), rather than in subsection (1)(a), which reads:

“protecting livestock, fowl ... or game birds in, or crops growing at, a particular place”.

There is a clear distinction between that and what Mike Watson has just said. I understand what Mike is saying, but it is technically wrong.

14:45

Mike Watson: I do not accept that distinction. It is clear what is meant by “a particular place”. People must know where the activity that is mentioned in paragraph (a) is taking place—by and large, it would be the land where the person works or which they own. I do not see why the fact that that is not stated in the head of the subsection is confusing.

Mr Tosh: Would the “particular place” be a croft or the glen in which the croft is situated? Would it be an estate or a smaller portion of that estate? Land does not necessarily divide itself into small pockets of ownership. There can be a general situation across a range of mountains, for example, and the “particular place” could be anything from a microscopic area to a huge area. I am not clear how the particular place can be defined.

Mike Watson: The land reform bill might lead us into some interesting territory if we accept Murray Tosh’s suggestion that land does not divide itself into pockets of ownership. I think that it is clear who owns the section of land on which a gamekeeper is working. People know the person for whom they work or by whom they have been contracted. It is stretching possibility to suggest that people might not know where a gamekeeper was working or that he might stray over a border and into someone else’s estate.

Fergus Ewing: It would have been helpful to receive civil servants’ comments on this matter. We are all struggling to achieve an aim and it would have been good to have the minister’s comments.

I respectfully disagree with Mike Watson. I am not suggesting that he does not believe what he says, but he started out by saying that the activity would be performed in the place where the gamekeeper was and went on to say, in response to Mr Tosh, that the activity would be performed in the place where the person was working at the time. However, that is not what amendment 53 says; it says that “a particular place” applies to

where the fowls, game birds, crops or ground-nesting birds are, not to where the gamekeeper happens to be working. Mr Tosh is quite right to say that “a particular place” is ambiguous. If the phrase is unclear, it should have no part in a section that could create criminals. Criminal law has to be crystal clear; amendment 53 would make the law as clear as mud.

Mike Watson: If the amendment would be unclear when it contains the phrase “a particular place”, would it be any clearer if the phrase were removed? It would be absolutely wide open and we could be talking about anywhere.

Rhoda Grant: Do we need to specify a particular place, given that subsection (2) says that:

“A person does not contravene section 1(1) by using a dog under control to flush a fox from below ground ... if that person—

... has the written permission of the owner or lawful occupier of that land to undertake that activity.”?

A lot of people might be involved in employing someone to hunt a predatory fox. The fox might be stealing lambs from many people’s land. It might not be possible to pinpoint who was responsible. It might be easier to say that there must be proof that the fox is causing a problem. I do not think that amendment 53 would help in that regard. There are enough safeguards in amendment 53 without having to specify the particular place in which damage to animals or crops has been done. It would be difficult to get permission in writing and to prove to a court that the area was suffering damage.

Mike Watson: I can only repeat that it is quite clear where a gamekeeper works. That is basically what amendment 53 is about. I can only refer members to the comments that I made earlier.

Elaine Smith: I agree with Mike Watson; it is important to have “a particular place” specified for the reasons that he gave. I just want to add my voice to that.

The Convener: In that case, I suggest that we move on. I ask members to remember how they feel about each amendment, as we cannot revisit amendments when we come to voting.

We move to the third sub-group, which is on hunting to provide food. I ask Fergus Ewing to speak to amendment 53A—and to amendment 81, if he wishes.

Fergus Ewing: Amendment 53A will be the last amendment that I will speak to for the time being. Members will shortly be entitled to a break from Fergus Ewing. I ask them not to worry, as one will come.

Amendment 53A is quite simple. It arose from

the evidence that we took last week. Amendment 53A seeks to add at the end of line 8 of amendment 53 the phrase “including a person,” so that it would read, “providing food for consumption by a living creature, including a person”.

The aim is to recognise what we heard in evidence last week, which was that some travelling people use a lurcher to provide a hare for the pot—in other words, to provide food for themselves to live. That practice, last week’s evidence informed me, is a tradition of travelling people. Members might feel that human beings are, by definition, living creatures, but I thought that the phrase “living creature” was not usually applied to human beings. Therefore, to eliminate any doubt as to whether people are living creatures, and to raise in debate a serious point about travelling people that was made last week by Mr Crofts, the committee should support travelling people’s use of a lurcher for catching prey and recognise that that is one of the traditions of travelling people in Scotland. Travelling people should not become criminals or outlaws any more than the people from whom we heard last week.

The Convener: I call David Mundell to speak to amendment 81.

David Mundell (South of Scotland) (Con): I am disappointed; I thought that Fergus Ewing was going to cite some examples of the undead, but that was not to be.

Amendment 81 covers the circumstance of providing rabbit or hare for consumption by other mammals—such as a domesticated dog or cat. I understand that that happens, but that such activity would be excluded if amendment 81 were not included in the bill.

The Convener: Does any other member want to comment on this sub-group?

Mike Watson: I do not want to comment on amendment 53A. I thought that people were living creatures, but I understand the need for the differentiation. I do not think that amendment 81 is necessary, because it is about the licensing scheme, which section 2 will deal with—I hope—and which I spoke against in my introductory remarks on amendment 53.

Mr Tosh: I have a procedural point. Many members were struggling to find amendment 81 in their papers—it is about a separate section, rather than being an amendment to amendment 53. It might be helpful, perhaps—just to track it all—if there could be some way of triggering for everybody’s information when we have reached a non-amendment 53 amendment while we are otherwise dealing with amendment 53.

The Convener: I will endeavour to proceed with that. If members want to know, amendment 81 is

on page 10 of the marshalled list. I am assuming—perhaps wrongly—that other members still do not want to speak to amendment 81. If no member wants to speak to amendment 81, we will move to the next sub-group, which is on killing humanely. This sub-group brings with it—coincidentally—the break from Fergus Ewing that we were encouraged to look forward to. I ask David Mundell to speak to amendments 53N, 53O, 57E and 24.

David Mundell: I do not intend to speak to amendment 24.

The Convener: Mr Mundell, I am sorry to interrupt. Amendment 24 is also to be found on page 10 of the marshalled list.

David Mundell: The purpose of amendment 53N is to insert the phrase “the target wild mammal” into line 11 of amendment 53. That will take into account the situation where dogs are in a forest, for example, to flush foxes or other animals out into the open in order to be shot. It might be that foxes or animals would emerge other than the animal that was the object of the initial flushing activity.

Without amendment 53N, my interpretation of the proposed new section is that it would make it an offence not to shoot all the foxes or wild mammals that were flushed out. I do not think that that was Mike Watson’s intention. Clearly, it must be for those who are engaged in flushing to determine which animal is shot, particularly where the activity is connected with sustaining the population. There should not be a requirement that animals that are flushed are shot, when that was not the intention of the initial flushing out. That is the purpose of amendment 53N.

Amendment 53O seeks to introduce practicality into the proposed new section by deleting “as soon as possible” and inserting the expression

“once it is safe to do so”.

Although I was not able to attend the committee meeting last week, there was discussion of the use of guns in urban areas or where there might be difficulties with immediate access to where the animal is. The phrase

“once it is safe to do so”

still has a requirement for urgency and humane killing. That is clearly the intention. However, it does not require the killing to be done immediately.

Amendment 57E is an amendment to Rhoda Grant’s amendment 57.

The Convener: That is on pages 5 and 6 of today’s marshalled list.

David Mundell: Amendment 57E seeks to

remove the urgent requirement to shoot the animal, but requires that the animal be dispatched by the quickest and most humane method appropriate to the circumstances. My interpretation of amendment 57 as it stands is that a failure to shoot in a situation where hounds would kill a fox would mean that a criminal offence was committed. That is not necessarily what was intended. Everyone wants the animal to be dispatched as quickly and humanely as possible, but I also want to remove the requirement to shoot it as quickly as possible.

The Convener: I ask Elaine Murray to speak to amendment 24, which members will find on page 10 of today's marshalled list.

Dr Murray: Amendment 24 amends section 2, which might be replaced, should amendment 53 and its subsequent amendments be agreed. However, the intention of amendment 24 is to take into account that there are occasions—in the use of hill packs for example—where an animal flushed from cover is not shot, but is killed by one of the dogs. Amendment 24 allows that to happen if it is the most humane way of dispatching the animal.

The Convener: Does any other member want to speak on this sub-group?

Mr Rumbles: I have a question of procedure. We are debating amendment 57E, which is an amendment to amendment 57, but we have not debated amendment 57. Is that appropriate?

The Convener: The amendments are grouped by subject matter and the amendments in this sub-group have the same subject matter.

Mr Rumbles: I am questioning whether the order is appropriate.

15:00

The Convener: We considered the matter. Rhoda Grant lodged amendment 57—would she like to say anything?

Rhoda Grant: I do not have a problem with the order, but if amendment 53 is agreed to, I will not move amendment 57. I wonder if we are wasting time on the amendments to amendment 57.

The Convener: Given that we do not know the outcome of the vote on amendment 53, and that amendment 57 deals with the same subject matter, it might save time later if members address the subject now. I am happy for members' speeches to be short and concise, as long as they cover appropriate points.

Fergus Ewing: I have a point about amendment 57E and amendment 24. As I understand the amendments, they would replace the requirement to shoot—or the possibility of shooting—a fox with

the requirement that the fox be dispatched by the quickest method or killed as humanely as possible. I have a general objection to that. The present wording allows for pests to be shot, but a requirement for animals to be killed as humanely as possibly would leave land managers and others open to the charge that they could—and should—use a more humane method than shooting. People might become criminals for not using a more humane method. Amendment 57E or amendment 24 would introduce the possibility of land managers not knowing with certainty, when they shoot an animal, whether they will end up in court. I do not know the answer to the problem, but it occurs to me that the amendments might have a nasty, unintended consequence. I am interested in what David Mundell and Elaine Murray have to say.

Dr Murray: The subject of the bill is the use of dogs, not the use of guns and the prohibitions in the bill are on the use of dogs. There would not be a problem about the use of other methods as long as it could be argued that they were the most humane method available to the land manager at the time. That method could be shooting or, in unusual circumstances, something else.

Fergus Ewing: Do you envisage that a method by which a fox could be killed more humanely than by shooting would be by using a dog?

Dr Murray: You said yourself that in some circumstances using a gun is not possible, but that the use of a dog is possible, for example with cubs or on those occasions when lurchers are used to bring down wounded animals.

David Mundell: As Mr Ewing knows, we understand that the bill, in whatever form it is finally passed, will give considerable scope for lawyers and others to argue. That is inevitable, particularly if the Executive does not choose to produce guidance. If “a particular place” is deemed to be an acceptable phrase, then “the most humane method appropriate in the circumstances”—which is equally definable—must also be acceptable.

Rhoda Grant: I have some sympathy with the idea, but the way in which amendment 57E is phrased would leave it open for someone to say, “I don't think that going out with a gun to dispatch a fox is the most humane method; I will go out with just my lurcher and dispatch it.” I know that the aim is to allow people to use a dog to dispatch an injured fox, for example, on a welfare basis, but the amendment would leave the position wide open. It almost goes against the object of the bill, which is not to allow the use of dogs. The amendment would openly allow the use of dogs.

David Mundell: I do not accept that the amendment goes against the object of the bill,

because clerks and their advisers are vigilant about weeding out wrecking amendments. However, I understand your point, and when the amendment is to be moved, I will consider whether another amendment that is more apposite could be lodged.

Dr Murray: If someone used a dog with the excuse that that was the most humane method, it would remain necessary for them to prove in court, if challenged, that they had used the most humane method.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): A complication may exist. We heard about a problem from some professional gamekeepers. Using a firearm on a fox in an urban situation would be very dangerous, if not prohibited. Some relaxation of the restriction is needed. I am not sure that the terminology should be the most humane method—the most appropriate method may be to flush the animal and dispatch it with the use of a dog. Under the present wording, a criminal offence might be created. The restriction must be relaxed for urban situations.

Mike Watson: I would not like any amendments in the sub-group to be agreed to. It would be unworkable to specify the target mammal. I use the analogy of the difference between a game of snooker and a game of pool. In one game, the player must specify the ball for which they aim, and in the other, they need not. If the target mammal were specified, what would happen if another mammal were flushed? How would those involved decide that the mammal that was flushed was not the mammal that was to be dispatched by shooting or whatever other method?

The proposal is unworkable. You could do anything that you liked to a mammal that was not the target, simply by saying that it was the target. Any legislation has scope for lawyers to interpret it, although this bill may have more scope than most. However, the people whom the accused was with could provide a defence. They could say, "I thought that that was the target mammal." The proposal would be unworkable and laughable if it ever reached a courtroom.

I have legal advice that the phrase "as soon as possible" is appropriate to the circumstances. The question is one of judgment. Amendment 53O would replace that phrase with the phrase "once it is safe to do so". No one assumes that the mammal would be dispatched in an unsafe way or in a way that could injure or cause risk to people or other animals. The phrase "as soon as possible" is the preferable option and legal advice backs that.

On dispatching humanely and not just shooting again, the question is: what is more appropriate? It

is for Parliament to decide on the most humane method. If the bill were passed in the proposed form, possible methods would include shooting. That is the most appropriate method. Defining the word "humanely" is fraught with difficulties.

The Convener: We will move on to the next sub-group of amendments.

David Mundell: Do I not speak again?

The Convener: I am sorry, Mr Mundell. If you wish to speak, you can catch my eye.

David Mundell: I will repeat the point that others made. Another example has arisen of how being bereft of proper, independent legal advice has rendered it difficult for the committee to comment on the proposals.

I accept that Mike Watson's intention is as he stated, but I disagree with his interpretation of the section that would be inserted by his amendment 53. There is no doubt in my mind that the proposed section would mean that a person must shoot animals that emerge, even if that is not what they wish to do. I cannot believe that anybody intends that to happen.

Dr Murray: I understand what both David Mundell and Mike Watson are driving at. One interpretation of the section is that if, for example, a person used dogs to flush a fox and a hare was flushed at the same time, the hare would have to be dispatched, although the intention had been to flush the fox. I am not sure how to get round that. I understand that Mike Watson would not want somebody to use the excuse that they had not intended to get a particular fox and that they would now set their dogs on the other fox because that was not covered by the legislation.

How would Mike Watson ensure that, if another species were not flushed at the same time as a fox, for example, a person would not be obliged to shoot or kill that species with a bird of prey?

Mike Watson: I do not understand the question. Would you repeat it? If another species were not—

Dr Murray: I meant if another species were flushed at the same time as a fox. If a dog were used to flush a fox, another species could be flushed from cover at the same time as a result of the disturbance. An interpretation of amendment 53 could be that the person would be obliged to shoot that species.

Mike Watson: I cannot imagine that situation. That is not my interpretation of amendment 53. I understand that that is your interpretation, but I do not think that that is how amendment 53 is framed.

Mr McGrigor: What would happen if a terrier attempted to flush a fox from a den and a badger came out? Would it be incumbent upon the person to shoot the badger?

Mike Watson: Not at all. Why would it be?

Mr McGrigor: I hope that it would not be incumbent upon the person to do so because one would obviously want the badger to go free. However, that is Mr Mundell's point. The target species—the species that someone is after—should be shot, and not just anything that comes out of the hole. Is that right?

Mike Watson: I was not thinking of a situation such as that. People are not allowed to use dogs on badgers. One would not have to shoot a badger if it happened to be flushed when one was looking for a fox. The situation would not necessarily present a problem.

Mr Tosh: I understand that that is not your intention. However, the issue is not your intention, but what amendment 53 says. If a person sets out to flush a wild mammal with a dog, they would be exempted from criminalisation only if, according to the proposed section, that animal is killed as soon as possible once it is flushed. If the wrong animal or range of animals is flushed, the amendment appears to suggest that the person is expected to dispatch that animal or animals or be liable to prosecution. I accept that that is not Mike Watson's intention, but that appears to be what the proposed section says.

Elaine Smith: Amendment 53 outlines the purposes of flushing. If a mammal that is not included in any of those purposes appears, why on earth would it have to be shot? An animal would be flushed for a particular reason. If a badger appeared, one would not shoot it. The intention would be to protect livestock, provide food for consumption, protect human health or prevent the spread of disease. Why on earth would one wish to shoot the badger?

Mike Watson: Badgers are a protected species anyway, but I accept Elaine Smith's point. If a gamekeeper is out looking for a particular mammal, such as a fox, he is not going to shoot something else that emerges when it is a fox that he is after. I do not see why there should be confusion over this. Gamekeepers would know precisely what they were looking for and would act accordingly.

15:15

David Mundell: I want only to repeat what I said two weeks ago on the amendments to section 1. Unfortunately, the average member of the public who is caught by this legislation will not have the benefit of Mike Watson or Elaine Smith or any other member of the Parliament in court with them. Once the bill leaves the Scottish Parliament, it will be interpreted by the Crown Office and Procurator Fiscal Service on the basis of the words that are contained in it. It is unfortunate to follow a course

of action that merely glosses over difficulties, even though they are not intended. I accept fully Mike Watson's intentions, but ultimately it is not his intentions that will determine the criminal act or exemption, it is the words in the bill. The words in amendment 53 do not produce the intended result. My amendments 53N and 53O would achieve the intended result.

Given what Rhoda Grant said about moving amendment 57 and amendments to that amendment, I may not move amendment 57E on the basis that if amendment 57 is agreed to, we could lodge another amendment at stage 3.

Mr Rumbles: I have listened to the debate carefully and having had no preconceived ideas before it, I am persuaded by what David Mundell has said, because what he proposes would tighten up the bill. After all, we are trying to ensure that the bill is effective.

Dr Murray: Elaine Smith is absolutely right that somebody would not be permitted under legislation to use a dog to flush a wild mammal for any purpose other than those that are specified in proposed subsection (1)(a) to (d) in amendment 53. However, it is still possible that in using a dog for a legitimate reason, other animals might be flushed. It is all about the way in which amendments are read. Jamie McGrigor is right that quite often badgers use fox dens, and in attempting to flush a fox from a den it is possible that a badger will be flushed instead.

The Convener: I remind members yet again to remember their feelings on each amendment when we vote.

We will move on to the next sub-group, which is on the use of dogs to kill after flushing. I invite Fergus Ewing to speak to amendments 53K, 53C and 53L, which make up the sub-group.

Fergus Ewing: Amendment 53K would add the phrase "or a dog" after the phrase "bird of prey" in line 12 of Mike Watson's amendment 53. What does that mean? So far, we have been dealing with the exception of stalking and flushing from cover and with the situation where the wild mammal is flushed

"from cover (including an enclosed space within rocks, or other secure cover) above ground".

We are dealing with the situation where the wild mammal being flushed is above ground, not below ground, which is dealt with in subsection (2) of the proposed new section.

The starting point is to remind ourselves of last week's evidence from Paul Crofts, who was speaking on behalf of the Scottish Hill Packs Association. He raised four issues that are germane to amendments 53K, 53C and 53L; I have tried to allow for those issues in the

amendments, so that, particularly in the Highlands, the Scottish hill packs will be able to operate lawfully, as they do at present, for good reasons.

First, Paul Crofts said:

"We need to know that a pack of dogs may be used. For example, when we go out, we use more than one dog."

Secondly, he said:

"In the process of flushing, the dogs themselves kill the fox."

He explained:

"We need to know that someone who intends to flush the fox, which is then killed, will not be considered to have committed an offence."

In other words, the intention is to flush the fox to be shot. However, on some occasions, the dog will dispatch the fox after it has picked up its scent. That is just what happens. Practices, skills and expertise that have been built up over generations are designed to ensure that these activities are carried out in a way that minimises the possibilities of the dog killing the fox. With the best will in the world, however, those possibilities exist, as we heard last week.

Thirdly, Paul Crofts stated:

"We would like someone to lodge an amendment that would allow a single dog—a lurcher—to kill a mammal if that mammal is considered to be an agricultural pest by a landowner."

He continued:

"if the fox does not bolt, we need to know that subsection (2)(b) of the proposed new section after section 1, as proposed in amendments 53 and 19, will allow us"—

this is the key point—

"to dig down, rescue the dog and shoot the fox in the hole."—[*Official Report, Rural Development Committee*, 6 November 2001; c 2335.]

I thought that the main purpose of the evidence that we heard last week was to get to the nitty-gritty of those circumstances in which the least cruel method is used to dispose of the fox. Amendment 53K recognises that, on occasion, a dog kills a fox or another wild mammal.

Paul Crofts cited a related situation. He pointed out that

"a member of the Scottish Hill Packs Association, John Waters, who is in Caithness, uses a small terrier pack, which flushes the foxes out of the bushes to waiting guns. If those guns miss the fox or only wound the fox, he or one of his men then slips a single lurcher to catch the wounded or escaping fox."—[*Official Report, Rural Development Committee*, 6 November 2001; c 2345.]

It is necessary to use a dog to kill a fox or other wild mammal—that is from the evidence that we all heard last week, which Mike Watson said he welcomed and which he presumably supports.

Earlier, I mentioned the travelling people. I should also have said that Paul Crofts referred to the fact that working men all over Scotland—including central Scotland—have a tradition of going out with a dog to get a hare for the pot.

Although it might seem difficult to accept, there are circumstances in which the reality is that using a dog is the most humane method of controlling wild mammals and the one that inflicts the least suffering, which is the definition of cruelty that we decided on at stage 1. If gamekeepers and other people—such as Paul Crofts—are to continue to do what they do, those circumstances are unavoidable. If amendments 53K, 53C and 53L are not accepted, there will be a real risk to the continued livelihood of those people.

The evidence from the Macaulay Land Use Research Institute was that, if the bill was not amended, 114 gamekeepers would lose their jobs. I appreciate that Mr Watson has come forward with some improvements, but the SGA felt that the figure of 112 or 114—I will correct that later—was a minimal estimate. They thought that the figure would be far higher. Part of what we are doing is protecting the livelihoods of those individuals—that is the primary purpose of the key amendments 53K, 53C and 53L. I hope that we are all signed up to that task.

Amendment 53C states:

"Where a person is using a dog in connection with pest control activities and intends to kill wild mammals in the course of those activities only by lawful means, that person does not contravene section 1(1) by using the dog to kill a wild mammal which has been flushed to a gun and has escaped without being shot, or been shot but not killed."

The amendment has been lodged because those are specific situations that Mr Crofts identified.

We know that a fox will escape and that on occasion a dog will pick up its scent. That is reality. We know that the fox will sometimes be shot. If the fox cannot be dispatched by the dog, it will crawl into a hole and on some occasions will contract gangrene and die a far more painful, far longer and far more lingering death. It might lie under cover for many days, if not a lot longer. Such a dismal, painful and horrible death can be avoided by allowing a dog to dispatch a wounded fox. If the shooters miss, that is again reality. Although some members find the whole topic difficult, I hope that they will appreciate my reasons for lodging amendment 53C.

Finally, amendment 53L states:

"Where a person is using a dog in connection with the despatch of a wild mammal, being of a pest species, with the intention of flushing the wild mammal from cover or from below ground in order that it may be shot or killed by lawful means, that person is not in contravention of section 1(1) by virtue of the dog killing that wild mammal in the course of that activity."

That amendment took some drafting with the help of Andrew Mylne. Although it is intended to convey clearly that, once again, the intention of the person carrying out the activity is to shoot the fox, it recognises that on occasions the fox will be dispatched by the dog. As last week's evidence—and other evidence that we received at stage 1—showed, that is reality. If the owner of the dog unintentionally kills the fox in that way, the bill as it stands could turn many of the people in the room and hundreds of their compatriots throughout Scotland into criminals.

Mr Watson shakes his head. I am disappointed about that, because I think that what I have said is the truth. However, I will wait and listen with respect to his response.

Mr Rumbles: Do amendments 53C and 53L offer alternatives?

Fergus Ewing: I had intended that all my amendments would be agreed to in order to ensure that their effect would be cumulative.

Rhoda Grant: Amendment 53K is a wrecking amendment. It allows anyone to dispatch with a dog a wild mammal under the categories outlined in paragraphs (a), (b), (c) and (d) of subsection (1). We cannot accept that.

I can see what Fergus Ewing is getting at with amendment 53C and I have much sympathy with his comments. However, I am a little concerned that the amendment's wording changes the bill's emphasis, as people might use a dog instead of a gun to dispatch a wild mammal if it escapes. Perhaps he will consider not moving that amendment, which would allow us to find a way of tightening the wording up.

Again, I understand and have some sympathy with the intentions behind amendment 53L. However, when we discussed the issue of intent last week, it became clear that the bill would cover any circumstances where a person's intent was not to kill a wild mammal with a dog. As a result, I am not sure that we need that amendment.

Fergus Ewing: I will take the last point first. I am not quite sure where the bill states that someone who intends to shoot a fox and does not intend for the fox to be dispatched by a dog is protected if the fox is dispatched by the dog. Perhaps Mike Watson can tell us. If I can be shown where that is stated in the bill, I will consider not moving amendment 53L.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I thank the committee for allowing me to join it today. I cannot pretend to be an expert on the bill, but the same sentiments that Fergus Ewing has expressed have been expressed to me by John Waters and others. I do not know whether the amendments are correctly

framed, but the idea of a mammal dying a slow and lingering death after being wounded by gunfire is a problem. Fergus made that case eloquently. If a wounded fox has run somewhere where one cannot get at it, a lurcher will have to be sent in to do what the gun cannot do. I cannot stress enough that, in my constituency, the need to deal with a wounded fox in that manner is perceived as an important issue, especially among those who depend on the successful control of foxes and other pests.

15:30

Mr Rumbles: Rhoda Grant said that she thought that amendment 53K was a wrecking amendment. I would like the convener to confirm that none of the amendments is a wrecking amendment and that he would not have allowed the committee to consider wrecking amendments.

The Convener: I assure members that, if an amendment were deemed to be a wrecking amendment, it would not be on the marshalled list. Amendment 53K could be viewed as a wrecking amendment, but only in conjunction with other amendments. On its own, its inclusion is justifiable.

Mr Rumbles: Thank you, convener. It is important to state that on the record.

As Jamie Stone and Fergus Ewing said, we are discussing a key issue that has upset a lot of people. There is an assumption—if I may say so, an ignorant one—that everyone is a perfect shot. However, people who fire guns can miss their target. Evidence that we took at stage 1 showed that wounded animals need to be dispatched and I believe that people will continue to need to dispatch wounded animals with dogs if the bill is passed. We owe it to them to get the law right and not to make them criminals.

Elaine Smith: I am listening to the argument, but the point is that, given what the convener said, amendment 53K could be supported only if other amendments fell. If those amendments stood, and amendment 53K became a wrecking amendment, how could it be supported? It should not be on the marshalled list in the first place. I believe that amendment 53K would allow foxes to be flushed out and killed by dogs.

Dr Murray: I have considerable sympathy with what Fergus Ewing is trying to achieve with amendments 53C and 53L. They might not be worded as well as they could be, but I see the need to protect the activities of hill packs. At stage 1, we were told that something like one fox in eight is caught by dogs, although not necessarily intentionally. It is important to recognise that fact, given that, in the stage 1 debate, the Scottish Parliament indicated that it wanted a bill that

outlawed mounted fox hunting, hare coursing and the underground baiting of foxes by dogs.

If amendment 53K is accepted, perhaps the wording should be re-examined at stage 3. I am not sure about inserting the words “or a dog” in the place suggested. It seems slightly circular to start the section by telling people not to use dogs and then to end the section by talking about using a dog to kill a fox. I am not terribly happy with the wording.

Fergus Ewing: I welcome the thrust of Dr Murray’s remarks. In recognising that we need to protect certain activities, we need to ensure that they are not turned into illegal activities.

I received help from the clerks in drafting amendments 53K, 53C and 53L. The amendments started off life in considerably worse shape, mainly because I was the author, but the clerks were the finishers of the process. The amendments had the benefit of the substantial experience of Mr Mylne, to whom I am grateful. As they are currently worded, amendments 53K, 53C and 53L add to the bill—they deal with the matters that were raised last week.

I say to Elaine Murray that of course the bill could be improved at stage 3. Indeed, that will be essential. However, what we have before us is better than what is proposed in amendment 53 and it recognises the evidence that we took last week. If amendments 53K, 53C and 53L are not agreed to, we may as well not have taken evidence from those witnesses, who are in the public gallery today—we may as well not have listened to them.

If we do not include the provisions in amendments 53K, 53C and 53L, or something like them, we will create victims who will be not rich landowners, but ordinary working people who live in the countryside. We will have failed Scotland and its rural community. I believe that with great passion. I will carry on trying to achieve my aim in any way that I can.

Mr Tosh: I think that it was Rhoda Grant who said that the issue might not be a problem because the application of the law would turn on a person’s intent. At that point, Mike Watson muttered some kind of agreement. I do not have in front of me a copy of the *Official Report* of what the committee agreed on section 1 two weeks ago in our stage 2 deliberations. Although I may be wrong, my recollection is that I tried to lodge an amendment to include the expression “with intent”. The convener was undoubtedly correct when, on the advice of the clerks and their legal adviser, he ruled that inadmissible.

The word “deliberately” was included in the bill and I remember Mike Watson saying that that adverb would qualify the verb “hunting”. It strikes

me that in the bill there is no question of intent in relation to how the animal is dispatched; the question is whether a person has “deliberately” hunted. People risk being criminalised unless the bill explicitly provides for the controller of a dog to escape prosecution because a dog has been used in a way that the controller did not intend. The bill also needs to provide for circumstances where there was no other option, including where a dog was allowed to finish off a wounded animal. People also risk being criminalised who have “deliberately” hunted and whose dog, in certain circumstances, has terminated the life of a hunted animal.

That is difficult territory for Mike Watson. If he rejects amendment 53K on the basis that he does not want the words “or a dog” to be inserted, he has to be certain that all the circumstances where the use of a dog would leave the person liable for prosecution are covered in amendments 53C and 53L. I am not sure whether amendment 53K is needed, but I am clear that amendments 53C and 53L are necessary, as otherwise a person who has “deliberately” hunted becomes a criminal if his animal kills a fox or if he uses the dog to kill a fox because he believes that in those circumstances that is humane. Amendments 53C and 53L are essential, but the committee should look carefully at amendment 53K to check whether the other two amendments cover the range of permissible cases.

The Convener: Does Mike Watson want to comment on that sub-group?

Mike Watson: Yes. As I do not want to incur the convener’s ire, I will not use the term “wrecking amendment”. However, it is my view that amendments 53K and 53C run counter to the general principles of the bill as they were debated at stage 1.

I think that it was Rhoda Grant—it may have been Elaine Smith—who said that, if we add “or a dog” to amendment 53 after the word “prey”, we effectively legalise flushing by dogs for deliberate kill by dogs.

Fergus Ewing can indulge in hyperbole, as he has done, to describe the effect of not agreeing to amendment 53K. I have never been insensitive to the question of jobs in the discussions that I have had with people who may or may not be able to benefit from the activities that Fergus Ewing’s amendment 53K covers. Exaggerating the effect as he has done does not help the argument at all. He said—I noted down some of his words—

“If the shooters miss, that is ... reality.”

Yes. If the shooters miss, the reality is that they do not get the fox. We should not forget that that is the argument that those in favour of mounted hunting made. They said that, quite often—in fact,

if we believe them, more often than not—the fox gets away at the end of the hunt. They said: “Most foxes escape and we have had a good day’s sport and that’s fine.”

Either we accept that the foxes will sometimes get away or we do not. The idea that, if someone takes a shot at a fox and it gets away, that fox becomes fair game for the dogs is contrary to the general principles of the bill, which a significant majority of members agreed to on 19 September 2001.

It seems to me that amendment 53K could be used for deliberately hunting with dogs. I am not suggesting that all gamekeepers, all members of the Scottish Hill Packs Association or all members of the National Working Terrier Federation would use the amendment for deliberately hunting with dogs, but it could happen. If amendment 53K were agreed to, it would leave a gate a mile wide open in the bill.

To a significant extent, the same is true of amendment 53C. My view is that that amendment would allow mounted hunts. If we take it at face value, it seems to attempt to insert a big loophole into the bill; it would allow a pack of dogs to chase and kill an animal simply because someone had taken a shot at it first, regardless of whether that shot was designed to wound the animal. I am not suggesting that it would not be designed to do so, but it would not have to be.

That seems to replicate unnecessarily the provision on the intention to hunt. I thought that we had resolved that question two weeks ago with the amendments that inserted the word “deliberately”; I thought that that had put the argument to rest. Amendment 53C seems to be an attempt to reopen the matter. That is why I am disappointed that the amendment was deemed admissible.

It is important to understand that in many cases—if not in most cases—gamekeepers and people with hill packs or working terriers will be successful in their work through shooting. I am not denying that there will be some cases in which that is not possible. I accept that. However, the idea that not agreeing to amendments 53K, 53C and 53L will result, as Fergus Ewing says, in hundreds of people being thrown out of work does not serve the argument at all.

Amendment 53L, too, is concerned with deliberateness. That issue is covered by the “deliberately” that we agreed two weeks ago. The intention of the amendment might be to cover accidental killing with dogs—even after Fergus Ewing’s comments, however, the intention is not clear—but it is already clear that someone has to have an intent to kill with dogs to lay themselves open to prosecution. Again, that replicates the earlier provision unnecessarily.

Amendment 53L is contrary to the principles of the bill. That is what worries me about this subgroup of amendments. I believe that the intention that the Parliament expressed on 19 September would be altered substantially if the amendments were agreed to. A number of advances have been made. A number of them are in line with the evidence that we heard last week. However, I cannot support amendments 53K, 53C and 53L because I believe that they would overturn the decision that Parliament arrived at in September.

15:45

Dr Murray: I do not agree that the amendments are a deliberate intention to undermine what was agreed at stage 1. If you read the amendments on their own, it looks as if that is the intention. However, the amendments must be read in conjunction with and as addenda to the other amendments and what we discussed a few weeks ago. I do not want to go into semantics again, but we are talking about exceptions and where dogs are being used deliberately to hunt. Most of us would agree that dogs should not be deliberately used to kill, but there are certain possible exceptions to that, for example where a dog kills despite the intention of its owner. Another example is when, during the activities of hill packs, dogs kill foxes although the intention is to shoot them.

Mike Watson: That situation is covered.

Dr Murray: How?

Mike Watson: A person is not open to prosecution in such a situation because the action is not deliberate. That is the point that I made.

Dr Murray: They are deliberately hunting a fox with dogs.

Mike Watson: With a view to shooting the fox.

Dr Murray: Your definition of hunting includes pursuing or coursing, not just killing. So if someone is using dogs to pursue a fox, they are deliberately hunting. They might not intend to kill a fox with a dog, but that might be an unintentional consequence. That is where we have a problem.

Mr Rumbles: I would like Mike Watson to answer a straightforward question. In the situation that happens all the time, in which a fox is flushed from cover and shot but only wounded, does the bill—without the amendments—allow somebody deliberately to dispatch that fox using a dog? The question was raised earlier and I listened carefully to your response, but I did not hear you address the issue. If the bill does not cover that situation then we must agree to the amendments.

Mike Watson: I do not see why the bill does not cover those circumstances. The point is that one is not allowed to set a dog on a wild mammal.

Mr Rumbles: Even to put it out of its misery?

Mike Watson: That becomes a subjective issue. The answer to that question would therefore be no.

Fergus Ewing: I found Dr Murray's comments to be helpful. She reminded the author of the bill that the amendments should be seen in the context of the section in which they would appear. To understand what they mean, one must start by reading amendment 53. The amendments apply in those circumstances and in those circumstances alone, because they are amendments to amendment 53. I am grateful that Dr Murray has gone straight to the nub of the issue with her characteristic good aim for what is relevant.

With respect to Mr Watson, I feel that he has not addressed my basic points in relation to the evidence that Paul Crofts gave last week. I have made an honest attempt to deal with those points and I think that it was a good attempt—perhaps only because the clerks assisted me. However, there has been no answer about what would happen to a wounded fox. There has been no mention of the working man going to get something for the pot, nor has there been mention of travelling people and what they do.

I am afraid that Mr Watson did not mention any of those points, nor did he mention Mr Crofts's statement that a pack of dogs might need to be used. He did not mention the expertise that exuded from all the witnesses who carry out such activities and he did not mention the fact that occasionally a dog will accidentally follow the scent of a fox. Goodness knows what "under control" means in that context, although I believe that we will come to that later with Mr Mundell's amendments.

Mr Watson did not address those points, but he attacked me; I do not mind that, I am quite used to it. I say to him, "Please carry on, if that is the way you want to do it." However, the figures that I quoted do not come from me—they come from the Macaulay Land Use Research Institute. The SGA felt that those figures were on the low side. Whether we are talking about one, 10 or hundreds of gamekeepers losing their jobs, it is one, 10 or hundreds too many.

Mike Watson did not address those points. I hoped that he would do so, but I accept Mr Tosh's and Dr Murray's comments. Mr Tosh has pointed out that amendments 53C and 53L should be passed, but he did not show such untrammelled enthusiasm for amendment 53K. However, I think that that amendment is necessary only in the context of the proposed new subsection (1), namely that stalking and flushing from cover must be for the purposes of protecting livestock, fowl and so on, for providing food for consumption by a

working man or a travelling person, for protecting human health and for preventing the spread of disease. To ignore those points is to do a disservice to the committee.

The Convener: Mike Watson suggested that amendment 53C might allow the reintroduction of mounted hunting. I do not see how that could be the case when amendment 53 recommends that a wild mammal be shot or killed by a bird of prey "as soon as possible". That does not happen in a mounted hunt. I am sorry that my judgment is being questioned; however, all sides of the debate are doing that, so it is probably fair enough.

Mike Watson: I do not wish to respond to Fergus Ewing's points. People must draw conclusions from what I have said and what is in amendment 53. I do not see any point in getting involved. I was not insulting Fergus Ewing; I was simply accusing him of exaggerating. I do not want to add anything to what I have said.

The Convener: I remind members to keep an eye on the amendments as we go through them.

We move to the use of dogs below ground and amendments 53M, 57A, 22 and 23. I ask Cathy Jamieson to speak to amendments 53M and 57A and to any other amendments in the group that she wishes to address.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): Thank you, convener. I hope to be brief—I have become used to speaking in soundbites over the past couple of days.

The amendments are fairly straightforward and are based on animal welfare concerns. They seek simply to restrict to a single dog the number of terriers that may be sent below ground. We heard last week—from people who are involved in the process—that the National Working Terrier Federation's code of conduct recommends that, wherever it is possible and practical, only one terrier at a time should be entered to ground. The amendments are consistent with that. We heard that, on occasion, another terrier might be entered underground to help to release a trapped dog. However, it was acknowledged that in most circumstances it is possible to dig out a trapped dog.

The Convener: That was commendably brief, Ms Jamieson.

I am sorry; I should have explained that the manuscript amendments that members have on a separate sheet—amendments 53W, 53X and 57G—are also contained in the sub-group. I ask David Mundell to speak to amendment 53X.

David Mundell: My amendment is 53W.

The Convener: I beg your pardon.

David Mundell: I had assumed that amendment

53W would be in the same grouping as 57G. Amendment 53W would delete the words “under control” from amendment 53. I do not want to replicate the arguments when we discuss the next grouping. I believe that “under control” is another term that is impossible to define. A person who is working a dog might consider it to be under control, but that is not how somebody else might see it. We do not have a definition of “under control”. Some people might regard dogs that are flushing out in a forest as being under control; others might not. Some people might regard a dog on a lead as being under control; some of us, on walking down a street and seeing a dog on a lead, might not regard it as being under control at all. The term is not sufficiently defined.

It was clear, from considering the evidence that was given last week, that distance is a relevant issue in the argument. A dog could be 200m away and not under control, whereas a dog that is five miles away could be argued to be under control. “Under control” is another term that brings uncertainty and an unsatisfactory scope for widely different interpretations. That is why I suggest its deletion from amendment 53 and, indeed, from amendment 57, if it is pressed.

The Convener: I call Mike Watson to speak to manuscript amendments 53X and 57G.

Mike Watson: I am rather surprised to see amendment 53X, which I had not seen before I arrived in the room this afternoon. Amendment 53X is not the amendment that I lodged yesterday. The wording is slightly different. I did not have sight of amendment 53X before I arrived.

The intention behind the two manuscript amendments that I lodged yesterday—amendments 53X and 57G—is to ensure that the amendments in the names of Cathy Jamieson and Rhoda Grant do not restrict to one dog the use of dogs in a cairn or rocky area. That intention arose from evidence that we heard last week from gamekeepers. It seemed to me that the amendment that Rhoda Grant lodged as an amendment to—I think—Cathy Jamieson’s amendment made ambiguous the phrase, “a dog”. Amendments 53X and 57G are meant to ensure that, although gamekeepers say that one dog only is needed underground, the use of dogs in cairns or spaces within rocks will not be restricted to one dog.

I am sorry, however, because it seems to me that amendment 53X in my name is not in line with what I originally lodged. I apologise if that amendment is less than clear to members—it is also less than clear to me.

The Convener: Are you talking about amendment 53X?

Mike Watson: Well—apparently.

The Convener: My understanding is that amendment 53X was discussed and agreed with your assistant, who had trouble reaching you. If there is a problem, then—

Mike Watson: I was not available this morning. I can see that amendment 57G is the same as the amendment that I lodged, but amendment 53X is not. Nonetheless, I presume that that wording has been used to cover what I intended to do.

The Convener: I am sure that it does.

Mike Watson: Therefore, the explanation that I have given should be relevant in the circumstances.

The Convener: So you are speaking to manuscript amendments 53X and 57G and leaving them in place.

Mike Watson: Yes.

The Convener: I call Elaine Murray to speak to amendment 22 and any others in the sub-group.

Dr Murray: Amendment 22 would amend a section of the bill that would be replaced if amendment 53 and amendments to it were passed. It would enable—I hope—some clarification of the phrase, “a single dog”. During stage 1, there was some debate about whether the phrase “a single dog” included dogs in the plural. Substituting the phrase “one or more dogs” for the phrase “a single dog” clarifies the exception for hill packs, for example, where more than one dog may be used.

The Convener: Lastly, I call Fergus Ewing to speak to amendment 23 and to any others in the sub-group.

Fergus Ewing: Amendment 23, which is on page 10 of the marshalled list, seeks to amend section 2(7) by leaving out the word “single.” Section 2(7) states:

“An occupier of land (or an individual acting with the occupier’s permission) does not contravene section 1(1) by using a single dog under close control”.

The purpose of amendment 23 is similar to Dr Murray’s purpose in amendment 22, which is to ensure that activities such as those of the hill packs that we heard about earlier are not restricted. Unlike Dr Murray, I felt that the appropriate method to achieve the objective that she outlined was to delete the word “single” at this point. However, amendment 22 should be read in conjunction with amendment 27, which—I appreciate—has not been included in this sub-group.

Perhaps I should have informed you, convener, that I felt that amendments 22 and 27 should be considered in conjunction and read concurrently. If I may, I will read out amendment 27, which is

intended to provide a definition. This harks back to a point that I made when the minister was before the committee last week, concerning a way in which it would be helpful for the Executive to clarify our activities. Throughout the bill, reference is made to “a dog”, “dogs” and “a single dog”. To be frank, I do not think that the references are correct in all cases. The Executive might not say today that it intends to address that issue at stage 3, although I hope that the minister will comment on it. However, amendment 27 would add to section 7 at line 34 of page 4 of the bill the words:

“and references to hunting with, or the use of, “a dog” are to be interpreted as applying to hunting with, or (as the case may be) the use of, two or more dogs”.

The purpose of amendment 27 is to reintroduce the statutory principle of interpretation—that the singular incorporates and includes the plural unless the contrary is specifically stated. Amendment 27 would make it clear beyond doubt that where the bill refers to “a dog” we are also contemplating the use of more than one dog, except where the bill refers to “a single dog”. In that case, the statutory presumption would be elided and rebutted: it would not apply. I hope that the minister will comment on that point.

16:00

Cathy Jamieson’s amendment 53M runs contrary to the evidence that we were given last week by Paul Crofts. A single dog would not be enough to flush a fox. Amendment 53M would also not allow another dog to be used to dig down to a dog that had become trapped below ground. As was made clear in the evidence that we heard last week, there are circumstances in which another dog might need to be used. Such action would be aimed at ensuring the welfare of the dog, as well as that of the fox.

I endorse David Mundell’s arguments concerning the use of the phrase “under control”. What does that phrase mean? Last week we heard helpful evidence about that: no one seemed to know what the phrase meant. Mike Watson proposed originally that the phrase “under close control” be used, the meaning of which is also opaque and unclear. The phrase “under control” is, I presume, less specific than the phrase “under close control”. However, we never obtained a definition of “under close control”, so that is merely a wild guess.

Last week, Mr Watson helped us by commenting on the evidence that we had received. In response to the evidence that was given by Thomas Parker in particular, he said:

“Control is when the person in command of the dog believes that he or she has control of the dog”—[*Official Report, Rural Development Committee*, 6 November 2001; c 2337.]

If “under control” is defined as a person believing that a dog is under control, that is an entirely subjective test. Such a test would involve proving what a gamekeeper or hill pack men believed at a particular moment in time. We should bear it in mind that we are trying to define what is and what is not criminal behaviour. I will be interested to see whether Mr Watson believes that the phrase should be withdrawn or inserted later in the bill, with a clearer definition of “control”.

As always, I will listen with interest to what Mr Watson says, but can it really be said that a dog is under control when it has caught the scent of a fox? Can it really be said that a dog is under control when it is underground? Mr Watson now recognises that dogs should be used underground. I know that retriever locators are used and that they are very useful devices. Is a dog under control if a retriever locator is used? If a locator is not used, how can a dog that is underground be said to be under control?

I am not saying that the matter should not be the subject of very careful provision. However, the points that Mike Watson made last week did not support the case for including the phrase “under control” in the bill. Rather, they undermined it. I am happy to support David Mundell on the matter.

Mike Watson: I would like to comment on the point that has been made about control and close control. The amendments that were before the committee when it began stage 2 consideration of the bill referred to “control”, rather than to “close control”. When I was asked to expand on what I meant by “control”, I gave the response that Fergus Ewing quoted from the *Official Report* of last week’s meeting. It was notable that all three people who gave evidence last week nodded when I gave that definition of control. It seemed that all three witnesses were comfortable with it and did not reject it as Fergus Ewing suggests. I am happy to repeat what I said last week. It is impossible to define control absolutely, but I thought that the matter had been dealt with last week in a way that the witnesses found satisfactory.

Fergus Ewing: The main thrust of my argument is that if Mr Watson’s answer is that control is defined as what a person believes it to mean, its definition is meaningless and can have no place in a statute that creates criminal offences. At the end of the day, any person in the dock would say simply that they believed that the dog was under control. If the test is totally subjective and that person is entitled to hold a belief—reasonably or unreasonably—prosecution of the case, if it ever got to that stage, would be a complete waste of time. It is an entirely subjective test.

The witnesses last week raised considerable doubts about the phrase, but felt that they were

using dogs appropriately. Such dogs cannot be controlled on leads—that suggestion is irrelevant, because that is not a situation in which to put a sheepdog. If such a provision is to be included in the bill, perhaps we can revisit it in a definitions section and have more structured arguments at that point.

Rhona Brankin: Perhaps I can help on the issue of “one or more dogs”. The point applies to amendment 22, as well as to amendments 21 and 27, as Fergus Ewing suggested.

The Executive is neutral on the amendments, but considers them to be unnecessary. On 30 October in committee, Fergus Ewing raised concerns about the words “one or more dogs” in section 1(5). We have considered the matter and, after the removal of that subsection—which took place at that committee meeting—we consider that reference to “a dog”, where it occurs in the bill, is sufficient to include “dogs” and that no further amendment is required. Fergus Ewing made reference to the interpretation rules.

Dr Murray: Could the legal definitions of “under control” be of assistance here? Perhaps we could return to that at stage 3. The issue is not really about what Mike Watson understands “under control” to mean, or even about what the people who work with dogs consider it to mean. I am sure that the control that gamekeepers have over their dogs is considerably greater than the control that I might have over my dog, although I would still say that I was in control of my dog. Fergus Ewing referred to the use of locators on terriers. However, locators are not for controlling dogs, but to allow the owner of a dog to find and rescue the dog if it gets into difficulty. A locator being put on a dog does not indicate that a person has control over that dog. I do not know whether the Executive can advise us whether there is any legal understanding of the meaning of “under control”. Perhaps we will have to consider that at another stage.

Rhona Brankin: We have not yet considered that matter, so I am unable to offer guidance.

Fergus Ewing: I was grateful for the minister’s helpful reply on the issue of the general use of the phrase “a dog or dogs”. The minister said that she thought that the amendments were unnecessary. However, I wonder whether she addressed specifically the purpose of amendments 22 and 23, which is to amend section 2(7) to allow an occupier of land to use more than one dog to hunt a rabbit or rodent, or to stalk or flush from cover above ground a fox or a hare. I understood that the minister had not intended to comment on that situation and had intended to restrict her remarks purely to the question of legal definition. I did not think that she was going to enter into the debate about the circumstances in which one dog or more

than one dog should be used for a purpose.

Rhona Brankin: I was confining my comments to amendments 22, 21 and 27 and was dealing specifically with a matter of legal definition.

Mr Tosh: I am conscious that I am a visitor to the committee and am probably tainted in the eyes of some members as being one who does not worship the false god of consensus. I do not want to be over-provocative, but I am surprised that the minister said that the Scottish Executive had not yet considered the definition of “under control”. I would have liked to think that the Executive, from a position of policy neutrality, would scrutinise the entire bill. I know that the minister said that she would consider lodging amendments at stage 3 if that were necessary, but I would like to think that the bill had been carefully considered and that advice would be given about all the legal and technical issues before we risked the bill becoming law.

Rhona Brankin: I was referring specifically to the legal points that were raised in amendments 22, 21 and 27. Having considered the matter, we are neutral on the policy issue that relates to the words, “under control”. I was not trying to comment on that.

David Mundell: I accept what the minister is saying about policy neutrality, but is she saying that after stage 2 the Executive will examine the bill to ensure that it fits together consistently and can be interpreted by the Crown Office and Procurator Fiscal Service? Alternatively, is the Executive simply neutral on the issue of whether the legislation is enforceable?

Rhona Brankin: I repeat that it is for the committee to decide what “under control” means in this situation. The Executive has no view on that amendment and it is for the committee to decide which amendments it wants to agree to. If the committee considers that agreed amendments require technical adjustments, we will lodge amendments at stage 3 to make those adjustments.

The Convener: The minister mentioned amendment 21 several times. I think that that was probably a slip of the tongue, given that that amendment is not in the group that we are considering.

Rhona Brankin: Neither was amendment 27, to which Fergus Ewing referred. I mentioned amendment 21 in response to that.

The Convener: Right, thank you.

Fergus Ewing: I understood that when the minister referred to amendment 21, which was discussed last week, she meant amendment 23. Is that right?

Rhona Brankin: I am completely confused now.

The Convener: You are not alone.

Rhoda Grant: Amendment 57, which I will withdraw if amendment 53 is agreed to, uses the word “control”. When I first drafted the amendment, I used the phrase “close control”. After discussing the matter with people who would be using terriers underground, I decided to remove the word “close”, as people would obviously not be close to the dogs, but to leave the word “control”, as people should be using a dog that they have trained and which will carry out the purpose that it is meant for.

If no qualification is made, a person could use any dog at all. I am not saying that people such as gamekeepers would use any dog, but we risk leaving a loophole for people who are not interested in the welfare of the animals to use any dog. An onus must be placed on people to use a dog that is trained and suitable for the job.

16:15

Dr Murray: Would it be possible to find out—the Executive may be in a good position to find out for us—whether there is a legal understanding of the term “under control”, or whether, if we continue to use the term, there will have to be a definition in the bill.

The Convener: I will give the minister an opportunity to respond to that in a minute.

Fergus Ewing: I heartily endorse Elaine Murray’s request for help from the minister. I draw the committee’s attention to the fact that, when the bill was discussed in the chamber, the minister said:

“it will be necessary to consider in detail the changes that are needed to make the bill workable. That is the function of stage 2, but I assure members that the Executive will assist with the process as far as possible.”—[*Official Report*, 19 September 2001; c 2571.]

I hope that that assistance, which the minister assured us would be provided at stage 2, will be forthcoming on this and other issues. There has not been much evidence of that thus far.

Mr Rumbles: I take exactly the opposite view to Fergus Ewing. When the minister came to the committee two weeks ago, she gave a clear view and, in my opinion, was not neutral on policy. She was not slow in being “forthcoming”—to use the word that Fergus used. She is now smiling, which is an advantage. She was not slow to inform the committee that the Executive wanted to move away from the whole issue of cruel sports. I find it ironic that some members now find it difficult that the Executive is taking a policy stand. I only wish that they had thought that two weeks ago.

The Convener: I take it that the minister would rather not respond to that.

Rhona Brankin: I will take a drink of water first.

Mike Watson: I would like to repeat my support for Cathy Jamieson’s amendments 53M and 57A—providing that my manuscript amendment 53X, confirming that more than one dog may be used in a cairn, is accepted. I do not really see the need for amendments 22 and 23. They are obviously consequential on licensing which, if section 2 were to be deleted, would not exist.

David Mundell: The issues that I highlighted in relation to my amendment 53W have been well discussed. I disagree with the minister: it is not for the committee to determine what the expression “under control” means; unless a definition is inserted in the bill, it will be for the courts to determine what the expression “under control” means. Anyone who reads the evidence that we have gathered will know that there is no consensus on what the expression means; it is not clear. Therefore, if Mike Rumbles wants the expression “under control” to remain, he should follow the route that I think Rhoda Grant was indicating and include a definition of what “under control” means in section 7.

Rhona Brankin: I want to respond to Mr Rumbles’s point. It is important to set the record straight. He was alluding to an amendment that was discussed in the committee on day one of stage 2—an amendment that I asked the committee to resist. I did so because the Executive believed it to be unworkable in law. It is important that the committee understands that the views expressed were not based on a policy position.

The Convener: I have been accused several times before in the committee of not calling a break when one was needed by members. I therefore propose a seven-minute comfort break—I believe that is what they are called. That does not give people very long but, in the convener’s case, a break is very necessary.

16:19

Meeting adjourned.

16:27

On resuming—

The Convener: We are one minute past my seven-minute deadline, so I am afraid that I must start. Mike Rumbles wishes to make a point and then so do I.

Mr Rumbles: On a point of clarification, I want to ask the minister about the statement that she made just before the break. She said that the

Executive opposed the amendments concerning cruel sports because they were not workable in law. Are all the other amendments that the Executive is not opposing workable in law? A simple yes or no would be helpful.

Rhona Brankin: The Executive remains neutral on the bill, except where amendments cut across Executive policy, have significant cost implications, go against the bill's principles or are unworkable in law. We seek to remain neutral.

Mr Rumbles: Just to clarify that point, are you saying that every amendment that the Executive does not oppose is, in its view, workable in law?

Rhona Brankin: Where we say that we are neutral, it is our view that the amendments are workable. However, they might require Executive amendments at a later stage.

The Convener: I am keen to move on. Members have rightly brought to my attention the fact that time is marching on. I am also keen that we reach the end of this major group of amendments to amendment 53 and that we vote on them tonight. Coming back to the issue in a week's time will entail restarting the debate, as members will have forgotten what the amendments are about. Although I have no intention of curtailing members' input, I ask them to be as concise as possible in making their points. I repeat that I am not going to curtail members' input, but it is important that we reach the end of the group tonight if we possibly can.

The next sub-group is on locating below ground. It comprises amendments 53P, 53R, 53D, 53T, 53E and 57B, which are on pages 3 and 5 of the marshalled list.

16:30

David Mundell: Amendment 57B would delete the words "under control" from Rhoda Grant's amendment 57. We have discussed that matter in full and I will say nothing further on that.

As for amendments 53P, 53R and 53T, my understanding is that six in 10 foxes that terriers locate underground must be dug out, as a fox will not be flushed out if it reaches a dead-end in the earth, for instance. The terrier men use the tracker to locate the terrier, dig down to him and lift him out; they then shoot the fox at close range. The amendments are intended to allow that to happen, by deleting words in the principal part of subsection (2) and by amending subsection (2)(a). Amendment 53T would simply remove the words

"flushed as soon as possible after it is located and shot as soon as possible after it is flushed"

and replace them with

"dug down to and shot, or flushed out and shot, as soon as

is safely possible".

Rhoda Grant: Amendment 53D would bring amendment 53 in line with my amendment 57, to allow dogs to be used in spaces in rocks and under cover above ground.

Amendment 53E would insert the word "reasonably", to ensure that the fox is flushed out as soon as reasonably possible. That would give people a wee bit of comfort. If it were unsafe to shoot the fox immediately, people could shoot it as soon as reasonably possible.

With his amendments, David Mundell is keen that people should be able to dig down and locate a fox if there is an impasse underground. Amendment 53 would allow for that, because it says that a person must take

"all reasonable steps to prevent injury to the dog".

That would not outlaw digging down.

Mr Tosh: Would Rhoda Grant consider applying the word "reasonably" to both occurrences of the word "possible" in subsection (2)(a)? Amendment 53E applies only to the first occurrence of "possible", but the argument applies equally to the second occurrence of the word "possible".

Rhoda Grant: I have no problem with that suggestion, although amendment 53E could not do that.

Mr Tosh: I simply raise the issue because you might wish to deal with it later.

Mike Watson: David Mundell's amendment 53P would remove the word "flush", which expresses the intent of the gamekeeper when he puts a dog below ground. He does not want only to locate the fox, but to flush it for a kill above ground. Therefore, I see no benefit in using the word "locate". Locating without flushing is dealt with in section 3, which we will consider in due course. Amendment 53R is consequential on amendment 53P.

I support Rhoda Grant's amendments 53D and 53E, subject to my manuscript amendments in the previous sub-group.

David Mundell: I do not think that amendment 53 would do what Mike Watson says it would, unless the word "flush" is given a wider definition, which includes going into an underground earth that has only one entrance. The word "flush" implies that an animal will exit. In some circumstances, an animal will not exit and other action will be taken. Amendment 53P is intended to deal with such a situation.

The Convener: The next sub-group, which is on species that may be flushed from below ground, contains amendments 53Q, 53S, 57C and 57D.

David Mundell: Elaine Murray might be

interested to know that I saw a mink in my garden in Moffat. Mink are out there and they are particularly pernicious non-indigenous pests. It is widely reported that the mink population is exploding, not only in the western Highlands and Islands, but in the south of Scotland. They are well known to be indiscriminate and opportunistic predators of fish, waterfowl, nesting birds, small mammals, domestic pets, poultry and game birds. Mink frequently inhabit small underground burrows, so the use of terriers underground is an essential form of mink control. That is why I lodged the amendments.

Fergus Ewing: I support David Mundell's clarification of the exception—it should apply to using a dog to flush a fox or a mink. I am told that mink are mainly caught in cage traps and type six fen traps, but to locate the mink it is necessary to use dogs to find the holes. I am told by authoritative sources that mink holes are not normally penetrable by dogs, which are used not always to flush mink, but to locate them. Mink are a serious problem, particularly in the Western Isles. The problem will become much more serious and will be the subject of a lot of publicity. I welcome David Mundell's amendments.

Mike Watson: I will lump all my comments into one. We heard the basic argument from Ronnie Rose of the Scottish Gamekeepers Association, who said that the effective way to kill mink is to use dogs for tracking or locating and to set traps in reed beds and so on. He said that there is no need for dogs to go underground to flush mink. That is how I understood Mr Rose's information. Fergus Ewing mentioned the Western Isles, but mink are caught there by trapping and shooting without the use of dogs. I urge opposition to the four amendments because the evidence shows that they are not necessary.

Fergus Ewing: That begs the question whether the system in the Western Isles works, which is doubtful.

Mr McGrigor: Does Lord Watson agree that although dogs are not necessary to kill mink, they are necessary to locate them?

Mike Watson: They can be necessary to locate them, but not to kill them.

The Convener: The next sub-group, on prevention of injury to the dog, contains amendments 53U and 57F.

Cathy Jamieson: Amendments 53U and 57F are fairly straightforward. People who use working dogs, particularly those who put terriers underground, are concerned for dogs' welfare. They know that, at times, the business can be dangerous and risky for dogs. The amendments seek to ensure that every possible step is taken to prevent dogs from becoming trapped

underground, that concerns of animal welfare are to the fore and that if a dog becomes trapped, it is rescued as soon as is practicable.

Mr Rumbles: Would that include using a second dog?

Cathy Jamieson: That has been clarified. There is no need for more than one dog to be used for flushing. However, from the Scottish Gamekeepers Association's evidence, it seems that in some instances a second dog is used to free a trapped dog. That is my understanding of the evidence. Using a dog to free a trapped dog is different from using a dog to flush animals from underground.

Mr Rumbles: So the amendments would allow the use of a second dog.

The Convener: If no other members wish to comment, I will move to the next sub-group, on firearms certificates and written permission, which comprises amendments 53F, 53V and 84. Members will find amendment 84 on page 12 of the marshalled list; although the amendment is relevant to section 7, it has to be discussed today.

Rhoda Grant: Amendment 53F is a tidying-up amendment. As people receive certificates, not licences, for firearms and shotguns, the amendment deletes the word "licences" from this section.

David Mundell's amendment 53V seeks the deletion of the word "written" from paragraph (d)(ii). Written permission is extremely important, as it gives protection to the people who are carrying out the activity. It would be quite possible for someone who gave verbal permission to a hunt for a fox that then went wrong to say that they had not given such permission. For that reason, I ask for the word "written" to be retained.

As for amendment 84, which would include "a visitor's firearm permit, and a visitor's shotgun permit"

under the category of "firearms or shotgun certificate", I specifically left those permits out of amendment 53F because pest control should be left to professionals, not to people who are visiting an area for sport. I understand that amendment 84 would allow people who want to go deer hunting to do so on a visitor's permit. That condition should not be allowed under this bill, in which the main issue is pest control.

David Mundell: I will speak only to amendment 53V. I do not agree with Rhoda Grant's comments. The word "written" should be deleted from paragraph (d)(ii), because to do otherwise would ignore the practical realities of the modern environment. If this were an Executive bill and we were seeking to insert the phrase "written permission" into its range of permissions, we

would be told that that would be unnecessary and over the top and that the ordinary evidence of proof that is presented in the courts every day would be enough to determine whether permission had been given. I do not see why the bill should be deemed so important in our criminal code that it should require the inclusion of written permission when other legislation does not.

Fergus Ewing: David Mundell has made a practical point. I understand that farmers give many oral instructions over the telephone about this activity. It might not always be practicable for farmers to issue written permission because this work is usually done very early in the morning. If the person carrying out the work does not have an opportunity to see the farmer or crofter involved between arranging and doing the work, there might not be a physical chance to get written permission. The question is whether the remaining sense of paragraph (d)(ii) would be enforceable if the word "written" were removed. I think that it would, because the point is that permission has been granted. Whether the permission is granted verbally or in writing is a secondary consideration, although it would be desirable if it could be granted in writing. For that reason, I support amendment 53V.

The British Association for Shooting and Conservation has told me that amendment 84 would tidy up a small loophole by allowing those who are granted visitor's firearm permits to take part in activities such as deer hunting and pest control that are currently carried out. Although it is a minor amendment, it should be supported.

Stewart Stevenson (Banff and Buchan) (SNP): Would people holding a temporary certificate be subject to the codes of conduct that we heard about from the various witnesses last week?

Fergus Ewing: I believe that they should be subject to those codes of conduct. However, the code of conduct that we heard about last week was the National Working Terrier Federation code. The question is whether that has significance in the bill: it does not at present. We have not yet debated that issue. We may do—who knows? Anyone engaging in this activity should subscribe to a code and I commend the NWTF code as a good base to build on. The terms of the bill do not require anybody carrying out the activity to subscribe to the aims of a code. We might want to consider that later.

16:45

John Farquhar Munro: I support amendment 84. Many visitors who use a temporary permit are engaged in other activities, such as pheasant shooting, grouse shooting or deerstalking. In the

course of those activities foxes regularly present themselves in front of the guns and I have seen many a good deerstalk disrupted and destroyed because the keeper instructs the rifle to take the fox. That happens regularly. The same thing happens if one is out grouse shooting or pheasant shooting. A fox appears and it is a natural instinct to down the fox rather than wait to have a good shot at a pheasant or grouse.

In that regard I am happy to support amendment 84 simply because, if we do not include it, those people who visit and shoot in our territory are likely to be committing an offence if in the course of that activity they shoot foxes or other predators.

Mike Watson: I support amendments 53F and 84, but not 53V. People who want to use a dog to flush out a fox should have written permission to do so from the owner of the land. The old nod and wink is just too loose and does not enable us to enforce the legislation. For that reason, I hope that members do not support amendment 53V.

The Convener: We move to the final sub-group, which contains amendment 57, in the name of Rhoda Grant, and amendment 53, in the name of Mike Watson. I ask Rhoda Grant to speak to amendment 57 in the light of the discussion of all the other amendments.

You have already said that if amendment 53 is agreed to, you will not move amendment 57, Rhoda.

Rhoda Grant: That is correct. I have left amendment 57 in in case amendment 53 is disagreed to. The basis of amendment 57 is exactly the same as that of amendment 53. It allows people to flush foxes from below ground and ensures that they have a firearms certificate or a shotgun licence. It puts in restrictions to ensure that people are not able to engage in fox baiting, but they are able to go about their lawful business of pest control.

Mike Watson: I have opposed most of the amendments and I do not think that there is much to add. I made my comments at that time. I support the amendments that I feel strengthen amendment 53. My opening remarks set out the context in which I lodged amendment 53 to replace the licensing system. Firearms certificates are an appropriate way of controlling the people who are involved in the activities that the bill seeks to control. For that reason, I hope that the committee will support amendment 53, as amended in the way in which I indicated.

The Convener: As no other members have indicated that they would like to speak, I ask the Deputy Minister for Environment and Rural Development, Rhona Brankin, to make some closing remarks before we proceed to vote on the amendments.

Rhona Brankin: The Executive recognises that pest control is important and considers amendment 53 to be an appropriate amendment that is workable in law.

Mr Tosh: Would it be appropriate to ask the minister to set out the Executive's attitude to amendment 57?

The Convener: It would. Minister, would you care to respond?

Rhona Brankin: The Executive takes a neutral position on amendment 57.

The Convener: Thank you.

Fergus Ewing: The minister has said that the Executive supports amendment 53. Does its attitude vary depending on what happens to the amendments to that amendment, or is the Executive saying that it supports amendment 53, amended or unamended?

Rhona Brankin: The Executive takes a neutral position on all the amendments, except for amendment 53, which we support.

Fergus Ewing: So the Executive takes a neutral position on all the amendments to amendment 53.

Rhona Brankin: Yes. We take a neutral position on all the amendments that have been lodged, except for amendment 53.

The Convener: We have reached the end of the debate and will now vote on each amendment.

Amendment 53G agreed to.

Amendment 53H moved—[Fergus Ewing]—and agreed to.

Amendment 53I moved—[Fergus Ewing].

The Convener: The question is, that amendment 53I be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

The Convener: The result of the division is: For 8, Against 3, Abstentions 0.

Amendment 53I agreed to.

Amendment 53A moved—[Fergus Ewing].

The Convener: The question is, that amendment 53A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

ABSTENTIONS

Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 7, Against 3, Abstentions 1.

Amendment 53A agreed to.

The Convener: I remind members that the order of voting follows the marshalled list, rather than the groupings.

Amendment 53B moved—[Fergus Ewing].

The Convener: The question is, that amendment 53B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Lochhead, Richard (North-East Scotland) (SNP)

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

Amendment 53B agreed to.

Amendment 53J moved—[Fergus Ewing].

The Convener: The question is, that amendment 53J be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Lochhead, Richard (North-East Scotland) (SNP)

The Convener: The result of the division is: For 7, Against 3, Abstentions 1.

Amendment 53J agreed to.

Amendment 53N moved—[David Mundell].

The Convener: The question is, that amendment 53N be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

The Convener: The result of the division is: For 8, Against 3, Abstentions 0.

Amendment 53N agreed to.

Amendment 53K moved—[Fergus Ewing].

The Convener: The question is, that amendment 53K be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Lochhead, Richard (North-East Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 2.

Amendment 53K agreed to.

Amendment 53O moved—[David Mundell].

The Convener: The question is, that amendment 53O be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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)

The Convener: The result of the division is: For 6, Against 5, Abstentions 0.

Amendment 53O agreed to.

Amendment 53C moved—[Fergus Ewing].

The Convener: The question is, that amendment 53C be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)

Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Lochhead, Richard (North-East Scotland) (SNP)

The Convener: The result of the division is: For 7, Against 3, Abstentions 1.

Amendment 53C agreed to.

Amendment 53L moved—[Fergus Ewing].

The Convener: The question is, that amendment 53L be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)

Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Lochhead, Richard (North-East Scotland) (SNP)

The Convener: The result of the division is: For 7, Against 3, Abstentions 1.

Amendment 53L agreed to.

The Convener: Does Cathy Jamieson want to move amendment 53M?

Cathy Jamieson: I seek clarification. Amendment 53M is clearly linked to manuscript amendment 53X, in the name of Mike Watson. If amendment 53X is agreed to, I would like to move my amendment; if not, I want to bring it back at stage 3.

The Convener: Having sought the advice of the clerk, I can say only that I cannot guarantee that a similar amendment will be debated at stage 3, but you have every right to try to get it debated. Are you asking that amendment 53X be moved and voted on before you move your amendment?

Cathy Jamieson: Substantially, yes.

17:00

The Convener: The procedure is that amendments must be taken in the order that they appear on the marshalled list. Therefore, I must press you to move or not move amendment 53M.

Amendment 53M not moved.

The Convener: Does David Mundell want to move amendment 53W?

David Mundell: I move manuscript amendment 53W, as an amendment to amendment 53, line 13, to leave out "under control".

Elaine Smith: I seek clarification. Can the convener explain where manuscript amendments 53W and 53X fit into the marshalled list?

The Convener: Manuscript amendment 53W comes after 53M. Manuscript amendment 53X comes after 53R, which we will be voting on shortly.

Fergus Ewing: If amendment 53W is agreed to, the words "under control" will be deleted from one subsection of the new section that is proposed in amendment 53. Given the fact that amendment 53X would insert the phrase "under control" into that subsection, should not amendment 53W preempt amendment 53X? Otherwise there could be a contradictory provision because, if amendment 53X is also agreed to, "under control" will have been deleted from one part of the subsection but inserted into another part of it.

The Convener: I accept that there is a difficulty with the manuscript amendments, but there are no pre-emptions in this grouping, so we will proceed. If, for whatever reason, the committee agrees to two amendments that do not sit particularly comfortably together, the bill can be tidied up at stage 3. We have to follow that ruling and continue. I accept that such difficulties can always arise with manuscript amendments. However, I did not want to rule out the manuscript amendments, because they were lodged for all the right reasons.

The question is, that amendment 53W be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)

Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

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)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 1.

I am in no doubt about which way a casting vote should go. When dealing with an amendment to an amendment, a casting vote should be in favour of the amendment—which, in this case, is amendment 53. Therefore, my casting vote is against amendment 53W.

Amendment 53W disagreed to.

Amendment 53P moved—[David Mundell].

The Convener: The question is, that amendment 53P 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 53P disagreed to.

Amendment 53Q moved—[David Mundell]—and agreed to.

Amendment 53R not moved.

Mike Watson: I move manuscript amendment 53X, as an amendment to amendment 53, line 14, to insert after “ground”:

“or by using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground”.

Amendment 53X agreed to.

Amendment 53D not moved.

Amendment 53S moved—[David Mundell]—and agreed to.

Amendment 53T not moved.

Amendment 53E moved—[Rhoda Grant]—and agreed to.

Amendment 53U moved—[Cathy Jamieson]—and agreed to.

Amendment 53F moved—[Rhoda Grant]—and agreed to.

Amendment 53V moved—[David Mundell].

The Convener: The question is, that amendment 53V be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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)

The Convener: The result of the division is: For 6, Against 5, Abstentions 0.

Amendment 53V agreed to.

Amendment 53, as amended, agreed to.

The Convener: I suggest to the committee that we now bring proceedings to a halt. There is great merit in doing so, as it will give members time over the next week to reflect on whether they wish to withdraw some of their amendments. That could save us some time next week.

Although I do not know whether it can be achieved, we have set a target of going no further than stage 3 next week. I am sorry, I mean section 3—I might have been accused of hurrying the bill just a little too much. The following week, we will attempt to complete our stage 2 scrutiny of the bill. However, we have left sufficient time in the week after that to allow us to complete it then if necessary. Those are only targets and do not have to be adhered to.

Fergus Ewing: It would be helpful to everyone—members of the committee and others who have an interest in this bill—to have a printed version of the amended bill as it now stands. That would allow us to assess, in the short time that we have, whether to press existing amendments or introduce further amendments. Is that something that the clerks would do, or that the Executive would do?

The Convener: I am advised that reprinting a bill at this stage has never been done before. However, the clerks say that they would be happy to reprint amendment 53, as amended, for the benefit of members. That would be extremely helpful.

Mr Tosh: It would be useful if the convener could tell us what will happen to amendment 57 and the amendments to it.

Rhoda Grant: I will withdraw amendment 57 from the marshalled list.

The Convener: I thank members for the way in which they have helped me conduct this afternoon's business.

Meeting closed at 17:13.

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