

RURAL DEVELOPMENT COMMITTEE

Tuesday 20 November 2001
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE

26th 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 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 20 November 2001

(Afternoon)

[THE CONVENER *opened the meeting at 14:02*]

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen, and welcome to this meeting of the Rural Development Committee. I remind members of the committee and the public to ensure that their mobile phones are turned off.

I welcome Mike Watson, David Mundell and Murray Tosh, as visiting members, and the Deputy Minister for Environment and Rural Development, Rhona Brankin.

Subordinate Legislation

Abolition of the Intervention Board for Agricultural Produce (Consequential Provisions) (Scotland) Regulations 2001 (SSI 2001/390)

The Convener: Agenda item 1 is consideration of two items of subordinate legislation under the negative procedure.

The Subordinate Legislation Committee considered the Abolition of the Intervention Board for Agricultural Produce (Consequential Provisions) (Scotland) Regulations 2001 in its 40th report, a copy of which members have received. Members should also have received correspondence from the Executive, which was e-mailed this morning, and a response from the clerk to the Subordinate Legislation Committee, which we received very late in the day. It is fair to say that there has been a communications mix-up in dealing with the instrument, both between committees and between committees and the Executive. This is the last day on which we can determine the fate of the instrument.

I have considered the papers closely and am absolutely satisfied that the difficulties that were referred to by the Subordinate Legislation Committee are of a purely technical nature, and that they need not unduly concern this committee. Are members content with the instrument?

Mr Jamie McGrigor (Highlands and Islands) (Con): Can I ask whether the new agency is simply the same agency with a different name?

The Convener: You can, but I am not sure that you should ask me. The people to ask would be

the officials who deal with the statutory instrument. However, I believe that to be the case.

Mr McGrigor: Would it be out of order for me to ask the minister, who is present today, if that is the case?

The Convener: Procedurally, I think that it would be out of order, as we have not asked the Executive to give evidence on the matter. I suspect that the minister would not be happy about answering your question today. I know that I would not be happy if I were her.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I would not be prepared to give evidence on the instrument today.

The Convener: Members have had the instrument before them for some time and have had sufficient opportunity to comment on it. I understand what Jamie McGrigor was asking about, and the answer to his question is yes, anyway.

Mr McGrigor: Which question?

The Convener: The one that you were going to ask the minister.

I am absolutely satisfied that the problems with SSI 2001/390 are purely technical. Are members content with the instrument?

Members: Yes.

Fish Health Amendment (Scotland) Regulations 2001 (SSI 2001/409)

The Convener: Are members also content with the Fish Health Amendment (Scotland) Regulations 2001 (SSI 2001/409)?

Members: Yes.

Protection of Wild Mammals (Scotland) Bill: Stage 2

The Convener: Last week, we closed the meeting after agreeing to amendment 53 as amended. The amendment has been reprinted in its amended form and circulated with the agenda for today's meeting. The target for today is to reach the end of section 3.

After the debate on each group is completed, amendments will be decided in the order that is shown on the marshalled list, except when there is an amendment to an amendment.

Last week, I suggested that members take notes during the debates. I made my notes on the sheet that showed the groupings, but that turned out not to be terribly sensible as I had trouble referring back to them when we were voting. The best place to make notes is on the marshalled list, because that is the order in which we will vote.

Elaine Smith (Coatbridge and Chryston) (Lab): Before we start, I would like to clarify something. Last week, we agreed that amendment 53 would be printed as amended so that we could see what we had agreed to. Having looked at the printed form of the amendment as amended, I would like the convener to state for the record his opinion on amendments 53K and 53C, which seem to go against the principles of the bill as stated in section 1:

"(1) A person must not hunt a wild mammal with a dog.

(2) A person who deliberately contravenes subsection (1) commits an offence."

The Convener: As I said last week, I am disappointed by the suggestion that any wrecking amendments had been included. Neither of the amendments that you mention were raised with me last week, so I was not asked to pass judgment on them. However, amendment 53 as amended was moved by its proposer and, procedurally, we do not have the right to go back and debate what has been debated. That is my opinion for the record.

Elaine Smith: Am I therefore right in thinking that, if any MSP were to agree with me that we have agreed an amendment that is contrary to the principles of the bill, they would have to attempt to amend the bill at stage 3?

The Convener: My understanding is that everything that is debated at stage 2 is open to amendment at stage 3.

Mike Watson (Glasgow Cathcart) (Lab): I would like to clarify a point. Last week, I moved amendment 53, which was in my name, for the simple reason that it was supported by Fergus Ewing and, if I had decided not to move it, he

would simply have moved it. I decided to use the most straightforward way of bringing the matter to a conclusion.

Nobody who reads the *Official Report* of last week's meeting, at which I made clear my opposition to many of the amendments that were debated, would think that the fact that I moved amendment 53 was a sign that I supported it as amended.

The Convener: I did not intend to say that you had signalled your support for the amendment as amended.

Mike Watson: Nobody could think that I supported it.

The Convener: I said merely that the amendment was moved and that that was procedurally correct.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): It is important to point out that when Mike Watson moved the amendment, on which we had spent a great deal of time, nobody opposed it. That fact should be restated.

The Convener: That is a matter of record, as the relevant decision is recorded in the *Official Report* of last week's meeting.

After section 1

The Convener: Amendment 2, in the name of Mike Rumbles, is grouped with amendments 46 and 66 to 68.

Mr Rumbles: Amendment 2 is aimed at exempting specified sports from the restrictions that are imposed by this bill. This takes me back to the time when the Executive intervened and took sides in the debate on the amendments that I originally lodged focusing on the issue of sport. The policy direction of the bill could have been simplified and made quite clear if we had focused on the issue that concerns many people—the abolition of what those people regard as cruel sports. I accept the decision that the committee made, on the recommendation of the Executive, not to proceed down that road. However, because we chose not to do that, we must now consider numerous amendments that are aimed at exempting certain activities from the provisions of the bill. I regard that as a ridiculous situation. However, we are where we are, as they say.

Amendment 2 seeks to make absolutely clear that the target of this bill is not anyone who participates in the sports of shooting or falconry, or a person who

"is employed as a gamekeeper and is acting in the course of employment to protect game birds in relation to one of those sports."

Ever since Mike Watson published the bill, I

have felt that it attacks many of the country sports and activities that should not have had any locus in it. Having said that, I will defer to John Farquhar Munro, whose amendment 46 improves on amendment 2. I have no hesitation in recommending that the committee support amendment 46. If for some reason amendment 46 fails, I see no problem with amendments 66 to 68, because the intention of those amendments is the same.

The Convener: I take it that you do not intend to move amendment 2.

Mr Rumbles: I do not.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I am grateful to my colleague Mike Rumbles for expressing such confidence in amendment 46. I hope that other members of the committee will also support it.

Much of what Mike Rumbles proposed in amendment 2 is carried forward into amendment 46, which seeks to protect what is, and is considered to be, a legitimate activity. I extended my amendment to include

“an owner or occupier of land”,

as well as gamekeepers who are employed to undertake a legitimate activity, because the position of the former seemed to have been overlooked in debate. I wanted it to be clear that the owners or occupiers of land have the same protection as legitimately employed gamekeepers. That is the strength of amendment 46.

Members will see that amendment 46 refers to a person who is

“employed as a gamekeeper (or is an owner or occupier of land acting in an equivalent capacity) and is acting in the course of employment (or in that equivalent capacity) to protect game birds in relation to one of those sports.”

The sports that are referred to in the amendment are shooting or falconry.

I move amendment 46.

David Mundell (South of Scotland) (Con): I am slightly confused about amendment 67, which appears in another group on my copy of the list. Is it part of this group?

The Convener: My list shows that amendment 67 is in this group.

14:15

David Mundell: I am happy to speak to amendment 67 as part of the group.

We should be consistent about the way in which the bill is set out and I remind members that previously we proceeded on the basis of including in the bill declaratory sections that seek to make clear the position of certain activities. In my view,

we should make it clear that the activities of falconry, gamekeeping and shooting are exempted from the general principles of the bill, to which the Parliament agreed, and that they are not regarded as criminalised activities under the bill. Accordingly, amendments 66 to 68 seek to make it absolutely clear that anyone who is primarily engaged in the activities of shooting or falconry, or who is going about their ordinary business as a gamekeeper, would not be criminalised by the bill.

I have taken a slightly different approach from that taken by John Farquhar Munro, whose amendment 46 is more condensed. I would be happy if amendment 46 were agreed to, although I believe that, stylistically, amendments 66 to 68 are preferable.

Stewart Stevenson (Banff and Buchan) (SNP): In the light of amendment 53, which already permits the use of a dog for activities such as flushing, what activities do amendments 46 and 66 to 68 extend the bill to include?

David Mundell: As I said, the amendments make the position of such activities absolutely clear. They take the same line as that followed by the committee when it dealt with previous amendments. Rather than leaving interpretation of the bill up to legal rules or open to question, where there exists a specific intention to exclude an activity from the bill's provisions, such an exclusion should be declared in the bill. That is what amendments 66 to 68 propose to do. I accept that legal arguments could be entered into on the question that parts of those activities are covered by amendments that were agreed to previously, but it is neater and clearer to state what the exclusions are.

Stewart Stevenson: May I press you on that point? Which activities associated with falconry or shooting are not covered in the bill already? Which activities do you seek to include?

David Mundell: It is quite clear that the sporting aspect of falconry was not included in subsection (1) of the section proposed in amendment 53, as I read it. I do not pretend to know exactly all the activities that a gamekeeper carries out in the course of his gamekeeping duties. We must be absolutely clear that the bill, as amended by amendment 53, covers every activity that a gamekeeper might legitimately carry out.

Elaine Smith: Before I begin, I wish to comment on something that Mike Rumbles said when he talked about amendment 2. I was disturbed by the tone. We must remember that the Protection of Wild Mammals (Scotland) Bill is not an Executive bill. We are discussing a member's bill that has cross-party support. I say that to clarify what Mike Rumbles said at the beginning.

If amendment 46 were passed, it would allow

anything to be done in the name of sport. Perhaps John Farquhar Munro can rebut that, but that is how it appears to me. I have a couple of questions for John Farquhar Munro. In the proposed paragraph (a), what does

"participating in the sport of shooting or falconry"

mean? For example, does it mean that an entire mounted hunt with one or two people with guns could be said to be participating in shooting? Would spectators be included in that definition? If so, would they be allowed to hunt?

Proposed paragraph (b) refers to "acting". Does that mean that someone could go mounted hunting, hare hunting and fox baiting if they said that they were acting in the course of their employment? Would amendment 46 allow for that?

The Convener: Does John Farquhar Munro want to come back on that now or to wait until he winds up?

John Farquhar Munro: It would be as well to clarify the situation at the start. Paragraph (a) refers to:

"participating in the sport of shooting or falconry".

Shooting, as Elaine Smith rightly said, could include many activities. We want to ensure that the activities are legitimate and have the consent of the owner or occupier of the area. The wording is quite clear and appropriate.

Mr Rumbles: In response to Elaine Smith's comments, I am well aware that this is a member's bill. My comments were quite specific and direct. I commented on the Executive's partisan approach in recommending that the committee knock out the whole approach of addressing the issue as one of cruel sports. That approach was knocked on the head right at the beginning by the Deputy Minister for Environment and Rural Development's intervention.

I am a little bit disappointed that Elaine Smith seems not to understand the role of the gamekeeper. There is nothing in amendment 46 that would allow the sport of fox hunting on horseback to take place. That is quite clear. Amendment 46 refers to the sports of shooting and falconry, and to work as a gamekeeper. That is absolutely without question, so I am puzzled by Elaine Smith's question.

Mr McGrigor: On Stewart Stevenson's question about amendment 66, in falconry pointers are used to locate the game and then to flush it before the bird can work.

Stewart Stevenson: Which is covered by amendment 53.

Richard Lochhead (North-East Scotland)

(SNP): Most of the points that I intended to make have been covered by other members. I find myself supporting the spirit of many of the amendments in the group, and other amendments in today's proceedings, yet I doubt that I will vote for any of them.

We all want to protect gamekeepers, but that will be done by the bill without the amendments today, and without any more appropriate amendments. Some members of the committee want to take every precaution to protect the role of gamekeepers; I understand that, but I do not think that machine gunning the bill with lots of amendments is the right way to go about it. The amendments in this group, and many other amendments that we will discuss today, will simply open up loopholes and create a legal minefield.

For some of the reasons that have been outlined by other members, the wording of most of the amendments that are before us today, particularly in the group that we are discussing now, is not suitable.

Dr Elaine Murray (Dumfries) (Lab): I am thinking along the same lines as Stewart Stevenson, particularly on the issue of gamekeepers. Amendment 67 is worded similarly to subsection (1)(a) of the section inserted after section 1 by amendment 53. Therefore, I am not sure what amendment 67 contributes, unless falconry and shooting are included under amendment 53. Perhaps people who feel that the amendments covering falconry and shooting are unnecessary could tell us how those activities are covered by the bill already.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I thought it might be useful to recap what the committee agreed unanimously at stage 1 because it answers some points—most notably, those of Stewart Stevenson and Elaine Murray. At paragraphs 94 to 97 of the stage 1 report, we agreed various matters in relation to falconry. I have just looked back through that.

The Scottish Hawk Board

"was concerned that the Bill as introduced would affect their sport, despite an understanding with the promoters of the Bill that this was not an intention of their proposals. The Hawk Board explained that Falconry is the sport of hunting wild prey in its natural state and habitat by means of trained hawks and falcons."

The report goes on to say that the use of more than one dog is required in connection with falconry and

"The Committee welcomes Mike Watson's intention to exclude Falconry from the effect of the Bill if it proceeds to stage 2, but the committee is still not content with the definitions of "close control" and "as soon as possible" as used in the Bill."

I mention that for a couple of reasons. I do not

think that subsection (1A) of the section inserted by amendment 53 would cover the use of dogs in falconry because it specifically refers to the use of a dog in connection with pest control. We have accepted and recognised that falconry is

“the sport of hunting wild prey”

so that is an obvious distinction. I also accept Richard Lochhead’s points because we want to avoid duplication. However, there would be no duplication unless one of the provisions in the section inserted by amendment 53 would protect those engaged in falconry.

I have looked but cannot immediately see that any of the provisions thus far agreed would protect those engaged in falconry. It is a sport and, by definition, it would not be covered by pest control activities. Mr Watson was going to lodge amendments and maybe he will do so later. However, today we have a chance to remove a problem about which we agreed at stage 1. Although there might be some technical objections, we should make a stab at doing that now, unless the Executive is going to offer us some guidance and assistance at stage 2, despite its neutrality. I think we all feel that that would have been a welcome development.

However, in the absence of that guidance, the problem with amendment 46 is that it might be a wee bit narrow, although I am sympathetic to it. It does not refer to the use of a dog but, as Jamie McGrigor has said, pointers are used. Perhaps amendments 67 and 68 should be agreed to. Certainly, amendment 66, in the name of David Mundell, should be agreed to. I will consider amendments 67 and 68 further before I finalise my judgment.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): I have a couple of points to follow on from Richard Lochhead’s points.

I understand the principles that people are trying to get at by distinguishing between falconry and some other sports, and the continued use of dogs to hunt wild mammals. However, I am concerned that the language of some of the amendments could open up loopholes, particularly in the definitions of a gamekeeper. I am well aware that professional gamekeepers belong to associations and do not wish to be involved in any way in any practices that would cause unnecessary cruelty. We heard evidence from the Scottish Society for the Prevention of Cruelty to Animals and others that, if some of these amendments were passed, people who are owners or occupiers of land might act in “an equivalent capacity”. I am concerned about that. How can we define “an equivalent capacity”?

Amendments 46 and 67 might allow people to argue that they were acting in “an equivalent

capacity”, but those people would not come under the codes of conduct that would operate if they were employed professionally and were recognised as gamekeepers. As I said, I am concerned about the wording of some of the amendments, which could cause more problems than they resolve.

14:30

Mr Rumbles: I understand that Cathy Jamieson feels strongly about this subject. Although she has expressed her genuine concerns, they are misguided. I do not agree with her. The answer to her point is that rather than vote against the amendments, at a later stage we should include provision for a code of conduct for those acting as gamekeepers. That would solve the problem and give us the belt-and-braces approach that we need.

Mike Watson: Some of the questions that members have raised on this group of amendments have not been answered. In amendment 67, what is meant by

“acting to protect game birds”?

Could that allow fox baiting? In amendment 66, what is meant by the phrase “is engaged in”? Those phrases are unclear and questions about them have not been answered.

Fergus Ewing suggested that I should indicate how amendment 53, as amended and agreed to, gave protection for falconry. The bill contains general pest control provisions, but in the new section added by amendment 53, as amended by amendment 53A, subsection (1)(b) refers to

“providing food for consumption by a living creature, including a person”.

That allows a falcon to hunt for food. Protection for falconry is covered. If amendment 53, as amended, does not cover it, I am prepared to lodge another stage 2 amendment, if we do not finish section 3 today, or an amendment at stage 3.

Right from the start, I have tried to make it clear that the intention behind the bill was never to draw in shooting and falconry. I think that I did so when I addressed the committee in April last year. I spoke then about the withdrawal of a replacement for section 2. I also said that those sports are conducted in a professional manner. The British Association for Shooting and Conservation and the Scottish Hawk Board have given me detailed outlines of their work. I am satisfied that their conduct is not in any way questionable. I have never intended for them to be included in the bill.

The amendments that we are debating today are too wide. There are gamekeepers in the room and I do not wish to offend them. However, these

extreme amendments would allow gamekeepers to go fox baiting or mounted fox hunting. They are not going to do that, but the amendments leave that possibility wide open. I am unhappy about that. The amendments do not do what they seek to do. Almost all the amendments allow almost anyone to bait, hunt or course mammals with a pack of dogs if they argue that they are engaged in the sport of shooting or falconry. Members may say that that is unlikely, but bills should not allow loopholes that might allow unlikely things to happen.

Mr Rumbles is laughing, but I say to him that I hope that we will deal with the bill in a serious manner.

Mr Rumbles: I am suitably told off, Mr Watson.

Mike Watson: The whole point of the amendment process is to close loopholes, not create them. Mr Rumbles would do well to remember that.

The convener knows my opinion of the sort of amendments that were passed last week. They open all sorts of possibilities that are quite different to what was agreed at stage 1. I am not happy about amendments that appear to go against the fundamental principles of the bill—amendments 2, 46, 66, 67 and 68 do that.

If there is another opportunity at this stage, or at stage 3, I am prepared to introduce an amendment to section 3 to deal with those matters. As far as I am aware, gamekeepers—who have lobbied me heavily—have not asked for that sort of protection. I wonder where those amendments have come from, because they go further than is necessary and create the sort of loopholes I have described.

Dr Murray: I do not believe that amendment 67 is necessary—it is covered by what we passed last week. From what you said at stage 1 and have said since, I know that it was never your intention to include falconry or shooting. The problem is that the amendments with which we are dealing are the only amendments that will exclude those sports. Rather than agreeing to the amendments with the idea that the matter will be tightened up and any loopholes squeezed out at stage 3, or hoping for the best that something turns up later on, it might have been helpful if we had had alternative amendments today.

Mike Watson: I did not think that alternative amendments were necessary—that is why I did not submit any. That is the point that I am making. If it is still thought that amendments are necessary—despite agreement to amendment 53—I will submit other amendments. I cannot go further than that.

Dr Murray: Where are shooting and falconry

covered in what we have agreed to?

Mike Watson: As I said earlier, subsection (1)(b) of the new section that amendment 53 inserts allows using a falcon to hunt for food.

Mr Rumbles: Thank you for the opportunity to come back, convener.

In answer to the charge that Mike Watson made a few moments ago, I find it extremely ironic that he chides me for not understanding that the role of the Rural Development Committee at stage 2 is to close all the loopholes and produce a bill that stands up. I was exasperated to hear him say that, as I cannot imagine the amount of time that the committee has spent over the past two years working through the bill. I am struggling for the right word to describe the bill without being too offensive. If Mike Watson had done his job properly in the first place and produced a bill that the committee could have worked through properly, we would not be in the mess that we are in now. We are having to go through a huge number of amendments to put the bill right.

The Convener: Does Mike Watson wish to respond?

Mike Watson: I want to explain that I was not chiding Mike Rumbles for that—I was simply chiding him for his sniggering.

Fergus Ewing: I wonder whether we can bring ourselves back to the task in hand. Between us, we want to find a way of exempting the sport of falconry. That is what we undertook to do at stage 1. Mr Watson is wrong to suggest that subsection (1B) of the new section that amendment 53 introduces after section 1 tackles matters, because it refers only to the use of a dog in

“the despatch of a wild mammal, being of a pest species”.

We would not regard the sport of falconry as pursuing pest species. That being the case, falconry is not covered by subsection (1B). Something else is necessary, as it seems that the mood among members is that we have not quite got it right. Unless the convener directs otherwise, the opportunity exists for consultation to take place during the week and for a series of amendments to be introduced, so that we can come back and argue the issue at a later stage.

I cannot find any sensible way through the matter with the material that we have before us. I would like the opportunity to seek the views of the Scottish Hawk Board and to determine whether we can work together—the Executive might even climb on board—to find a way through the morass. We could come back next week, hold a shorter and less acrimonious session and find a solution.

Stewart Stevenson: Just for clarity, are we talking about subsection (1)(b) of the new section

that amendment 53 introduces after section 1, or subsection (1B)?

The Convener: Do other members wish to contribute to that?

Rhoda Grant (Highlands and Islands) (Lab): I will provide some clarity. Subsection (1)(b) of the new section allows a dog to be used, under control, to flush a wild mammal from cover to provide food for consumption by a living creature. Once the wild mammal has been flushed from cover, it can be killed by a bird of prey. To me, that is the sport of falconry—to provide food for the bird, which subsection (1)(b) allows.

The Convener: Have all members contributed as much as they wish to do?

Stewart Stevenson: It is important that the *Official Report* will make it clear which section we have been talking about. I am not clear because of the way in which amendment 53 is laid out. In essence, there are two (1)(b)s—(1)(b) and (1B). In the debate, we have not made a clear distinction between which is which. That clarification is just for the *Official Report*, so that we do not have to revisit the matter later.

The Convener: I am slightly confused. Are you referring to subsection (1)(b) of the new section introduced by amendment 53, which is followed by subsection (1B)?

Stewart Stevenson: Yes. I want to be clear which one we have been talking about.

Mike Watson: Is that a question for me?

The Convener: I think it probably is.

Mike Watson: It is the large B—section (1B).

The Convener: Thanks.

Members: It is the small b.

Mike Watson: I did not have the amendment in front of me.

Mr Murray Tosh (South of Scotland) (Con): I am utterly confused, convener. If it is subsection (1B), does that not mean that falconry is permissible only where a pest species is involved? Does that not make the case for the declaratory statement that falconry should be permissible? Members should understand—as I think that we do—that if amendments that are passed here are for some reason not technically competent, the Executive will introduce amendments at stage 3 to preserve the spirit of what the committee wanted, but ensure that the draftsmanship is secure.

The Convener: That was my understanding of the Executive's role at stage 3.

Mike Watson: I had just turned the page to look at amendment 53 when I answered the question. I

was referring to subsection (1)(b), but I did not have the amendment in front of me.

The Convener: For the sake of complete clarity, it is new subsection (1)(b), which starts, "providing food for consumption".

Mike Watson: Yes

The Convener: Thank you.

Mike Watson: I mentioned that wording in my earlier comments.

David Mundell: Can I clarify whether Mr Ewing is moving that we delay discussion of this matter?

The Convener: Will I move that suggestion?

Fergus Ewing: That might be best, given the technical problems that members have found with the variety of attempted solutions. I believe that a solution must be found. As Mr Tosh has said, there should be a specific exemption for falconry. I am not satisfied that we have found the correct solution. If members feel that they want to move the amendments, in the usual way, I will vote on the balance of what is best.

Mr Tosh: Is that a proposal from Mr Ewing to suspend further consideration of the bill until next week? I do not know whether we could leave something out and come back to it.

The Convener: I have been passed a note, which suggests that new sections that provide exceptions to the prohibition can be considered after section 3. We have had amendments after section 1 and we could have amendments after section 3. The only alternative to that is that we suspend the meeting now.

Richard Lochhead: My understanding of what Fergus Ewing said is that perhaps amendment 66 could be withdrawn, given that there is consensus that there may be a case for an appropriate amendment on falconry. Therefore, the committee could urge David Mundell to withdraw amendment 66 on the understanding that the committee will discuss an appropriate amendment, to be lodged by Mr Mundell or someone else, next week. Therefore, we should vote on all the amendments other than amendment 66.

The Convener: Amendment 66 must be voted on one way or the other, as it has been moved.

Richard Lochhead: My point was that Mr Ewing was urging David Mundell to withdraw the amendment.

David Mundell: I have not moved the amendment.

The Convener: I am sorry. That was my mistake. David Mundell is right. He has not moved the amendment.

Cathy Jamieson: For clarification, convener, if we assume that there is a degree of consensus that the issue has to be addressed somewhere, is it possible not to move the amendment today but to bring back an appropriate amendment at stage 3? I understand that a number of members would support that. Would that not be an acceptable way forward?

14:45

David Mundell: The difficulty for those of us who have lodged amendments is that the committee agreed a timetable and the amendments have been on the public record for nearly two weeks. I understand what Richard Lochhead said about the difficulty of the process, but if members have concerns about amendments that are lodged—I think that Mike Watson knew that members had concerns—they can lodge new amendments or amendments to the amendments. I am prepared not to move amendment 66 at the moment, but it is difficult to ask us to go blind into the next section without anything on the table. I am concerned that we do not have a clear idea of where we are or are going.

My interpretation of the amendments is not the same as Mike Watson's, although I tried to make the definitions as tight as I could. I think that Cathy Jamieson raised the interesting prospect of a code of conduct for those acting as gamekeepers in the definition section of the bill. It is important that such issues are fully debated at stage 2 as a lot will be left up in the air if we go into stage 3 without clarity on a number of issues.

Richard Lochhead: For David Mundell's benefit, we are talking about section 3 rather than stage 3. The proposal is to bring back a falconry amendment perhaps at next week's meeting rather than at stage 3.

The purpose of a debate before voting on amendments is to flush out the issues, as it were. Members become aware of arguments—that is why we do not go straight to voting. We debate to tease out the issues.

I say to David Mundell that we have teased out a number of issues and that there is consensus in the committee that an amendment must be lodged that is appropriate to falconry. There is an opportunity to do so for next week's meeting. Perhaps he should consider not moving amendment 66 and allow us to vote on other amendments.

David Mundell: Cathy Jamieson has clarified that she meant section 3 rather than stage 3.

Cathy Jamieson: I apologise for getting my stages confused and thank Richard Lochhead for clarifying matters.

David Mundell: You confused your stages and that confused me. The suggestion is therefore a way forward as it would allow discussion in the committee and not leave discussion to stage 3 in Parliament.

The Convener: Indeed. I thank David Mundell for that.

Mr Rumbles: We are in danger of splitting exceptions for the sport of falconry and for the work of gamekeepers who act

"in the course of employment to protect game birds in relation to one of those sports."

Mike Watson wondered where the amendments came from. We have been in discussion with the Scottish Gamekeepers Association. That is one reason why amendment 2 was not put forward and why John Farquhar Munro improved on it. There has been a great deal of discussion about amendments 2 and 46.

The amendments were lodged weeks ago. David Mundell said that if people were concerned about them or wanted to amend them, they could easily have done so. If we postpone a decision on the matter, I am concerned that we will split falconry from other work, for a reason that I still cannot fathom. That is important. I understand Cathy Jamieson's concerns about the definition of a gamekeeper. She could easily propose a code of conduct later, but not to agree to amendment 46 now would be a big mistake.

The Convener: Mike Watson, do you wish to comment further?

Mike Watson: No.

The Convener: I invite John Farquhar Munro to wind up the discussion on the grouping, which has been somewhat longer than I thought it would be.

John Farquhar Munro: The discussion has certainly been extended and the clarity that I assumed I had when I came to the meeting seems to have disappeared.

As Mike Rumbles has just reiterated, we had a lot of advice on amendments 2 and 46, which is why amendment 46 is slightly different from the amendment that Mr Rumbles lodged. We took advice from people who are involved in the profession. They were of the opinion that we should be clear, concise and precise about what is permitted by the activity engaged in by the gamekeeper or those that associate with the sports of shooting or falconry. That is why we included the words

"owner or occupier of land acting in an equivalent capacity".

I do not see any difficulty with that—it is clear and straightforward and makes the position of the gamekeeper secure. That is why I am happy with amendment 46.

The Convener: The question is, that amendment 46 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)
 Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 46 disagreed to.

The Convener: Amendment 20 is grouped with amendment 20A.

Fergus Ewing: Amendment 20 reads:

"A person does not contravene section 1(1) where a dog for which that person is responsible chases or pursues a wild mammal and where the person's principal purpose for having that dog in that place is to provide the dog with exercise or other benefits of access to an outdoor area."

The purpose of the amendment is self-explanatory. It is to prevent the possibility that someone who is out walking their dog would be a potential criminal. Fears have been expressed since the bill was published that, because of the way in which the bill is worded, dog walkers would be potential criminals. Most, if not all of us, would agree that dog walking must continue and dog walkers must not, when they wish only to take pooch for a walk, feel that that might result in a visit to the sheriff court.

It might be said that the amendment that Mr Watson proposed on day one, which was to shift the position of the word "deliberately", would render amendment 20 unnecessary. I would disagree. As I understand it, the word "deliberately" was always in the bill, although it has been repositioned. The offence was always going to be only where someone deliberately hunted a wild mammal with a dog. There is still doubt whether, when someone takes out a dog that is either not on a lead or is let off a lead, and the dog subsequently pursues a wild mammal, that could be construed as a deliberate act. That would depend on the intention of the person going out for a walk. It is not inconceivable that the situation that I have described would happen. If members

agree that it is desirable to make it clear that the Parliament's intention is to avoid a situation in which dog walkers were potential criminals, I see no reason for not incorporating the amendment into the bill.

I move amendment 20.

The Convener: Thank you. I ask Elaine Murray to move amendment 20A and to speak to both amendments, if she wishes.

Dr Murray: Do I move the amendment, or do I just speak to it?

The Convener: You must move the amendment, because we have to dispose of amendment 20A before we can move on to amendment 20.

Dr Murray: The intention behind amendment 20A is to prevent the creation of a loophole. Someone could argue that their dog—or dogs, if they were walking more than one dog—had rushed off and unintentionally pursued a wild mammal. Under amendment 20A, that person could demonstrate their lack of intention of using the dogs for coursing by the fact that they had brought them back under control as soon as possible.

I know that members have objected that such amendments would allow hare coursing, although I am not absolutely certain why anyone should think that people could not distinguish between someone walking a dog and a group of people standing around watching dogs chase hares. The activities are obviously different. My amendment tightens up amendment 20 to ensure that people could not use the fact that their dog or dogs had run off after an animal as an excuse for allowing them to hunt wild mammals.

I move amendment 20A.

Cathy Jamieson: As a dog owner, I am keen to ensure that no one finds themselves inadvertently falling foul of the law. However, I worry that the wording of amendment 20 might open up unintended loopholes. Written evidence that we received earlier in our consideration of the bill said that the involvement of deerhounds in coursing was part of the exercise that was necessary to maintain that breed. I would not want such a defence to be used because amendment 20 opened that loophole.

For purposes of clarification, I would like a definition of the word "exercise". Furthermore, what does Fergus Ewing mean by the phrase

"other benefits of access to an outdoor area"

in amendment 20? Whatever those benefits are, I hope that they will be dealt with responsibly.

Fergus Ewing: I was wondering whether

someone would ask that question and, if so, how I should phrase the answer.

The Convener: Responsibly, I hope.

Fergus Ewing: Perhaps I should deal with that question first and get it out of the way. One benefit “of access to an outdoor area”

that immediately springs to mind is allowing a dog to do what a dog has got to do.

On a more serious note, amendment 20 might be criticised as being too strict on dog walkers because it could be argued that the onus is on them to prove that their principal purpose was to walk the dog. The amendment is drafted as it is to make it absolutely clear that, if an incident occurred along the lines suggested by Cathy Jamieson—although I think that that is a bit far-fetched—the dog walker would have to prove that their purpose was to walk the dog. If such a serious incident occurred and someone were found to be deliberately trying to break a law under the guise of walking a dog, the wording of the amendment would certainly leave the way open for a successful prosecution. That person would have an uphill task if they tried to argue that they were only walking a dog when they were in fact engaged in the sort of activity that Cathy Jamieson described.

Stewart Stevenson: Will Fergus Ewing point to the part of the bill that could make walking a dog illegal?

Fergus Ewing: That would be section 1(1), as amended. As originally drafted, section 1(1) said:

“A person must not hunt a wild mammal with a dog.”

Section 1(2) said:

“A person who deliberately contravenes subsection (1) commits an offence.”

I do not have the amended section 1(1) in front of me. However, I believe that it states: “A person who deliberately hunts a wild mammal with a dog commits an offence.” Mr Watson will correct me if I am wrong, as his amendment amended the subsection.

In my opening remarks, I said that one could argue that the word “deliberately” in section 1(2) is enough to make it plain that dog walkers are exempt. However, I felt that that might not be the case, perhaps for the arguments that Cathy Jamieson advanced. Therefore, we should make it clear that Parliament’s message is that dog walkers are walking their dogs and that it is not intended that they fall foul of the bill—if members will excuse the metaphor.

Stewart Stevenson: I take issue with Fergus Ewing on that. The burden of proof would be on the prosecution to establish that a person hunted

wild mammals with a dog. Unless I am missing something, the burden of proof would not be on the person to demonstrate that their purpose was to exercise their dog. I am concerned that amendment 20 opens up other possibilities. I will not be persuaded unless Fergus explains why the burden of proof should be on the person to demonstrate that they were exercising their dog.

Fergus Ewing: As I understand it, the burden of proof in a criminal case is to establish beyond reasonable doubt that someone is guilty of an offence. If certain circumstances are proven in a case, the onus of proof can shift so that the person must explain why he was in a particular situation. For example, if a person says that he was taking a dog or a pack of dogs for a walk, during which the dogs killed various hares—perhaps in a scenario that might be seen as equivalent to hare coursing—the onus of proof would in essence be shifted on to the person who is trying to persuade a court that he was simply walking his dog or dogs. If a person appeared to be involved with hare coursing, the onus of proof would rest on them to explain that they were entitled to the protection of the amendment.

15:00

Stewart Stevenson: Will the minister, on behalf of the Executive, clarify whether the interpretation of the bill would be as Fergus Ewing suggests or as I suggested? As a non-lawyer, I defer to Fergus’s legal training, but my suggestion was that the burden of proof would remain firmly with the prosecution.

The Convener: I am happy to offer the minister the opportunity to clarify that.

Mr Tosh: While the minister is conferring, I will chip into the conversation. I understand that ordinarily it has to be proven that someone is guilty of something when they are prosecuted. However, is not the issue that, unless it is made clear in the bill, the person who is walking a dog will have to prove their innocence? The bill reverses the burden of proof in many places. The purpose of amendment 20 is to provide explicit protection for a person in those circumstances.

I have a question on Elaine Murray’s amendment 20A. I see the amendment’s intention—that someone should try to get a dog under control when it does something that it should not do. However, does the expression “every reasonable effort” have standing in law? Is it a recognisable legal expression? Would a court be able to interpret it? The interpretation could vary enormously depending on the dog walker’s age, physical fitness and ability to keep up with the dog. The terrain—for example, whether the dog can be seen—is another factor. I do not know

where amendment 20A comes from, but does it contain a definition that the courts can interpret?

Dr Murray: Amendment 20A comes from me. I am not a lawyer, so I have no idea whether there is any legal definition of “every reasonable effort”. Presumably the solicitors and others with a legal training at the meeting are better apprised of that than I am. I think that “every reasonable effort” would include some assessment of the age of the people and the type of dog. Some breeds of dog are easier to control than others; we might be able to call some breeds back to heel rapidly, whereas others might be more difficult. The expression “every reasonable effort” would allow the courts—if such a case were ever to come to court—to interpret the person’s actions in view of that person’s circumstances.

Mr Tosh: I cannot debate the question, because I do not know the answer either. However, if the committee agrees to amendment 20A, the Executive might want to consider the matter carefully simply to satisfy itself that the amendment is technically and legally a meaningful insertion into the bill.

Elaine Smith: I have a small point to make. Surely charges would have to be brought against someone if they were thought to be acting contrary to the bill. If someone were just out walking their dog, is it likely that charges will be brought against them? I do not think so, but I would like some comment on that.

Rhoda Grant: I have concerns with amendment 20, which refers to a situation

“where the person’s principal purpose for having that dog in that place is to provide the dog with exercise”.

I am not sure what the words “principal purpose” bring to the amendment. Could the person also have a secondary purpose of hunting with the dog?

I am also not happy with the word “exercise”. What form does exercise take? The amendment does not mention walking a dog. It would be up to the person to decide what was exercise for that dog. Could it be hunting? If amendment 20 is agreed to, that will leave a huge gap in the bill.

David Mundell: I have a more general comment. I feel that the debate is another example of how the lack of independent legal advice to the committee as it goes through the process of amending the bill creates a difficulty. The process throws up issues that cannot be resolved. Those at the meeting who are solicitors or legally qualified are inevitably perceived as partisan in their interpretation of the amendments. That is most unfortunate.

To go back a step, the legal system of Scotland does not allow acts of Parliament to be

deliberately flouted by overt activity that is contrary to those acts. Therefore, given what section 1 of the bill says, the idea is ridiculous that everyone could go out on a mounted hunt but just take a gun with them and then be said to be exempt because they are out shooting.

It is unfortunate that we do not have a legal adviser. The Executive is clearly unprepared to act in that role. We have no one at the committee who can put members’ minds at rest that certain things are not in the range of possibilities. For example, I do not believe that amendment 20 could possibly be interpreted as meaning that a group of people on horseback with several dogs were out walking their dogs. The courts would just not accept that.

Dr Murray: I have concerns in relation to people walking dogs, particularly people who have more than one dog. Some people are great dog lovers and keep several dogs and enjoy walking lots of dogs. There are such people in my family. I am sure that we have dealt with neighbour disputes and instances in which people have fallen out with others who live nearby. It is always possible that someone who walks a number of dogs in a rough area could be maliciously accused of using those dogs to hunt.

Rhoda Grant: I am a little concerned that some members of the committee are in a terrible rush to defer to the better judgment of the Executive. That is not normal practice. That the committee does not have independent legal advice is a point worth making. I wonder whether it is possible for us to ask the Parliament’s lawyers to sit in and advise us on legal points as we go through the bill.

The Convener: If the committee is genuinely concerned about the matter, there is nothing to prevent us from taking evidence from the Law Society of Scotland. However, I am not sure whether we are entitled to ask the Parliament’s lawyers to advise us.

Rhoda Grant: Could we explore that?

The Convener: Yes, we will come back to that point. I will now ask the minister to respond to some of the points that have been made.

Rhona Brankin: The advice that I have been given is that the Crown would have to prove that the dog was being used to hunt a wild mammal.

Stewart Stevenson: For the sake of clarity, until that was proven, is it correct to say that nothing else would have to be proven by anyone? In other words, what the minister describes would be the sum and substance of the starting point of any prosecution. Were that not proven in essence, the provisions of the bill would not apply. Of necessity, I expect a fairly general answer to that question.

Mr Rumbles: I understand that the Crown would have to prove the case. Is the minister confirming

that anyone who was out walking their dog and whose animal went off and hunted while it was out being walked could face prosecution?

Rhona Brankin: In our view, it could not. That would be our advice.

Mr Rumbles: The advice is that such a person could not face prosecution. Is that correct?

Rhona Brankin: Yes.

Richard Lochhead: My understanding—I am not a lawyer, but say this from my lay experience of the justice system—is that the police are reluctant to bring charges unless they have hard and fast evidence. In this case, there would have to be hard and fast evidence that a dog was being deliberately used for hunting wild mammals. The procurator fiscal will not bring charges unless he or she is convinced that the police have based their case on hard and fast evidence. The burden of proof is surely on the Crown and on no one else. It has been suggested that someone might be maliciously accused of using their dogs to hunt when that person was just out walking, but that scenario is very unlikely.

Mr McGrigor: It would be a tragedy if fewer dogs were kept as pets as a result of the bill. It is important that people are aware that they are not breaking the law when they take their dog for a walk. I support amendment 20.

Mike Watson: I will not respond on the legal point. Amendment 38 was agreed to and section 1 now states: “A person who deliberately hunts a wild mammal with a dog commits an offence.” I thought that that covered the question. If it does not, as Fergus Ewing has said, a possibility is opened up that I had not considered.

However, I refer members to the written evidence from the Deerhound Coursing Club, which made it clear that the purpose of coursing with deerhounds is to give the dogs exercise and hence maintain the breed lest it

“degenerate into a mere decorative pet”.

I think that the phrase “deliberately hunts a wild mammal with a dog” addresses the issue. I echo Rhoda Grant’s point about the inclusion of the phrase “principal purpose”, which makes me even more unhappy, as the word “purpose” on its own might have been clearer. I believe that the amended section 1 will protect people who genuinely want to walk and exercise their dog.

Dr Murray: In view of the discussion, which has been helpful in illuminating the nature of the bill, I am happy to withdraw the amendment.

Amendment 20A, by agreement, withdrawn.

The Convener: Fergus, do you want to press amendment 20?

15:15

Fergus Ewing: I feel that I should. This has been an interesting discussion. Were I to withdraw the amendment, we would be reliant on the assurance that the minister has given us this afternoon. If the minister is wrong—and we are all fallible—in years to come someone may face a prosecution. It would reflect badly on the committee if we had not voted on the amendment.

Amendment 20 is a well-intentioned amendment that would make it explicit that dog walkers are not intended to be caught by the provisions of the bill. I do not think that the arguments against it hold water. The suggestion that a group of people who are out on horseback with a pack of dogs and horns and who are wearing red coats and drinking port could be confused with people who are walking a dog is one of the most far-fetched arguments that I have heard in this Parliament. I hope that members will accept that amendment 20 is well intentioned and straightforward, and that they will support it so that dog walkers can walk their dogs in peace, free from the fear of prosecution.

The Convener: Before we vote on amendment 20, I indicate to Rhoda Grant in particular that we will find out whether we can seek advice from parliamentary lawyers. We will come back to that.

The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: I did not think that we would be. 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 20 disagreed to.

Amendment 58 not moved.

The Convener: Amendment 59 is in a group on its own.

Fergus Ewing: Amendment 59 would provide a further exception to those provisions of the bill

relating to pest control below ground. It states:

“A person does not contravene section 1(1) by using a dog in connection with the despatch of a wild mammal, being of a pest species, for the purposes of pest control where—

- (a) that mammal is below ground and has not bolted; and
- (b) there is no other practical alternative method of killing that mammal.”

It should be noted that the situation described in the amendment is not covered by any of the provisions of amendment 53, which we debated last week. In the new section inserted by amendment 53, only subsection (2) deals with the use of a dog below ground. It seems to me that it is necessary to provide a further exception, which this amendment seeks to do.

The amendment is restricted to pest species. Later in our consideration of the bill I intend to move an amendment defining pest species. Some time ago I lodged an amendment that would do that. Last week I asked the Scottish Society for the Prevention of Cruelty to Animals to advise me on the wording of the definition of pest species; I would also be happy to receive advice on that matter from the Executive.

The amendment is restricted to pest control, as opposed to sport, and refers only to pest species. The activities to which it relates cannot be confused with hunting for sport. It concerns situations where a

“mammal is below ground and has not bolted”—

in other words, where there is no other practical means of disposing of the animal. It would cover the situation that we will debate when considering amendments 60 and 86. However, its provisions are wider than those of amendments 60 and 86, because it is intended to provide a definition of the situation, rather than of the activity.

That wider definition might be necessary to ensure that the activities that Paul Croft described in his evidence to the committee a fortnight ago continue to be lawful. As Elaine Murray said at an earlier meeting, there is a risk that the exceptions in this legislation are framed too narrowly and that we might inadvertently leave those who are involved in land management and pest control open to prosecution. That is why my amendment 59 uses a wider form of words than amendment 60.

I know that Mr Watson profoundly disagreed with me last week, but I sincerely believe that we have a job to do for gamekeepers and land managers. We must allow them to continue to use methods of pest control that have been used for generations, if not centuries. If we fail to recognise the job that they do, we will be doing rural Scotland a great disservice. I hope that members

will be persuaded that my amendment is necessary.

I move amendment 59.

Cathy Jamieson: I understand what Fergus Ewing is trying to achieve, but I am not convinced that the wording of the amendment would not open up loopholes, in particular, people might try to say that there was no other practical alternative method of pest control without absolutely demonstrating that fact. Also, irresponsible people might try to use the amendment as a loophole that would allow them to indulge in the practice of fox baiting, which no one wants to happen.

I am concerned about the wording of the amendment and I seek some clarification.

Fergus Ewing: There is no possibility whatsoever of what the amendment describes being confused with fox baiting. I did some research into the definition of fox baiting, which is not referred to in the bill. Fox baiting means the deliberate use of an animal to torture a fox in circumstances in which that is the intention, and in which the fox has no escape route. A form of baiting activity would be tethering an animal to a post and deliberately inflicting pain upon it. That has nothing to do with amendment 59. Another form of baiting would be making two dogs fight together in a pit. We would all deprecate that. To try to equate the subject of amendment 59 with fox baiting is nonsensical. I note that no MSP has yet come forward with a definition of fox baiting. The Executive could have assisted us with that if it were willing to play an assisting role in the passage of this legislation, but it is not.

I cannot remember whether Cathy Jamieson asked another question. If she did, I do not know whether what I have said answers it.

Cathy Jamieson: What you have said will do.

The Convener: If Cathy Jamieson is happy with what you have said, we can move on.

Cathy Jamieson: I would say that I have heard the answers, rather than that I am happy.

Dr Murray: I am not terribly happy with amendment 59. The term fox baiting was used as a form of shorthand at stage 1. I do not think that the sport of fox baiting—if one wishes to dignify it so—has a set form. The amendment would allow the use of dogs to fight foxes underground and I got the impression from the stage 1 debate that that was one of the things that the Scottish Parliament wanted to prevent.

To what circumstances would amendment 59 apply? Given that we are not talking about orphaned cubs, which we are dealing with separately, I could not envisage a situation in which someone would use a dog to kill an animal

underground.

Fergus Ewing: Those are fair questions.

First, it is clear that there has been no definition of fox baiting. Elaine Murray asked in what circumstances amendment 59 would apply and in what circumstances its protection would be required. A variety of circumstances spring to mind. A wounded fox in a den—possibly with a gangrenous wound—might be incapable of movement, of life above ground and of supporting itself. It would possibly be prone to suffering a lingering death through starvation or gangrene, which gamekeepers tell me can last for several weeks. In those circumstances, the dispatch—the word that the amendment uses—of the fox by a dog would involve the least infliction of pain.

Gamekeepers and land managers are motivated by trying to inflict the least pain. They do not wish to see foxes and dogs fighting underground any more than any one else. They are more conscious of animal welfare than the rest of us because their job involves that. The gamekeepers whom I have met seem to have the right motivation—to control the fox in the way that causes the least pain.

We heard from the witnesses who appeared at our meeting two weeks ago that foxes do not groom themselves, are prone to infection and carry germs. We heard from Ronnie Rose that dens are places of great infection, with food lying around and so on.

A second possible situation is one in which there are orphaned cubs. We will perhaps go on to consider that. I understand that for the first two weeks, cubs survive solely on the vixen's milk; they are not capable of eating solids. If the vixen is shot, they are left underground. How do members feel about orphaned cubs in those circumstances spending 13 days underground with no one to feed them, being unable to move or feed themselves? In those circumstances, the way to dispatch the cub that involves inflicting the least pain is the way that amendment 59 would permit.

The Convener: With respect, Mr Ewing, I think that I am right in saying that we will be coming on to orphaned cubs and indeed injured cubs in later groupings.

Fergus Ewing: I understand fully. As I mentioned earlier, the purpose of amendment 59 is to set out the general criteria where there is no practical alternative. Those criteria stretch wider than the orphaned-cubs scenario; they stretch to the wounded-fox scenario. They may stretch to other scenarios that I do not know of.

Elaine Murray has pointed out the danger of defining accepted activities too narrowly. If an activity is not accepted, it is a criminal activity. We could make criminals of those who carry out such

activities. Amendment 59 is intended to ensure that that possibility does not arise.

Dr Murray: I come back briefly to the issue of the wounded fox. I am not aware whether gamekeepers use dogs in order to dispatch wounded foxes below ground when they know that the fox is wounded. I would have thought that if a fox were wounded, there would be more chance that it would fight with a dog, because it would not be capable of getting away. There might be a bit of a problem there.

The other point about amendment 59 is that it states:

“A person does not contravene section 1(1) ...”

It does not refer to the activities of gamekeepers. It could mean that nobody would contravene section 1(1) by using a dog if they thought that a mammal that had not bolted was underground. I am bit concerned about that.

Stewart Stevenson: I understand the concerns about gangrene, having nursed human beings who had it. I know how distressing a condition it is. Am I correct in recalling that evidence to the committee suggests that terriers are put to ground only to dispatch animals that are significantly smaller than they are? They are not put to ground to dispatch animals of a similar or larger size. That might represent a real threat to the animal that is put below ground—the animal whose purpose is to dispatch the fox.

15:30

Rhoda Grant: That is one of the issues that I wanted to raise. I find it difficult to see how a dog that is large enough to dispatch a fox quickly can be made to go below ground. I do not think that that is possible.

Fergus Ewing talked about wounded or injured animals and cubs. There are amendments to deal with that, which we will come to. However, how would it be possible to find out the condition of a fox when it was below ground? How could it be known that it was suffering? In amendments that we will come to, that is laid out a little better. I find it strange that we are discussing amendment 59, just in case there is something that we have not thought about. We have taken a lot of evidence, none of which has suggested to us that a dog would be used below ground for that purpose.

Richard Lochhead: I have some sympathy with Fergus Ewing's comments. However, in our stage 1 report, one of the few recommendations on which the committee agreed was that dogs should be sent underground only for the dispatch of cubs.

Fergus Ewing: The use of a dog to dispatch any form of fox other than a cub would be rare, but it would occur from time to time. I do not accept

the suggestion that there has been no evidence to that effect. The dispatch would be very swift.

Elaine Murray's point was that the amendment refers to a person. If that criticism is valid for amendment 59, it is valid for the whole of amendment 53, of which subsections (1), (1A), (1B) and (2) all refer to a person. If she thinks that I have got it wrong in amendment 59, she must also think that we have got it wrong in all the other work that we have done.

Regarding Stewart Stevenson's point about the animals being smaller, I agree that, in most cases, they would be.

Finally, I do not recall that we agreed specifically that a dog should be used to dispatch only orphaned cubs.

I do not think that the situation described in amendment 59 will arise often, but things happen in the control of animals that parliamentary committees are not always the best experts to consider. I ask members to think about the meaning of the words

"where ... there is no other practical alternative".

What is to be done? The alternative is to allow the possibility of an animal suffering a death that is far more painful than might otherwise be the case if we allowed gamekeepers and land managers to do their job in their own way, having regard to the welfare of their dogs. No one will protect the welfare of a dog more than the gamekeeper or owner of that dog. They will not expose it to danger; they will use it when it is sensible and appropriate to do so. Therefore, although I understand the points that committee members have made, I would like this additional protection to be included in the bill.

Dr Murray: My objection to the reference to a person is not an objection to the phrase "a person"—all the other amendments that we have considered have been fairly specific in defining what activity is an exception—but to the fact that amendment 59 would allow any person to put a dog underground where they believed that there was a wild mammal that had not bolted. That could cover a wide spectrum of activities, some of which are not the sorts of responsible activities that gamekeepers would take part in. The amendment would potentially allow people the exception to use dogs in a very different way, which we all agreed at stage 1 would be unacceptable.

Fergus Ewing: That would be true, were it not for the fact that the amendment refers specifically to the dog's use for control of a pest species.

Mike Watson: I support Elaine Murray's point about the use of the phrase "a person". The amendment would allow anyone to engage in fox

baiting. If Fergus Ewing would find it helpful, I would be happy to include a definition of fox baiting in section 7. Most people have a fair understanding of what baiting is—it is putting two animals in a situation in which they are encouraged to fight. In the days of bear baiting, bears were tied to a pole or put in a bear pit, and dogs were also put in pits. I think that people understand what baiting is, and that would be the effect of putting a dog underground. The fox's inclination is to fight a dog rather than to bolt from it; therefore putting a dog underground would be baiting. The amendment would leave that possibility open, and that is the problem.

I want to share two quotations with the committee. The Scottish Society for the Prevention of Cruelty to Animals makes clear in its briefing for today's meeting that it is

"opposed to the use of dogs below ground and ... cannot accept Amendment 59."

The National Working Terrier Federation states in its code of conduct that the recommended method of quarry dispatch is "a shotgun or firearm."

We should be guided by those organisations. The issue of cubs, which we will discuss later, is different. I believe that Cathy Jamieson's amendment 83 is an appropriate way of dealing with that.

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

Members: No.

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

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

Amendment 59 disagreed to.

The Convener: Amendment 60 is grouped with amendment 86, which members will find on page 5 of the marshalled list.

Before Fergus Ewing speaks to and moves amendment 60, I advise members that we have received clarification on two points. It appears that a term needs to be defined only if it occurs in the

bill—fox baiting is not mentioned in the bill. On the legal point raised by Rhoda Grant and other members, a lawyer can be asked to give an opinion, but that opinion would be only the personal opinion of the lawyer. A definitive decision can be made only in the courts. I hope that that information is helpful—it was intended to be.

Fergus Ewing: I put much of the argument for amendment 60 when I spoke to amendment 59. Amendment 60 seeks to protect the welfare of orphaned cubs that are underground. I have examined Elaine Murray's amendment 86, which takes an alternative approach, but which seeks to deal with the same situation.

Amendment 60 says:

"A person does not contravene section 1(1) by using a dog to despatch a wild mammal, being of a pest species, where—

- (a) that mammal is below ground; and
- (b) the person reasonably believes that the mammal is an orphaned cub."

Amendment 86 talks about the use of

"a single dog to despatch a fox cub below ground, where that person reasonably believes the cub to be orphaned and incapable of independent feeding."

I hope that the committee accepts—as it accepted during stage 1—that there is a general need for orphaned cubs to be despatched by a dog. I think that we have all recognised that that need exists; the question is which amendment we should agree to today.

I suggest that amendment 60 puts the issue clearly and allows for the control of other types of pest species in the circumstances in which a cub is orphaned, whereas amendment 86 deals only with fox cubs. There may be other species, such as mink, to which that need applies, although we know that dogs are not generally used to pursue mink below ground because in most cases—but not all—the mink hole is too small for a dog to travel through. Unlike amendment 86, amendment 60 would allow other types of pest to be dealt with.

Members may wonder what the phrase "incapable of independent feeding" means. I had the benefit of discussing with some gamekeepers how the inclusion of that phrase in the bill would affect them. I am advised that there are three stages that an infant fox cub goes through. In the first two weeks, the fox cub is utterly dependent on the vixen and is able to obtain nourishment through milk only. In the second phase, feeding is a mixture of milk and solids. The cub is still dependent on the mother for its food, which is provided in the form of milk or assorted lambs, game birds, ground-nesting birds and all the other types of bird and animal that we are trying to

protect. In that second phase there is a different type of feeding and the cub is able to go above ground, but not to fend for itself. In the third phase the cub is increasingly able to fend for itself and function as an adult fox.

My question to Elaine Murray is, how are gamekeepers to know how old cubs are? How? They have to know in advance of obtaining the benefit of Elaine Murray's amendment 60 that the cub is so young that it is incapable of feeding itself. They have to know that before they send the dog down into the den. They may have a rough idea of the age of a cub, but unfortunately—and I am sure that this is unintended—gamekeepers to whom I have spoken are worried that unless they can show in advance of using the dog that the cub is incapable of independent feeding, they would not be entitled to the benefit of the exception, and would lay themselves open to prosecution.

While I appreciate fully and agree with the subsection in Elaine Murray's amendment 86, it adds another problem and another hurdle, that is, something else that a gamekeeper or hillpacksman—as Rhoda Grant will well know—has to prove in order to avail themselves of the protection. For that reason, while I support the spirit of Elaine Murray's amendment 86, I believe that amendment 60 is more workable and achieves what we all hope to achieve by the bill.

I move amendment 60.

Dr Murray: I should explain the background to amendment 86, which is the fact that foxes can breed over a long period of time. I believe that they can do so from as early as December until well into the spring. Indeed, a vixen may have a number of litters in a den with her, from very young cubs to much older cubs that are capable of fending for themselves.

In the instance where a dog is sent down a den—and generally that is done to flush a vixen, rather than dispatch cubs—often it will dispatch very young cubs as soon as the vixen bolts. However, older cubs are likely to bolt themselves, and therefore will be flushed to the gun. The behaviour of fox cubs depends on their age. It is unlikely that a terrier would be used to dispatch an older cub that is capable of hunting and feeding itself, because older cubs are larger animals and are more likely to run to the gun.

Amendment 86 uses the term "reasonably believes", so that if in the pursuit of their employment a gamekeeper who uses their own terriers, or those of a terrier person who has come in, reasonably believes that the vixen may have young cubs, they would be exempted from prosecution if the terrier dispatched young cubs in the course of the work. Fergus Ewing's amendment 60 states:

"the person reasonably believes that the mammal is an orphaned cub".

I do not know when a cub becomes a fox, but an orphaned cub could be quite an old cub. There could be circumstances in which it could be argued that a dog was being used to fight with an older cub underground, rather than flush it to be shot.

I refer briefly to Cathy Jamieson's similar amendment 83, which is in a different group, to highlight the differences between what I am saying and what she is saying. She is saying that the dog is used

"in order to locate the fox cub"

which is then destroyed

"as humanely as possible".

However, my understanding is that, if a terrier is used, it might quickly dispatch the cubs—especially very young ones—which makes it unlikely that it will locate the cubs and then allow the gamekeeper or whoever to decide whether to use another humane method of dispatch.

15:45

Stewart Stevenson: In amendment 60, Fergus Ewing reasonably believes that the mammal is an "orphaned cub", whereas Elaine Murray, in amendment 86, reasonably believes that the mammal is the "cub to be orphaned". As Fergus Ewing so cogently argued when he talked about dispatching mammals that were incapable of independent feeding, would not we be required to prove that the mother had been dispatched to argue that a cub is orphaned? Examination of the mother would indicate whether she was lactating and therefore whether the cubs were still dependent on her. It would be necessary to see the mother to know that we were dealing with orphaned cubs and so reasonably to assess that the cubs were incapable of independent feeding.

Fergus Ewing: I agree with those comments.

Dr Murray: I do not know whether Stewart Stevenson is trying to argue that the vixen would have to be examined after it was killed before any decision could be made to send down the terrier to dispatch the cubs. My understanding is that the cubs could be dispatched at the same time as the vixen is flushed. We might reasonably assume that, if we are talking about a vixen during the breeding season, she will have cubs that are incapable of independent feeding and which might be dispatched by the terrier. The criterion of reasonableness exempts people from examining the vixen's corpse to find out whether she is lactating.

Stewart Stevenson: Amendments 60 and 86 require a reasonable belief that the cubs have

been orphaned. In other words, one has to reasonably know that a vixen has been dispatched and reasonably assume that it might be the mother of the cubs in question. Under those circumstances, it might be reasonable to conclude the stage in life that the cubs have reached.

With your indulgence, convener, I point out that by using the phrase "orphaned cub" in paragraph (b) of the section proposed by amendment 60, Fergus Ewing might inadvertently have restricted the wild animal pest species.

John Farquhar Munro: Any experienced gamekeeper who arrives at the lair or den can well establish the state of play. For example, if the fox is in the den and is flushed by one of the terriers, it is a fair assumption that the fox is lactating and feeding her young. If gamekeepers see carrion or other debris being carried into the den, that should give them a fair opinion of the age of the cubs. To suggest that the gamekeeper or whoever is employed in the position must establish beyond any reasonable doubt that the cubs are orphaned is absurd.

Richard Lochhead: Once again, I expect that there is a consensus in the committee in favour of dispatching orphaned cubs, although there will undoubtedly be some dispute about the wording. We must remember that we have to take amendment 83 into consideration along with amendments 60 and 86. Instead of repeating the debate later, can we just discuss all three amendments at once, or at least ask the members who are moving the amendments to speak to the other ones? The committee will simply compare the three amendments and pick the best one.

The Convener: Amendment 83 relates to section 3 of the bill. We cannot debate it now.

Richard Lochhead: So there is no way we can even discuss it.

The Convener: I am advised that the amendment relates to retrieval and location, rather than to the subject that we are debating.

Cathy Jamieson: Given that amendment 83 has been referred to on several occasions, I would like to take the opportunity to offer members some clarification.

I did not lodge amendment 83 with any great relish or because I wanted to support the notion of dispatching—for want of a better word— orphaned cubs. However, the amendment would allow for the use of a dog, where that is the most humane method of dispatching cubs. I refer members to evidence that the SSPCA submitted on the matter. Although the use of a dog in the situation that we are discussing is not ideal and is something to which people would resort reluctantly, it was recognised as the most humane method in certain

circumstances of dispatching cubs. That point has been made on the record on a number of occasions.

Amendment 83 would deal with the issues that other members have raised, but would tighten up the provisions of the bill to ensure that alternatives to the use of a dog are sought. It also seeks to ensure that permission is given for people to be on the land to carry out such activity.

The Convener: It strikes me that we are debating Cathy Jamieson's amendment 83. I am prepared to use my authority to allow the amendment to be debated, but I point out that if we debate amendment 83 today, we cannot debate it again at a subsequent point. If members want to debate it now, I am happy that we do so, but given what Cathy Jamieson has just said, it may be best for us to return to the amendment later. Is that agreed?

Members *indicated agreement.*

The Convener: Would any other members like to comment on the amendments in the group?

Rhoda Grant: I have a couple of comments, which again relate to amendment 83. Both amendments in the group—amendments 60 and 86—state that a dog needs to be used to dispatch fox cubs. We have received evidence that some terriers can lift fox cubs out of their dens if the cubs are young enough. Amendment 83 would allow for cubs to be lifted out of their dens, if that were possible. It would also allow people to dig down for fox cubs, where that was possible. Of the three amendments that we are considering, Cathy Jamieson's amendment 83 would provide the most scope. It states that a dog does not need to be used to dispatch fox cubs, but that one can be used for that purpose.

Dr Murray: Neither my amendment nor Fergus Ewing's amendment states that it is necessary to use a dog to dispatch cubs. The amendments state merely that that can be done. There is nothing in them to suggest that people could not allow a dog to lift out a young cub or would not be allowed to dig down to retrieve cubs. The amendments merely allow for a dog to be used to dispatch the cubs. They are specific to that circumstance and would not prevent the other activities that have been mentioned from taking place.

Fergus Ewing: I endorse the arguments that Elaine Murray has just made. There is nothing in amendment 60 that requires a dog to be used below ground to dispatch an orphaned cub. As Elaine Murray said, that is not the point. The point is that the amendment would enable people to use dogs to dispatch orphaned cubs. One hopes that their judgment could be respected in such situations. If, as Rhoda Grant points out, it is

possible for a cub to be transported above ground, that can be done. I am not certain that that would be possible in a huge range of circumstances, but I could be wrong.

Reference has been made to the SSPCA, which provided us with evidence. In its written evidence, the society stated that it would prefer dogs not to be used below ground, or words to that effect. However, I respectfully remind committee members of what James Morris of the SSPCA said to the committee. I hope that I am not in any way misrepresenting him, but I think that he said that, sadly, terriers must be used below ground. Specifically, he acknowledged that by passing amendment 60, we would avoid inflicting more suffering and pain on orphaned cubs than is necessary.

I stress that because I hope that no one is going to suggest that any of us is trying to do anything other than achieve the best for the welfare of pest species and seek that they be dispatched as efficiently as possible. From the cub's point of view, it does not make much difference whether the bill says it will be killed humanely. Perhaps we will return to that later.

Mike Watson: I want to come back on the point that Fergus Ewing made about the SSPCA. I invoked their support last time so it is only fair that I should make it clear that the SSPCA is not in favour of setting dogs below ground. That is true as far as the written briefing is concerned, but I did not speak to James Morris. The SSPCA would prefer to have a closed season when cubs are dependent. I use that to clarify the situation.

My preference is to support Cathy Jamieson's amendment 83. So as not to rehearse the arguments, I will not go into detail, but I note her comments and I will support the amendment.

I could support Elaine Murray's amendment 86, but I would prefer it not to be passed at this stage. It says only:

"A person does not contravene".

Amendment 83 mentions:

"A person who is an occupier of land (or is acting with the occupier's written permission)",

which is stronger.

I accept the point that Fergus Ewing made about humane killing. It is not a major issue but it does strengthen Elaine Murray's amendment. I therefore hope that amendment 83 will be passed in preference to amendments 60 or 86.

The Convener: The question is, that amendment 60 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)
 Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 60 disagreed to.

The Convener: Last week I discovered a remarkable procedure that allowed the committee to speed up its deliberations. Once again, I call a five-minute comfort break.

15:57

Meeting adjourned.

16:05

On resuming—

The Convener: Welcome back, ladies and gentlemen. During the adjournment, three members indicated that they need to be elsewhere at quarter to 5. The member in charge of the bill has said that he has no objection to my finishing business at quarter to 5. I suspect, to everybody's relief, that that is exactly what we will do.

Amendment 62, in the name of Fergus Ewing, is grouped with amendment 87.

Fergus Ewing: I think that amendments 62 and 87 intend to achieve the same aim. Amendment 62 aims to provide that it is in order to use a single dog to dispatch a wild mammal where

"it would be unsafe to use a rifle or shotgun".

Elaine Murray's amendment 87 uses a slightly different formula, which is that one can use

"a single dog to despatch a wild mammal if there is no practical and safe method of humane despatch available."

The intention of amendment 62 is to provide for the situation that we heard about two weeks ago in evidence from the National Working Terrier Federation and from people who practise the control of foxes and pests.

In the case of urban foxes, for example, it would—for obvious reasons—be wholly unsafe to use a rifle or shotgun. We heard in evidence that it is necessary to control foxes in our towns and

cities. The fox population in some towns and cities, including this one, is believed to be growing rapidly—it is becoming a serious problem. It is well known that foxes are carriers of various diseases. In future, there may well be serious public concern about the possibility of human health being affected by foxes. We heard evidence that it is necessary to control the fox in towns and cities, although it is obviously inappropriate to use a rifle or shotgun. If the committee accepts that evidence, I hope it will support amendment 62.

I move amendment 62.

Dr Murray: Other than being a little wider, amendment 87 is not very different from amendment 62. The amendment has been criticised for implying that the use of dogs is always inhumane—I perhaps should have said "alternative method". That may be something I ought to consider.

More generally, the amendment refers not just to foxes, but to "pest species". There could be other pest species for which a rifle or a shotgun would be inappropriate. If those methods are not appropriate for the dispatch of the pest species, one could then use a dog. That might not always be the alternative—some pest species could be humanely destroyed in another way, perhaps by use of a pistol or another method of control—but if there were no other method of dispatch, it might be permissible to use one dog.

Cathy Jamieson: I understand what Fergus Ewing is trying to achieve with amendment 62, but I wonder whether it would open up potential loopholes. The amendment might contradict the provision we agreed when we agreed to amendment 53, in relation to flushing fox, mink and other pest species, that those animals should be dispatched by persons possessing a firearms or shotgun certificate. Potentially, people not in possession of such certificates could use amendment 62 as a loophole to allow them to use dogs when they thought that shooting would be unsafe—regardless of whether that judgment was based on proper professional knowledge. I seek clarification.

Rhoda Grant: I, too, am a little concerned. Perhaps Fergus Ewing and Elaine Murray are thinking about built-up areas where it would be unwise to shoot. However, it would be equally unwise to allow a dog to run in hot pursuit of a fox in a built-up area, which could cause traffic accidents and the like. Surely trapping would be a better way to deal with foxes in built-up areas.

Dr Murray: That is one of the reasons why amendment 87 says:

"if there is no practical and safe method of humane despatch available."

The exception would apply only if there were no alternative.

Mike Watson: I do not have much that is new to say. The amendments suggest that, in an urban environment, a person would not need to possess a firearms certificate to use a dog. How would such a person judge whether it was unsafe to use a rifle? A person could simply say that they were not qualified to use a rifle or did not have permission to use a shotgun. Should that give them the right to use a dog?

Elaine Smith: I seek clarification from Fergus Ewing on the control of pests in built-up areas. What is the usual way of controlling such pests?

16:15

Fergus Ewing: I believe that the usual methods are employed where the fox lives in a den and is flushed. I believe that netting is commonly used to catch the fox when it comes out of the den. The use of a net allows a person to secure the fox before it is safely shot—the kill is instantaneous, swift and avoids the least infliction of suffering.

We need to agree on an amendment to take account of the evidence that we have heard. I hope that members accept that that is the case. If we agree on that, which amendment are we to agree on?

Amendment 62 does not require the use of a dog; it merely enables the use of a dog. We have heard that the NWTf code would apply and that the most humane methods would be used. In some cases, those methods would include trapping. Amendment 62 is an enabling measure. If it is not included in the bill, people—including the gentleman who gave evidence—could become potential criminals.

On firearms certificates, anyone in possession of a rifle or a shotgun who did not have an appropriate certificate would commit a firearms offence. It may be possible to lodge a stage 3 amendment to make a technical improvement to the bill. The Executive has indicated that it will do that.

I am bound to point out that we agreed to amendment 53, as amended. That amendment introduced a new section after section 1, of which only subsection (2)(c) requires a person using a shotgun to have a firearms certificate. If members look at the new section, they will find that the requirement to have a valid firearms or shotgun certificate seems not to apply to the amendment in its entirety.

I may be wrong about that, but I am sure that we all agree that we have debated the fact that anyone who is engaged in this activity should be in possession of a valid firearms certificate. Mr

Watson is indicating his agreement. I am sure that, whatever else we disagree about, we agree about that. However, that is not a reason for rejecting amendment 62. If required, a technical improvement can be made at a later date.

Dr Murray: I take on board Mike Watson's point about possession of a firearms certificate. That is an omission that should have been included in amendments 62 and 87, as it is included elsewhere in the bill.

Mike Watson: I want to pick up on the point that Fergus Ewing made about amendment 53, as amended. At a later stage, I hope to end the ambiguity.

Fergus Ewing: We are all agreed about that. As the point did not arise in the debate on the amendments that we agreed last week, I hope that it does not arise in relation to amendment 62.

The Convener: The question is, that amendment 62 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 62 agreed to.

The Convener: Amendment 65 is in a group of its own.

Mr Tosh: The purpose of amendment 65, as originally conceived, was to get round the great tangle that was amendment 53 and all the amendments to that amendment. Its genesis was an e-mail—I am not sure where the e-mail came from or whether other members received it—that carried the names of the terrier and hill pack folk and the Scottish Gamekeepers Association. The e-mail suggested that, rather than write into the bill all the offences and all the objections to cover every aspect, we should look at creating the condition for exemptions.

The e-mail suggested that we allow the terrier

code of conduct 2001 to be the guiding basis on which exemptions should be allowed. That did not seem to be a competent way to proceed, as doing so would effectively write the code into law. Also, as the code was not drafted for the purposes of inclusion in a bill, and it could not be amended without further primary legislation, it did not seem reasonable to proceed on that basis.

I suggested, therefore, that we proceed on the basis of secondary legislation. The amendment would allow a dog to be used to flush a wild animal and to kill a wild animal in accordance with regulations that would be drawn up by Scottish ministers and approved by Parliament. It occurred to me that those regulations could be based on the terrier workers' code of conduct, but that they would be capable of amendment as circumstances and opinions changed. They would also be drafted independently.

I understood that to be the basis on which most legislation passes through the Parliament. We put as little as possible in the bill; we spell out the principles in the bill and flesh out all the detail in subordinate legislation. My view is that that would have been a more sensible way to tackle the field that is outlined in amendment 53 as amended, which, I gather, may require further amendment at stage 3—in the view of at least some members—to get it watertight.

I still think that it would be better to proceed along the lines that I suggested. However, last week, no doubt on the guidance of the clerks, the convener did not rule that amendment 65 would be pre-empted by amendment 53 or amendment 57. In my view, amendment 65 is pre-empted by amendment 53 as amended, which was agreed to last week.

I cannot press amendment 65 at stage 2. The amendment could be presented at stage 3 as an alternative to what will presumably become section 2—that is, amendment 53 as amended—were the Executive minded to take the responsibility for cleaning up the law, the codes of conduct and the various exemptions that would exist. In accordance with normal Executive practice, I would expect that to proceed on the basis of the fullest consultation. I would expect that the codes of conduct or practice would be properly defined, sufficiently valid and defensible, so that they could be understood by a court of law and could form the basis on which the police, procurators fiscal and the courts could make judgments in determining whether exemptions applied.

From a purist point of view, that would be a better way to proceed. However, I recognise that the committee has agreed to amendment 53 as amended and has therefore dealt with the matter. It would not be possible for the committee to go

back on that decision. I thought that it was still worth speaking on the issue to make the point, and to allow the committee to debate the amendment to whatever extent it wishes, although I am not in a position to move amendment 65. However, if the convener asks me to move the amendment for procedure's sake, I will do so with the indication that I will ask at the end of the debate for permission to withdraw the amendment on the ground that I do not think that it is procedurally competent any more.

The Convener: Are you moving amendment 65? My understanding is that, if it is not moved, it cannot be debated.

Mr Tosh: It is my understanding that the committee can debate anything that it wants to, but I will move the amendment if that is your ruling. However, I will withdraw it at the end of the debate.

I move amendment 65.

The Convener: As you are the convener of the Procedures Committee, I bow to that finding.

Mr Tosh: That would be a mistake.

The Convener: Amendment 65 has been moved. Do any other members wish to comment?

Rhona Brankin: The Executive's view is that the committee should resist amendment 65. The amendment envisages that wild mammals can be legally flushed and killed using dogs, providing that the person using the dogs

"acts in accordance with such provision as may be made by the Scottish Ministers to regulate"

those activities.

The Executive does not consider that it has any role in regulating pest control activities in that way. Apart from the additional resources that would have to be made available to carry out that work, it would also entail active prescription by the Executive of the range of activity that amendment 65 covers. I do not believe that that is appropriate. I urge the committee to vote against amendment 65, if the amendment is pressed.

Mike Watson: I am opposed to the amendment for the same reasons as those that the minister outlined.

Fergus Ewing: Now that the Executive's view is absolutely clear, that makes it all the more important that the exceptions that we include in the bill protect gamekeepers, land managers and hill pack men. If we do not, those people are potentially criminals.

Mr Tosh: I am not sure whether the minister's response was a statement of neutrality or, as a statement that the Executive did not support the amendment, a statement of partisanship. Perhaps

it was a statement of partisan neutrality. I promise not to upbraid the minister, meeting after meeting, for having taken such a negative attitude to my suggestion.

The minister might profitably consider this matter again at stage 3—unless she is absolutely convinced that amendment 53, as amended, is totally watertight or can be made so by a further series of amendments. In principle, it is poor legislative practice to try to cover every conceivable circumstance in the bill. However, I appreciate Fergus Ewing's point that, if the Executive is unwilling to take responsibility for defining the criminal law of the land, it is incumbent on the members of this committee to do the best they can in the absence of independent legal advice.

Amendment 65, by agreement, withdrawn.

The Convener: That was helpful, Mr Tosh. Thank you very much.

Amendment 66, in the name of David Mundell, has been debated with amendment 2.

David Mundell: Convener, I will not move amendment 66 or amendment 68. I—

Mr Rumbles: In that case, may I move amendment 66?

David Mundell: I had not finished speaking, Mr Rumbles.

The Convener: Yes—please continue, Mr Mundell.

David Mundell: I will not move the amendments at this stage, on the basis that Mike Watson has undertaken to produce an amendment that will encompass falconry and shooting exemptions.

Fergus Ewing: I would like to clarify something. We know that Mr Watson undertook previously to introduce such an amendment; that is recorded on page 23 of our stage 1 report. However, we also know that Mr Watson's intention was quite specific. I am not sure whether David Mundell is aware of that. Once he becomes aware of it, I wonder whether he will reconsider his stance. The report states:

"Mike Watson ... intends to lodge amendments to exempt falconry (and rough shooting) from the effects of the Bill, by removing reference to a *single* dog. His proposed amendment would also include a provision that flushed mammals are killed, as soon as possible, by a bird of prey as an additional condition within which use of dogs would be permitted in falconry."

Those are the two things that Mr Watson said that he would do at stage 2; perhaps he will say today what he intends to do. However, as those were Mr Watson's stated intentions at stage 1, I wonder whether that will be sufficient to persuade David Mundell to change his mind.

The Convener: Amendment 66 has not been moved, so we cannot debate it much further.

Amendment 66 moved—[Mr Mike Rumbles].

The Convener: The question is, that amendment 66 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 66 disagreed to.

David Mundell: Any of the concerns that were raised about amendment 67 could be dealt with by defining the term gamekeeper in the bill; I undertake to introduce an amendment to that effect.

I move amendment 67.

The Convener: The question is, that amendment 67 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 67 disagreed to.

Amendment 68 not moved.

The Convener: Amendment 69 is in a group of its own.

16:30

David Mundell: The purpose of amendment 69, given the basis on which we are proceeding, is to allow for other activities that have not been thought about at this stage. We listened carefully to the discussions about the difficulty of covering every possible circumstance. Amendment 69 would allow for other activities to be excepted once the bill has been passed. The amendment sets out a process by which that could happen.

I have attempted to ensure that the process is as democratic as possible. A majority vote in the Parliament would be required to include new excepted activities, so an activity could not simply be added by an order of the Executive. An order for a new excepted activity would have to be consulted on and undergo a super-affirmative process. I do not want to speculate about new activities, because I cannot name one that we have not thought of—if I could, it probably would have been the subject of a specific amendment. The amendment would ensure that if ministers, in the spirit of the legislation, thought that there should be a new excepted activity, that activity could be included by means of a vote in Parliament, without amending primary legislation. The amendment follows on from the list of defined excepted activities.

I move amendment 69.

Fergus Ewing: David Mundell is to be commended for lodging amendment 69, which would make it possible to solve, by means of subordinate legislation, problems that might emerge after the bill is enacted. If we do not agree to the amendment, a flaw in the bill might emerge and we might wish to except an activity. Without the amendment, it would be possible to resolve the problem only by primary legislation and, as the difficulty of finding time in the Executive's timetable is unlikely to change, the amendment is sensible.

As Elaine Murray pointed out last week, it might emerge that we have neglected to consider the plight, and failed to respect the interests, of a group of people who wish to carry out legitimate activities in the countryside. I hope that that situation will not arise, but we must support the amendment and we are indebted to David Mundell for lodging it. I hope that members will agree that the amendment would add to the bill. Although I hope that using it would be a fallback position, it would be there if we needed it. The alternative is serious.

Mr Rumbles: Amendment 69 is the most

important of the amendments in this process and it is helpful because some activities might not have come to our attention. When the bill is put into practice, real problems might occur and the amendment would be an effective way of tackling them.

Amendment 69 agreed to.

The Convener: Amendment 70, in the name of Tommy Sheridan, is grouped with amendment 70A. I would love to call Tommy Sheridan to speak to and move amendment 70, but I cannot. I understand that John Farquhar Munro was prepared to speak to the amendment last week, had we reached that point. I am sure that he is in the same state of readiness.

Fergus Ewing: Is there a defection in the offing?

John Farquhar Munro: In the absence of the good Mr Sheridan, it falls to me to speak to amendment 70.

The amendment addresses the exception of agricultural pests. The amendment states:

"A person does not contravene section 1(1) by using a single dog to chase and catch a rat, rabbit, hare, fox or mink considered by the person who owns or occupies the land on which the activity takes place to be an agricultural pest."

I have no difficulty with that, but Mr Sheridan could have gone a bit further. The amendment states that, if the dog chases and catches the mammal, that is not an offence. However, we are assuming that each mammal that is caught is destroyed by the dog. I am not sure whether the rest of the committee thinks that the wording of the amendment might be strengthened; as it is, it uses only the word "catch". Nevertheless, in Mr Sheridan's absence, I will move the amendment.

I move amendment 70.

Mr McGrigor: Amendment 70A is intended to allow people to use dogs—especially lurchers, which are often used by Gypsy/Travellers and have been for years—for the purpose of killing a pest. Land managers and gamekeepers have pointed out to me that pest control is a managed scheme. Although a land manager might consider a creature a pest, he might not want any individual to use a dog to kill it without his knowledge or permission. Therefore, amendment 70A seeks to add the concept of permission to amendment 70, which I agree with.

I move amendment 70A.

Dr Murray: Amendments 70 and 70A are totally unnecessary, as the matter has been covered by previous amendments. The issue of Gypsy/Travellers using a lurcher to provide food is covered in subsection (1)(b) of amendment 53, as amended, which talks about

“providing food for consumption by a living creature, including a person”.

The issue of pests has been tackled, as pest species have already been referred to in the bill, and Fergus Ewing promises to provide a definition of pest species in section 7. Moreover, the phrase “agricultural pest” already has a definition in law. I am rather disappointed that Tommy Sheridan has not come to the meeting, as I would have liked to hear from him why he wanted to lodge this amendment.

Elaine Smith: I agree with Elaine Murray. I have three questions for John Farquhar Munro. First, would the phrase “occupies the land” include illegal occupation, which would apply to poachers or squatters? Secondly, the amendment seems to include no requirement for humane killing. If the amendment was agreed to, would it allow coursing with a single dog or fox baiting, which was discussed earlier? Thirdly, if the animals became endangered species at some point, would the amendment mean that they could still be killed in this fashion?

John Farquhar Munro: The wording of amendment 70 deals with the bill’s implication that an individual who is out with a dog that simply catches a mammal might be prosecuted because that individual has committed an offence. Amendment 70 contains a list of animals that are considered to be pest species, so I do not see that there is a great problem; it also says:

“considered by the person who owns or occupies the land on which the activity takes place to be an agricultural pest.”

so it also covers that aspect.

Fergus Ewing: I have much sympathy with what Jamie McGrigor and John Farquhar Munro said.

The question is whether Elaine Murray is right that this area is already covered by amendment 53 as amended. I am not entirely sure that that is the case. I think that Jamie McGrigor made the point that it should not be possible to control agricultural pests without the permission of the owner or lawful occupier. I think that it is true that such permission would be necessary. My reading of amendment 53 as amended is that this would be allowed under subsection (1) of the proposed new section. At present, the restriction about owners’ consent does not seem to apply to that—although that might change.

I have difficulty with the definition of “agricultural pest”. We have agreed that there should be a definition of pest species. However, if we were to have a further concept of agricultural pest, I presume that that would be a subsection of pest species. It is starting to get a little bit complicated—perhaps I should delete the word

“starting”—and we might need to consider the definition again.

I understand that the SSPCA will give some assistance—in the absence of assistance from a ministerial quarter—to help us grapple with these matters of definition. Once we have more information about the definition of pest species—by next week, perhaps—I hope that we might be able to reconsider the matter, if necessary. At the moment, amendments 70 and 70A, if they are agreed to, would make the bill even more opaque than it is already.

Mike Watson: We have seen a rather interesting demonstration of class unity from Tommy Sheridan, John Farquhar Munro and Jamie McGrigor, which I am sure is unique. I cite the SSPCA view that amendment 70 would permit fox baiting and hare coursing. As the prohibition of those activities is a general principle of the bill, I hope that amendment 70 and amendment 70A will be opposed.

The Convener: Do any other members want to speak? If not, I invite Jamie McGrigor to wind up.

Mr McGrigor: I wish to say only that I agree with Elaine Smith’s point that the wording in amendment 70 would open the door to poaching.

The Convener: The question is, that amendment 70A 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)

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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 70A disagreed to.

The Convener: Does John Farquhar Munro wish to press amendment 70?

John Farquhar Munro: In the circumstances, and in the absence of Mr Sheridan, I will put it to a vote.

Fergus Ewing: Spoken like a true comrade.

The Convener: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

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)

McGrigor, Mr Jamie (Highlands and Islands) (Con)

Murray, Dr Elaine (Dumfries) (Lab)

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

Smith, Elaine (Coatbridge and Chryston) (Lab)

Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Fergusson, Alex (South of Scotland) (Con)

The Convener: The result of the division is: For 1, Against 9, Abstentions 1.

Amendment 70 disagreed to.

The Convener: I promised members that we would stop the meeting at quarter to 5 and I must stick to that. I thank members and we will see the minister next week.

Rhona Brankin: My one chance to move an amendment today has gone.

The Convener: I suggest that we set no targets or limits for next week, but proceed towards the end of the bill. If we do not reach the end of the bill, we will start the following week where we leave off next week.

I also ask members to note that we will take evidence on the Fur Farming (Prohibition) (Scotland) Bill at the beginning of next week's meeting. We will try to resume consideration of the Protection of Wild Mammals (Scotland) Bill at around 3 o'clock, if we can. We will take evidence and take as long as is needed for members to be satisfied.

I apologise to the minister for stopping before we reached her amendment 71—that is life.

Meeting closed at 16:45.

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